STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0804

In re the Matter of the Welfare of the Children of: N. A. R. and R. P., Parents.

Filed November 12, 2019
Affirmed
Connolly, Judge

Meeker County District Court
File No. 47-JV-19-79

John E. Mack, Joel A. Novak, New London Law, P.A., New London, Minnesota (for appellant-mother N.A.R.)

Anne M. Carlson, St. Paul, Minnesota (for respondent-father R.P.)

Brandi L. Schiefelbein, Meeker County Attorney, Jeffrey D. Albright, Assistant County Attorney, Litchfield, Minnesota (for respondent Meeker County Social Services)

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

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

CONNOLLY, Judge

Appellant challenges the order terminating her parental rights (TPR) to her daughter, arguing that the district court erred in not ordering another parental-capacity assessment, in determining that respondent county provided reasonable efforts to rehabilitate appellant and unite her with her child, and in concluding that terminating

appellant's parental rights is in her child's best interests. Because we see no error, we affirm.

FACTS

Appellant N.A.R. is the mother of five children, born in 1998, 2000, 2003, 2004, and 2014. In November 2015, the county in which appellant then resided filed a children in need of protection or services (CHIPS) petition on behalf of her children. By May 2016, appellant had moved to Meeker County, and respondent Meeker County Social Services (MCSS) paid for a parenting-capacity assessment of appellant, performed by F.W., a licensed psychologist. Appellant was diagnosed with multiple mental illnesses. In June 2016, her first child reached the age of majority.

In May 2018, MCSS filed a CHIPS petition on behalf of appellant's other children; appellant admitted to the petition in June 2018. In August, appellant's second child reached the age of majority.

In December 2018, appellant completed an additional mental-health assessment and moved for an order that MCSS provide another parenting-capacity assessment. In January 2019, MCSS filed a petition to terminate appellant's parental rights to her three youngest children, and appellant began treatment with an Adult Rehabilitative Mental Health Services (ARMHS) worker. The district court approved appellant's request to have another parenting-capacity assessment but did not require MCSS to pay for it.

In March 2019, appellant voluntarily terminated her parental rights to her third and fourth children. The district court found that:

> [appellant's third child] has experienced 321 days in protective care; [she] self-mutilates and has attempted suicide no less than 7 times . . . and [her fourth child] has experienced 564 days in out of home care and used to be plagued by somatic, or non-epileptic, seizures; this has been identified as an emotional reaction or maladaptive coping mechanism to a chaotic and stressful environment. All of the mental-health conditions of the children are directly related to the chaotic caregiving they received from [appellant] and her failure to consistently meet [their] needs.

Appellant does not challenge these findings.

Also in March 2019, appellant's fifth child, C., was diagnosed with disinhibited social-engagement disorder (DSED) by a licensed mental health professional, N.L.; C.'s father voluntarily terminated his parental rights to her for good cause, and a trial was held on the termination of appellant's parental rights to C. The district court found that appellant was palpably unfit to be a party to the parent-child relationship and terminated her parental rights. Appellant's motion for amended findings or a new trial was denied. On appeal, she challenges the order terminating her parental rights and the denial of her motion.

D E C I S I O N

Standard of Review

"[Appellate courts] 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) (citation omitted).

1. The 2016 Parental-Capacity Assessment

Appellant argues that the district court erred by permitting MCSS to stop providing services to appellant and by turning down her request to have another parental-capacity assessment. But the record reflects that the district court did neither of these things.

Appellant provides no reference to the record or the transcript indicating when the district court permitted MCSS to stop providing services to appellant. Moreover, in January 2019, after a hearing and in response to MCSS's motion for a TPR and an order relieving MCSS of making reasonable efforts, the district court issued an order providing that:

> 18. [MCSS] is not relieved of reasonable efforts at this time.
> . . . .
> 21. [Appellant's] request for an additional parental capacity evaluation is APPROVED. MCSS shall not bear the burden of paying for an additional parental capacity evaluation. . . . . The scheduling of the additional parental capacity evaluation shall not be further delayed.

Thus, the district court neither permitted MCSS to stop providing services nor denied appellant's request for another parental-capacity assessment; it denied only her request that MCSS be required to pay for a second assessment.

