STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0945

In re the Matter of the Welfare of the Child of:
I. M. K. and M. M. R., Parents.

Filed November 25, 2019
Affirmed
Ross, Judge

Morrison County District Court
File No. 49-JV-19-322

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Brian Middendorf, Morrison County Attorney, Kari O'Leary, Assistant County Attorney, Little Falls, Minnesota (for respondent Morrison County Social Services)

Courtney Rannow, Little Falls, Minnesota (guardian ad litem)

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Jesson, Judge.

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

ROSS, Judge

I.M.K. challenges the district court's order terminating her parental rights to her one-year-old child, E.J.K. Child-protection staff removed the child from I.M.K.'s care, believing that she was failing to protect the child from her boyfriend, who was living with her and physically abusing the child. The district court found, among other things, that clear and convincing evidence proved three statutory grounds for termination and that

terminating parental rights was in the child's best interests. Because the district court's findings are supported by clear and convincing evidence, we affirm.

FACTS

I.M.K. is the mother of E.J.K., who was one year old at the time the district court ordered I.M.K.'s parental rights terminated. M.M.R. is the boy's father but has not been involved in his life and did not appear at the termination trial. The district court involuntarily terminated M.M.R.'s parental rights, which are not at issue in this appeal.

Morrison County Social Services successfully petitioned the district court to find E.J.K. to be in need of protective services in January 2019 after I.M.K. took the infant to the hospital for a head injury. The county alleged that he had been physically abused by I.M.K.'s boyfriend, C.S., after I.M.K. left the child in his care. The county filed a petition in March 2019 seeking an order terminating I.M.K.'s parental rights. The petition alleged three statutory grounds for termination: failure to comply with parental duties, palpable unfitness, and egregious harm in the parent's care. The primary basis for the petition was that I.M.K. failed to provide a safe environment for the child because C.S. had repeatedly abused him and I.M.K. intended to continue living with C.S. The district court conducted a termination trial in May 2019.

Testimony from I.M.K. and other witnesses established that the child's injuries were sustained while C.S. was living with I.M.K. and caring for E.J.K. C.S. first moved in with I.M.K. and E.J.K. in October 2018. They lived together in I.M.K.'s parents' home in a basement area partitioned only with fabric. I.M.K. and C.S. jointly cared for the child. C.S. eventually provided most of the caregiving, especially at night.

C.S. excessively physically disciplined the child. I.M.K. saw him slap and heard him spank E.J.K. on multiple occasions. She said that C.S. occasionally got so out of control that she had to stop him. I.M.K.'s mother testified that she confronted I.M.K. in November 2018 after another family member heard a loud slap. She told I.M.K. that the child should not be slapped and warned that C.S. must move out if it happened again. C.S.'s nine-year-old daughter, who stayed with them in the basement on weekends, said that she saw C.S. slap the infant regularly on the buttocks and the face and that the child would get a bloody lip.

After E.J.K. was taken to the hospital in January 2019, child-abuse pediatric doctor Mark Hudson examined him. Dr. Hudson noted bruises on E.J.K.'s head, ear, trunk, and shoulder. He also determined that the child's left wrist had been fractured, most likely within the previous three months. I.M.K. and C.S. offered various explanations about possible causes of some of the injuries. Dr. Hudson concluded that some explanations were implausible and could not account for the injuries. Based on the amount of bruises and their location in places atypical of accidental trauma, Dr. Hudson concluded that the child was the victim of abuse.

The county removed E.J.K. from I.M.K.'s care and drafted an out-of-home placement plan. Child-protection case manager Logan Swendsrud worked with the family. Under the plan, I.M.K. was to visit the boy twice a week for two hours. The case plan identified two safety concerns: parenting practices and home environment. The case plan directed I.M.K. not to allow C.S. to have any contact with the child. I.M.K. was also offered two parenting education programs: Early Childhood Family Education (ECFE) and

Mothers of Preschoolers (MOPS). I.M.K. attended only half the sessions for ECFE and none for MOPS. She participated in in-home counseling during her visits with the child, and the case manager referred her for intensive individual therapy. I.M.K. made one appointment for the therapy, but she rescheduled it to a date after the trial.

