STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1875
A18-1881
A18-1891

In re the Matter of the Welfare of the Child of:
L. M. E. and B. E. E., Parents (A18-1875),

and

In re the Matter of the Welfare of the Child of:
L. M. E. and C. K. D., Parents (A18-1881, A18-1891)

Filed April 15, 2019
Affirmed
Connolly, Judge

Mille Lacs County District Court
File No. 48-JV-18-1465

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

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

CONNOLLY, Judge

Appellants, the parents of a son, challenge the termination of their parental rights to him; appellant-mother also challenges the termination of her parental rights to her daughter. Appellant-father argues that the district court failed to make adequate findings to support the conclusion that he failed to correct the conditions leading to their child's out-of-home placement; appellant-mother argues that she did correct the conditions leading to her children's out-of-home placement and that she also satisfied her case plan.[1] Because clear and convincing evidence supports the district court's finding that the statutory requirements for termination were met, we affirm.

FACTS

Appellant L.M.E. is the mother of a daughter, E.R.E., now 15, and of a son, B.J.D., now 3, whose father is appellant C.K.D.[2] In August 2017, respondent Mille Lacs County Community and Veterans' Services (MLCCVS) removed the two children from appellants' home and filed petitions to have them declared children in need of protection or services (CHIPS). In May 2018, the children were placed together in their current foster home,

[1] While L.M.E. claims in her brief that the district court also terminated her parental rights on the basis of palpable unfitness, see Minn. Stat. § 260C.301, subd. 1(b)(4) (2018), nothing in the record, including the district court's orders, supports this claim and we do not address it.

[2] E.R.E.'s father voluntarily terminated his parental rights to her in July 2018 and is not a party to this appeal.

which is willing to be a permanent placement for them, and petitions were filed to terminate appellants' parental rights to them. In November 2018, following a trial, appellants' parental rights to the children were terminated.

C.K.D. filed an appeal challenging the termination of his rights to B.J.D.; L.M.E. filed one appeal challenging the termination of her rights to B.J.D. and another appeal challenging the termination of her rights to E.R.E. This court consolidated the three appeals.

D E C I S I O N

Standard of Review

This court will "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). In terminating parental rights, the best interests of the children are the paramount consideration, and conflicts between the children's rights and the parents' rights are resolved in favor of the children.[3] Minn. Stat. § 260C.301, subd. 7 (2018). If the record provides clear and convincing support for termination, the appellate court will defer to the district court's determination that the statutory

[3] Neither appellant challenges the district court's determination that termination of their parental rights is in their children's best interest.

requirements for termination have been established. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 899-900 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

1. Reasonable Efforts to Reunite Appellants with the Children Were Made

In any termination proceeding, the district court shall make specific findings

> that reasonable efforts to finalize the permanency plan to reunify the child[ren] and the parent[s] were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent[s] and reunite the family.

Minn. Stat. § 260C.301, subd. 8(1) (2018). "[R]easonable efforts, by definition, does not include efforts that would be futile." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004) (quotations omitted).

The district court found that MLCCVS worked with the family from November 2016 through August 2018 and that the services provided included: (1) counseling/therapy for L.M.E.; (2) individual counseling for E.R.E.; (3) independent living skills [ILS] for home management care; (4) a family home visiting nurse to assist with child development; (5) mental health assessments for L.M.E., C.K.D., and E.R.E.; (6) mental health services for L.M.E.; (7) MN Choice assessments; (8) personal care assistance [PCA] services, (9) case management services; (10) parenting education classes; (11) referral to payee central for assistance in managing social security benefits and paying bills; (12) transportation; (13) parenting capacity assessments for both appellants; (14) medical and dental care; (15) education services for E.R.E.; and (16) supervised parenting time for the family at Lighthouse Child & Family Services (LCFS). The district court made detailed findings as to what each service provider found when it began working with the family and

what, if anything, each service provider was able to achieve. Particularly in light of the fact that reasonable efforts do not include futile efforts, *see id.*, the district court's conclusion that MLCCVS made reasonable efforts to rehabilitate appellants and reunite the family is supported by the clear and convincing evidence.

2. The Minn. Stat. § 260.301, subd. 1(b)(5) termination criteria

The district court terminated appellants' parental rights to both children on the basis of Minn. Stat. § 260.301, subd. 1(b)(5) (2018), providing that a district court may, upon petition, terminate all rights of parents to their children if,

> following the child[ren]'s placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child[ren]'s placement. It is presumed that reasonable efforts under this clause have failed upon a showing that:
> (i) [the children have] 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 required under section 260C.212 and filed with the court under section 260C.178;
> (iii) conditions leading to the out-of-home placement have not been corrected . . . [which is presumed] upon a showing that the parent or parents have 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[s] and reunite the family.

Id.

Both in their briefs and at oral argument to this court, appellants argued primarily that their parental rights should not have been terminated because the children were removed only because of the condition of the home, which had improved by the time of trial in September 2018. The district court's awareness of this argument may be inferred

from its findings stating that appellants' case plan identified several reasons for removing the children from the home, including "a combination of prior [child protection] involvement, an unsanitary living environment, medication distribution issues, and parental and children's developmental needs, and that "[w]hile [appellants'] admission had a limited factual basis related to the condition of the home, [they] agreed to the entire Case Plan, which addressed many other areas of concern as noted above."