In April 2019, following trial, the district court explained why the May 2016 parental-capacity assessment was still reliable:

> [F.W., a licensed psychologist] conducted a psychological and parenting assessment of [appellant] on May 12, 2016. [He] issued a report (Exhibit 25) summarizing his findings following the psychological and parenting assessment. [He] testified credibly. [His] approach in assessing [appellant's] psychological issues and functioning is reliable and his findings are relevant and pertinent to the issues before the

> Court. Even though the assessment took place in 2016, [his] findings and conclusions remain relevant because they are largely based on static factors.

Appellant cites no legal support for her view that MCSS should have been required to pay for an updated assessment. The district court did not abuse its discretion in relying on the 2016 parenting-capacity assessment performed on appellant by a licensed psychologist and on that psychologist's testimony.[1]

2. MCSS's Reasonable Efforts

Appellate courts review the district court's determination of the existence of a statutory basis for an order terminating parental rights for an abuse of discretion. *In re Welfare of Child of J.T.K.*, 814 N.W.2d 76, 87 (Minn. App. 2012). Before determining whether to terminate parental rights, a district court must ask whether the county has made reasonable efforts to rehabilitate the parent and reunite the family. Minn. Stat. § 260C.301, subd. 8(1) (2018). Factors to consider in this determination are whether services were (1) relevant to the child's safety, (2) adequate for the needs of the child and the family, (3) culturally appropriate, (4) available and accessible, (5) consistent and timely, and (6) realistic under the circumstances. Minn. Stat. § 260.012(h)(1)-(6) (2018).

Appellant argues that MCSS did not make a "significant attempt to address [her] mental-health needs." But appellant declined to take advantage of the services offered and recommended to her. In the 2016 parental-capacity assessment, F.W. recommended that

[1] Appellant argues that the district court abused its discretion in not considering evidence that the condition of appellant's home had improved. But appellant's mental health and her failure to treat or even acknowledge it, not the condition of her home, were the primary reason for the termination of her parental rights.

appellant complete individual therapy, attend couples counseling, have regular psychiatric consultations, remain alcohol and drug free, attend sober meetings twice weekly, and maintain employment or volunteer work. Appellant did none of these things and lied to F.W. about it. F.W. was questioned and testified as follows:

> Q: To your knowledge, did [appellant] complete those recommendations?
> A: I had met with [her] in months after where she had told me she had completed some of those tasks and so I sent a letter to social services. . . . Then after social services received the letter, they informed me that she had not actually completed tasks.
> . . . .
> Q: . . . [W]hat did . . . Social Services report to you?
> A: There were a number of things that they had concern[s] about which [were] related to what [appellant] had told me when I spoke to her. For example, that [appellant] had told me that she was in a relationship and they had been attending couples counseling. I was informed they hadn't been attending couples counseling and they had separated numerous times.
> . . . .
> Q: [A]fter meeting with [appellant], did you issue this letter?
> A: Yes I did.
> Q: And what were you communicating to the county social services in this letter?
> A: [Appellant] had told me that she had been illegal drug free for more than six months. That she was involved in intensive individual therapy. That she was attending parenting training and that she was being compliant and cooperating with her psychiatric work.
> Q: And so then you received [a letter from social services] and what changed?
> A: Well she hadn't been seeing her therapist. She wasn't participating in couples counseling. She had taken herself off her psychiatric meds. She had tested positive for substances. She hasn't been maintaining contact with her sponsor. She was not employed. She hadn't been cooperating with parenting education. Basically she hadn't been following through with the recommendations.

. . . .

A: . . . .[W]hen I found out none of that was true, then I realized that's just more of her borderline personality disorder and I probably should've seen it coming.

After learning that appellant had not complied with his recommendations and had lied about doing so, F.W. withdrew his recommendation that the children be returned to her.

In April 2017, MCSS recommended that appellant have mental-health services. Appellant informed a case manager that "she really does not need a whole lot of assistance as far as mental health because she can recognize her issues." In May 2018, appellant completed a diagnostic assessment with L.W., a licensed psychologist, who recommended that appellant return for therapy. Appellant made an appointment but never returned. In December 2018, appellant had another mental-health diagnostic assessment; again individual psychotherapy was recommended, along with other mental-health services.

Appellant testified about these recommendations and about her use of prescribed medication.

Q: Did you follow through on those recommendations?
A: I did not. Not all of them.
Q: Can you explain why?
A: I did the assessment with [L.W.] and . . . she said that she was going to recommend individual therapy every couple weeks for a few months, but I didn't receive [a] copy of the whole assessment. I just never went back so I didn't receive [a] copy of it so I wasn't aware of the two other recommendations.
Q: You didn't attend the individual therapy though?
A: I did not.
Q: And why not?
A: I didn't . . . feel it was a priority with everything going on . . . to add one more thing every couple weeks when the doctor or nobody seemed to make it appear like it was that big of a deal.