I.M.K. expressed her disagreement with the case plan's assessment of her relationship with C.S. She told Swendsrud repeatedly that she did not share the same concern that C.S. was a danger to the child. She complained that the child-protection case and C.S.'s pending child-abuse criminal case were "B.S." Swendsrud therefore opined that the safety concerns that led to the child's out-of-home placement had not changed since the removal.

I.M.K.'s trial testimony echoed her statements to Swendsrud dismissing concerns about C.S.'s apparent abuse of the child. She had moved out of her parents' home and was living with C.S. in a one-bedroom apartment. She disagreed with social services' assessment that he was a danger to E.J.K. She said that she planned to marry C.S. and considered him to be the boy's father, intending that he would adopt the boy. She acknowledged that the state had charged C.S. with felony assault for child abuse of E.J.K., but she disagreed with the charges and considered C.S. to be a safe caregiver. And she testified that, even if she did believe that C.S. was guilty of harming the child, she would still continue her relationship with him, relying on her hope that he would improve his parenting skills. She said also that she would not leave C.S., even if ordered to do so in a case plan.

The district court terminated I.M.K.'s parental rights. It found that E.J.K.'s injuries were caused by C.S. and that I.M.K. either knew or should have known about the abuse. It found that I.M.K. failed to take the necessary steps to protect E.J.K. and that there was no substantial likelihood that she would do so in the reasonably foreseeable future.

The district court concluded that clear and convincing evidence supports the termination of parental rights on all three statutory grounds alleged and that termination is in the child's best interests. It also found that social services had made reasonable efforts to reunite I.M.K. and the child but that additional efforts would be futile. I.M.K. appeals.

D E C I S I O N

I.M.K. challenges the district court's order terminating her parental rights. We give considerable deference to a district court's termination decision. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We review the district court's findings to determine whether they are supported by substantial evidence and are not clearly erroneous. *Id.* We will affirm a district court's termination of parental rights if there is clear and convincing evidence that a statutory ground for termination exists, termination is in the child's best interests, and either social services made reasonable efforts to reunite parent and child or additional efforts would be futile. *In re Welfare of Children of T.A.A.*, 702 N.W.2d 703, 708–09 (Minn. 2005). I.M.K. challenges the district court's determinations on all three requirements.

I

I.M.K. first argues that the county presented insufficient evidence to prove any of the statutory grounds. To terminate parental rights, the district court must find that clear

and convincing evidence establishes at least one of the grounds under Minnesota Statutes section 260C.301, subdivision 1(b) (2018). *See T.A.A.*, 702 N.W.2d at 708. We will focus on whether the district court acted within its discretion in concluding that I.M.K. is palpably unfit to parent under subdivision 1(b)(4).

The district court had an adequate basis to terminate I.M.K.'s parental rights based on her palpable unfitness. A finding of palpable unfitness requires a showing of a consistent pattern of specific conduct or specific conditions that directly relate to the parent-child relationship and that are of a duration or nature that renders the parent unable to care appropriately for the child's needs for the reasonably foreseeable future. Minn. Stat. § 260C.301, subd. 1(b)(4). The district court based its palpable-unfitness determination on I.M.K.'s failure to protect E.J.K. from C.S.'s abuse and her unwillingness to keep the child safe if he were returned to her care. Three findings support the conclusion. First, the child's injuries were caused by C.S.'s abuse. Second, I.M.K. either knew or should have known about the abuse. And third, if E.J.K. were returned to I.M.K.'s care, she would continue to live with C.S. and allow him to harm the child. The record supports each finding with clear and convincing evidence.

The evidence that C.S. was physically harming the child is clear and convincing. I.M.K., C.S., and E.J.K. were living together in the basement of I.M.K.'s parents' home. C.S. provided much of the child's caregiving and regularly physically disciplined him. C.S.'s daughter stayed with the family and said that C.S. frequently slapped the child, bloodying his lip. I.M.K. testified that the child developed many bruises while C.S. was caring for him. Dr. Hudson concluded that E.J.K. suffered physical abuse based on the

number and atypical location of the bruises and the lack of any other plausible explanation for most of the injuries. The record supports the finding that C.S. was abusing the infant.

