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**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-1291**

In the Matter of the Welfare of the Children of:
A. L. P., D. L. D., T. M., D. D., Unknown, Parents.

**Filed January 20, 2015
Affirmed
Halbrooks, Judge**

Pope County District Court
File Nos. 61-JV-13-306, 61-JV-13-305, 61-JV-13-304, 61-JV-13-303

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appellant A.L.P.)

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Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant A.L.P. challenges the termination of her parental rights, arguing that the district court erred by finding that terminating her parental rights is in the best interests of the children because the record lacks clear and convincing evidence to support the best-interests determination. We affirm.

FACTS

Appellant is the biological mother of four children who are currently between the ages of three and eleven years old: T.M., born May 29, 2003; J.P., born January 24, 2007; V.W., born March 10, 2008; and K.D., born March 25, 2011. On June 25, 2013, the state charged appellant with second-degree murder relating to the death of a four-year-old child, E.D., while in appellant's care. E.D. was a step-sibling to appellant's four children. Pope County Family Services filed termination of parental rights (TPR) petitions for appellant's four biological children based on the allegations underlying the murder charge. The TPR proceedings were stayed pending resolution of the criminal matter.

A grand jury indicted appellant with first-degree murder—while committing child abuse and with second-degree murder—malicious punishment of a child. On May 28, 2014, a jury found appellant guilty of first-degree murder—while committing child abuse, and the lesser-included offenses of second-degree murder—malicious punishment of a child and second-degree manslaughter—child endangerment or neglect. Appellant was sentenced to life in prison with the possibility of parole after serving 30 years.

On June 20, 2014, the district court held a TPR adjudicatory hearing. Three of the children, T.M., J.P., and K.D., were in the custody of their respective fathers at the time of the hearing. V.W. was in the custody of Pope County Human Services and placed with his maternal grandmother. The district court took judicial notice of the fact that if T.M. and J.P. were called to testify, they would both state that they love their mother and wish to be with her.

The county attorney entered into evidence a certified copy of appellant's order of conviction and jury verdict form, but the county did not present any other evidence and did not call any witnesses. The district court asked the guardian ad litem (GAL) if she wished to present any evidence. The GAL did not offer any evidence but stated that "the sooner these children can get a place where they can get some balance back in their lives and continue to go forward, the sooner these kids can become healthy and able to handle the changes that have been happening to them." The GAL also indicated that she was concerned for the children's psychological health if appellant continued to have parental rights to the children.

Appellant moved the district court to dismiss the TPR cases because the county attorney did not present any evidence to support a determination that termination is in the children's best interests. The district court denied the motion to dismiss. Appellant then called three witnesses: the children's intensive in-home family therapist, K.D.'s father, and appellant. The children's therapist testified that she had worked with the children for more than a year and that the children were struggling with the loss of their step-brother and with the transition of changing home placements. The therapist stated that T.M. showed signs of depression and that V.W. had behavioral problems at school. When the therapist was asked for her opinion regarding whether termination of parental rights is in the children's best interests, she stated that she had no opinion.

D.D., the father of K.D., testified that he did not believe that terminating appellant's parental rights is in K.D.'s best interests. D.D. testified that K.D. is "always asking about mom. . . . He misses [appellant] very much. I do believe in my opinion that

it would be in his best interests to have some sort of contact with [appellant].” The county attorney asked D.D. if he would still allow visitation even if appellant’s parental rights were terminated and D.D. responded, “Yes, I most likely would.”

Appellant testified that she believed that termination of her parental rights would not be in the children’s best interests because “that would harm [the children] emotionally and mentally more than they’ve already been harmed throughout this whole process.” Appellant also testified that she “need[s] a relationship with all of [her] children.” In response to questioning by the county attorney, appellant explained that prison staff initially told her that she would not be eligible to have visitation with her children because she was convicted of murder following a pattern of child abuse. She stated that she was going through the appeal process to be allowed to have physical visitation with the children in the future.

In his closing argument, the county attorney stated that the jury in the criminal case found “not only that she murdered her child but . . . they also found that she’s a pattern child abuser. That speaks volumes to the best interest of the children that her rights be terminated.” The county attorney also argued that the county needed “to move forward with permanency, and a TPR at this time would allow permanency to go forward It would protect the child from a case where the spouse with permanent custody were to pass away. It would allow the families to move on.”

During the GAL’s closing argument, she argued that the children eventually will know that appellant is guilty of killing a four-year-old child and that the children will feel betrayed “when they get to a point when they fully understand what is going on if they

are always going back and forth.” The GAL stated that the purpose of the TPR is to allow appellant’s children to go on with their lives. Specifically addressing V.W., the GAL explained, “If we do not do a TPR on the mother at this time, we—we cannot put [V.W.] up for adoption either with relatives, close personal friends, or on the adoption register.”

