STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0899

In the Matter of the Welfare of the Child of:
N. L. and C. S., Parents

Filed December 4, 2017
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-JV-16-2362

Mary F. Moriarty, Fourth District Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota (for appellant-mother N.L.)

Michael O. Freeman, Hennepin County Attorney, Michelle A. Hatcher, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

C.S., Redwood Falls, Minnesota (pro se respondent-father)

Michael J. Biglow, Minneapolis, Minnesota (for guardian ad litem Jean Hariman)

Mary F. Moriarty, Fourth District Public Defender, Courtney J. Kozel, Assistant Public Defender, Minneapolis, Minnesota (for child A.J.L.)

Considered and decided by Larkin, Presiding Judge; Hooten, Judge; and Smith, Tracy M., Judge.

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

SMITH, TRACY M., Judge

Appellant-mother challenges the district court's termination of her parental rights to her child, arguing that reasonable efforts were not made to reunify her family, that a

statutory ground for termination was not established by clear and convincing evidence, and that termination is not in the child's best interests. We affirm.

FACTS

Appellant N.L. is the mother of A.J.L. and has been his sole custodian and caregiver since birth. A.J.L. has attention-deficit/hyperactivity disorder and a sensory-processing disorder. Throughout the years, appellant enrolled A.J.L. in a variety of therapies and extracurricular activities. No one contests that appellant loves her son and has done an admirable job working to address his special needs. At the time of trial, A.J.L. was ten years old.

Appellant first came to the attention of Child Protection Services (the department) in December 2014, after a call was made to the Hopkins Police Department by appellant's oldest child, her daughter, who reported that appellant was intoxicated and had been "dragging her 8 year old son around the house." The children were eventually taken to a friend's house for the night, and the responding officers contacted the department. In January 2015, the department opened an out-of-court case and offered appellant a case plan aimed at keeping the children in her care. As part of this plan, appellant was to undergo a chemical-dependency assessment, follow its recommendations, and demonstrate sobriety with urinalysis testing (UAs). Appellant's case with the department was open for roughly five months before it was brought to court.

In April 2015, A.J.L. called his school to report that he would be absent because he missed the bus and his mother was "drunk." Officers were directed to appellant's house to help A.J.L. get ready for school, and appellant was transported to the hospital and placed

on a health-and-safety hold due to her high alcohol concentration. Shortly after this incident, the department filed a petition in the district court alleging that A.J.L. was a child in need of protection or services (CHIPS), and A.J.L. was placed in foster care.

In July, appellant admitted that she was having issues with alcohol that negatively impacted her ability to parent, and the district court adjudicated A.J.L. a child in need of protection or services. Appellant was subsequently ordered to follow a case plan requiring her to demonstrate sobriety by submitting to UAs as requested by the department, engage in inpatient treatment and follow the aftercare recommendations, and cooperate with the department and a guardian ad litem (GAL). The court also ordered appellant to maintain suitable housing, abstain from all mood-altering substances, and complete a mental-health assessment and follow the resulting recommendations.

Appellant completed her initial inpatient alcohol treatment in July and moved to outpatient treatment. That fall, appellant began missing treatment classes and was discharged from outpatient treatment after continually submitting positive UA samples. In December, appellant relapsed and paramedics were called in response to her excessive alcohol consumption.

In February 2016, appellant was arrested for her second DWI within two years. In early March, a neighbor requested that police perform a safety check and the responding officer observed appellant fill her glass with wine three times within the two minutes he was at the door. Several days later, during another requested safety check, appellant was found unresponsive and transported to the hospital. The responding officer described appellant's house as "completely filthy and uninhabitable." Although appellant denies that

this incident was due to alcohol use, the responding officer noted that multiple empty wine boxes had been found at appellant's residence and that she had been unable to form a coherent sentence.