Clear and convincing evidence also supports the finding that I.M.K. knew or should have known about this abuse. Only fabric separated the parts of the basement where C.S. and I.M.K. lived. I.M.K. testified that she knew of C.S.'s physical discipline and that she felt she had to occasionally tell him to stop. She testified that she heard C.S. slap the child and that the slap was so loud once that her mother confronted her about it. I.M.K. recognized that the child was developing more bruises when C.S. was caring for him. The evidence clearly establishes that I.M.K. knew about C.S.'s abuse but continued to leave the child in his care.

The record also supports the finding that, if E.J.K. were returned to I.M.K., she would not protect the child from abuse. She began living with C.S. in a one-bedroom apartment before the time of trial, knowing that he had been charged with felony assault for abusing the child. And she said that, even if C.S. harmed the child, she would continue her relationship with C.S. She in fact planned to marry C.S., considered him to be the child's father, and hoped he would adopt him. She clarified her preference for the child's apparent abuser over the child's safety by announcing that she would not leave C.S. even if directed to do so in a court-ordered child-protection plan. The evidence that I.M.K. would fail to prevent future abuse if the child were returned to her care is very clear and especially convincing.

These findings support the district court's determination that I.M.K. is palpably unfit to parent. A palpable-unfitness determination is supported when a parent's children

have been abused by her boyfriend, the parent continues to allow the abuser to live with her after learning of the abuse, and she refuses to acknowledge her responsibility to protect her children. *T.A.A.*, 702 N.W.2d at 708–09. I.M.K.'s behavior constitutes a consistent pattern of specific conditions, and it directly relates to the parent-child relationship because it involves the child's safety. I.M.K.'s testimony supports the finding that the dangerous conditions are likely to continue for the foreseeable future.

Because clear and convincing evidence establishes that I.M.K. is palpably unfit to parent, we decline to address the other statutory grounds for termination.

II

We also affirm the district court's conclusion that termination of rights is in E.J.K.'s best interests. Termination can be ordered only if it is in the best interests of the child. Minn. Stat. § 260C.301, subd. 7 (2018); Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). The district court's order properly weighed the competing interests and concluded that termination served E.J.K.'s best interests. The district court's underlying findings are supported by clear and convincing evidence. The district court concluded that E.J.K.'s safety depended on termination. This conclusion is supported by I.M.K.'s demonstrated preference for her child's abuser over the child's protection. The child's interest in living in a safe environment prevails over I.M.K.'s interest in preserving the parent-child relationship.

III

The record belies I.M.K.'s argument that the district court erred by determining that social services provided reasonable efforts to reunify parent and child and that further reunification efforts would be futile. The district court may not terminate parental rights

unless it finds that social services made reasonable efforts to reunify parent and child or that reasonable efforts are not required. Minn. Stat. § 260C.301, subd. 8 (2018). Reasonable efforts are not required where they would be "futile and therefore unreasonable under the circumstances." Minn. Stat. § 260.012(a)(7) (2018).

The county's efforts were reasonable. The case plan allowed I.M.K. to visit the child twice weekly. She received in-home counseling during the visits. Her case manager met with her periodically. I.M.K.'s case manager recommended that she engage in parenting training, and ECFE and MOPS programs were offered to her. Her case manager also referred her for intensive individual therapy. The record supports the finding that social services' efforts were reasonable.

I.M.K. implies that she was able to assume parental duties at the time of trial and that the fast pacing of the proceedings deprived her of the opportunity to demonstrate her progress. But the district court determined that additional reunification efforts would be futile, and the record also supports this determination. Despite all of the services already provided, I.M.K. remained steadfast in refusing to acknowledge the abuse that she allowed or to make any plans to remove the abuser from the child's life. None of the services provided brought her close to addressing the primary concern about her unsafe home environment. Because the extensive services that she received over a four-and-a-half-month period did not lead her to acknowledge that living with C.S. would be unsafe for the infant, the record amply supports the district court's conclusion that additional efforts would be futile.

Affirmed.