STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0972

In the Matter of the Welfare of the Children of: B. C., S. L. W., Sr., C. J. L., J. L. L., R. J. M., and D. M. B., Parents.

Filed November 13, 2017
Affirmed
Connolly, Judge

Sherburne County District Court
File No. 71-JV-16-541

Cathleen Gabriel, CGW Law Office, Annandale, Minnesota (for appellant-mother, B.C.)

Kathleen A. Heaney, Sherburne County Attorney, Tracy J. Harris, Assistant County Attorney, Elk River, Minnesota (for respondent Sherburne County Health and Human Services)

Thomas Richards, Buffalo, Minnesota (for respondents A.N.C., J.Z.S., K.D.S.)

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Florey, Judge.

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

CONNOLLY, Judge

Appellant-mother challenges the termination of her parental rights, arguing that the record does not support the district court's determinations that (1) she failed to satisfy the duties of the parent-child relationship, (2) she is palpably unfit to be a party to the parent-

child relationship, (3) reasonable efforts failed to correct the conditions leading to her children's out-of-home placement, and (4) termination of her parental rights is in her children's best interests; she also argues that the district court abused its discretion in denying her motion for a continuance. Because the record supports the district court's determinations and we see no abuse of discretion, we affirm.

FACTS

Appellant is the mother of six children: three boys, J.Z., 16; K.D., 14; and K.J.; 9; and three girls, A.N., 12; C.A., 8; and A.B., 6. In June 2011, the children were all ordered into placement in Stearns County, where they then lived with appellant; they were returned to appellant in November 2011.

S.L.W., the father of A.B., married appellant, and the family, including S.L.W.'s daughter Anj.N., 14, as well as appellant's children, moved to Sherburne County. In May 2016, respondent Sherburne County Health and Human Services (SCHHS) received reports that appellant's children and Anj.N. had been victims of verbal, emotional, and physical abuse by S.L.W. and appellant. SCHHS filed a petition to have the children adjudicated in need of protection or services (CHIPS), and they were transferred from the home to various out-of-home placements; they have been in out-of-home placement since May 2016. At the beginning of the trial on the CHIPS petition, S.L.W. voluntarily terminated his parental rights to A.B., his joint child with appellant, and to Anj.N.[1]

[1] Anj.N.'s mother is deceased; when S.L.W. terminated his parental rights to her, she became a ward of the state.

The children were adjudicated CHIPS in January 2017, and a case plan was adopted for appellant. She and S.L.W. filed a joint divorce petition but continued their relationship and lived together. This court affirmed the CHIPS adjudication. *See In the Matter of the Welfare of the Children of B.C., et al, parents*, No. A17-0258, 2017 WL 2625954 (Minn. App. June 19, 2017).

In September 2016, SCHHS filed a petition to terminate the parental rights (TPR) of appellant and of the children's fathers.[2] A trial was set for May 2017. When the trial was about to begin, appellant, who was represented by a public defender, asked for a continuance so she could hire a private attorney. She had not notified either the district court or SCHHS of her intent prior to trial. Because the children had then been out of the home for about a year and needed permanency, the request for a continuance was denied. Appellant stated, on the record, that she would not participate in the trial. Although both the district court and her attorney told her that a failure to participate could result in a default judgment against her, she left the court and did not return. Her attorney nevertheless represented her during the trial.

The district court terminated appellant's parental rights to her children on three grounds: appellant refused and neglected to comply with her parental duties (Minn. Stat. § 260C.301, subd. 1(b)(2) (2016)); she was palpably unfit to be a party to the parent-child relationship (Minn. Stat. § 260C.301, subd. 1(b)(4) (2016)); and reasonable efforts failed to correct the conditions leading to the CHIPS placement (Minn. Stat. § 260C.301, subd.

[2] K.J. and C.A. are full siblings, having the same father; the other children have different fathers.

1(b)(5) (2016)).[3] Appellant challenges each of the grounds for termination, the district court's conclusion that termination is in her children's best interests, and the denial of her request for a continuance.