In late April, the department filed a TPR petition, seeking to terminate appellant's parental rights to A.J.L. Appellant completed another chemical-dependency assessment and returned to outpatient treatment in July, but was again negatively discharged. From late summer to winter of 2016, appellant missed numerous required breath tests. In October, appellant's supervised visit with A.J.L. was cancelled after the visit supervisor noted appellant's slurred speech during a phone call. In November, appellant did not attend A.J.L.'s school conference. In early December, appellant's supervised visit was cancelled after A.J.L. arrived at appellant's home because appellant again appeared to be intoxicated.

The next day, appellant had another relapse and was transported to the hospital and placed on a suicide hold. Appellant again denied drinking, but hospital staff reported that appellant admitted to taking a mixture of alcohol and prescribed medications. Appellant would not allow staff to test her alcohol concentration.

Appellant completed a new chemical-dependency assessment in mid-December; intensive outpatient treatment was recommended. Appellant began attending treatment nine hours a week. The treatment center reported that appellant was scheduled to complete phase II by early March and, upon completing phase III of the program, would graduate in late April of 2017.

From January to early March, appellant missed a number of scheduled breath tests. Appellant points out that she had negative UAs during treatment throughout January and

February. While appellant submitted a number of alcohol-negative tests, the district court gave these recent test results less weight since the vast majority of these samples were not observed. Testing records also show that appellant submitted a number of diluted UA samples throughout February and March.

Appellant's three-day termination trial began January 10, 2017, and continued on March 6 and 8. Five witnesses testified during the trial: the assigned Hennepin County child protection social worker, the GAL, appellant's individual therapist, appellant's oldest child, and appellant. On April 21, 2017, the district court terminated appellant's parental rights to A.J.L. This appeal followed.[1]

D E C I S I O N

A natural parent is presumptively a "fit and suitable person to be entrusted with the care of his or her child," and "[o]rdinarily, it is in the best interest of a child to be in the custody of his or her natural parents." *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). As a result, parental rights may be terminated "only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990).

The decision to terminate parental rights is discretionary with the district court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136-37 (Minn. 2014). To terminate parental rights, a district court must determine that at least one statutory basis for termination exists and that termination is in the best interests of the child. Minn. Stat. § 260C.301, subds. 1, 7 (2016); *R.D.L.*, 853 N.W.2d at 137. In addition, the district court

[1] The father's parental rights were also terminated, and he has not appealed the termination of his rights.

must find, when required, that the county made reasonable efforts to reunify the family. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). The "best interests of the child" are the "paramount consideration" in a termination proceeding. Minn. Stat. § 260C.301, subd. 7.

Determinations of whether a statutory basis for involuntarily terminating parental rights is present, whether termination is in the best interests of the child, and whether parental rights should be terminated are reviewed for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901-02, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). A district court abuses its discretion if its underlying findings of fact are clearly erroneous, if it misapplies the law, or if it resolves the matter in a manner that is against logic and the facts on the record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997); *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). In termination proceedings, appellate courts review the district court's underlying findings of fact for clear error, taking into account the clear-and-convincing-evidence standard of proof used in juvenile-protection proceedings. *J.R.B.*, 805 N.W.2d at 900-02. A factual 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." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted).

I. The district court's finding that the department made reasonable efforts to rehabilitate appellant and reunify the family is not clearly erroneous.

In termination proceedings, the district court must make specific findings that the responsible social services agency provided culturally appropriate and reasonable services

to meet the needs of the family or that reasonable efforts were not required. Minn. Stat. § 260.012(f) (2016); Minn. Stat. § 260C.301, subd. 8 (2016). The district court must determine whether the services were aimed toward alleviating the conditions that caused the out-of-home placement of the child. *See In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996) (stating that the reasonableness of the efforts depends on the problems presented). The district court must consider a variety of factors, such as whether the services were relevant, adequate, culturally appropriate, available and accessible, consistent and timely, and realistic. Minn. Stat. § 260.012(h) (2016). The district court may relieve the county of its obligation to provide reasonable efforts if "the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances." Minn. Stat. § 260.012(a)(7) (2016).

