STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1165

In re the Matter of the Children of: L.N.L. and S.J.R., Parents.

Filed December 30, 2019
Affirmed
Reilly, Judge

Wright County District Court
File No. 86-JV-19-1076

Cathleen Gabriel, Annandale, Minnesota (for appellant mother L.N.L.)

Thomas N. Kelly, Wright County Attorney, Kari L. Willis, Assistant County Attorney, Buffalo, Minnesota (for respondent county)

Lisa Rutland, Princeton, Minnesota (for respondent father S.J.R.)

April Dekpoh, Fridley, Minnesota (guardian ad litem)

Considered and decided by Cochran, Presiding Judge; Bjorkman, Judge; and Reilly, Judge.

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

REILLY, Judge

On appeal from the termination of her parental rights, appellant argues that the record does not support the district court's determinations that (1) she is palpably unfit to parent; (2) reasonable efforts failed to correct the conditions leading to the children's out-of-home placement because the county failed to make reasonable efforts to reunify the family; (3) the children are neglected and in foster care; and (4) termination of appellant's

parental rights is in the children's best interests. Because clear and convincing evidence supports the finding that reasonable efforts failed to correct the conditions leading to the children's out-of-home placement, and the district court did not abuse its discretion by determining that termination was in the children's best interests, we affirm.

FACTS

Appellant is the biological mother of eight-year-old M.L.R. and six-year-old B.S.R. B.S.R. suffered a traumatic brain injury at the age of two when her head was closed in a community gate while playing outside. Appellant and the children's father S.J.R. were divorced in 2016. At the time the children were removed from appellant's care, appellant was married to and living with C.L.

In early April 2018, appellant had not heard from C.L. for several days after he had left the home he shared with appellant and the children. On April 6, 2018, appellant sent C.L. the following text message:

> I am going to kill the kids and then myself. I hate you, this life you hAve f---ed up for everyone and it's all over. So by the time the police get here everyone will be dead. You can live with being the reason for all of it. None of this would have happened if I would have never have trusted you and left a year ago. Good bye!

Appellant then sent her mother-in-law the following text message: "I am going to kill both of the kids and then myself and you can blame your son for all of it. He is a nasty human being! . . . So within an hour everyone will be gone." Appellant also sent text messages and left voicemails for her mother and father with similar messages. Additionally, appellant posted a public message to Facebook in which she stated:

> [b]y morning [C.L.] will be making funeral arrangements (that is of course if he even cares enough to do that) We are all 3, me and the girls are going to be gone . . . . He has pushed me for the last time and I am done. There is nobody to take care of the girls therefore they are better off with me in heaven. Good bye and I am sorry to those I have ever hurt and I love you all more than you will ever know.

Appellant then turned off her phone and took the children to the basement. After receiving multiple calls from several parties about the text messages, voicemail messages, and the Facebook post made by appellant—all of which indicated she planned to kill herself and her children—law enforcement responded to appellant's home. Law enforcement broke down appellant's door and entered the home with their guns drawn after appellant failed to answer the door. Law enforcement found appellant and the children in a basement bedroom, hiding under a blanket. The children were placed in protective care and appellant was transported to the emergency room.

On April 11, 2018, Wright County Health and Human Services (WCHHS) filed a petition in Wright County District Court, alleging that the children were in need of protection or services (CHIPS). Appellant admitted to the CHIPS petition and the children were adjudicated CHIPS pursuant to Minn. Stat. § 260C.007, subd. (6)(9) (2018). The out-of-home placement plan was approved by the district court on June 14, 2018.

On February 27, 2019, WCHHS filed a termination-of-parental-rights (TPR) petition alleging that appellant is (1) palpably unfit to be a party to the parent-child relationship, (2) reasonable efforts failed to correct the conditions leading to the children's out-of-home placement; and (3) the children are neglected and in foster care. A six-day trial was held on the TPR petition in June 2019. At the trial, the district court heard

testimony from former and current WCHHS case managers, appellant's parenting skills worker and domestic violence counselor, the children's therapist, teachers and babysitter, visit supervisors, multiple psychologists, a Buffalo police officer, appellant, and the Guardian ad Litem (GAL).