D E C I S I O N

Appellate courts

> review the termination of parental rights to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous. We give considerable deference to the district court's decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing. We affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family.

In re Welfare of Children of S.E.P., 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted). "Thus, on appeal from a district court's decision to terminate parental rights, we will review the district court's findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). Further, "[w]e review a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion." *Id.* at 905. "In terminating parental rights, the best interests of the

[3] The parental rights of all the children's fathers except S.L.W., who had terminated his parental rights voluntarily, were terminated involuntarily. The fathers' terminations are not challenged on appeal.

child are the paramount consideration, and conflicts between the rights of the child and rights of the parents are resolved in favor of the child." *Id.* at 902.

1. Compliance with parental duties

A district court may terminate parental rights if a parent is not "providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development . . . ." Minn. Stat. § 260C.301, subd. 1(b)(2). The testimony of three foster parents of appellant's children demonstrated appellant's failure to comply with her parental duties. The foster parents were examined by SCHHS's attorney and cross-examined by appellant's attorney.

The foster mother of one boy, K.D., testified that he had been in her home for ten months. When he arrived, he was "more aggressive and violent both physically and with his words" than he was at the time she testified. K.D. had required an individualized education program at school but was mainstreamed when she testified. *Id.* He talked in his foster home about what happened in appellant's home: (1) "sessions" when the children were being "whooped" that went on for a very long time;[4] (2) being locked in a dark room in the basement without food; (3) his younger brother, K.J., being locked in the dark room for a long time, then not speaking at all for a while, then beginning to stutter, and appellant not knowing why K.J. was stuttering; (4) an incident when appellant, who had been out drinking with S.L.W., had all the children in the dark room, brought a knife, and threatened

[4] "The three oldest children testified in chambers [during the CHIPS proceeding] about the 'whoopings' they received from [appellant and S.L.W.], sometimes with objects such as belts, for minor perceived infractions; the district court found their testimony credible." *Welfare of the Children of B.C.*, 2017 WL 2625954 at *2.

to kill them all; (5) K.D. being so numb that he did not fight back; (6) K.D. and his brother J.Z. running away from home multiple times; and (7) sometimes running away to get food by stealing it or eating from garbage cans. The foster parent also testified that K.D. had food issues, hoarding food and hiding it in his room, and that he had gained about 40 pounds in the ten months he had been with her. She also testified that appellant and S.L.W. were still together, that K.D. was scared when he saw them in a car because he thought S.L.W. could hurt the foster parents and himself; and that K.D. asked questions about where he was going to be in the future.

The foster mother of two of the girls, A.N. and A.B., testified about them. As to A.N., she testified that, when A.N. arrived, she would not shower or talk to anyone and stayed in her room; while in foster care, she had made friends, played outside, and interacted with other children. A.N.'s only contact with appellant in the past 11 months had been a phone call lasting about a minute and a half; A.N. did not want to have phone calls with appellant, and she did not want to go to therapy if appellant would be there. A.N. had at first refused to read letters from appellant, then read them, but did not talk about them. A.N. had told the foster mother that, if the children went home, they would "be beaten worse than they were before" and that, the previous time A.N. went home from foster care, she was beaten because of things she had said while in foster care. A.N. wanted to be adopted and had asked the foster mother to adopt her. A.N. wanted no contact with appellant or A.N.'s siblings; while she was required to visit her siblings, she was not required to visit appellant.

As to A.B., the foster parent testified that she was doing well except when she had visits with her parents, appellant and S.L.W., and then A.B. "was not sleeping, was wetting the bed all the time, doing a lot of crying and screaming." A.B. asked her parents why they had lied to the judge about whooping the children. A.B. said she wanted to stay with her foster mother forever and just visit appellant. The foster mother said she was aware of allegations of inappropriate sexual contact between J.Z. and K.D., C.A., and A.B., but she did not know of any such allegations concerning A.N. Finally, the foster mother did not think the siblings should be reunited because she didn't believe that they knew "how to act appropriately around each other and respect boundaries."

