STATE OF MINNESOTA
IN COURT OF APPEALS
A14-1181

In the Matter of the Welfare of the Children of:
R. R. E. V. a/k/a M. D. R. V., J. M., and A. U. P. a/k/a G. P. S., Parents

Filed December 15, 2014
Affirmed
Rodenberg, Judge

Anoka County District Court
File Nos. 02-JV-08-954, 02-JV-09-215, 02-JV-14-327, 02-JV-14-328

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Connie Kranz, Guardian ad Litem, Ramsey, Minnesota (respondent)

Considered and decided by Hooten, Presiding Judge; Rodenberg, Judge; and Kirk, Judge.

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

RODENBERG, Judge

We affirm the district court's order terminating appellant-mother's parental rights.

FACTS

Appellant has six children, two of whom are involved in this termination of parental rights (TPR) case.[1] D.M.V. is the daughter of appellant and J.M., whose whereabouts remain unknown. J.J.V. is the son of appellant and J.G., who was in jail during the district court proceedings. Because the circumstances leading to the termination of appellant's parental rights date back to 2008, we will recite the facts beginning in 2008.

In April 2008, police received information that appellant was involved in dealing methamphetamine. Obtaining a search warrant, police entered appellant's home and found small amounts of cocaine around the house, $4,121 in cash, and 79.2g of methamphetamine stored in a cupboard within reach of the children. The children were placed in foster care. In May, Anoka County social services filed a petition, alleging the children to be in need of protection or services (CHIPS petition). The district court found that the children would be in immediate danger if returned to appellant, continued the children in foster care, and placed appellant on a urinalysis (UA) call system to monitor her drug use.

During a routine medical examination in May 2008, social services learned that J.J.V. had a heart murmur, a condition that would need surgery when J.J.V. reached the age of two or three years. "[S]trict monitoring" would be required until that time. Social

[1] Appellant was pregnant with the sixth child at the time of the TPR trial. Three of the children are the biological children of appellant and G.E. G.E. gained full custody of these children in 2008. The sixth child is the biological child of appellant and J.G., appellant's boyfriend throughout the 2014 proceedings. The sixth child was due to be born in September 2014.

services discussed the heart murmur with appellant, who indicated that "an ultrasound had been conducted while she was pregnant and . . . at that time it had been detected that there was something wrong with [J.J.V.'s] heart." However, appellant had never obtained medical treatment for J.J.V. and had never informed social services of the heart condition so that appropriate measures could be taken to meet J.J.V.'s medical needs.

Between May and June, appellant completed all requested UAs. One UA had been diluted and all others were negative. In June 2008, appellant told social services that she would decline further UAs because "she did not feel she needed to." She also informed social services that she "was under no obligation to participate in any service[s] directed toward reunification unless they were court ordered." During that same month, appellant met with a court appointed guardian ad litem (GAL) and reported that she had a history of depression and suicidal ideation, including a history of self-harm and ingestion of poison and pills.

In July 2008, appellant's children were adjudicated to be in need of protection or services. At the disposition hearing in August 2008, D.M.V. and J.J.V. were continued in their foster care placement.[2] Also in August, appellant submitted all four urine samples. One was diluted and another tested positive for cocaine. Appellant admitted using alcohol and cocaine on one occasion.

In September 2008, appellant began outpatient treatment. She attended one session and then informed her counselor that "she did not need to be in a substance abuse

[2] During several out-of-home placements, the children resided with the same foster parent.

program, that she did not have a problem or issue with mood/mind altering substances." Appellant insisted that she needed treatment for depression rather than for substance abuse. However, when appellant's chemical health assessor referred her to outpatient treatment center for depression and chemical dependency, appellant failed to follow up with the referral. Subsequently, appellant officially discharged herself from the outpatient substance abuse program against medical advice.

In February 2009, the county filed a TPR petition but withdrew it in September 2009 conditioned on appellant admitting that the probable cause portion of the petition would be "deemed proven for purposes of" future proceedings.

