STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0508

In the Matter of the Welfare of the Children of:
H. R. W. and M. D. L., Parents.

Filed October 29, 2018
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-JV-17-3092, 27-JV-17-4232

Mary Moriarty, Hennepin County Public Defender, David W. Merchant, Assistant Public Defender, Minneapolis, Minnesota (for appellant-mother H.R.W.)

Mary Moriarty, Hennepin County Public Defender, Shuly Yang Her, Assistant Public Defender, Minneapolis, Minnesota (for respondent-father M.D.L.)

Michael O. Freeman, Hennepin County Attorney, Britta K. Nicholson, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department

Colin T. Nelson, Bloomington, Minnesota (for guardian ad litem)

Considered and decided by Larkin, Presiding Judge; Smith, Tracy M., 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 woman's parental rights to her three children. She challenges the termination on both procedural and substantive grounds. We conclude that the appellant's constitutional right to due process was not violated. We also conclude that

the district court did not err by finding that the county made reasonable efforts to reunify the appellant with her children. We further conclude that the district court did not err by determining that termination of appellant's parental rights is in the children's best interests. Therefore, we affirm.

FACTS

H.R.W. and M.D.L. are the biological parents of three children. Their first child was born in June 2011, their second child was born in May 2013, and their third child was born in August 2017. The district court terminated both parents' rights to all three children.

In July 2016, Hennepin County petitioned the district court to designate the first and second children as being children in need of protection or services (CHIPS). The county became involved with the family after receiving several reports of domestic violence between H.R.W. and M.D.L. The district court granted the CHIPS petition, and the children were placed in foster care. The district court ordered H.R.W. and M.D.L. to comply with a case plan, which required H.R.W., the mother, to complete a Rule 25 chemical-use assessment, complete domestic-violence programming, complete a parenting assessment, obtain and maintain suitably safe and stable housing, and cooperate with the county and the guardian *ad litem*. H.R.W. had difficulty making progress with the case plan and displayed an unwillingness to comply with its terms.

In June 2017, the county petitioned the district court to terminate H.R.W.'s and M.D.L.'s parental rights to the two children. The petition alleged four statutory bases for termination: (1) failure to comply with duties of parent-child relationship, (2) palpable unfitness to parent, (3) reasonable efforts by the county have failed to correct the conditions

that led to out-of-home placement, and (4) the child was neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2016).

On August 29, 2017, H.R.W. gave birth to the couple's third child. Immediately after giving birth, H.R.W. tested positive for tetrahydrocannabinol (THC), and the third child's meconium tested positive for the same. On September 5, 2017, the county petitioned the district court to terminate H.R.W.'s and M.D.L.'s parental rights to the third child. The petition alleged the same four statutory bases for termination as the previous petition, with an additional allegation that H.R.W. was unwed to M.D.L. at the time of conception and birth, neither parent was entitled to an adoption hearing, and neither parent had registered with an adoption registry. *Id.*, subd. 1(b)(7). On the same day, the district court ordered the third child into out-of-home placement. In response to the county's request, the district court consolidated the two termination-of-parental-rights (TPR) cases for trial.

Trial in the first case had previously been scheduled for November 20. At the outset of trial, H.R.W. moved for a continuance of the trial with respect to all three children or, in the alternative, with respect to only the third child. The district court took the motion under advisement and gave the county additional time to submit briefing. Meanwhile, the district court proceeded with the first witness, M.D.L. On the second day of trial, the district court denied H.R.W.'s motion for a continuance with respect to all three children.

The case was tried on four days between November 20, 2017, and January 9, 2018. On February 22, 2018, the district court filed an order granting the TPR petitions and terminating the parental rights of H.R.W. and M.D.L. with respect to all three children.

H.R.W. and M.D.L. filed separate motions for a new trial or amended findings, which the district court denied. H.R.W. appeals.

D E C I S I O N

I. Due Process

H.R.W. first argues that the district court erred by depriving her of her constitutional right to due process, in two ways: first, by denying her motion to continue the trial with respect to the third child and, second, by allowing the county's attorney to represent the guardian *ad litem* and conduct direct examination of the guardian *ad litem*.