The foster mother for K.J., a boy, and C.A., his full sister, testified that they had been with her for ten months. K.J. was doing well in school, enjoying sports, very quiet at home, mostly happy, and enjoyed playing outside and riding his bike. He asks for her help and tells her where he is going when he leaves the house; both behaviors are new. K.J. used to be very mean to C.A., but that has improved. The foster parent had set boundaries for K.J. about not being in the girls' room, not sitting on laps, and not touching C.A. K.J. was stuttering a lot when he first came to the foster mother's home; his stuttering had decreased to the point where he stuttered only when he was very nervous or upset, but he was again stuttering more after the visits with appellant started. K.J. did not want to go to the therapist when appellant was here. K.J. talked about the future and doing things with members of the foster family; he was pleased to get a lot of homework for summer vacation because he thought it meant he would still be in the foster home in the fall. K.J. said that, if he were forced to go back to appellant, he would adopt a pattern of staying one night

with appellant and 30 nights with the foster mother. Finally, K.J. had begun crying when J.Z. had him sit on J.Z.'s lap; K.J. told the foster mother that his siblings "try to make me do things I don't want to do and I don't want to do those things anymore," which the foster mother thought was a reference to sexual things done when the children were at appellant's home.

As to C.A., the foster mother testified that at first C.A. often said she wanted to go back to appellant, but after her visits with appellant began, C.A. talked about a future that did not include appellant and did include being with her foster mother. When C.A. inadvertently urinated on the floor, she asked the foster mother if she was going to be beaten; when the foster mother assured her that there were no beatings, C.A. said, "I really, really love you." C.A. was angry when she saw appellant with S.L.W. because appellant had told C.A. that S.L.W. was no longer with her. C.A. had told the foster mother that, when they were with appellant, the girls would sit in their bedroom and pull the blankets over their heads because appellant "was doing things to the boys and it would make the boys cry and it made them sad." The foster mother said the children had two scheduled weekly times to call appellant but generally chose not to call; they called only once every few weeks. When visits with appellant started, both K.J. and C.A. wanted to sleep in the foster mother's room on the floor, and they never discussed their visit with appellant. Finally, the foster mother said she had no doubt there had been sexual contact between the siblings when they lived together in appellant's home and that both J.Z. and K.D. had been inappropriate with K.J. and C.A.

The foster mothers' testimony demonstrates that, when the children were taken from the home, appellant had not been providing them with the care necessary for their physical and emotional development: they were "whooped," deprived of food, and threatened; they were frightened of appellant and had adverse reactions after being with her, even in a controlled setting such as therapy; they were terrified of S.L.W., with whom appellant continued to have a close relationship, and they had not been taught appropriate sexual boundaries with one another. Because clear-and-convincing evidence supports its findings of the underlying facts, the district court did not abuse its discretion by ruling that appellant refused or neglected to comply with her parental duties.

2. Palpable unfitness for the parent-child relationship

"[A]n admission that [a mother's] boyfriend had physically abused the child as well as [the mother's] continued defense of her boyfriend's actions . . . coupled with the uncertainty of improvement in the future . . . showed a pattern of behavior which rendered appellant unfit as a parent and established that the prospects for substantial improvement in the future were not good." *Matter of Welfare of Maas*, 355 N.W.2d 480, 483 (Minn. App. 1984). The same situation is present here. Evidence from the family's case manager (C.M.) indicated that appellant's boyfriend, S.L.W., abused the children[5] and that appellant continued to defend him and have a relationship with him.

