STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0927

In re the Matter of the Welfare of the Child of: N. L. B., Mother.

Filed November 18, 2019
Reversed
Florey, Judge

Winona County District Court
File No. 85-JV-19-31

Bruce A. Nelson, Winona, Minnesota (for appellant N.L.B.)

Karin L. Sonneman, Winona County Attorney, Rebecca R. Church, Assistant County Attorney, Winona, Minnesota (for respondent Winona County Community Services)

Heidi Neubauer, Holmen, Wisconsin (guardian ad litem)

Considered and decided by Johnson, Presiding Judge; Florey, Judge; and Klaphake, Judge.*

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

FLOREY, Judge

On appeal from the district court's involuntary termination of her parental rights, mother argues that the district court erred by terminating her rights based on a statutory ground not alleged in the petition. She also contends that the record does not support the

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

district court's determinations that (1) a child suffered egregious harm in her care and (2) it is in the child's best interest to terminate her parental rights. We reverse.

FACTS

F.S.B. (Child 2) was born in 2018 and is a resident of Winona County. In January 2019, Winona County (the county) received a child-protection report. The report alleged that appellant-mother N.L.B. had previously sexually abused an older child (Child 1). The county opened a family investigation for threatened sexual abuse of Child 2. Child 2 was placed on a 72-hour hold by the Winona Police Department and removed from the care of N.L.B. The county filed a petition to terminate N.L.B.'s parental rights, alleging that she had committed sexual abuse against Child 1 and that Child 1 had suffered egregious harm while in her care. The county's petition stated the following reasons to terminate N.L.B.'s parental rights:

> The parental rights of [N.L.B.] to the above named children should be terminated based on the following grounds:
>
> > A. That Child 2 is a sibling of a child who was [subjected] to egregious harm.
> > Minn. Stat. 260C.503, subd. 2(a)(2).
> >
> > B. That Mother committed sexual abuse against another child of Mother's.
> > Minn. Stat. 260C.503, subd. 2(a)(5).

The petition alleged that in 2013, Crawford County, Wisconsin, received a child-protection report alleging sexual abuse against then-five-year-old Child 1. N.L.B. told numerous people over a one-month span that she had done something wrong with Child 1. A forensic interview of Child 1 was conducted, but he did not make any disclosures. Later

that year, Crawford County received another child-protection report involving Child 1. The report stated that Child 1 told an adult that he had sex with his mother, N.L.B. A second forensic interview was conducted in 2014, and Child 1 disclosed that N.L.B. "touched his penis with her mouth" and "put his penis into her vagina." Child 1 disclosed that this occurred at his grandmother's home, where N.L.B. still lives. Child 1 also stated that he did not tell anyone during the first interview because he was afraid he would not get to see N.L.B. anymore.

Crawford County substantiated maltreatment against Child 1 in 2014. The matter was referred for criminal charges, which were declined. N.L.B. appealed the maltreatment determination, but the decision to substantiate maltreatment was upheld. It is not disputed that N.L.B. suffered severe and ongoing mental-health issues during the time of the sexual abuse, and in the five years since the abuse. The district court noted that N.L.B. remains "in denial that anything happened because she was told by others that she was in the midst of a psychotic episode and therefore the sexual abuse never happened." Additionally, N.L.B. has not completed a psychosexual evaluation nor received any treatment related to the sexual abuse of Child 1.

N.LB. entered denials to the termination petition at the admit/deny hearing. The district court held a two-day termination trial in May 2019. N.L.B. testified extensively about her ongoing mental-health issues and continued to deny sexually abusing Child 1. The district court noted that N.L.B. "did not introduce any witnesses in her defense and no evidence from any treating medical practitioner was brought to the court during the trial" and that therefore, the court "can only rely on [N.L.B.]'s explanation as to her mental health

and what did or didn't happen to Child 1 in 2013 and to her future prospects of rehabilitation."

The district court issued an order terminating N.L.B.'s parental rights. The district court specifically noted that in its petition to terminate N.L.B.'s parental rights, the county:

> alleges that termination is supported under [the] following subsections of Minn. Stat. § 260C.503, subd. 2(a)(2):
>
> a. Termination of parental rights. (a) the responsible services agency must ask the county attorney to immediately file a termination of parental rights petition when:
> ****
> (2) the Child is determined to be the sibling of a Child who was subjected to egregious harm; &
>
> b. Minn. Stat. § 260C.503, subd. 2(a)(5), The parent has committed sexual abuse as defined in section 626.556, subdivision 2, against the Child or another Child of the parent.

The district court concluded that there was "clear and convincing evidence that one or more of the conditions set out in Minn. Stat. § 260C.301 exist." The district court's order concludes that N.L.B.'s rights "shall be terminated pursuant to Minn. Stat. 260C503 subd. 2(a)(2) in that Child 2 is a sibling of a Child who was subjected to egregious harm" and "pursuant to Minn. Stat. 2600503 subd. 2(a)(5) in that Mother has committed sexual abuse against another Child of the Mother." The district court also concluded that termination was in the best interest of Child 2. N.L.B. appeals.

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); *see In re Welfare of*

Children of J.R.B., 805 N.W.2d 895, 905 (Minn. App. 2011) (stating that "[appellate courts] review a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion."), *review denied* (Minn. Jan. 6, 2012). On appeal, we 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).