Psychologists

Dr. George Petrangelo, a licensed psychologist, completed two parenting assessments with psychological components with appellant. He testified that appellant's tests indicated markers of dependent personality, compulsive personality, avoidant personality and some antisocial personality traits. He stated that the tests revealed that appellant demonstrated defensiveness about admitting to psychological problems. Dr. Petrangelo further indicated that he gave appellant another Minnesota Multiphasic Personality Inventory (MMPI) test which indicated depression and anxiety.[1] He also testified that the results indicate that appellant has persistent depressive disorder and generalized anxiety and that these could have an effect on her ability to parent. In January 2019, Dr. Petrangelo completed a second parenting evaluation with appellant. Based on this evaluation, Dr. Petrangelo found that appellant was having more psychological issues than she did during the previous administration of the testing. He testified that appellant's updated assessments showed that appellant had the same levels of depression but showed

[1] Appellant completed three previous MMPI tests in April 2018, May 2018, and June 2018. Appellant's personality profile could not be interpreted on these tests because the validity scale that detects an attempt to "present oneself in a non realistically favorable way" was too high. Appellant's response pattern indicated that "she was presenting herself in a very favorable light" and not "wanting to admit to some of the things going on in her life."

increased levels of paranoia, suspicion and distress, as well as some indicators of schizophrenia. Dr. Petrangelo testified that the data from his second parenting assessment did not support reunification because "[t]he data got more serious . . . [and appellant's] symptoms got worse." Dr. Petrangelo's report indicates the following:

> Perhaps a most critical element to these data is the increasing symptomology [appellant] is experiencing. Her 2019 test profiles draw attention to an increased risk of self-harm that should be monitored closely by her treatment team. A particularly critical caution is if [appellant's] already high levels of stress and psychological disorientation (more confusion, more impulsiveness, more paranoia) worsens further due to any major crisis or setback in her current status, she could be at-risk for self-harm. If [appellant's] mental health worsens, hospitalization may be necessary.

(emphasis omitted).

Dr. Jonathan Hoistad completed additional psychological tests in March 2019 after appellant requested a second opinion on Dr. Petrangelo's evaluation. Dr. Hoistad completed a Health Dynamics Inventory with appellant. Dr. Hoistad and his colleagues created the inventory. The inventory relies on self-reports from the client and measures emotional functioning. The results of appellant's inventory showed that her "overall emotional health right now was good." Appellant reported good relationships with other people and no difficulty in managing stress, though she did feel "somewhat anxious" at times and has some depressive symptoms. Dr. Hoistad reviewed Dr. Petrangelo's testing and did not understand how Dr. Petrangelo came to the conclusion that appellant had a "major mental illness." However, Dr. Hoistad also testified that he only received a summary of Dr. Petrangelo's report contained in a report authored by appellant's WCHHS

case manager. Dr. Hoistad testified that there is nothing in his work with appellant that would lead him to conclude that she is unable to safely and appropriately parent her children. The district court only found "some" of Dr. Hoistad's testimony credible, due in part, to the district court's concerns about the validity and reliability of Dr. Hoistad's testing method, Dr. Hoistad's reliance on summaries of prior testing rather than the assessments themselves and Dr. Hoistad's lack of collateral information regarding the special needs of the children.

Case Manager

Appellant's current case manager testified that she continued to see evidence that appellant's mental health symptoms were not under control throughout the case and expressed concerns that appellant's mental health has not been sufficiently treated. The case manager testified that she does not believe appellant is currently able to care for the special needs of her children and that the children should not be returned to appellant's care.

Visit Supervisors

The visit supervisors testified that appellant had "difficulty" during the visits, the visits were "[s]ometimes chaotic," the children would fight, and the children had to be redirected. The supervisors also testified that appellant would arrive late to visits, be on her phone during visits, and that appellant fell asleep during visits.

Parenting Skills Worker

Appellant's parenting skills worker testified that appellant did not have any concerns about her parenting skills and that the only deficit appellant could identify was

that she spoiled the children. The parenting skills worker agreed to end the service on Dr. Petrangelo's recommendation because appellant was not able to identify parenting issues or recognize that there were parenting concerns due to her mental health.