C.M. testified that the children reported physical abuse, including "whoopings," by appellant and S.L.W.; that S.L.W. "had thrown a couple of the children down the stairs"

[5] Specifically, the district court found that S.L.W. "participated in the abuse of the children by using a belt on them and holding down the children while [appellant] 'whooped' them."

on different occasions, that the children were confined to their rooms, and that there was insufficient food. She testified that (1) appellant had previously been charged with and convicted of malicious punishment in Stearns County, (2) the conditions leading to the children's Sherburne County out-of-home placement had also existed in Stearns County and had not been corrected, and (3) C.M. expected some significant change in appellant and S.L.W before the children would be released into appellant's custody. When asked if it would be sufficient for appellant to attend therapy and complete domestic-abuse programming, C.M. replied that was not enough: appellant would need to gain insight into the issues and change.

C.M. also testified that appellant would have to "demonstrate the ability to implement appropriate discipline and parenting for her children, as well as the ability to keep her children safe from physical discipline from her partner [i.e., S.L.W.]" and "not to question the children regarding statements and allegations of abuse."

C.M. explained that appellant did not want to complete domestic-abuse programming because, although appellant had previously been in an abusive relationship with the father of K.J. and C.A., she "did not feel that her relationship with [S.L.W.] was unhealthy" and "never reported any physical abuse or any domestic violence concerns for herself in that relationship." But, about two months before the TPR hearing, appellant had called 911 three times in one night concerning S.L.W.[6] C.M. said that, given appellant's reluctance to reach out to law enforcement and her directive that her children not open the

[6] However, appellant would not discuss this incident with C.M. "until after [S.L.W.'s] court proceedings were over."

door to law enforcement, she must have been "pretty afraid and scared" when she called 911.

Moreover, the children reported incidents of S.L.W. being physically abusive to appellant, which caused C.M. to conclude that appellant lacked the insight to recognize and change the situation between herself and S.L.W. J.Z. had told C.M. that appellant once woke him up and told him they were going to leave because S.L.W. had hit appellant in the face. C.M. believed that, despite such incidents, S.L.W. still lived at appellant's address. C.M. did not believe appellant's statement that S.L.W. would not be involved in appellant's life if the children were returned to her care. Although S.L.W. said in July 2016 that he was living in Minneapolis with family, in August 2016 appellant said her goal was to reunite herself with him and the children. Appellant told both her therapist and C.M. that she and S.L.W. had separated because she had been putting him before her children and realized she needed to put the children first, but later she said that her goal was to reunify with S.L.W. Six months after that, she wanted S.L.W. to attend a conference on the children's needs and the case plan, although, having voluntarily terminated his parental rights to A.B., he no longer had rights to any of appellant's children. Although appellant and S.L.W. claimed to have separated before the TPR hearings, C.M. saw them "hugging and kissing in the court hallway"; they had been seen together in the community, and S.L.W. was around when appellant had therapy with the children, which frightened the children.

During a phone call with appellant, C.M. confronted her about S.L.W. being around; C.M. testified that appellant "felt like it wasn't a big issue that [S.L.W.] was there and did

not understand what our concerns were [about him] and felt that the children were not afraid of him [and] . . . she did not really believe that seeing [S.L.W.] had any effect on the children." In the same phone call, appellant told C.M. that J.Z. and K.D. had "ruined her life" and talked about terminating her parental rights to those children. Appellant told C.M. both that S.L.W. would not leave the home so appellant was seeking other housing and that appellant did not see what the problem was with S.L.W.

C.M. concluded:

> I think that especially in the last month of [S.L.W.] coming back around and [appellant] not understanding the impact that has on the children and how they are fearful of him just continues to demonstrate her lack of insight into the children's mental health needs, emotional needs and how the environment of her home has impacted them to the point that they are struggling at home, they're struggling at school, they struggle emotionally, socially and really struggle to maintain stability in a family setting.

Appellant's inability to terminate her relationship with S.L.W. in the interests of her children shows that the district court did not abuse its discretion by ruling that appellant is palpably unfit to be a party to the parent-child relationship.

