STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0648

In the Matter of the Welfare of the
Child of: P. S. and J. L., Parents.

Filed October 16, 2017
Affirmed
Johnson, Judge

Washington County District Court
File No. 82-JV-17-55

Megan Hunt Schlueter, Hunt Law Office, Stillwater, Minnesota (for appellant-mother)

Pete Orput, Washington County Attorney, Erin A. Johnson, Assistant County Attorney, Stillwater, Minnesota (for respondent Washington County)

Rachel Hausladen, Stillwater, Minnesota (guardian *ad litem*)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Johnson, Judge.

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

JOHNSON, Judge

The district court terminated a mother's parental rights to her five-year-old son after finding that the county had proved four statutory grounds for termination and that termination would be in the child's best interests. We affirm.

FACTS

P.S. gave birth to a son, J.S., in September 2011. P.S. and the boy's father, J.L., later separated. J.L.'s parental rights have been terminated and are not at issue in this appeal.

P.S. has an extensive history of mental-health problems. In February 2015, when P.S. was hospitalized for a mental-health crisis, J.S. was placed in a foster home. In March 2015, Washington County petitioned the district court to adjudicate J.S. a child in need of protection or services (CHIPS). Shortly thereafter, a psychologist evaluated P.S. and diagnosed her with major depressive disorder, anxious distress, mood-congruent psychotic features, in partial remission; generalized anxiety disorder; post-traumatic stress disorder, chronic; and other specified personality disorder, mixed personality features. After P.S.'s mental-health crisis subsided, J.S. was returned to her care temporarily. But in October 2015, the district court ordered that J.S. again be placed in foster care. In January 2016, the county requested, and the district court granted, a six-month continuance of the CHIPS case. *See* Minn. Stat. § 260C.204(a) (2016).

In April 2016, the county petitioned to terminate P.S.'s parental rights to J.S. After a trial in June 2016, the district court denied the petition on the ground that it was in J.S.'s best interests that P.S.'s parental rights not be terminated and that he remain in foster care. In December 2016, P.S. moved for an order returning J.S. to her on a trial basis. The county opposed the motion. After a hearing, the district court denied the motion, reasoning that it was not safe for J.S. to return to P.S.'s care. The district court also ruled that it was not in J.S.'s best interests to continue the matter for an additional six months.

In January 2017, the county filed a second petition to terminate P.S.'s parental rights. In March 2017, the psychologist updated his evaluation of P.S. He diagnosed P.S. with unspecified bipolar disorder, with anxious distress, severe, with mood-congruent psychotic features, in partial remission; post-traumatic stress disorder, chronic; and generalized anxiety disorder, secondary to post-traumatic stress disorder. His report states that P.S. is "psychologically fragile, with trauma reactions becoming easily triggered, her thinking becoming disorganized and decisionmaking occurring based on intense, anxious ruminations that are not reality-based." The report also states that P.S. likely "will continue to interfere with [J.S.'s] social development due to her inappropriately protective stance of his welfare" and that P.S.'s "fears about [J.S.'s] interactions with the world, and resulting intrusions into others' interactions with [J.S.], will probably disrupt the gradual development of independence that all children display and need as they grow."

When P.S. did not appear for a March 15, 2017 pre-trial hearing, the county moved to proceed by default but asked the district court to reserve the issue until trial. P.S. also did not appear for the beginning of trial on the afternoon of March 20, 2017. She left a voice-mail message for her attorney that morning, saying that she was at a hospital. The district court later learned that P.S. was not admitted to a hospital and apparently was free to leave. Trial began at 1:05 p.m. P.S. arrived at approximately 3:30 p.m. The county's attorney called P.S. as a witness and questioned her. The district court recessed for the day at 4:25 p.m. and stated that the trial would resume the next day at 9:00 a.m.

P.S. did not appear the next day at 9:00 a.m. The county renewed its motion to proceed by default. The district court stated that if P.S. were not present when the county's

first witness finished testifying, the district court would allow the county to proceed by default. P.S. still was absent when the county's first witness, the psychologist, finished testifying. The district court stated that the county could proceed by default. P.S. arrived at about 10:30 a.m., during another witness's testimony, but left the courtroom approximately 10 minutes later and did not return.

Nine days later, the district court filed its findings of fact and conclusions of law. The district court found that P.S. was in default and that the county had proved by clear and convincing evidence that (1) P.S. failed to satisfy the duties of the parent-child relationship, (2) she was a palpably unfit parent, (3) reasonable efforts had failed to correct the conditions that led to J.S.'s out-of-home placement, (4) J.S. is neglected and in foster care, and (5) termination of P.S.'s parental rights is in J.S.'s best interests. The next day, the district court filed an order terminating P.S.'s parental rights.

P.S. filed a post-trial motion for a new trial or a reopening of the trial for additional testimony. The district court denied the motion. P.S. appeals.

D E C I S I O N

I. Default

P.S. argues that the district court erred by granting the county's motion to find her in default and by denying her post-trial motion for a new trial or a reopening of the trial.