A. Denial of Motion to Continue Trial

As stated above, H.R.W. argues that the district court erred by denying her motion to continue the trial with respect to the third child. She contends that, because she was forced to go to trial so soon after the third child's birth, she did not have a fair opportunity to comply with the case plan and, thus, was not allowed adequate time to defend against the allegations in the petition. She does not cite any caselaw that is specifically on point; rather, she argues generally that additional time was necessary to ensure "fundamental fairness" and "a meaningful adversarial hearing." *See In re Child of P.T.*, 657 N.W.2d 577, 587-88 (Minn. App. 2003). In response, the county argues that H.R.W. "had a full and fair trial before an impartial decision-maker" and that the trial occurred within the statutory timeframe.

In her pre-trial motion, H.R.W. argued that a continuance was appropriate because she should have more of an opportunity to complete her case plan and to reunify with her third child. The district court denied the motion. After trial, in a portion of its 42-page

order on the merits, the district court stated that it would have reached the same result even if it had given H.R.W. additional time to work on her case plan because there are grounds for granting the county's termination petition with respect to the third child "that are not dependent on timeline related arguments." In her subsequent motion for a new trial or amended findings, H.R.W. argued that the district court erred by denying her motion for a continuance as to the third child. The district court denied that part of the motion by referring back to its termination order.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits states from depriving a person of life, liberty, or property "without due process of law." U.S. Const. amend. XIV, § 1. A court must conduct a two-step analysis to determine whether a person's right to due process has been violated. *Rew v. Bergstrom*, 845 N.W.2d 764, 785 (Minn. 2014). First, the court must determine whether the state has deprived the person of a protected interest in life, liberty, or property. *Id.* If so, the court then must determine whether the state's procedures were constitutionally sufficient. *Id.* If the relevant facts are not in dispute, this court applies a *de novo* standard of review to a district court's decision that its procedures do not violate a person's constitutional right to due process. *See id.*

In this case, the first requirement is satisfied because there is no dispute that H.R.W. has a recognized protected interest. Natural parents have a "fundamental liberty interest . . . in the care, custody, and management of their child." *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394-95 (1982); *see also In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 133 (Minn. 2014). This "freedom of personal choice in matters of family

life is a fundamental liberty interest protected by the Fourteenth Amendment." *Santosky*, 455 U.S. at 753, 102 S. Ct. at 1394. "When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." *Id.* at 753-54, 102 S. Ct. at 1395. This is so because, "'[w]hen the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it.'" *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 672 (Minn. 2008) (quoting *Santosky*, 455 U.S. at 759, 102 S. Ct. at 1397).

The second requirement of the caselaw is that the procedures utilized at trial were constitutionally sufficient. *Rew*, 845 N.W.2d at 785. In a TPR proceeding, the process due to a parent is determined by the three-factor due-process test. *Santosky*, 455 U.S. at 754, 102 S. Ct. at 1395 (citing *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893 (1976)); *see also In re Welfare of J.W.*, 391 N.W.2d 791, 794 (Minn. 1986). The three factors are (1) the private interest affected by the proceeding, (2) the risk of an erroneous deprivation of that interest compared with the value of additional or substitute procedural safeguards, and (3) the nature of the state's interest. *Mathews*, 424 U.S. at 335, 96 S. Ct. at 903.

In this case, the first factor is significant. A parent's loss of parental rights is "a unique kind of deprivation" with lasting implications. *Lassiter v. Department of Soc. Servs.*, 452 U.S. 18, 27, 101 S. Ct. 2153, 2160 (1981). It is "plain beyond the need for multiple citation that a natural parent's desire for and right to the companionship, care, custody, and management of his or her children" is substantial. *Santosky*, 455 U.S. at 758, 102 S. Ct. at 1397 (quotation omitted). The fundamental liberty interest in raising one's children "undeniably warrants deference" and respect. *Stanley v. Illinois*, 405 U.S. 645,

651, 92 S. Ct. 1208, 1212 (1972). Thus, the termination of H.R.W.'s parental rights affects a significant liberty interest.

The third factor also is significant. The state has important interests in a TPR proceeding. Specifically, the state has "a *parens patriae* interest in preserving and promoting the welfare of the child and a fiscal and administrative interest in reducing the cost and burden of such proceedings." *Santosky*, 455 U.S. at 766, 102 S. Ct. at 1401. The district court's decision to not continue the trial with respect to the third child served the state's interests by achieving permanency for the third child at an earlier date and by reducing the expense of the judicial proceedings necessary to resolve both TPR petitions.

The second factor is the key to resolving H.R.W.'s due-process argument. H.R.W.'s primary contention is that it was fundamentally unfair for the county to file the TPR petition with respect to the third child only one week after she was born and fundamentally unfair that she was required to go to trial on that petition when the third child was only 12 weeks old. H.R.W.'s secondary contention is that she did not have a fair opportunity to defend against the petition because, in the short time between the birth of the third child and trial, the county did not provide her with a court-approved case plan that was specifically tailored to the third child.