3. Failure to correct conditions

Parental rights may be terminated if the district court finds:

> that following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement. It is presumed that reasonable efforts under this clause have failed upon a showing that:
>
> (i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months . . . .;

> (ii) the court has approved the out-of-home placement plan . . . .;
>
> (iii) conditions leading to the out-of-home placement have not been corrected . . . [which] is presumed . . . upon a showing that the parent . . . ha[s] not substantially complied with the court's orders and a reasonable case plan; and
>
> (iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

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

The conditions leading to appellant's children being declared CHIPS and placed out of the home were stated in the district court's conclusions of law in the CHIPS proceeding, admitted as Exhibit 1 in the TPR proceeding.

> 3. The record shows by clear and convincing evidence the children are victims of physical and emotional abuse under [Minn. Stat. § 260C.007, subd. 6(2)]. The children have repeatedly been beaten to the point of causing physical injuries for minor disciplinary infractions. The abuse has been consistent, and took place up to the time the children were removed from [appellant's] care. The excessive and capricious nature of [appellant's] abuse has had an observable, sustained, and adverse effect on the children's mental and emotional development.
>
> 4. The record shows by clear and convincing evidence the children are in need of protection from their abusive, unremorseful and unstable mother. [Appellant] is unable to provide proper parental care under [Minn. Stat. § 260C.007, subd. 6(8)]. [Appellant] continued to physically and emotionally abuse her children despite past child protection placements and a criminal malicious punishment conviction. Several of [her] children believe she will simply resume "whooping" them if they are returned to her care. [Appellant] has not acknowledged her recent abusive behavior and will continue to physically abuse her children if they are returned to her. Additionally, the children are in need of services stemming from their mother's abusive behavior. The children all have trauma related mental health diagnoses requiring

> continuing therapy and care. SCHHS has provided these services while the children are in foster care.
>
> 5. The record shows by clear and convincing evidence the [S.L.W./appellant] household is a dangerous environment unfit for children under [Minn. Stat. § 260C.007, subd. 6(8). S.L.W. and appellant] ran their household with Draconian-style rules and severe discipline. This is unlikely to change if the children are returned to [appellant's] care. Additionally, the children are still in the process of developing coping skills to help them deal with parental visitation. Returning them to the [S.L.W./appellant] home would be dangerous for the children's mental health.

Appellant does not refute these conclusions or argue that the conditions cited in them have been corrected. Her sole argument on this issue is that SCHHS did not provide adequate services to help her separate from S.L.W. She offers no legal support for the view that SCHHS had an obligation to facilitate her separation from her husband when she was unwilling to separate from him and dishonest about the fact that they had not separated.

Moreover, the district court listed 14 services provided by SCHHS in addition to the 19 services previously provided by Stearns County and concluded that:

> [Appellant] nominally participated in some services but failed to correct the conditions leading to the children's placement. [She] still lacks insight into her abusive behavior, abusive relationships, and the children's trauma . . . . Additional services will not likely bring about lasting parental adjustment enabling a return of the children to [appellant's] home in a reasonable period of time given her continued denial of abuse. The services provided by the SCHHS were appropriate and adequate to facilitate a reunion of this family. The children need stability and safety, and [appellant] has not demonstrated a willingness or ability to provide such an environment. This is evidenced by [her] continued relationship with [S.L.W.] and extreme lack of insight into safe and nurturing parenting. [She] previously stated her wish to continue parenting the children. Despite this, [she] did not participate in the TPR trial in an attempt to protect her parental rights. . . . Most of the children

> do not want to return to [her] care, evidencing an extreme lack of trust and attachment. None of the children want to return to their mother's care if [S.L.W.] is in the home. The record shows [appellant and S.L.W.] continue to cohabitate and continue their relationship. The children deserve a stable home free from physical abuse. [Appellant] cannot provide such a home environment.

Appellant has not shown that the district court abused its discretion in concluding that "SCHHS has proven, by clear and convincing evidence, [that its reasonable efforts have] failed to correct the conditions leading to the children's out-of-home placement."