A. Default Finding

We first consider P.S.'s argument that the district court erred by finding her to be in default. The applicable rule states that "if a parent . . . fails to appear for . . . a trial after being properly served with a summons pursuant to Rule 32.02 or a notice pursuant to Rule

32.03 or 32.04, the court may receive evidence in support of the petition or reschedule the hearing." Minn. R. Juv. Prot. P. 18.01. The rule further provides, "If the petition is proved by the applicable standard of proof, the court may enter an order granting the relief sought in the petition as to that parent . . . ." Minn. R. Juv. Prot. P. 18.02.

In this case, the district court granted the county's default motion when P.S. was not present in the courtroom, after she had failed to appear on several occasions. P.S. contends that the district court abused its discretion by granting the county's motion. But P.S. does not develop the argument. P.S. does not contend that she was not properly served with a summons or a notice, as required by the rule. *See* Minn. R. Juv. Prot. P. 18.01. If a parent fails to appear, a district court may either "receive evidence in support of the petition or reschedule the hearing." Minn. R. Juv. Prot. P. 18.01. The district court elected the latter of those two options and received evidence from the county in support of its petition. Thereafter, the district court decided the case on the merits. We discern no abuse of discretion in the district court's handling of the case in P.S.'s absence.

Thus, the district court did not err by granting the county's motion to find P.S. in default.

B. Post-Trial Motion

We next consider P.S.'s argument that the district court erred by denying her post-trial motion for a new trial or a reopening of the trial. *See* Minn. R. Juv. Prot. P. 45.06(a), (b). P.S. sought post-trial relief on the ground that the district court "should not have granted the county's motion for default." On appeal, P.S. reiterates the same argument. She contends that the district court's default finding was an "irregularity . . . in the

proceedings," *see* Minn. R. Juv. Prot. P. 45.04(a), and an "error[] of law," *see* Minn. R. Juv. Prot. P. 45.04(f), and that a new trial is required by the "interests of justice," *see* Minn. R. Juv. Prot. P. 45.04(h). Having concluded above that the district court did not err by finding P.S. in default, we likewise conclude that the district court did not err by denying P.S.'s post-trial motion.

P.S. also contends that the district court erred by denying her post-trial motion on the ground that she satisfied the four-factor test for relief from a default judgment that was articulated in *In re Welfare of Children of Coats*, 633 N.W.2d 505 (Minn. 2001):

> (1) she has a reasonable defense on the merits of the case; (2) she has a reasonable excuse for her failure to act; (3) she acted with due diligence after the notice of entry of the default judgment; and (4) the opposing party will not be substantially prejudiced if the motion to vacate the default judgment is granted.

Id. at 510. In *Coats*, the district court allowed the county to proceed by default when the parent did not appear at a pre-trial hearing. *Id.* at 509-10. The district court heard testimony on the merits of the petitioning party's allegations and issued a default judgment. *Id.* at 509-10. The parent later moved for relief from the default judgment pursuant to rule 60.02 of the Minnesota Rules of Civil Procedure. *Id.* at 510. The district court denied the motion. *Id.* On appeal, the supreme court concluded that the district court did not err by denying the parent's rule 60.02 motion. *Id.* at 512.

After *Coats*, the supreme court promulgated the Minnesota Rules of Juvenile Protection Procedure. *Order Promulgating Amendments to Rules of Juvenile Protection Procedure*, C1-01-927 (Minn. Nov. 12, 2003); *Amended Order Promulgating Amendments*

to Rules of Juvenile Protection Procedure, C1-01-927 (Minn. Nov. 14, 2003). Rule 46.02 of those rules is very similar to rule 60.02 of the rules of civil procedure. *See In re Welfare of Children of R.A.J.*, 769 N.W.2d 297, 303 n.1 (Minn. App. 2009) (noting that civil rule 60.02 and juvenile protection rule 46.02 are "nearly identical"). If P.S. had sought relief in the district court under rule 46.02, we would apply the four-factor *Coats* test. But she did not; she brought a motion for a new trial pursuant to rule 45. Rule 45 is akin to rule 59 of the rules of civil procedure. *Compare* Minn. R. Juv. Prot. P. 45 *with* Minn. R. Civ. P. 59. Because P.S. did not rely on either rule 60.02 or rule 46.02 in her post-trial motion, *Coats* does not apply.

Thus, the district court did not err by denying P.S.'s post-trial motion for a new trial or a reopening of the trial.

II. Statutory Grounds

P.S. argues that the district court erred by finding that the county proved each of the four alleged statutory bases for termination. She contends that the evidence is insufficient with respect to each statutory ground.

In reviewing such an argument, this court "closely inquire[s] 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). We will affirm a district court's termination of parental rights if "at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). We are mindful that "[p]arental rights are terminated only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d

370, 375 (Minn. 1990). We apply a clear-error standard of review to a district court's findings of historical fact, *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995), and an abuse-of-discretion standard of review to a district court's ultimate finding as to whether a statutory basis for terminating parental rights is present, *In re Welfare of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

We begin by considering P.S.'s argument with respect to the district court's finding that she failed to correct the conditions that led to J.S.'s out-of-home placement. A district court may terminate parental rights to a child if, among other things,

> conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan.