In December 2009, appellant pleaded guilty to felony first-degree drug possession (relating back to the June 2008 search). The district court sentenced appellant to 86 months in prison, stayed the sentence, and placed appellant on probation for 15 years, on conditions including that she not use mood-altering substances and take her prescribed medications and comply with other ordered services.

In March 2010, social services was authorized by the district court to return D.M.V. and J.J.V. to appellant's home under protective supervision. The children had then spent over 22 months in out-of-home placement. In August 2010, the CHIPS case was dismissed and protective supervision was terminated.

In September 2013, and unrelated to any court proceedings, appellant executed a Power of Attorney, giving the foster parent permission to house and care for J.J.V. so that J.J.V. could more easily get to school. Although the Power of Attorney was not executed

until September, J.J.V. had been living with the foster parent during summer 2013, with occasional visits to appellant's home.

In December 2013, appellant learned that she was pregnant. At a prenatal appointment in February 2014, appellant admitted using methamphetamine on January 24, 2014, after she had learned that she was pregnant. Appellant reported to a clinic social worker that she was severely depressed, having thoughts of self-harm, and had tried to commit suicide by ingesting a substance similar to Drano.

Anoka County social services was informed of this prenatal visit on March 3, 2014 and sent a social worker to appellant's home on March 5. Appellant admitted to the social worker that she had used methamphetamine in December 2013, before she knew that she was pregnant. She denied using after finding out that she was pregnant. Appellant also told the social worker that she had conflicted thoughts about keeping her baby, but she reported that her boyfriend was excited about the pregnancy. She admitted attempting suicide by ingesting powdered drain cleaner in June 2013, an action for which she was hospitalized. Appellant admitted that D.M.V. had missed almost 15 days of school, explaining that D.M.V. often does not want to go to school and that appellant did not "want to deal with her." The social worker requested that appellant take a UA. Appellant was hesitant but submitted. The UA tested positive for methamphetamine.

Social services placed appellant and her children on a 72-hour health and welfare hold because appellant was using drugs while she was pregnant and not being truthful about her drug use. D.M.V. was again placed with the foster parent. J.J.V. was already in the foster parent's care at this time.

During a meeting on March 11, 2014, appellant admitted using methamphetamine once or twice a week in December and February. She also admitted taking more pills than prescribed during December. Two days later, social services filed a new TPR petition. A social worker spoke with appellant about a case plan, which was approved and which required appellant to, among other things, complete a psychological evaluation, take her medication as prescribed, complete a chemical health assessment (CHA) and comply with all recommendations, and submit UAs as requested.

Appellant completed the CHA on March 25, 2014. Although she again admitted using methamphetamine in December before she knew she was pregnant and in February after learning that she was pregnant, appellant did not believe her methamphetamine use had ever been a problem. She reported that she had stopped taking her prescribed depression medication because she believed that it caused her to have thoughts of suicide and auditory hallucinations. The CHA assessor eventually recommended inpatient treatment "if future UAs indicated continued use."

Three days later, appellant tested positive for methamphetamine at an OB/GYN appointment. The test results were reported to social services. Appellant said she used methamphetamine because she was preparing to enter treatment. On April 7, social services placed appellant on a 72-hour hold, and she was transported to Mercy Hospital by the Fridley Police Department. Mercy Hospital then transported appellant to Ramsey County detox.

On April 9, judicial commitment proceedings were initiated. The next day, appellant was determined to be chemically dependent as defined by Minn. Stat.

§ 253B.02 (2012). The district court stayed the commitment proceedings for six months, conditioned on appellant successfully completing inpatient treatment at Recovery Plus. The next day, appellant was transported to inpatient chemical dependency treatment at Recovery Plus. Appellant again provided false information when she reported to Recovery Plus that her last use was in February 2014. Appellant was expected to complete the inpatient portion of her treatment on June 6, 2014.

All of appellant's UAs for the month of April were negative. On May 6, appellant submitted an invalid and diluted UA sample.

