STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2339

In the Matter of the Welfare of the Children of:
J. L. J. T. and B. L. H., Parents.

Filed June 2, 2014
Affirmed
Hudson, Judge

Anoka County District Court
File No. 02-JV-13-988

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Jennifer Taylor, Ramsey, Minnesota (guardian ad litem for children)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Smith, Judge.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

On appeal from the termination of her parental rights to two children, appellant-mother argues that the record does not show by clear and convincing evidence that she is a palpably unfit parent nor that termination is in the best interests of the children. We affirm.

FACTS

In November 2013, following a petition by respondent Anoka County Social Services (ACSS) and a trial, the district court terminated appellant J.L.J.T.'s parental rights to her minor children, A.C.I. and A.T.H., ages six and two, respectively. A.C.I.'s father is deceased; A.T.H.'s father, respondent B.L.H., consented to the adoption of A.T.H. and appeared, but did not participate, in the termination proceedings.

The record shows that in December 2011, ACSS received a report that appellant, who was then on probation for a fifth-degree controlled-substance offense, had tested positive for methamphetamine. The children were placed on a police hold, a petition was filed alleging that they were children in need of protection or services (CHIPS), and they were adjudicated in need of protection or services and continued in foster care. Appellant was diagnosed with episodic amphetamine dependence and opioid dependence in remission; as recommended, she completed a relapse prevention program.

Appellant's case plan as adopted by the court in January 2012 required, among other conditions, that she abstain from mood-altering chemicals, comply with random urinalyses (UAs), and complete psychological and psychiatric evaluations and follow their recommendations. An assessment diagnosed appellant with amphetamine dependence in remission, with adjustment reaction and anxious mood. B.L.H., with whom appellant was living, was diagnosed with depressive disorder, a rule-out diagnosis of bipolar disorder, and an unspecified personality disorder. He was referred for a psychiatric evaluation and anger-management services.

In January and February 2012, appellant provided UAs as directed. Although all tested negative for controlled substances, creatinine levels in three of ten UAs suggested dilution. In February 2012, appellant was successfully discharged from the relapse prevention program with a good prognosis, contingent on following through with discharge recommendations, which included abstinence from alcohol and mood-altering chemicals. She was referred to the Anoka County Enhanced Treatment Program (ETP). At a March 2012 review hearing, ACSS recommended that the children remain in foster care until appellant provided nondiluted UAs, but the district court ordered the children to return home under protective supervision.

Appellant entered ETP in March 2012. In April, she provided three diluted UAs. In May, she provided a UA that tested positive for alcohol. When confronted by the ETP case manager, she admitted that she had consumed alcohol and that one of the children had been at home when she had been drinking. She was placed on probation in the ETP program, but admitted that she had again consumed alcohol when the children were sleeping after she had fought with B.L.H. and told him to leave.

In May 2012, an ACSS social worker made an unannounced home visit, and appellant admitted that she had been drinking and had come to realize that she was an addict who could not drink. A decision was made that the children did not need to be placed in foster care. Ten days later, ACSS learned that B.L.H. had left the home after an argument. Appellant stated that B.L.H. had returned home the next day, but reported about three weeks later that he had left again. B.L.H. had several UAs that tested positive for alcohol and after May 2012 submitted only one UA, which tested positive for alcohol.

At a review hearing in June 2012, ACSS submitted reports indicating that appellant had recently submitted three UAs that tested positive for alcohol and that she had not informed ACSS about her relapses until confronted with the results. The district court ordered that the children remain with appellant, but that she must enter inpatient treatment within 30 days; if she did not comply with the condition of negative UAs, the children would be placed in foster care.

Appellant provided negative UAs for three months. Because her insurance would not fund inpatient treatment, she completed outpatient treatment at Chrysalis. She returned to ETP, from which she had previously been suspended. At additional review hearings in September 2012 and January 2013, the district court continued the children's placement with appellant under protective supervision.

In November 2012, appellant had a psychological evaluation, which diagnosed her with generalized anxiety; depressive and panic disorders; polysubstance dependence; and personality disorder not otherwise specified, with borderline, antisocial, and paranoid traits. She was recommended to continue outpatient therapy, see a psychiatrist for medication management, apply for rehabilitative mental health services, use job training resources, successfully complete ETP, and use additional resources. B.L.H. did not address his chemical health, mental health, or anger-management issues, and ACSS expressed to appellant a concern that her preoccupation with B.L.H.'s behavior could undermine her own mental-health stability and sobriety.

In March 2013, the ACSS social worker learned that appellant had been hospitalized with pneumonia and that, while hospitalized, she had provided a UA that

testified positive for methamphetamine. Appellant was also discharged from the ETP program after limited progress. After an emergency removal hearing, the children entered out-of-home placement.