Here, the district court found that the department had provided reasonable efforts to reunite appellant and her child. During the five months the case was open, prior to court involvement, the department offered voluntary services and provided a case plan aimed at addressing appellant's alcohol abuse to prevent A.J.L.'s foster-care placement. Once the case was brought to court, the department prioritized addressing the condition that led to the CHIPS petition by having appellant complete multiple chemical-dependency evaluations. The department made repeated attempts to have appellant enter and complete treatment. The department provided appellant with a variety of chemical-testing options to accommodate her work schedule and allow her to establish a record of sobriety. Appellant was offered UAs at Minnesota Monitoring, along with home breath tests, and then offered UAs again after she expressed discontent with her breath-testing machine. In

addition to treatment, the department's rehabilitation and reunification efforts included ensuring that appellant was receiving counseling/therapy and trying to include her in A.J.L.'s school events. The record supports the district court's findings that the department's efforts were reasonable and that appellant failed to utilize services to the extent necessary to provide for successful reunification.

Appellant argues that the department's efforts to reunify the family were unreasonable because her case plan and the department's efforts centered on addressing appellant's alcohol abuse and demonstrating sobriety. Essentially, appellant argues that, because the department was overly focused on chemical dependency, it failed to offer her other appropriate services such as a parenting assessment and classes. We disagree. It was appellant's chemical dependency and accompanying alcohol abuse that led to the department's initial involvement and, eventually, A.J.L.'s out-of-home placement. The department's priority among services was rightly chemical-dependency treatment, as it was appellant's alcohol abuse that created an unsafe environment for A.J.L., not her parenting skills.

"The issue that brought this case to the department for alcohol abuse still, after two and a half years, has not been adequately addressed," the social worker testified. Appellant had five months to utilize the department's voluntary services to address and manage her chemical dependency before her child was taken out of home. Appellant then, from the time she signed the plan in July 2015, had over a year and half to comply with the case plan and get her child back. Nevertheless, appellant continued using alcohol excessively to the point of repeated incapacitation and hospitalization. Appellant was aware of the case

plan's requirements, underwent numerous chemical-dependency assessments where both inpatient and outpatient treatment was recommended, and knew she was required to submit to breath and urine testing. Yet, she missed visits with her child and was discharged from treatment due to continued absences. On this record, we conclude that clear and convincing evidence supports the district court's finding that the department made reasonable efforts to reunite appellant and her child.

II. The record supports a statutory basis for terminating appellant's parental rights.

The district court determined that several statutory grounds existed for termination of appellant's parental rights, including that "reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). The condition that led to the placement of A.J.L. in foster care was appellant's chemical dependency and alcohol abuse and the resultant unsafe environment for A.J.L. As discussed above, the department made reasonable efforts to address that condition.

The district court may presume that reasonable efforts have failed upon a showing of five factors:

> (A) the parent has been diagnosed as chemically dependent by a professional certified to make the diagnosis;
> (B) the parent has been required by a case plan to participate in a chemical dependency treatment program;
> (C) the treatment programs offered to the parent were culturally, linguistically, and clinically appropriate;
> (D) the parent has either failed two or more times to successfully complete a treatment program or has refused at two or more separate meetings with a caseworker to participate in a treatment program; and

(E) the parent continues to abuse chemicals.

Id., subd. 1(b)(5).

The district court found that appellant was diagnosed as chemically dependent, was required to participate in treatment, failed to complete appropriate treatment on more than two occasions, and continued to abuse chemicals. Applying the statutory presumption, the district court found that the department had demonstrated by clear and convincing evidence that reasonable efforts had failed to correct the conditions leading to the out-of-home placement of the child. *See* Minn. Stat. § 260C.301, subd. 1(b)(5).

The district court made additional findings that A.J.L. had been living outside appellant's home and care for over a year, a case plan for reunification had been approved and ordered, appellant had failed to substantially comply with this case plan, and the department had been making reasonable efforts to reunify the family for nearly two years.[2]

The record supports the district court's findings. Appellant had been diagnosed as chemically dependent by numerous service providers and was repeatedly required to engage in both inpatient and outpatient treatment. Appellant failed, on more than two occasions, to follow through with the recommendations of her treatment program and was discharged from treatment due to repeated absences. While appellant insisted she had been sober since March 2016, the record reflects a pattern of continued alcohol abuse well into December 2016. Throughout the fall of 2016, appellant submitted positive chemical-test

[2] These findings may have supported a second statutory presumption that reasonable efforts had failed. *See* Minn. Stat. § 260C.301, subd. 1(b)(5)(i)-(iv). However, the district court did not choose to invoke this second presumption.

samples and appeared intoxicated before and during supervised visits with her children. One month before trial began, she was hospitalized due to what strongly appeared to have been excessive alcohol consumption, despite appellant's testimony to the contrary.

