STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0196
A18-0197

In the Matter of the Welfare of the Children of:
E.M.J. and A.R.S., Parents.

Filed November 26, 2018
Affirmed
Halbrooks, Judge

Todd County District Court
File No. 77-JV-17-813

Sarah Federle, Federle Law, Wadena, Minnesota (for appellant E.M.J.)

Andrew Wipper, St. Cloud, Minnesota (for appellant A.R.S.)

Chuck Rasmussen, Todd County Attorney, Jane Gustafson, Assistant County Attorney, Long Prairie, Minnesota (for respondent county)

Courtney Rannow, Little Falls, Minnesota (guardian ad litem)

Considered and decided by Halbrooks, Presiding Judge; Jesson, Judge; and Bratvold, Judge.

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

HALBROOKS, Judge

In these consolidated appeals, appellants challenge the terminations of their parental rights. We affirm.

FACTS

Appellants E.M.J. (mother) and A.R.S. (father) are the parents of M.E.S., who was born in September 2016. E.M.J. is under guardianship and lives in a group home that does not allow children. Respondent Todd County Health and Human Services filed a child-in-need-of-protection-or-services (CHIPS) petition five days after M.E.S.'s birth, and he was placed in foster care directly from the hospital. The district court appointed counsel for E.M.J. and separate counsel for A.R.S. after he established paternity.

The district court adjudicated M.E.S. as CHIPS in December 2016 after A.R.S. and E.M.J. admitted the CHIPS petition. In April 2017, the district court granted a six-month extension of the permanency timelines. E.M.J. and A.R.S. continued to work on their individual out-of-home placement plans for more than a year. While both parents had supervised visits with M.E.S., neither was approved for a trial home visit.

In August 2017, the county petitioned to involuntarily terminate the parental rights of E.M.J. and A.R.S. The district court scheduled trial on the petition for January 2, 2018. Shortly before trial, A.R.S. filed a petition to voluntarily terminate his parental rights. On the first day of trial, the district court accepted A.R.S.'s petition after he testified as to the voluntariness of his decision.

Trial proceeded on the involuntary termination of E.M.J.'s parental rights. After 13 witnesses had testified, on the third day of trial, E.M.J.'s counsel advised the district court that E.M.J. wished to voluntarily terminate her parental rights. After E.M.J., her guardian, the social worker, and the guardian ad litem testified, the district court accepted E.M.J.'s waiver of her right to trial. Thereafter, the district court issued an order stating that E.M.J.

and A.R.S.'s parental rights should be voluntarily terminated under Minn. Stat. § 260C.301, subd. 1(a) (2016), for good cause and that it was in M.E.S.'s best interests to remain in foster care until permanency for the child could be established.

E.M.J. and A.R.S. filed separate appeals. We consolidated the appeals and concluded that, because appellants consented to the termination of their parental rights, the termination order was analogous to a default order. We therefore stated that our review was limited to whether the evidence in the record supports the findings of fact and whether the findings of fact support the conclusions of law. *Nazar v. Nazar*, 505 N.W.2d 628, 633 (Minn. App. 1993), *review denied* (Minn. Oct. 28, 1993). With respect to appellants' challenge to the voluntariness of their consents, we stated that appellants should raise the issue in a motion for relief under Minn. R. Juv. Prot. P. 46.02. We stated that we would not review in the first instance appellants' claims that their consents were not voluntary.

Appellants subsequently moved the district court under Minn. R. Juv. Prot. P. 46.02, challenging the voluntariness of their consents. The district court denied the motion. Appellants did not appeal from the district court's order denying their rule 46.02 motion. Thus, our review remains limited to whether the evidence in the record supports the findings of fact and the findings of fact support the conclusions of law. *Id.*

D E C I S I O N

Upon petition, the juvenile court may terminate all rights of a parent to a child with the written consent of a parent who for good cause desires to terminate parental rights.

Minn. Stat. § 260C.301, subd. 1(a). The best interests of the child must be the paramount consideration. *Id.*, subd. 7 (2016).

The district court found that there was good cause to voluntarily terminate the parental rights of E.M.J. and A.R.S. The district court found that both parents love and want the best for M.E.S., but neither parent can offer M.E.S. the stability and resources required to meet his ongoing needs.

Reports submitted to the court by the social worker and guardian ad litem conclude that, despite working on their case plans for over a year, both parents continued to exhibit an inability to properly care for M.E.S. and meet his social, emotional, psychological, and developmental needs. The reports reflect that in more than 13 months of reunification efforts, the county never approved a trial home visit for either parent. A.R.S.'s last visit with M.E.S. was more than four months before trial. A therapist performed parenting assessments of E.M.J. and A.R.S. Her assessment of E.M.J. stated that E.M.J. lacks the capacity to meet M.E.S.'s needs. Her assessment of A.R.S. stated that his declining mental health was a barrier to M.E.S.'s treatment. The assessment also stated that A.R.S. was no longer willing or able to reflect on M.E.S.'s physical and emotional needs, and that A.R.S.'s goal to parent M.E.S. full-time was unrealistic.