We note that H.R.W.'s contention is contradicted by the district court's statement in its termination order that H.R.W. was not prejudiced by the lack of additional time between the birth of the third child and the trial. The district court stated that the grounds for terminating H.R.W.'s parental rights to the third child were "not dependent on timeline related arguments." The district court added that H.R.W. "received 15-plus months of

services in support of the [county's] reasonable efforts at reunification" and that such efforts "were not enough to overcome the serious and persistent concerns about her safety and the best interests of her children." As the district court also noted, a finding of prejudice is essential to a determination that the right to due process has been violated. *See B.J.-M.*, 744 N.W.2d at 673. Accordingly, to prevail, H.R.W. must overcome the district court's statement that she was not prejudiced by the lack of additional time before trial. H.R.W. does not directly challenge the district court's statement. She identifies ways in which her chances of success at trial might have been enhanced, but she does not demonstrate that her evidence would have been so different that the district court would have found in her favor and against the county on all five of the alleged grounds for termination. Thus, H.R.W. has not shown that additional time before trial would have been consequential or that the absence of additional time created an undue risk of an erroneous deprivation of her fundamental interest in parenting her third child. *See Mathews*, 424 U.S. at 335, 96 S. Ct. at 903.

Thus, the district court did not err by concluding that its denial of H.R.W.'s motion to continue trial with respect to the third child did not violate H.R.W.'s right to due process.

B. Testimony of Guardian *ad Litem*

As stated above, H.R.W. also argues that the district court violated her right to due process by allowing the county's attorney to also represent the guardian *ad litem* and to conduct direct examination of the guardian *ad litem* during what H.R.W. claims was the guardian *ad litem*'s case. In response, the county argues initially that H.R.W. did not properly preserve this argument by presenting it to the district court at the appropriate time.

In reply, H.R.W. concedes that she did not object during trial but contends that this court nonetheless should consider the issue for the first time on appeal.

We do not accept H.R.W.'s premise that the assistant county attorney who represented the county also represented the guardian *ad litem*. Rather, it appears that the county called the guardian *ad litem* as a witness in the county's case-in-chief out of order. The district court and counsel discussed the matter off the record before the district court recited the agreed-upon procedure on the record. The county was prepared to rest its case except for the testimony of the guardian *ad litem*, whom the county preferred to call after both parents had presented their respective cases. The county's request presumably was intended to make it unnecessary to call the guardian *ad litem* twice, both in the county's case-in-chief and in its rebuttal case. The district court made clear that either parent or both parents could be recalled as sur-rebuttal witnesses if requested. No party objected to the procedure described by the district court. In fact, H.R.W.'s attorney affirmatively agreed to the procedure. In light of H.R.W.'s expressed agreement, she has waived the right to challenge the procedure on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Doe v. Columbia Heights Sch. Dist.*, 842 N.W.2d 38, 45-46 (Minn. App. 2014). In any event, we note that neither the county nor the district court stated that the county's attorney would represent the guardian *ad litem*.

Thus, H.R.W. was not deprived of her right to due process.

II. Reasonable Efforts

H.R.W. also argues that the district court erred by finding that the county made reasonable efforts to reunify H.R.W. with her third child.

After a CHIPS adjudication, a county social services agency must make "reasonable efforts . . . to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time." Minn. Stat. § 260.012(a) (2016). Reasonable efforts "are always required," subject to a few exceptions. *Id.* Unless an exception exists, a district court may not terminate parental rights without finding that the county made reasonable efforts to reunify parent and child. Minn. Stat. § 260C.301, subd. 8 (2016). In determining whether the county made reasonable efforts, a court shall consider whether the services offered were "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Minn. Stat. § 260.012(h) (2016). Reasonable efforts "must go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). A court should consider "the length of the time the county was involved and the quality of effort given." *Id.* This court applies an abuse-of-discretion standard of review to a district court's finding that the county made reasonable efforts. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 323 (Minn. App. 2015), *review denied* (Minn. July 20, 2015); *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012).