Throughout her two-year involvement with the department, appellant completed numerous chemical-dependency assessments, was repeatedly discharged from treatment due to noncompliance, was arrested for driving while intoxicated, consistently missed required breath tests, and submitted positive chemical-test samples and, most recently, diluted samples. Appellant has had multiple alcohol-induced relapses requiring medical attention, including a hospitalization and suicide hold one month prior to the termination trial. Appellant has denied using alcohol during most of these instances and repeatedly failed to give accurate reports regarding her alcohol abuse to service providers. At the time of trial, A.J.L. had been in out-of-home placement for 658 days and appellant remained unable to have unsupervised or overnight visits because she could not demonstrate and maintain sobriety.

Although appellant clearly loves her child, clear and convincing evidence supports the district court's finding that reasonable efforts have failed to correct her alcohol abuse. Despite the department's efforts to ensure that appellant had the necessary resources to become sober, maintain her sobriety, and build a support system, reasonable efforts have failed to correct the conditions leading to the child's placement out of the home. Because we conclude that one statutory basis for terminating parental rights exists, we need not address the other bases identified by the district court for terminating parental rights. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004) ("Termination of

parental rights will be affirmed as long as at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests.").

III. The district court acted within its discretion in finding that termination was in the child's best interests.

Even if a statutory ground for termination exists, the district court must still find that termination of parental rights is in the best interests of the child. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). The district court must explain its rationale "for concluding why the termination is in the best interests of the children." *In re Termination of Parental Rights of Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003). A best-interests analysis requires consideration of the child's and parent's interests in preserving the parent-child relationship and of any competing interests of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). "Competing interests [of the child] include such things as a stable environment, health considerations[,] and the child's preferences." *J.R.B.*, 805 N.W.2d at 905 (quotation omitted).

The district court's best-interests finding is well-supported by the record. The district court found that A.J.L's special needs require "an attentive and stable caregiver" and that he has been in "limbo far too long." A.J.L. has been in foster care since May 2015, and appellant has not been responsible for providing for his day-to-day care for almost two years. Appellant's oldest child testified to the strong bond between A.J.L. and his mother and believed appellant could be a good caregiver. While the court acknowledged the "strong parent and child relationship" between appellant and A.J.L, it also necessarily

considered "the testimony regarding the kind of caretaker [appellant] has been since at least December, 2014, and the kind of caretaker the child deserves."

The district court found that appellant would not be able to be the "caretaker that [A.J.L.] requires" in the reasonably foreseeable future due to her continued alcohol abuse. In making this determination, the district court credited the testimony provided by the social worker and GAL that the child needed a permanent, safe, stable home, and that appellant's chemical dependency rendered her unable to parent and meet her child's needs or make good decisions for him. Appellant and her individual therapist testified that termination of appellant's parental rights would not be in A.J.L.'s best interest. But the district court is in the best position to make credibility determinations, *Tanghe*, 672 N.W.2d at 625, and chose to give more weight to the social worker's and GAL's recommendations.

While appellant argues that she has "maintained a capacity to parent" and, at the time of trial, was "very high-functioning," the record indicates that her continued alcohol abuse has made appellant unavailable to care for A.J.L. A.J.L. has "an overriding interest in a stable, sober, available, attentive, and competent caregiver." Based on the record, the district court acted within its discretion in finding that the child's best interests would be served by terminating appellant's parental rights. Because a statutory ground for termination is supported by clear and convincing evidence and termination is in A.J.L.'s best interests, we affirm the termination of appellant's parental rights to A.J.L.

Affirmed.