STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0300

In re the Matter of the Welfare of the Child of:
J. V. and S. V., Parents.

Filed August 19, 2019
Affirmed
Klaphake, Judge[*]

Ramsey County District Court
File No. 62-JV-17-2715

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Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and Klaphake, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

KLAPHAKE, Judge

Appellant-mother J.V. challenges a district court order terminating her parental rights to her child. The district court found that appellant is palpably unfit under Minn. Stat. § 260C.301, subd. 1(b)(4) (2018), that the county made reasonable efforts to reunify the family that were unsuccessful, and that it is in the best interests of the child to terminate appellant's parental rights. We affirm.

FACTS

Appellant is the mother and S.V. is the presumed father[1] of O.V., a two-year-old child. The district court found appellant to be a vulnerable adult with physical and mental impairments, which include limited cognitive abilities and slowed mental processes. Appellant was diagnosed with a rare vascular disorder called moyamoya and suffered a major stroke that has affected her verbal communication abilities and caused paralysis to the right side of her body. Appellant also experiences severe aphasia disorder, vertigo, poor balance, blurred vision, fatigue, and impaired decision-making.

Ramsey County Social Services Department (RCSSD) received a report of suspected maltreatment regarding O.V. on July 15, 2016, shortly after the child's birth. RCSSD assigned a child protection worker to investigate. Although O.V. was medically cleared for discharge, the child was placed on a 72-hour child-protective hold. An

[1] Under Minn. R. Juv. Prot. P. 2.01(24), a "'[p]resumed father' means an individual who is presumed to be the biological father of a child under [Minn. Stat. §§ 257.55, subd. 1, or 260C.150, subd. 2 (2018)]." At the time of O.V.'s birth, the parties were married, which makes S.V. the presumed father under Minn. Stat. § 257.55, subd. 1(a).

investigation revealed concerns about appellant's medical diagnoses, marijuana use, and a history of domestic violence in her relationship with S.V. On July 21, 2016, RCSSD petitioned the district court to adjudicate O.V. a child in need of protection or services (CHIPS) under Minn. Stat. § 260C.007, subd. 6(3), (8), (9) (2018).

On November 28, 2016, the district court adjudicated O.V. as a CHIPS after appellant voluntarily admitted allegations in an amended CHIPS petition.[2] Appellant admitted O.V. met the legal definition of a CHIPS under Minn. Stat. § 260C.007, subd. 6(3), (8). The district court found that RCSSD provided reasonable, appropriate, and relevant services to meet the needs of the child to prevent removal of O.V. from the home.

RCSSD provided appellant with several case plans throughout the child-protection process. Appellant signed some case plans but refused to sign others, believing that she would be giving up her parental rights to O.V. RCSSD developed case plans for appellant that included referrals for chemical dependency programs, parenting education, mental health evaluations, providing a public health nurse, supervised visits, and gas and bus cards for travel. The case plans also involved psychological evaluations, domestic abuse education, drug testing, occupational therapy assessment, engaging with a public health nurse to understand O.V.'s needs, and in-home counseling.

On November 28, 2017, RCSSD petitioned to terminate appellant's and S.V.'s parental rights to O.V. RCSSD alleged three statutory grounds to terminate their parental rights: Minn. Stat. § 260C.301, subds. 1(b)(2), (b)(4), (b)(5) (2018). The district court

[2] The district court found S.V. to be in default for failing to appear or contact the court or the parties.

held a 16-day court trial on the petition. On December 26, 2018, the district court granted RCSSD's petition to terminate appellant's parental rights, but it denied RCSSD's petition to terminate S.V.'s parental rights. The district court terminated appellant's parental rights on a finding of palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4), and that the termination was in the best interests of O.V. Additionally, the district court found that RCSSD made reasonable efforts to reunify the family. Appellant filed a posttrial motion seeking relief under Minn. R. Juv. Prot. P. 45.03, .04, which the district court denied.

This appeal follows.