On May 21, the district court held a TPR trial. By that time, D.M.V. and J.J.V. had been in formal out-of-home placement for more than two years of their young lives. Considering formal out-of-home placement and voluntary out-of-home residence, J.J.V. had lived out of his parental home for longer than he had lived in the home. Social workers and the foster parent testified about many difficulties and problems the children had experienced, including that D.M.V. believes she has been treated more harshly by appellant than J.J.V. There also was evidence that, despite having the foster parent's contact information, appellant never called the foster parent's home to speak with D.M.V. or J.J.V. She texted the foster parent once only to see how D.M.V. was doing.

The district court terminated appellant's parental rights, finding clear and convincing evidence that proved appellant palpably unfit to be a party to the parent-child relationship because of specific conduct directly relating to the parent-child relationship, which the district court found "to be of a duration or nature that renders her unable, for the reasonably foreseeable future, to care appropriately for her children's ongoing

physical, mental, or emotional needs." It also found that social services made reasonable efforts to reunify, that the children were neglected and in foster care, and that it is in the best interests of the children that appellant's parental rights be terminated. This appeal followed.

D E C I S I O N

"Parental rights may be terminated only for 'grave and weighty reasons.'" *In re Welfare of the Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (citing *In re Welfare of the Child of E.V.*, 634 N.W.2d 443, 446 (Minn. App. 2001)). In order to terminate parental rights, the petitioner must provide clear and convincing evidence that one of the statutory grounds justifying termination under section 260C.301, subdivision 1 of the Minnesota Statutes is satisfied. *In re Welfare of the Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). "Only one ground must be proven for termination to be ordered." *Id.* On appeal, the district court's order terminating parental rights is reviewed "to determine whether the district court's findings (1) address the statutory criteria and (2) are supported by substantial evidence." *J.K.T.*, 814 N.W.2d at 87; *see also T.A.A.*, 702 N.W.2d at 708. We give deference to the district court's decision to terminate parental rights "but closely inquire[] into the sufficiency of the evidence to determine whether it was clear and convincing." *T.A.A.*, 702 N.W.2d at 708. We review factual findings for clear error and whether a statutory basis for termination exists for an abuse of discretion. *J.K.T.*, 814 N.W.2d at 87. "A finding is clearly erroneous if it is manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. An abuse of discretion occurs if the district court improperly applied the law."

Id. (quotation and citations omitted). Because appellant did not move for a new trial, the issues on appeal are limited to whether the record supports the district court's findings of fact and whether those findings support the district court's conclusions of law. *In re Welfare of the Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009).

When a statutory basis for termination exists, we then determine whether there is clear and convincing evidence that the county made reasonable efforts to reunify the natural parent with the child(ren). Minn. Stat. § 260C.301, subd. 8 (2012). We also determine whether there is clear and convincing evidence to support the finding that termination is in the best interests of the child(ren). Minn. Stat. § 260C.301, subd. 7 (2012).

Here, the district court made findings which were sufficient to terminate appellant's parental rights on multiple statutory grounds.[3] A district court has authority to terminate parental rights when it finds that, "following the child's placement out of the home, reasonable efforts . . . have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5) (2012). Whether reasonable efforts have failed to correct the conditions leading to a child's placement in foster care requires an analysis of whether (1) reasonable efforts were made to correct the conditions and (2) there was, in fact, a failure to correct the conditions. *J.K.T.*, 814 N.W.2d at 87-90.

[3] The district court found termination justified for (1) failure to correct the conditions that led to out-of-home placement under Minn. Stat. § 260C.301, subd. 1(b)(5); (2) substantial and continual failure to comply with the duties imposed by the parent-child relationship under Minn. Stat. § 260C.301, subd. 1(b)(2); (3) appellant's children were neglected and in foster care under Minn. Stat. § 260C.301, subd. 1(b)(8); and, (4) appellant is palpably unfit to be a party to the parent-child relationship under Minn. Stat. § 260C.301, subd. 1(b)(4).