Minn. Stat. § 260C.301, subd. 1(b)(5)(iii) (2016).

In this case, the condition that led to J.S.'s out-of-home placement was P.S.'s poor mental health and her inability to treat or manage it. The district court found that P.S. has a "lack of understanding or appreciation of her mental health," "has been unable to make the needed changes to her mental health to allow [J.S.] to be safely returned to her care," and "is not fit to be a parent to [J.S.]." The district court also noted that, when it denied the first petition to terminate P.S.'s parental rights, it had encouraged P.S. to "understand and appreciate that her separation from [J.S.] is not the reason for her mental health issues" but that, after "six more months of efforts and services," P.S. had not done so.

The record supports the district court's findings. The psychologist testified that P.S.'s mental stability had not improved much since her 2015 evaluation and that P.S. is

unable consistently to use skills she had learned. The psychologist further testified that P.S.'s "anxiety overwhelmed [those skills] and really clouded her judgment." A family-services worker testified that P.S. did not understand "the weight of her mental health and how that plays in with her interactions with [J.S.]" and that her visits with J.S. deteriorated over time, prompting visitation to be reduced from three days per week to one day per week. The family-services worker also testified that, as a result of P.S.'s visits, J.S. became "a lot more emotional," had "a lot of emotional outbursts," and became "easily angered."

P.S. contends that termination is unwarranted because she completed the tasks in her placement plan. But that is not the relevant standard. "The critical issue is not whether the parent formally complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012).

Thus, the district court did not err by finding that P.S. failed to correct the mental-health issues that led to J.S.'s out-of-home placement. In light of that conclusion, we need not address the other statutory grounds on which the district court relied. *See In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005) (declining to analyze other statutory bases after affirming on one statutory basis).

III. Best Interests

P.S. argues that the district court erred by finding that termination of her parental rights is in J.S.'s best interests.

In a termination-of-parental-rights case, the best interests of the child is "the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2016). A district court must

make "findings regarding how the order is in the best interests of the child." Minn. R. Juv. Prot. P. 42.08, subd. 1(b). Even if one or more statutory bases for termination have been proved, termination of parental rights is not appropriate if termination is not in a child's best interests. *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009). In analyzing the best interests of a child, the district court must balance three factors: "(1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); *see also* Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). Competing interests may include "a stable environment [and] health considerations." *R.T.B.*, 492 N.W.2d at 4. The district court "must consider a child's best interests and explain its rationale in its findings and conclusions." *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). But the findings need not "go into great detail." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004). This court applies an abuse-of-discretion standard of review to a district court's determination that termination of parental rights is in a child's best interests. *J.R.B.*, 805 N.W.2d at 905.

In this case, the district court found that it was "clear" that P.S. loves J.S. and that J.S. "has a connection and a bond with [P.S.] and enjoys the time he spends with her." The district court recognized that J.S. had been in foster care for "619 days over the course of these proceedings and that he has been in continuous foster care for almost eighteen months." The district court considered the psychologist's testimony "and shares [his] concerns as to how [P.S.'s] fears and anxiety could impact [J.S.'s] development and growth." The district court found that J.S. "has been exhibiting behaviors and symptoms,

such as being ill or reverting to aggressive behaviors, that would seem to indicate the toll this situation has taken on him." The district court went on to find that J.S. "needs to be in a permanent household with permanent caregivers" and that "[t]hose caregivers must be ones that allow [J.S.] to fully develop and grow." But the district court continued by stating that P.S. "is not such a caregiver, in that she has repeatedly and continuously shown that she is unable to manage her mental health such that she can put [J.S.'s] needs ahead of her own fears and anxiety." The district court further found that J.S.'s "competing interest in having a healthy home where he can thrive, grow, develop and mature, outweighs any other interests." For those reasons, the district court concluded that it is in J.S.'s best interests to terminate P.S.'s parental rights. In light of the evidentiary record, the district court's findings were not erroneous.

P.S. also contends that the district court erred on the ground that it "did not make the required specific findings or [apply] the balancing test required by Minnesota law when analyzing the child's best interests." Contrary to P.S.'s contention, the district court's order reveals that the district court did make the required findings and balance the appropriate factors. The district court's findings that P.S. loves J.S. and that J.S. has a bond with P.S. address the first and second factors. The district court's findings regarding the amount of time that J.S. has been in foster care, the toll that the current custodial arrangement is taking on him, and his need for permanent caregivers address the third factor. Furthermore, the district court expressly stated that J.S.'s "competing interest[s] . . . outweigh[] any other interests [and], [a]s such, . . . it is in [J.S.'s] best interests to terminate [P.S.'s] parental rights."

Thus, the district court did not err by finding that the termination of P.S.'s parental rights would be in J.S.'s best interests.

Affirmed.