D E C I S I O N

"[T]ermination of parental rights is always discretionary with the juvenile court." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). A district court's decision to terminate parental rights must be supported by one of the statutory grounds listed in Minn. Stat. § 260C.301, subd. 1(b) (2018). "We will affirm the district court's termination of parental rights when a statutory ground for termination is supported by clear and convincing evidence, termination is in the best interests of the child, and the county has made reasonable efforts to reunite the family." *In re Welfare of Children of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018). In doing so, we grant significant deference to the district court's decision to terminate parental rights, but we must "closely inquire into the sufficiency of the evidence to determine whether the evidence was clear and convincing." *Id.*

"We review the district court's findings in a [termination-of-parental-rights] proceeding to determine whether they address the statutory criteria for termination and are

not clearly erroneous, in light of the clear-and-convincing standard of proof." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012) (citation omitted). A district court abuses its discretion by making a clearly erroneous finding, which occurs "if it is 'manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.'" *Id.* (quoting *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008)). And "[a] district court abuses its discretion if it improperly applies the law." *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 654 (Minn. App. 2018) (quotation omitted).

I. The district court did not abuse its discretion by determining that appellant is palpably unfit to be a party to the parent-child relationship under Minn. Stat. § 260C.301, subd. 1(b)(4).

Appellant challenges the district court's finding that she is palpably unfit to parent. She argues that the district court's finding that she cannot parent on a full-time basis is insufficient to terminate her parental rights. Appellant also asserts that RCSSD failed to establish that she will not be able to parent O.V. safely in the foreseeable future.[3]

A district court may terminate parental rights to a child if it finds that the parent

> is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care

[3] Appellant also raised the issue that the termination of her parental rights violates her rights under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101-213 (2012). As we explain below, appellant's parental rights were not terminated because of her condition but because of her inability to parent O.V. safely. Therefore, we are not persuaded that appellant is entitled to relief under the ADA in this context.

> appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4). "Termination on the ground of palpable unfitness requires a petitioner to prove 'specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child.'" *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 446 (Minn. App. 2011) (quoting *T.R.*, 750 N.W.2d at 661), *review denied* (Minn. Jan. 6, 2012). In reviewing a termination-of-parental-rights order based on palpable unfitness, the "case relies not primarily on past history, but 'to a great extent upon the *projected* permanency of the parent's inability to care for his or her child.'" *In re Welfare of Solomon*, 291 N.W.2d 364, 368 (Minn. 1980) (quoting *In re Welfare of Kidd*, 261 N.W.2d 833, 836 (Minn. 1978)).

The district court found that appellant is a vulnerable adult who has physical and mental impairments, which include limited cognitive abilities and slowed mental processes. A mental impairment or illness alone cannot support a basis to terminate a person's parental rights. *See In re Welfare of P.J.K.*, 369 N.W.2d 286, 290 (Minn. 1985). The district court determined that appellant's condition directly affects her parenting ability in a way that has not improved over the course of two-and-a-half years through the child-protection process and that appellant will not improve in the foreseeable future. In reaching this conclusion, the district court found instances where appellant's behavior—not her condition—evidenced impaired parenting ability. Appellant, for example, failed to feed O.V. properly-sized portions of food for his age, refused to complete forms to rehabilitate

her parenting skills and provide necessary care and services for O.V. based on her not comprehending the paperwork, and failed to complete medical forms for O.V.

Appellant relies on *In re Welfare of Children of B.M.*, where this court reversed a termination of parental rights order that was based solely on a parent's mental impairment. 845 N.W.2d 558, 563-64 (Minn. App. 2014). In *B.M.*, the court was "not persuaded that a parent's struggle to meet his needs is sufficient to support terminating his parental rights." *Id.* at 564 (quotation omitted). The facts in *B.M.* involved a parent with disabilities that "ha[d] not manifested negative behaviors towards his child or others. The testimony regarding [B.M.] consistently stated that [B.M.] was cooperative and had a positive demeanor. Witnesses testified that [B.M.] had a good relationship with his daughter and that his relationship should be maintained." *Id.*