4. The children's best interests

Appellant claims that "the district court failed to examine the children's best interest." But the district court found that the guardian ad litem "testified termination of the parents' rights is in the children's best interests" and concluded that "[t]he children's interest in having a safe home outweighs [appellant's] interest in preserving the parent-child relationship. Termination of [appellant's] parental rights is in the children's best interest." *See* Minn. R. Juv. Prot. 39.05, subd. 3 (listing best interests considerations). Moreover, the district court's 97 detailed findings of fact and six pages of conclusions of law on the children and appellant both imply and support its consideration of the children's best interests.

Appellant concedes that "it may not be appropriate to reunify one or more of the children" with her, but argues that "there clearly are some children in which reunification could occur" and that "several of the children . . . have expressed an interest in maintaining a relationship with [appellant]." Appellant does not identify the children with whom reunification could occur or the children who have expressed an interest in maintaining a

relationship with her. Moreover, a child's wanting to maintain a relationship with appellant does not equate to wanting to be in her custody. The district court noted that appellant "blamed [J.Z.] and [K.D.] for the children's placement and previously indicated she may no longer wish to parent them. [She] did not participate in the TPR trial, and her ultimate intentions as to [J.Z.] and [K.D.] remain a mystery."

The district court also made specific findings about each child's views:

"[A]fter [J.Z.] learned S.L.W. still resides in the home, he did not wish to return to appellant's care."

K.D. "rarely talks to [appellant] on the phone" and "asks many questions about a future home."

"[A.N.] refused to see [appellant] since placement in foster care and will become nonresponsive if asked about [appellant] or this matter" and "asked [the] foster mother and respite care provider to start an adoption."

K.J. "never talks about wanting to go home to [appellant,] but says [he] would just like to visit [her] one day a month in the future" and "has been trying to make plans with the foster parent for the future."

C.A., after starting therapy with appellant, "has appeared very nervous, does not say goodbye to [her] following therapy, is anxious, experiences enuresis, has nightmares, requests to sleep in foster parent's room, does not want to leave the foster parent's home, has headaches, self-harms (hitting and biting) and wants to be close to the foster parent" and "tried to talk with the foster parent about a future with the foster parent."

A.B. "does not ask to return to [appellant's] care" and "just wants to visit [her] in the future" and "has confronted [appellant] on the phone, saying 'You say you didn't whoop me, but I know that you did, and you have to say that you did otherwise it's a lie'"; A.B. "is afraid of both parents [appellant and S.L.W.]."

Each of these findings implies that termination is in that child's best interests. The district court did not abuse its discretion in making that determination.

5. Denial of a continuance

"The granting of a continuance is a matter within the discretion of the [district] court and its ruling will not be reversed absent a showing of clear abuse of discretion." *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977).

The TPR petition was filed in September 2016, and the trial dates were set in February 2017. When the trial began on May 11, 2017, appellant, without having notified the court or the other parties, moved for a 30-day continuance so she could hire a private attorney. Although she claimed to have called attorneys and left messages for them, she could not identify any attorney she had called or any other effort she had made to retain a private attorney between February 2017 and the start of the trial. Her own attorney was in court, ready to proceed with trial; SCHHS was also ready to proceed with trial. The district court denied appellant's motion on the grounds that (1) the continuance would prejudice SCHHS, which had subpoenaed witnesses for the trial; (2) appellant did not explain why her current counsel was unfit or unable to proceed with trial; (3) it was not fair or reasonable to delay the trial; and (4) the children were past the permanency deadline and it was in their best interests to proceed.

Appellant made a statement on the record, saying her civil rights were violated, the system was prejudiced, she was treated unfairly when she was pulled over after another hearing, and she could lose her housing. Despite the urging of the court and her attorney, appellant did not return to the trial. Her counsel continued to represent her, cross-examining SCHHS's witnesses.

Appellant now argues that the district court violated her due process rights by denying her continuance request so that she could have participated in the proceedings. She does not dispute her children's need for permanency after almost 18 months in out-of-home placement, but she offers no explanation for why she could not have participated with her previous attorney, who did participate without her, or why she delayed hiring an attorney until the scheduled opening of trial. There was no abuse of discretion in the denial of the continuance.

Affirmed.