When the termination of parental rights is involuntary, we review the order

> to determine whether the district court's findings (1) address the statutory criteria and (2) are supported by substantial evidence. [Appellate courts] must closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing. Ultimately, however, [appellate courts] review the factual findings for clear error and the statutory basis for abuse of discretion. A finding is clearly erroneous if it is manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. An abuse of discretion occurs if the district court improperly applied the law.

In re Welfare of Child of J.K.T., 814 N.W.2d 76, 87 (Minn. App. 2012) (citations and quotations omitted); *see In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008); *In re Welfare of Children of S.E.P.*, 744 N.W.2d at 385; *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998); *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995); *In re Welfare of Children of J.R.B.*, 805 N.W.2d at 901.

N.L.B. argues that the county's petition to terminate parental rights was "fatally flawed" because it did not allege one of the proper statutory grounds for termination

pursuant to Minn. Stat. § 260C.301 (2018). The county contends that, because the district court addressed the proper statutory criteria, the lack of proper statutory grounds in the petition is simply a clerical error and is not fatal. Minn. Stat. § 260C.301, subd. 1, states that upon petition, the juvenile court may terminate all rights of a parent to a child "if it finds that one or more of the following conditions exist."

The district court did make a finding that the statutory ground of egregious harm existed. Minn. Stat. § 260C.301, subd. 1 (b) (4), (6). But this ground was not alleged by the county as the basis for termination of N.L.B.'s rights. Instead, the county alleged that termination was proper under Minn. Stat. § 260C.503, subd. 2 (2018), which is a procedural statute setting forth when the "responsible social services agency must ask the county attorney to immediately file a termination of parental rights petition." *Id.* subd. 2(a).

Here, the county filed a termination-of-parental-rights petition on the basis of egregious harm and prior sexual abuse. But the petition itself did not allege any of the necessary statutory grounds to involuntarily terminate parental rights pursuant to Minn. Stat. § 260C.301, subd. 1. While the county correctly points out that the language of the district court's order shows that the district court concluded that at least one statutory ground for termination exists in this case, the district court cannot terminate parental rights based on a statutory ground not included in the petition. *In re Welfare of Children of T.R.*, 750 N.W.2d at 660 ("Because termination of parental rights cannot be based on a statutory ground not included in the petition to terminate parental rights . . . we consider whether the district court's findings address only those statutory criteria for termination of parental rights alleged in the petition." (citation omitted)). The supreme court has held that the

Rules of Juvenile Protection Procedure "unambiguously condition the termination of parental rights on a finding that the statutory grounds set forth in the petition are proved." *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008) (quotation and citation omitted). When a statutory ground is not stated as a basis for termination in the county's petition, there "is no evidence upon which termination under this ground could be justified." *Id.* at 672. Here, the county's petition did not allege even one of the required statutory grounds for involuntary termination of parental rights pursuant to Minn. Stat. § 260C.301, subd. 1. Thus, the district court could not properly determine whether there was an appropriate statutory ground to terminate. Because the county's petition did not allege any of the statutory grounds required to terminate under Minn. Stat. § 260C.301, the district court abused its discretion and its order terminating N.L.B.'s parental rights must be reversed.

The county asserts that because the petition references Minn. Stat. § 260C.503, subd. 2(a)(2), a procedural statute regarding the filing of a termination petition when a child has been subjected to egregious harm, and because the district court made factual findings that egregious harm occurred, the failure to properly allege egregious harm in the petition pursuant to Minn. Stat. § 260C.301, subd. 1(b) (6), is simply a clerical error and is not fatal. We disagree. For the reasons set forth above, termination must be based on a statutory ground alleged in the petition. *In re Welfare of Children of T.R.*, 750 N.W.2d at 660.

Even if the county's mistake in the petition was not fatal, the district court's order did not properly analyze whether egregious harm occurred as defined by statute. Minn. Stat. § 260C.301, subd. 1(b)(6), states that termination is appropriate when a child has

experienced egregious harm "of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care."

Here, the district court's order does not examine the "nature, duration, or chronicity" of the harm, nor does it conclude that the harm is such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care." *Id.* Accordingly, even if the district court's order had cited Minn. Stat. § 260C.301, subd. 1(b)(6), its findings under that subdivision were not sufficiently supported by the record.

Equally troubling is that large portions of the district court's order focus on whether N.L.B. is palpably unfit to parent pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4). The district court focused on N.L.B.'s testimony regarding her mental-health challenges to conclude that she is palpably unfit to parent. But palpable unfitness was not alleged in the petition and was not properly before the district court and is therefore an inadequate basis for termination. *In re Welfare of Children of T.R.*, 750 N.W.2d at 660.

Finally, we note that even if the district court had properly addressed the statutory criteria, the district court abused its discretion by concluding that termination was in the child's best interest for two reasons. *In re Welfare of Children of J.R.B.*, 805 N.W.2d at 905. First, the best-interest findings were not adequate because they consisted of a conclusory statement that termination is in the best interest of the child without meaningfully balancing the preservation of the parent-child relationship against the competing interest of the child. *See In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 668 (Minn. App. 2012). Second, to the extent that the district court addressed the

competing interest of the parent-child relationship, it grounded the analysis in its factual findings and conclusions regarding palpable unfitness, which was not alleged in the petition.

Accordingly, the district court's order terminating N.L.B.'s parental rights must be reversed. Nothing in this opinion shall preclude or require the filing of a proper petition to terminate N.L.B.'s parental rights.

Reversed.