Children's Therapist

The children's therapist testified that M.L.R.'s treatment goal was to "reduce[] symptoms of posttraumatic stress disorder." The therapist explained that M.L.R. completed a "trauma narrative" in therapy where M.L.R. talked about domestic violence between appellant and S.J.R. and appellant and C.L., B.S.R.'s accident, and being spanked by C.L. The therapist worked on skills with B.S.R. to help with relaxation and emotional regulation. The therapist testified that B.S.R. disclosed to her that M.L.R. threatened to kill her and also choked her on numerous occasions. The therapist further testified that she sent a letter to the ongoing case worker in March 2019, requesting that visitation between the children and appellant be decreased or stopped all together. She also sent a follow-up letter in April 2019, recommending that visitation remain on hold to allow the girls to progress through therapy, as she noticed progress with the girls while the visitation was on hold.

B.S.R.'s Teachers

B.S.R.'s classroom teacher testified that B.S.R. has an Individualized Education Plan (IEP) for social/emotional skills and academic skills. B.S.R.'s teacher further testified that B.S.R. had a "calming corner" in the classroom that she used when she needed to calm herself or when she was having a tantrum. The teacher noticed that B.S.R. used the quiet corner when there was a scheduled visit with her parents and the day after the visit. The

teacher testified that during a writing activity, B.S.R. drew a picture of her sister M.L.R. and explained that "[M.L.R.] said she would kill her when she got older."[2] B.S.R.'s IEP case manager testified that she noticed more "emotional instability" in B.S.R. following a parent visit or when anticipating a parent visit.

Appellant

Appellant testified that she believes parenting skills are not relevant to her case and not needed on her case plan. Appellant testified that the children never fought when they were in her care. She also denied any issues between the children and testified that she did not believe the reports regarding the fights between the children. Appellant testified that there was extensive verbal and emotional domestic abuse in her relationship with the children's father, S.J.R. However, she also testified that if the children were to come home but had to be separated, appellant would take one of the children and S.J.R.[3] would take the other. Appellant denied that B.S.R. has any social or emotional deficits to work on in therapy.

Appellant's Therapist

Appellant's therapist testified that the general goal of appellant's therapy was to address domestic violence. She testified that she and appellant discussed red flags of domestic abuse, why people stay in relationships with domestic violence and why appellant

[2] The children were placed in separate homes in December 2018 due to M.L.R.'s assaultive behaviors toward B.S.R.

[3] As part of her "trauma narrative," M.L.R. talked about domestic violence between her mom and S.J.R. Specifically, she described appellant and S.J.R. fighting and hearing loud noises. M.L.R. described S.J.R. as the aggressor in the relationship.

stayed in her relationships. She also testified that she gave appellant "handouts" regarding domestic violence. Appellant's therapist was not able to provide testimony regarding the tests or assessments she administered to appellant. She testified that she believes appellant has made progress in her treatment because she had taken accountability for the incident on April 6, 2018, her criminal charges, and her "propensity to be involved with domestic abusers" and has made progress in identifying problem relationships before she enters them. Appellant's therapist testified that she and appellant "talked about parenting" and discussed disciplinary techniques. She testified that she planned to continue working with appellant. Finally, appellant's therapist testified that she believes appellant's mental health has stabilized enough to allow her to safely parent. The district court did not find the therapist's testimony credible.

Guardian ad Litem

The GAL testified that she doesn't believe appellant has shown that she is capable of meeting her children's needs because her mental health concerns impact appellant's ability to place her children's needs before her own. The GAL testified that she has seen more emotional stability in B.S.R. than previously and that B.S.R. was calmer and more settled after visitation with appellant ceased. The GAL testified that M.L.R. needs a "structured, scheduled, stable setting" in order to do well. The GAL testified that both children are doing well in their out-of-home placements and that she believes it is in the children's best interests that appellant's parental rights be terminated.

Following trial, in a thorough and well-reasoned order, the district court involuntarily terminated appellant's parental rights to M.L.R. and B.S.R., finding that

WCHHS proved all three bases for termination by clear and convincing evidence and that it was in the best interests of the children that appellant's parental rights be terminated. This appeal follows.

D E C I S I O N

I. The district court's finding that a statutory basis for termination of parental rights exists is supported by the record.