Whether reasonable efforts were made by the county to correct the conditions leading to out-of-home placement requires the district court to consider whether services to the child and family were (1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances. *See id.* at 88 (applying Minn. Stat. § 260C.012(h) (2012) to the reasonable-efforts analysis of Minn. Stat. § 260C.301, subd. 1(b)(5)). When the district court's "detailed findings of fact demonstrate the existence of . . . the factors outlined" and those findings "provide clear and convincing evidence of the standard for termination" in Minn. Stat. § 260C.301, subd. 1(b)(8), we may affirm. *In re the Welfare of A.D.*, 535 N.W.2d 643, 649 (Minn. 1995). The critical issue to consider in determining whether there was an actual failure to correct the conditions leading to out-of-home placement is "whether the parent is presently able to assume the responsibilities of caring for the child." *J.K.T.*, 814 N.W.2d at 89.

The district court found that appellant was provided with many services aimed at addressing her substance abuse and mental health issues, including multiple chemical dependency assessments, multiple outpatient treatment programs, aftercare programs, psychological evaluations, parenting assessments and education, UA monitoring, case management assistance from multiple social workers, supervised visitation with her children, transportation assistance so she could attend those visitations, referrals to a number of psychological, mental, and behavioral health services, individual therapy, detox, and, finally, inpatient care. Yet, despite these services, appellant continued to

submit positive and diluted UAs, including one occasion just weeks before the TPR trial where she submitted a diluted UA.

Noting the importance of stability to appellant's young children, and "the cumulative effects of relentless trauma," the district court concluded that "reasonable efforts have failed to correct the conditions that led to the children's out-of-home placement. [Appellant] has not taken advantage of case plan services properly tailored to the issues of the case and the [c]ourt can accordingly infer that she will not be able to parent her children in the foreseeable future." The district court also concluded that appellant would be "unable for the reasonable foreseeable future to care appropriately for the ongoing needs of her children."

Appellant argues that these conclusions are "not supported by the evidence presented at trial." She contends that there was "ample evidence that [she] engaged in all aspects of the requirements of the case plan" and that she did not begin treatment immediately because "she was confused as to the start date." However, "[t]he critical issue," as the district court properly identified, "is not whether the parent formally complied with the case plan, but rather whether the parent is presently able to assume responsibilities of caring for the child." *J.K.T.*, 814 N.W.2d at 89. The record supports the district court's conclusion that appellant is not able to assume the responsibility of caring for D.M.V or J.J.V., and she will not be for the foreseeable future.

Appellant further argues that "there was a strong likelihood that [she] could reside with her children as she continued to address her chemical health, mental health and parenting needs." But the district court concluded that appellant would not be in a

position to parent the children in the reasonably foreseeable future. Because this conclusion is supported by the record, it is not clearly erroneous.

In light of the district court's conclusion that appellant is not presently able to assume responsibility for the children and will not be in the reasonably foreseeable future, the district court did not abuse its discretion in concluding that reasonable efforts had failed to correct the conditions that lead to D.M.V. and J.J.V.'s out-of-home placement.

We next separately consider whether there is clear and convincing evidence that the agency made reasonable efforts to reunite the family. Minn. Stat. §§ 260C.012(h) .301, subd. 8 (2012). Appellant argues that respondent's services were inadequate and exhibited a lack of genuine effort by the agency. As noted above, appellant was provided with an array of services tailored to her needs. And, as the district court also noted, appellant still has not acknowledged her chemical use issues. Therefore, because the record supports the district court's conclusion that reasonable efforts were expended to reunite the family, the district court acted within its discretion.