The district court addressed appellant's reliance on *B.M.* and distinguished the case based on its facts. In its findings, the district court determined that appellant engaged in behavior that evidenced that she lacked the capacity to parent or engage in constructive efforts to better her parenting ability. The district court reached this conclusion by finding that: (1) appellant was a safety hazard to O.V.; (2) appellant lacked understanding about O.V.'s medical needs; (3) appellant refused to engage in efforts to rehabilitate her parental skills and provide the necessary care and services to O.V.; (4) appellant became less cooperative in attempts to learn parenting concepts; (5) appellant lacked a support network to help care for O.V.; and (6) appellant failed to understand or properly react to O.V. in the parenting setting. For example, the district court found that appellant left a practice doll in a stroller on a public bus that was supposed to assist her in caring for O.V., cancelled basic

services for herself to be able to contact persons in emergency circumstances, and became less receptive and cooperative with the reunification process. These findings are supported by the record. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990) (holding that the court of appeal's role is "an error-correcting body[]" rather than entering "into the fact finding domain of the [district] court"). Because appellant's condition manifested behaviors that endanger O.V.'s safety, the district court's finding that appellant is palpably unfit does not constitute an abuse of discretion.

Appellant also argues that RCSSD failed to prove that she was not capable of parenting O.V. in the reasonably foreseeable future under any or all types of circumstances. The district court disagreed. In reaching its conclusion, the district court relied on the two-and-a-half years of child-protection involvement, during which time appellant's parenting ability has not improved. Even though appellant engaged in some services and could execute some parenting tasks, the district court found that her ability to safely parent and meet O.V.'s physical, mental, and emotional needs will continue to be lacking for the foreseeable future. In particular, the district court noted that appellant could complete tasks like breastfeeding and changing O.V.'s diapers, but that she lacked the ability to meet O.V.'s ongoing physical, mental, and emotional needs. The district court weighed the evidence presented by appellant and RCSSD, and it determined that appellant's parenting skills will not improve based on the lack of progress over the two-and-a-half year child-protection proceeding. We determine that the district court did not abuse its discretion in reaching this conclusion. *See K.S.F.*, 823 N.W.2d at 665 (recognizing that a district court abuses its discretion by making a clearly erroneous finding, which occurs "if it is manifestly

contrary to the weight of the evidence or not reasonably supported by the evidence as a whole") (quotation omitted).

II. The district court did not abuse its discretion by concluding that it is in the best interests of O.V. to terminate appellant's parental rights.

Appellant argues that the district court abused its discretion by finding it is in the child's best interests to terminate her parental rights but not terminate S.V.'s rights as well. Appellant further contends that the evidence does not establish that her parental abilities support that termination is in the child's best interests.

In every termination proceeding, if a statutory basis for terminating parental rights is found to exist, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2018). Even if a statutory ground for termination is met, the district court must find that termination is in the best interests of the child. *In re Children of T.A.A.*, 702 N.W.2d 703, 709 (Minn. 2005). In doing so, the district 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 Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. Jan. 6, 2012). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). A 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); *see also* Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3) (recognizing that a district court must make particular

findings about the best interests of the child in its termination of parental rights order). "Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7.

"[P]arental rights are not absolute and should not be unduly exalted and enforced to the detriment of the child's welfare and happiness. The right of parentage is in the nature of a trust and is subject to parents' correlative duty to protect and care for the child." *In re Child of P.T.*, 657 N.W.2d 577, 583 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Apr. 15, 2003). There is a presumption that "a natural parent is a fit and suitable person to be entrusted with the care of his or her child[,]" but that presumption may be overcome by the evidence. *See In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995).

The district court found that it is in the best interests of O.V. that appellant's parental rights be terminated because appellant's mental and physical impairments detrimentally affected O.V., which made unsafe the environment provided by appellant. In reaching these conclusions, the district court relied, in part, on appellant's failure to react to O.V.'s behavior such as the child running towards the street outside appellant's apartment and appellant being unable to reach the child, which required intervention by a social-services-case aid, and allowing O.V. to touch an oven while the oven was in use. The district court also found that appellant lacked family support or available friends to assist in parenting O.V., a concern because appellant becomes easily fatigued when parenting, which causes difficulties with her speech, and diminished motor skills and physical movement. The district court additionally found that O.V.'s needs for emotional and psychological

stability, safety, and stable environment superseded appellant's competing interest to preserve the parent-child relationship.