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). "Considerable deference" is given to the district court's termination of parental rights decision; however this court carefully reviews the sufficiency of the evidence to determine whether it is clear and convincing. *Id*. On appeal from a district court's TPR order, "we will review the district court's findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation and citation omitted).

The district court determined that the county proved three statutory bases for termination by clear and convincing evidence. The district court thoroughly analyzed the statutory bases and found that (1) following the children's placement out of home, reasonable efforts failed to correct the conditions that led to out-of-home placement; (2) appellant is palpably unfit to be a party to the parent and child relationship; and (3) the children are neglected and in foster care. Appellant challenges all three statutory bases, contending that there is insufficient evidence to support the district court's termination of her parental rights. We consider first whether there was sufficient evidence to support a finding that following the children's placement out of the home, reasonable efforts failed to correct the conditions that led to the children's placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5) (2018).

A. Reasonable Efforts Failed to Correct the Conditions Leading to the Out-of-Home Placement

A district court may terminate a parent's rights if reasonable efforts have failed to correct the conditions leading to the out-of-home placement. *Id*. It is presumed that reasonable efforts have failed when: (1) a child has resided out of the home for a period of 12 months within the preceding 22 months or when the child is under the age of eight at the time the CHIPS petition is filed, the presumption arises when the child has been in the out-of-home placement for six months unless the parent has maintained regular contact with the child and the parent is complying with the case plan; (2) the district court has approved the out-of-home placement plan; (3) the conditions leading to the out-of-home

placement have not been corrected; and (4) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family. *Id*., subd. (1)(b)(5)(i-iv).

B. Uncontested Elements

Appellant does not appear to challenge elements (1), (2), or (3). First, appellant concedes that the children have been out of the home for a period that exceeds 12 months within the preceding 22 months. This is supported by the record. The children were removed from appellant's care on April 6, 2018 and remained in their out-of-home placements up until the TPR trial in June 2019. As such, the children remained in out-of-home care for just over 13 of the preceding 22 months at the time of the trial. Additionally, the record shows that both children were under the age of eight years old at the time the CHIPS petition was filed and remained in their out-of-home placements for more than six months. Moreover, the district court found, and the record supports the finding, that appellant did not comply with the out-of-home placement plan as appellant has failed to "demonstrate adequate mental health and maturity to consistently meet the children's needs" and failed to improve her parenting skills.

Second, appellant concedes that the district court approved the out-of-home placement plan. This is also supported by the record, as the district court approved the case plan on June 14, 2018.

Appellant does not appear to directly challenge element (3), nor does she explicitly concede that it has been satisfied. Nonetheless, we conclude that, on this record, element (3) has been satisfied because the conditions leading to the out-of-home placement—primarily appellant's mental health—have not been corrected. "It is presumed that

conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan." *Id.*, subd. 1(b)(5)(iii). The district court found that while appellant attended therapy throughout the case, "without taking responsibility for her actions and being truthful with the participants of this case, there appears to have been little to no improvement in her mental health since the beginning of this case." The district court also found that appellant "had the ability to comply with the court-ordered case plan and did not do so." These findings are supported by the record.

C. Reasonable Efforts Toward Reunification

Appellant challenges the district court's finding regarding element (4), WCHHS's efforts toward reunification. Appellant contends that "[i]t is questionable whether or not conditions leading to the out-of-home placement were adequately addressed by reasonable efforts from the agency" and argues that WCHHS "failed to make genuine efforts" to reunify appellant and her children. Notably, appellant does not offer alternative or additional services that would have been helpful or provide any legal authority to support her contention that WCHHS's efforts were unreasonable under the facts of this case.

The district court found that WCHHS made reasonable efforts to rehabilitate appellant and reunite the family. Specifically, the district court found that WCHHS provided services and made numerous referrals for appellant's benefit that were "directly related to the specific issues [appellant] was facing." The district court found that the "efforts constitute[d] tangible resources that, if utilized and followed, could have addressed [appellant's] mental health, domestic abuse, and lack of parenting skills. The case plan

was reasonably designed to address the conditions which led to the children's out of home placement." The district court concluded that the efforts made by WCHHS were "relevant to the safety and protection of the children; adequate to meet the needs of the children and family; culturally appropriate; available and accessible; consistent and timely; and realistic under the conditions."