Based on trial testimony, the district court found in its order terminating L.M.E.'s parental rights to E.R.E. that the children's mental-health social worker assigned to work with E.R.E. prior to her removal from the home: (1) tried to establish school-linked therapy for her and L.M.E., but L.M.E. did not consistently participate; (2) suggested in-home skills training for the family, which was scheduled but did not occur because the family canceled or was not present for the meetings; (3) observed dog feces and urine in the home and medication and a syringe within reach of a child; (4) noticed that L.M.E. could not read E.R.E.'s cues and ignored her questions; (5) noticed that L.M.E. did not know what age-appropriate expectations and behaviors would be for E.R.E.; (6) found that, as a result of the unsanitary condition of the home, E.R.E. had developed pinworms that were diagnosed when she was placed in foster care; (7) observed that E.R.E. was not taking prescribed seizure medications, even when L.M.E. was provided first with pill boxes, then with blister packs to help her get the prescribed dose; (8) saw several unopened packages of E.R.E.'s medication and became aware that L.M.E. lied about E.R.E. having taken her medication; (9) noted that L.M.E. rejected having E.R.E. participate in a social skills group and summer school, but asked that she be registered for summer camp, and then did not bring her to

camp; and (10) reported that L.M.E. declined to engage in adult services for herself and terminated the social worker's services.

The district court also found, in its order terminating the rights of both appellants to B.J.D., that the Family TIES social worker, who had drafted a Child Protective Services Plan that identified appellants as in need of mental-health services and parenting support and the children as in need of mental-health support, also worked with the family from November 2016 through August 2017. Her testimony reflected that (1) appellants did not seem to understand that [B.J.D.] was developmentally delayed due to the conditions in the home, where he was simply left in a high chair and not allowed to move around; (2) L.M.E. had to be refocused when speaking to the social worker about the children; (3) both appellants declined respite care offered to them so they could focus on their tasks; and (4) L.M.E. tested positive for amphetamines although she had no prescription for any drug containing it.

The psychologist who evaluated appellants reported L.M.E.'s reading skills are inadequate for some of the standardized tests; her IQ is 54; her skills in caring for herself and her household are limited, as are her communication skills; a guardian should be appointed for her; she suffers from untreated anxiety and depression; she needs help with medication management; she needs monitoring to learn new tasks; she "will continue to struggle with decision-making, providing for her own safety, understanding safety risks for her children, employment, social relationships, and meeting basic day-to-day responsibilities and needs for herself and her children."

The psychologist's testimony as to C.K.D. indicated that his IQ is 66; he had been in a group home prior to his recent move to live with L.M.E. and the children; he suffers from untreated anxiety and depression; he needs medication management and individual therapy; he does not understand his medications; he needs household supervision to maintain hygiene and cleanliness and deal with finances; he has an inability to make decisions that complicates his cognitive processing; and he should deal with his mental health issues before attempting to develop skills.

The psychologist who evaluated appellants, the nurse practitioner who did diagnostic assessments of them, and the assessor who did their parenting-capacity evaluations all recommended that appellants obtain guardians, and the district court's order required them to follow the psychologist's recommendation. Both appellants refused to obtain a guardian, thus, in the district court's words, "exhibiting the same concerning tendencies that led to the conditions surrounding [the children] being removed from the home—namely refusing services offered to [them] to assist [them] in meeting both [their] own needs and those of [their] children."[4]

The guardian ad litem testified that, when B.J.D. was removed from the home, at the age of 18 months, he was still using a bottle, could not speak, feared water, banged his head, wobbled when he walked, and had tantrums; after a year in foster care, he had closed

[4] The psychologist also evaluated E.R.E. and reported that her IQ is 44; she struggles with selfcare, social relationships, hyperactivity, and impulsive behavior; and she requires more parental intervention and supervision than other children. The psychologist explained that, when both parents and a child have intellectual disabilities, communication and emotional regulation are impaired and attention and focus are limited, and noted that this was apparent with appellants and E.R.E.

the skills gap, was functioning at age level, and "has the ability to make age appropriate developmental progress if he is given the appropriate nurturing and tools." She testified that E.R.E. was aggressive and violent when removed from the home, had issues with anger control and hygiene, and had nightmares; after a year in foster care, her hygiene was good, she could dress herself, she participated in Special Olympics, and her behavior was good both at school and in her foster home, where she wanted to remain.

The parenting-capacity assessor testified that L.M.E. was in the high risk of abuse category because she lacks nurturing skills, she does not understand the children's needs, and she would have difficulty in handling parental stress. Her interactions with the children were not relaxed or natural; there were no gestures of affection and L.M.E. had "little to no insight into the significant needs of her children, especially [E.R.E.] and [had a] limited ability to meet those needs."

She also testified that the parenting-capacity evaluation of C.K.D. showed he was at high risk of abuse: (1) "If children fail to meet [his] expectations, rejections and abuse may result"; (2) "[he] lacks nurturing skills . . . and may also have difficulty handling parental stress"; (3) [Children's] normal development demands are viewed as "bothersome and annoying"; (4) he may be a "caregiver[] who uses children to meet [his] needs"; and (5) he has "a difficult time placing children's needs as a priority." The assessor also noted that C.K.D. "does not experience positive feelings in the parent-child interactions."

The assessor noted that both appellants "verbalized several negative opinions regarding . . . the need to have any service workers in the home . . . which . . . raises a concern that [they] would [not] follow through with recommendations for either

[themselves] or the children." She recommended that custody of both children be outside the custody of L.M.E. and C.K.D.

The extensive testimony of these witnesses provides clear and convincing evidence to support the district court's conclusions that the county made reasonable efforts to reunite appellants with their children and that those efforts failed to correct the conditions that led to the children's removal from the home.

Affirmed.