In this case, the district court found that the county made reasonable efforts to prevent foster-care placement and return the children to H.R.W. The record contains evidence that supports the district court's finding. The record indicates that the county offered to refer H.R.W. to professionals who could provide a parenting assessment and a

psychological assessment but that she declined. The record also indicates that the county provided transportation for her children to and from appointments and helped H.R.W. secure affordable housing by assisting with Section 8 paperwork. The county also provided H.R.W. with financial assistance in the form of bus passes and pre-paid telephone services. These services were provided to H.R.W. by the county for more than 15 months. In fact, H.R.W. essentially admitted on cross-examination that the county made reasonable efforts; she testified that there was no service that was requested that the county could not offer and that her social workers were helpful to her when she attempted to complete the case plan.

H.R.W. contends that the county failed to make reasonable efforts because it did not comply with the statutory requirements concerning a case plan. Specifically, she contends that the county did not seek her participation in the preparation of a case plan and that the county never sought or received the district court's approval of the case plan. The county was required to "prepare an out-of-home placement plan addressing the conditions that [the] parent must meet before the child can be in that parent's day-to-day care." Minn. Stat. § 260C.219(a)(2)(i) (2016). The purpose of this requirement is to ensure that a parent is aware of what is required for reunification. *See* Minn. Stat. § 260C.212, subd. 1(c) (2016); *In re Welfare of Copus*, 356 N.W.2d 363, 366 (Minn. App. 1984).

In this case, the district court approved a written case plan for the third child on September 5, 2017. This case plan was modeled after the written case plan for the older two children, which had been discussed and reviewed with H.R.W. and approved by the district court. In its order approving the case plan for the third child, the district court

expressly indicated that the case-planning services provided to H.R.W. for the older two children also applied to the third child. Although the case plan for the third child was granted on a temporary basis, it was nonetheless a "written document," as required by statute. Minn. Stat. § 260C.212, subd. 1(b) (2016). At trial, H.R.W. acknowledged that she understood her second case plan and its requirements. Because the requirements for the initial case plan were essentially the same as those for the case plan relating to the third child, H.R.W. was aware of what was necessary for reunification with her third child. Indeed, in her motion for a continuance, H.R.W. repeatedly referred to "her case plan."

On appeal, H.R.W. contends that this court's recent decision in *In re Welfare of A.R.B.*, 906 N.W.2d 894 (Minn. App. 2018), supports this argument. In *A.R.B.*, the county never developed a case plan for the appellant at any time. *Id.* at 896. Accordingly, this court noted that "it was *impossible* for [the appellant] to know what steps he needed to take to correct the conditions in the absence of a case plan." *Id.* at 899 (emphasis added). This case is distinguishable. H.R.W. was given a court-approved written case plan shortly after her third child was born. This case plan contained similar requirements to those of the case plan for the older two children, of which H.R.W. was fully aware. Unlike the appellant in *A.R.B.*, H.R.W. knew the steps she needed to take in order to be reunited with her third child.

Thus, the district court did not err by finding that the county made reasonable efforts to reunite H.R.W. with her third child.

III. Best Interests

H.R.W. last argues that the district court erred by finding that the termination of her parental rights is in the best interests of her children.

"[I]n terminating parental rights, the best interests of the 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." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 902 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012); *see also* Minn. Stat. § 260C.301, subd. 7 (2016). "In analyzing the best interests of the child, the 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). 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). 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. *In re Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008).

In this case, the district court found that it was in the best interests of the children to terminate the parental rights of H.R.W. and M.D.L. The district court noted that H.R.W. expressed an interest in parenting her children. But the district court found that her lack of case-plan compliance cast doubt on her ability to parent the children safely. The district court also found that H.R.W. was unable to meet the children's basic needs and significant

special needs. Ultimately, the district court found that the needs of the children "far outweigh" the desires of their parents to retain their parental rights.

The district court's findings are supported by the record. The evidence shows that H.R.W. consistently failed to meet the requirements of her case plan. The evidence also shows that the first child, who has significant medical needs, had not been seen by his medical specialists for two years before entering foster care. One of H.R.W.'s social workers testified that termination was in the children's best interests based on the parents' failure to ensure a safe environment for them. Another social worker testified that termination was in the children's best interests because H.R.W.'s parenting issues would continue for the reasonably foreseeable future. The guardian *ad litem* testified in favor of termination, citing the children's exposure to domestic violence and numerous safety concerns that she had observed during parenting-education sessions. The district court expressly found the testimony of the two social workers and the guardian *ad litem* to be credible, and we typically defer to a district court's credibility determinations. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007).

Thus, the district court did not err by finding that the termination of H.R.W.'s parental rights is in the children's best interests.

In sum, the district court did not err by granting the county's petition and terminating H.R.W.'s parental rights to her three children.

Affirmed.