In April 2013, appellant completed an updated chemical dependency assessment; the assessor believed that she had been using methamphetamine when she arrived for the appointment, but he did not recommend treatment, based on her statement that she had not used methamphetamine in a year. In May 2013, after appellant had a diluted UA and a missed UA, the district court ordered hair-follicle testing, which came back positive for amphetamine/methamphetamine. Appellant denied that the result could have been positive. Another UA in June 2013 also tested positive for methamphetamine, even though appellant's social worker testified that appellant had at first assured her that it would be negative. When asked again about the test results, appellant indicated that, because she was drinking heavily, she could not remember whether she had used methamphetamine.

In July 2013, a petition to terminate the parental rights of appellant and B.L.H. was filed, alleging that they were palpably unfit to be parties to the parent-child relationship and that, following the children's out-of-home placement, reasonable efforts had failed to correct conditions leading to that placement. The next day, appellant entered an intensive residential program at Wayside House, where she made positive progress. In September 2013, B.L.H. filed a consent to adoption of A.T.H.

At trial in November 2013, the ACSS social worker testified that, although the children had been with appellant under protective supervision for a year, the case had not

been closed because of concerns about appellant's ability to stay sober and failing to address her mental health on a consistent basis through therapy. The social worker testified that, when appellant was hospitalized in March 2013, B.L.H. brought her to the hospital, and a concern existed that appellant's contact with B.L.H. could have triggered a relapse. She testified that, when she learned of the positive results from appellant's UA in June 2013, she met with appellant, who denied using drugs or alcohol but expressed a desire to do so. She testified that, although the last several months had been positive for appellant, appellant had been struggling to remain sober for two years outside of a structured treatment program. She indicated that appellant was a positive support to A.C.I. when she maintained sobriety, but that she had a pattern of deteriorating after programming ended and not reaching out for help unless it was forced on her by perceived negative information, such as missing UAs. She testified that a termination of parental rights and adoption was in the children's best interests because it would provide them a sense of permanency, rather than returning them to foster care for a third time.

The children's guardian ad litem testified that, when appellant's programming at Chrysalis ended, she had received reports about appellant's concerning behaviors, including failing to reach out for help until confronted about a relapse. She testified that appellant did well in treatment, but as soon as she completed treatment, issues would return, and that although appellant was then sober, the children had been through a lot of changes. She testified that A.C.I.'s therapist had reported that appellant was very capable of parenting her children if she could remain sober, but that the children needed a stable, drug-free home.

Appellant testified that she had made "big mistakes," including relapsing on alcohol and methamphetamine and stating that her UAs would be negative when they turned out to be positive. She testified that she regretted not being completely honest, which was necessary for her sobriety, and that at Wayside House, which was different from her previous programming, she had learned new skills. She testified that she felt more stable and planned on continuing the children's current services, finishing a domestic-abuse plan, attending meetings, and continuing therapy. She testified that she had filed a petition to transfer custody of the children to her half-sister and her sister's husband.

Appellant testified that, while using controlled substances, she was meeting her children's physical and emotional needs, and that, even though they were affected by her chemical use, she "was still caring for them." She indicated that the children appeared affected by B.L.H.'s yelling when he was in the home, and that it was hard for her at times to let go of the relationship. She initially testified that she could not explain the diluted UAs, although she drank a few times and used methamphetamine on two occasions, but she then acknowledged that she would drink baking soda to change the PH of her urine. She stated that the hair-follicle test was positive because she used chemicals after her children were removed from her home, and that, when she told the social worker that the test would not be positive, she was not being truthful. She testified that her chemical use would affect the children because A.C.I. would have more bad behavior if he were away from her more, or if he returned to her and then left.

Appellant's mental-health counselor at Wayside House testified that appellant was fully participating in treatment and that she had a favorable prognosis if she finished nonresidential treatment, continued with recovery maintenance, continued individual therapy, took medication, went to meetings, and found a sponsor. Appellant's recovery coach at Wayside House testified that, as appellant became sober, she became more engaged in the program and more committed to her recovery, and that, if appellant used the appropriate tools, she had the ability to stay sober for a long time.

The district court ordered the termination of appellant's parental rights. The district court found that appellant had shown a consistent inability to maintain her sobriety outside of a structured treatment program, despite numerous social-service interventions, and that she had demonstrated little insight into how her addiction and relationship with B.L.H. affected the children. The district court found that appellant had done well in her latest treatment setting, but that she previously failed to use programming and assessment tools consistently enough to avoid continued supervision, and that, although there was hope that she could maintain sobriety, her history of relapse and dishonesty with caseworkers had harmed the children by exposing them to parents who were impaired in unsafe and unstable environments. The district court also found that ACSS made reasonable efforts at reunification, which failed to correct conditions leading to the children's out-of-home placement. Therefore, the court concluded that ACSS proved by clear and convincing evidence that appellant was palpably unfit to be a party to the parent/child relationship, that providing her additional services for

reunification would be futile, and that it was in the children's best interest that her parental rights be terminated. This appeal follows.