The guardian ad litem testified that despite E.M.J.'s efforts on her case plan, there remained a significant concern that, due to E.M.J.'s disability, she will not be able to keep up with M.E.S.'s development or meet his needs on a consistent basis. The guardian ad litem testified that E.M.J. is not capable now or in the reasonable future of meeting M.E.S.'s needs. Similarly, the social worker testified that E.M.J. was inconsistent and

would not be able to meet M.E.S.'s needs now or in the near foreseeable future. E.M.J. testified that she did not have a home to provide for M.E.S. because her group home did not allow children. And she admitted that "there's probably some things in [her] parenting that [she] need[s] to work on."

In his voluntary termination petition, A.R.S. stated that he and E.M.J. had "poor chemistry." The petition also states that their relationship was tumultuous and involved persistent conflict that affected the child. A.R.S. stated on the record in district court that realistically he was not ready to be a father and that the stress of the last year was not good for M.E.S. He also stated on the record that M.E.S. needed to be with people who could get along. Based on our careful review of the record, the district court's findings that there was good cause to voluntarily terminate the parental rights of both parents is well-supported by the record.

The district court also found that voluntary termination of E.M.J. and A.R.S.'s parental rights is in the best interests of M.E.S. Both A.R.S. and E.M.J. admitted on the record that termination would be in the best interests of M.E.S. The social worker concluded in her report that contact with A.R.S. is not in M.E.S.'s best interests because M.E.S. is vulnerable to stress caused by inconsistencies in caregiving experiences. The parenting assessments recommended that M.E.S. be placed for adoption because neither parent has the capacity to consistently meet M.E.S.'s basic needs now or in the foreseeable future. The assessments stated that contact between A.R.S. and M.E.S. was not recommended, but that E.M.J. could be allowed supervised ongoing contact to the extent it is positive for M.E.S. The guardian ad litem's reports conclude that M.E.S. requires

caregivers who can meet his needs on a consistent basis and that M.E.S. is in need of security and stability.

The social worker testified that it is in M.E.S.'s best interests for E.M.J.'s parental rights to be terminated due to E.M.J.'s inability to meet M.E.S.'s basic physical, social, emotional, and developmental needs with consistency. The guardian ad litem testified based on her extensive involvement since the beginning of the case that it is in M.E.S.'s best interests for E.M.J.'s parental rights to be terminated. We are satisfied that the district court's finding that termination of E.M.J. and A.R.S.'s parental rights is in M.E.S.'s best interests is well-supported by the record.

A.R.S. and E.M.J. also contend that the district court's findings are not supported by the record because what began as an involuntary termination proceeding ended with voluntary terminations by both parents. There are two ways to convert an involuntary termination of parental rights to a voluntary one: file a new petition or amend the original. *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 705 (Minn. App. 2004). A.R.S. filed a petition to voluntarily terminate his rights before trial began on the involuntary termination petition. Therefore, an amendment was not required.

With respect to E.M.J., a new petition was not filed and the original was not formally amended. In *In re A.S.*, we cautioned counsel and district courts "to make a clear record to transform a petition for involuntary permanency placement into voluntary relinquishment of parental rights for good cause." 698 N.W.2d 190, 196 (Minn. App. 2005) (applying standard to permanent transfer of custody), *review denied* (Minn. Sept. 20, 2005). Here, E.M.J.'s counsel advised the district court on the third day of trial that E.M.J. wished to

convert the proceedings to a voluntary termination. E.M.J. was questioned by her attorney, the county, and the district court. E.M.J. testified that she understood her trial rights, had consulted her attorney, and was willing to voluntarily terminate her parental rights to M.E.S. for good cause. She testified that she was not under any undue duress in making the decision to voluntarily terminate her rights. We conclude that the district court made a clear record to transform the involuntary termination petition to a voluntary termination.

E.M.J. also contends that the record does not support the district court's finding that she waived her right to trial because she did not consult with her guardian regarding the voluntary termination. The district court found that E.M.J.'s guardian was personally present throughout the trial, that the guardian heard E.M.J.'s testimony that she wished to give up her parental rights, and that the guardian supported E.M.J.'s decision. The district court found that E.M.J. admitted that she had sufficient time to make her decision.

The record reflects that E.M.J. was represented by counsel throughout the proceedings and at trial. Her guardian was also present at each hearing and at trial. E.M.J.'s guardian testified that although she and E.M.J. had not discussed the decision to voluntarily terminate, she supported the decision if that was what E.M.J. wanted. She testified that she had not tried to influence E.M.J.'s decision. The record also reflects that while E.M.J. was not regularly communicating with her guardian, she had ample opportunity to do so if she wished. The district court's factual findings that E.M.J. had sufficient time to make her decision, that the guardian was present, and the guardian supported the voluntary termination are supported by the record.

The district court determined that there is clear and convincing evidence that the rights of E.M.J. and A.R.S. should be voluntarily terminated for good cause because neither parent is in a position to take on the permanent care of M.E.S. or believes they can offer him stability and resources to meet his needs. Because the district court appropriately relied on its factual findings, which support voluntary termination under the statute, we conclude that the district court's findings of fact support its legal conclusions.[1]

Affirmed.

[1] On March 30, 2018, A.R.S. and E.M.J. filed a motion in this court. On March 20, 2018, this court filed an order denying their earlier motion dated March 19, 2018, and their correspondence from March 8 and March 9, 2018, which sought substantially the same relief. Under Minn. R. Civ. App. P. 140.01, no petition for rehearing shall be allowed in the court of appeals. Accordingly, the March 30 motion is denied.