The district court issued its findings of fact, conclusions of law, order for judgment and judgment. The district court found that because appellant was convicted of first-degree murder based on the death of E.D., the county proved by clear and convincing evidence that a child suffered egregious harm under appellant’s care. The district court also found that there was clear and convincing evidence that it would be contrary to the best interests of the children if appellant’s parental rights were not terminated. The district court terminated appellant’s parental rights to all four children. This appeal follows.

D E C I S I O N

“Parental rights are terminated only for grave and weighty reasons.” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). On review of a district court’s determination to terminate parental rights, we review “the district court’s findings . . . to determine whether they address the statutory criteria for termination and are not clearly erroneous, in light of the clear-and-convincing standard of proof.” *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012) (citation omitted). We defer to the district court’s findings but exercise “great caution in proceedings to terminate parental rights.” *In re Children of Vasquez*, 658 N.W.2d 249, 252 (Minn. App. 2003).

We review the district court's "ultimate determination that termination is in the 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).

Parental rights may be terminated for one of nine statutory reasons. Minn. Stat. § 260C.301, subd. 1(b) (2012). If a statutory condition has been met, "the paramount consideration" in determining whether parental rights will be terminated is "the best interests of the child." *Id.*, subd. 7 (2012). One statutory basis for termination is if:

a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care.

Id., subd. 1(b)(6). The statute defines "egregious harm" as "the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care" and specifically includes "conduct towards a child that constitutes" murder. Minn. Stat. § 260C.007, subd. 14 (2012). Here, appellant was convicted of first-degree murder while committing child abuse with a past pattern of child abuse. Appellant concedes that the county proved the egregious-harm component of the statute but argues that the record lacks clear and convincing evidence to support the district court's best-interests determination.

The best-interests analysis considers "(i) the child's interests in preserving the parent-child relationship; (ii) the parent's interests in preserving the parent-child relationship; and (iii) any competing interests of the child." Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). "Competing interests include such things as a stable environment, health

considerations and the child's preferences." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). The district court's order terminating parental rights must explain its "rationale for concluding why the termination is in the best interests of the children." *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003).

Appellant argues that the record lacks clear and convincing evidence to support the district court's finding that the best interests of the children would be served by termination of appellant's parental rights because the county attorney presented no evidence that termination is in the children's best interests. Appellant correctly notes that the county attorney did not offer any evidence other than the certified conviction and jury verdict form and did not call any witnesses to testify. While it would have been preferable for the county attorney to have presented direct evidence demonstrating that termination is in the children's best interests at the hearing, his failure to do so does not mean that the district court's findings are clearly erroneous or unsupported by clear and convincing evidence in the record.

The TPR hearing produced minimal evidence relating to the children's best interests, but the district court's best-interests findings, although lean, are adequate within the parameters of this case. The district court based its best-interests determination on the evidence produced at the hearing through the county attorney, the GAL, and the testimony of appellant's three witnesses. The district court's order explained why terminating appellant's parental rights would serve the children's best interests. The district court found that "[t]here is no greater egregious harm to a child than one that results in the child's death." The district court also found that the jury found beyond a

reasonable doubt that appellant “committed a past pattern of child abuse and that she allowed a child to die under circumstances showing extreme indifference to human life.” These findings are supported by appellant’s conviction. The district court also found that appellant’s actions toward E.D. “would lead a reasonable person to believe it is contrary to a child’s best interests to be in her care.”

In addition, the district court found that because appellant is serving a life sentence and is not eligible for parole for 30 years, the children would be “left in a state of uncertainty” if appellant’s rights remained in place and that the children would gain stability and permanency by terminating appellant’s rights. This finding is particularly applicable to V.W., for whom adoption is not possible while appellant’s parental rights are in place. The district court’s stability and permanency best-interests considerations are also supported by the therapist’s testimony that V.W.’s trauma was caused in part by “removal from his home, changes, [and] siblings in and out of the home.”

The district court found that appellant was denied access to a prison program that facilitates physical visits with children, and it is uncertain whether she will be able to obtain visitation privileges in the future. This finding is supported by appellant’s testimony that she is appealing the decision that she cannot have physical contact with the children. Because of her sentence to life in prison, and the uncertainty of her visitation privileges, the district court found that there was “minimal opportunity” for appellant to develop a meaningful relationship with her children and that it is “in the best interests of the children to provide them with more permanency than allowable by the restrictions of [appellant’s] current and future situation.”

We conclude that the district court's findings are supported by clear and convincing evidence and are not clearly erroneous. In light of those findings, we conclude that the district court did not abuse its discretion in determining that termination of appellant's parental rights is in the children's best interests.

Affirmed.