D E C I S I O N

A court will terminate parental rights only for grave and weighty reasons. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). On appeal, this court examines the record to determine whether the district court applied the appropriate statutory criteria and made findings that are not clearly erroneous. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 249 (Minn. App. 2003). "A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660–61 (Minn. 2008) (quotation omitted). We defer to the district court's termination decision if at least one statutory ground for termination alleged in the petition is proved by clear and convincing evidence and if termination is in the children's best interests. *Id*. at 661. If the district court finds the existence of a statutory basis to terminate parental rights, this court will not alter that determination unless the district court abused its discretion in doing so. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). Appellate courts "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

I

To meet the statutory ground for terminating parental rights on the basis of palpable unfitness, the county must prove a "consistent pattern of specific conduct before

the child or . . . specific conditions directly relating to the parent and child relationship . . . of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing . . . needs of the child." Minn. Stat. § 260C.301, subd. 1(b)(4) (2012). Appellant argues that there was insufficient evidence to support termination on the ground of palpable unfitness because the district court based its findings on outdated conditions. She points out that she has successfully participated in treatment at Wayside House, which provided her the first opportunity for inpatient treatment addressing both her chemical and mental health. She maintains that she is medication-compliant, participating in therapy, and has a plan for parenting her children while addressing her own needs. A district court considering whether to terminate parental rights focuses primarily on the parent's projected inability to care for the children, rather than on past history. *Matter of Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). But in its analysis, the district court may examine a parent's past patterns of behavior and conditions. *See id.* (concluding that a parent's sustained inability to care for himself due to mental illness supported a finding that he would be unable to care for his child); *see also In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 710 (Minn. App. 2004) (relying on a parent's history of substance abuse and past to support a finding of failure to rebut a presumption of palpable unfitness). In *W.L.P.*, this court noted that, although the parent had recently made progress, she had only maintained sobriety while in a controlled environment, and she had a history of relapse after successfully completing treatment programs. *Id.*

Here, the district court found that appellant consistently showed an inability to maintain her sobriety despite numerous interventions. This finding is not clearly erroneous: both the ACSS social worker and the children's guardian ad litem testified that they believed appellant would relapse and noted that she had been unable to remain sober despite participating in three treatment programs within two years. As in *W.L.P.*, appellant's ability to remain sober in a controlled environment does not necessarily predict her ability to maintain sobriety outside of that situation. *See id.* The record supports the district court's findings that, although appellant has recently made progress, she has been incapable in the past of using tools provided by social services to maintain sobriety. And significantly, the district court found that appellant appears to lack insight into how her substance abuse has affected her relationship with the children; she testified that the only harm to the children during the pendency of the CHIPS case was their removal from her care. Because the district court's findings of fact on these matters are supported by clear and convincing evidence and are not clearly erroneous, the district court did not abuse its discretion by invoking the statutory basis for terminating parental rights indicating that appellant is a palpably unfit parent. *See* Minn. Stat. § 260C.301, subd. 1(b)(4).

Because we have concluded that the district court did not abuse its discretion by invoking the statutory basis for terminating appellant's parental rights on the ground of palpable unfitness, we do not address the district court's additional basis for terminating her parental rights: that, following the children's out-of-home placement, the county's reasonable efforts under the direction of the court have failed to correct conditions

leading to that placement. *See* Minn. Stat. § 260C.301, subd. 1(b) (2012) (requiring only one statutory ground for termination).

II

Provided that the district court finds at least one condition for terminating parental rights, the best interests of the child remain the paramount concern. Minn. Stat. § 260C.301, subd. 7 (2012). Analyzing the best interests of the child requires balancing three factors: the child's interest in preserving a parent-child relationship, the parent's interest in preserving that relationship, and any competing interest of the child. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *Id.* "We review a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

Appellant argues that the district court abused its discretion by concluding that the children's best interests supported terminating her parental rights. She maintains that it is undisputed that, when sober, she has very good parenting skills, and that she has a positive relationship with the children. But at the time of trial, ACSS had been working with appellant for nearly two years to address her mental-health and chemical-dependency issues. And during the year that the children were returned to her, those issues did not resolve. The children's guardian ad litem testified that it was in the their best interests to be raised in a stable, drug free environment, and the ACSS social worker testified that a termination of parental rights would provide them a sense of permanency,

which had been lacking after their repeated stays in foster care. The interests of the child and the parent do not need to be given equal weight. *R.T.B.*, 492 N.W.2d at 4. Based on this record, we agree with the district court that the children's needs for permanency and stable, competent caregivers outweigh any competing interests and that the children's best interests support the termination of appellant's parental rights.

Affirmed.