Appellant argues that it is not in O.V.'s best interests that the district court only terminated her parental rights and left S.V.'s parental rights intact. Appellant's theory relies on the premise that, without the termination of both parents' parental rights, there is no competing interest of terminating parental rights to allow the child to be adopted. This argument fails for two reasons. First, a district court may terminate one biological parent's parental rights and not the other, if it makes such findings as part of its termination order. *See* Minn. R. Juv. Prot. P. 42.10, subd. 1(b) ("When the rights of both known, living parents are not terminated at the same time, the order terminating the rights of one parent, but not both parents, shall not award guardianship and legal custody to a person or entity until and unless the rights of both parents are terminated or the child is free for adoption due to consent of a parent to adoption under [Minn. Stat. § 260C.515, subd. 3 (2018)]."). Second, appellant's argument conflicts with the legislature's expressed preference that a child be either adopted or placed with a relative. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 57-58 (Minn. 2004). The district court determined it is not in O.V.'s best interests to be in appellant's care, but it is in his best interests to continue to be in the care of S.V., his presumed father. This result meets the preference that after terminating a parent's rights that the child be placed with a relative, if not adopted, when possible. *Id.*; *see also In re Welfare of Children of J.L.G.*, 924 N.W.2d 9, 13 (Minn. App. 2018) ("Because the legislature prioritizes relative adoption, Minnesota law further requires that notice be given

to certain relatives of the review hearings held to assess progress toward permanency.") (footnote omitted).

Appellant also asserts she did not abuse or neglect O.V., and the evidence is lacking to show that her parenting abilities warranted termination. The best-interests factors for termination do not include consideration of a parent abusing or neglecting the child as a factor to support termination. *See J.R.B.*, 805 N.W.2d at 905. The district court considered O.V.'s competing interests to the parent-child relationship involving O.V.'s stability, safety, and environment. Although the district court considered appellant's assertions that she never abused or neglected O.V., the district court found dangers in appellant's parenting of O.V. In the district court's termination order, it found instances where appellant lacked the ability to contact medical staff while she was suffering from vertigo symptoms and refused to sign forms for O.V.'s care. In its posttrial order, the district court noted that appellant engaged in behavior showing that she "cannot provide a stable, safe environment for O.V. now or in the future," and the child's best interests supported termination. Specifically, the district court identified an occurrence where appellant carried scalding water to a tub with O.V. in her proximity with the intention to bathe O.V. in the water. The district court further noted that in another instance appellant became tired after parenting and picked O.V. up by one arm, rolled over onto O.V. and used the child's body as support to stand up. The district court did not abuse its discretion by finding that the best interests of O.V. are met by terminating appellant's parental rights based on the competing interest of a stable, safe environment for the child. *Id.*

III. RCSSD provided reasonable efforts to reunify the family required by Minn. Stat. § 260.012(h) (2018).

Appellant argues that RCSSD's efforts were inadequate to meet the needs of the family because they were neither consistent and timely nor realistic under the circumstances. We disagree.

In a termination-of-parental-rights proceeding, a district court "shall make findings and conclusions as to the provision of reasonable efforts." Minn. Stat. § 260.012(h). When making reasonable efforts determinations, the district court must consider whether the services 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." *Id.*

The district court identified the need for reasonable efforts under Minn. Stat. § 260.012(h) in its order and the requirement to make specific findings on the reasonable efforts. The district court found clear-and-convincing evidence that the county made reasonable efforts to reunify O.V. with appellant. RCSSD provided at least three out-of-home-placement plans for appellant that focused on the basis for the child protection referral involving domestic violence, and physical and mental health issues. Over the two-and-a-half years of child-protection involvement, the county referred and provided services to appellant to respond to her needs. And the district court's posttrial order made additional findings that support this conclusion. The district court found that appellant could communicate with providers during the child-protection process and that appellant's behavior resulted in services being discontinued because she failed to cooperate and be

involved. Because RCSSD provided services to reunify the family, and appellant's behavior caused the cancellation of services, the district court did not abuse its discretion by finding reasonable efforts were made to reunify the family.

Affirmed.