. . . .
Q: Do you think you need medications?
A: I do not.
Q: Can you explain a little bit?
A: There was a period of time in my life that I definitely needed medication. I utilized medication at those times. . . . My symptoms have improved quite extensively over the last several years to where I no longer feel that I need the medication along with the therapies in order to maintain my diagnoses.
. . . .
Q: Is there a reason you don't want to take [the prescribed medications]?
A: Well there's a lot of side effects to those medications and a lot of times the side effects did outweigh the benefits of the medications and why put myself through the torment of side effects if I don't feel [I need it] and I'm doing well without the medication.

This testimony reflects appellant's belief that she, not mental-health professionals, should decide whether she engages in therapy and takes prescribed medications.

The problem is not that MCSS has not provided adequate services; it is that appellant has chosen to refuse the services provided. The fact that mental-health services are refused does not mean that the county failed to provide reasonable services. *See In re Welfare of A.D.*, 535 N.W.2d 643, 649 (Minn. 1995).

3. C.'s Best Interests

The district court found that:

> [Appellant] clearly loves [C.] and has an interest in maintaining the parent child relationship. [Appellant], however, has a terrible track record at parenting. [She] is barely able to take care of her own needs and requires the use of an ARMHS worker. Unfortunately, [she] failed to accept the referral for this service until much too late. [She] receives disability due to her mental health issues; this means she does not have the capability to maintain employment. . . .

> [Appellant's] interest in maintaining the parent child relationship does seem to be based on her need to have people around her to support her mental health needs and stave off loneliness. Her interest is not in actually providing what [C.] needs to be a successful child, but in receiving the benefit of having a child near her.
>
> . . . [C.'s] interest in maintaining the parent child relationship with [appellant] is tenuous. [C.'s] needs have not been met by [appellant] and she has developed maladaptive coping strategies to ensure her needs are being met by myriad external de facto caregivers, a.k.a. strangers. . . . This is a symptom that [C.] has not had her needs met consistently by [appellant] and has had to go searching innately and intuitively for random caregivers to meet her needs. There is no reason to believe [appellant] has adjusted her parenting skills to meet [C.'s] needs. . . .
>
> . . . .
>
> It is in the best interests of [C.] that the parental rights of [appellant] . . . are terminated . . . .

Appellant argues that the district court failed to make findings on the best interests of C. But the district court did make findings, based on the testimony of N.L., a licensed mental health professional specializing in infant and early childhood mental health who interviewed and observed both C. and her father. The district court found that her "education, training and methodology are sufficient to make her a reliable and credible witness regarding her conclusions about [C.'s] diagnosis," which was DSED.

Appellant claims N.L.'s testimony explaining DSED went "beyond junk science into witchcraft," but does not explain why a layman with no experience in the field of childhood mental disorders is qualified to make this judgment on the testimony of a trained professional with nine years of experience.

Both at trial and in her brief to this court, appellant relies on the fact that, three months before trial on January 14, 2019, she began weekly appointments with an ARMHS

worker and says that this has resulted in improvements in her mental health. She quotes extensively from the worker's testimony to support this. But the worker testified that he had "no specific psychology training," and he said nothing about appellant's ability to parent, only that she was improving in social interactions, coping skills, and task completion.

Appellant admits that the ARMHS worker's testimony contradicted the testimony of the mental-health professionals who testified earlier and that the district court was free to disregard the ARMHS worker's testimony and credit that of the professionals, but she argues that, because the ARMHS worker had met with appellant more recently, his testimony has more value.[2] But the psychologist's testimony was directed specifically at the issue before the district court, namely appellant's capacity to parent, while that of the ARMHS worker did not address this issue at all. Moreover, because appellant's mental illness is the most significant reason she is incapable of parenting, testimony from someone not qualified to diagnose or treat mental illness would not be relevant.

The district court made adequate findings that were supported by clear and convincing evidence to support its conclusion that terminating appellant's parental rights would be in C.'s best interest.

Affirmed.

[2] Appellant also argues that the psychologist's testimony involved "remarkable" claims and should have been excluded under the *Frye-Mack* standard. This claim is forfeited because it was never presented to the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).