Finally, "[e]ven when the statutory grounds for termination are met, the district court must separately find that termination is in the child's best interests." *J.K.T.*, 814 N.W.2d at 92. "Because the best-interests analysis involves credibility determinations and is generally not susceptible to an appellate court's global review of the record, we give considerable deference to the district court's findings." *Id.* (quotation omitted). When deciding what is in the best interests of the child, the district court considers the interests of the child(ren) in preserving a relationship with their natural parent, as well as

the interests of the parent and any competing interests. *Id.* "Competing interests include health considerations, a stable environment, and the child's preference." *Id.* In any analysis, however, the best interests of the child are paramount. Minn. Stat. § 260C.301, subd. 7 (2012). "[T]he best interests of a child are not served by delay that precludes the establishment of parental bonds with the child by either the natural parent or adoptive parents within the foreseeable future." *S.Z.*, 547 N.W.2d at 893. We have held that the best interests of the child are met when the child is "presently part of a stable and loving . . . family" and when the termination proceeding will give "legal reality to [the child's] situational reality." *R.T.B.*, 492 N.W.2d at 4 (quotation omitted).

The district court found that "the children's need for permanency, with stable, nurturing, competent caregivers, outweighs any competing interests." The district court found that the children have experienced instability because of appellant's ongoing and unaddressed chemical dependency issues, pointing to D.M.V.'s and J.J.V.'s experiences in and out of foster care and the large amount of time they spent in foster care during appellant's previous termination proceeding. Further, the district court found that it was in the children's best interests to be available for adoption.

Appellant argues that the district court made insufficient findings and that, instead of terminating appellant's parental rights, the district court should have required the county to continue reunification efforts. Appellant argues that the district court should have given more weight to the testimony of appellant's witnesses and should have more carefully scrutinized the testimony of the foster parent because her testimony was biased "as she very much desires to adopt both children."

The caselaw is clear that permanence and stability are legally sufficient reasons for a district court to find that a child's best interests are served by terminating the parent's rights. *See, e.g.*, *T.A.A.*, 702 N.W.2d at 709 (holding that, among other things, the district court's findings that "the children have adjusted to permanent placement with their relatives and that the relatives are meeting the needs of the children" are sufficient to determine that termination was in the best interests of the child); *S.Z.*, 547 N.W.2d at 893 (holding that the child's best interests "are not served by delaying his availability for permanent placement"); *In re Welfare of the Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011) (holding the district court's finding that "the children need stability [and] appellants are unable to provide . . . stability" sufficient to conclude that termination was in the child's best interests); *R.T.B.*, 792 N.W.2d at 4 (holding that the child was "presently part of a stable and loving . . . family" and thus it would be in the child's best interests "to provide legal reality to [the child's] situational reality") (quotation omitted)). It is true that "there is no legal basis for granting termination solely because the child cannot be returned immediately to the parental home." *In re Welfare of M.A.*, 408 N.W.2d 227, 233 (Minn. App. 1987). But the district court's order terminating appellant's rights was not based on appellant being in inpatient treatment at the time of trial, and therefore unavailable to the children. Rather, the district court found that the record did not support a finding that the children would be able to return to appellant's care at any time in the reasonably foreseeable future, as discussed above.

Further, the district court may accept all or only part of a witness's testimony, and deference must be given to the district court's assessment of credibility and the weight to

be given to it. *R.T.B.*, 492 N.W.2d at 4. Because a district court is in the best position to assess a witness's demeanor, we defer to its credibility determinations. *J.K.T.*, 814 N.W.2d at 90. Here, the district court found the testimony given by appellant's witnesses to be credible only to the extent that the testimony demonstrated appellant's inability to acknowledge or seek help for her substance abuse issues. These findings were not "manifestly contrary to the weight of the evidence . . . as a whole" and therefore are not clearly erroneous. *See id.* at 87. The district court found the testimony of the social worker, the foster parent, and the guardian ad litem credible, and all three testified that it was in the children's best interests for appellant's parental rights to be terminated. The record supports the district court's best-interests findings.

In sum, the district court did not err in finding that a statutory basis for terminating appellant's parental rights was proven, that reasonable efforts to reunify had been made by the agency, and that the best interests of the children would be served by terminating appellant's parental rights.

Affirmed.