The record supports the district court's findings that WCHHS made reasonable efforts. Appellant was offered a number of psychological evaluations, a parenting assessment and parenting assessment update, individual therapy, domestic violence counseling, family therapy, parenting skills education, random drug testing, supervised visitation, and assistance creating a safety plan. The children also participated in therapy. The case manager's chronology notes show WCHHS's consistent efforts to communicate with appellant and her providers.

Appellant contends that there is no record of the efforts or services being offered to her at the time the state pursued termination. This is contrary to the record. Appellant testified that she was still participating in individual therapy and domestic violence counseling at the time of the trial. These services were part of appellant's case plan and were services appellant participated in throughout the case. It appears the issue in this case was not that appellant was not completing the services, but rather that she was not able to meaningfully address the issues she was facing even with services. The district court's findings are supported by the record. The district court did not abuse its discretion when it found WCHHS made reasonable efforts to reunify appellant with her children.

The district court did not err when it found that the evidence supports termination under Minn. Stat. § 260C.301, subd. 1(b)(5). Because we conclude that there is sufficient evidence to support one basis for termination, we need not address any other statutory basis. *See* Minn. Stat. § 260C.301, subd. 1(b) (2018); *see also In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) ("To involuntarily terminate parental rights, the district court must find that at least one of the eight statutory conditions for termination exist.").

II. The district court did not abuse its discretion when it concluded termination is in the children's best interests.

Appellant argues that termination of her parental rights is not in the best interests of the children. In termination of parental rights proceedings, if a statutory basis for an involuntary termination is present, the best interests of the child is the "paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2018). When analyzing the child's best interests, 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." *J.R.B*, 805 N.W.2d at 905. "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). "Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7. The court of appeals reviews "a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion." *J.R.B.*, 805 N.W.2d at 905.

Here, the district court concluded that it is in the children's best interests that appellant's parental rights be terminated. The district court found that

> [appellant] loves the children and the children love her. However, [appellant] has not shown an ability to meaningfully address the issues causing the children's removal from her care, including her mental health, lack of parenting skills, inability to move on from abusive relationships in order to keep the children safe, and inability to put the children's needs ahead of her own. Perhaps the most significant barrier to reunification is [appellant's] complete inability to acknowledge her mental health issues, the children's mental health issues, the seriousness of her threats against herself and the children, and to take responsibility for her actions.

Appellant argues that the evidence shows that she and her children have a strong bond and love each other. Though the district court recognized that appellant loves the children and the children love her, "the child's interest in preserving the parent-child relationship" is only one factor that the district court must balance when considering the child's best interests. *See R.T.B.*, 492 N.W.2d at 4 (stating that the court must balance three factors when analyzing the best interests of the child). The district court, in properly balancing the three factors, found that this love is outweighed by appellant's inability to "meaningfully address the issues causing the children's removal from her care, including her mental health, lack of parenting skills, inability to move on from abusive relationships in order to keep the children safe, and inability to put the children's needs ahead of her own." These findings are supported by the record.

Appellant next argues that the evidence suggests that removing the children from appellant's care caused more harm than good. Contrary to appellant's assertion, the record shows that the children made progress after their removal from appellant. The children's

therapist testified that the girls experienced trauma due to the removal from their mother, but that it is not the exclusive source of their trauma. The children's therapist testified that M.L.R. was able to make progress in her therapy and complete her trauma narrative after visits with her mother stopped. Both the GAL and B.S.R's teacher testified that they have observed more emotional stability in B.S.R. The GAL also testified that M.L.R.'s psychological evaluation states that she needs a "stable, structured environment" and that she has observed that M.L.R. has shown that when "she has a structured, scheduled, stable setting that she's able to go forward and blossom and do very well." Overall, the record indicates that the children have done well and made progress since they were removed from their mother's care and visits were ended.

The district court carefully considered the three factors outlined above and concluded that the children's best interests were served by terminating appellant's parental rights. The district court did not abuse its discretion when it found that it is in the best interests of the children that appellant's parental rights be terminated.

Affirmed.