STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1440

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

Filed April 27, 2020
Affirmed
Slieter, Judge

Brown County District Court
File Nos. 08-JV-19-43, 08-JV-18-123

Steven P. Groschen, Kohlmeyer Hagen Law Office, Chtd., Mankato, Minnesota (for appellants S.A.F. and A.J.F.)

Charles W. Hanson, Brown County Attorney, Jill M. Jensen, Assistant County Attorney, New Ulm, Minnesota (for respondent Brown County)

Shiree Oliver, St. Peter, Minnesota (guardian *ad litem*)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

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

SLIETER, Judge

Appellants S.A.F. and A.J.F. challenge the district court's termination of their parental rights to J.A.F.[1] Appellants assert that (1) the district court erred by finding that

[1] Based on appellants' brief to this court, A.J.F. does not challenge the district court's determination that a child suffered egregious harm in his care, but A.J.F. does challenge the district court's finding that termination of his rights is in the child's best interest.

the county established S.A.F. subjected a child to egregious harm; and (2) the district court abused its discretion by determining that J.A.F.'s best interests supported termination of appellants' parental rights. Because the record supports the court's findings by clear and convincing evidence that a child suffered egregious harm in S.A.F.'s care and that termination of appellants' parental rights is in J.A.F.'s best interests, we affirm.

FACTS

This appeal is limited to J.A.F., whose biological mother is S.A.F. and biological father is A.J.F. S.A.F. is also the biological mother to two other children. A.J.F. is the biological father to three other children. As of September 2018, appellants and their six children lived at the same residence.

In September 2018, Brown County Human Services (the county) received a report that A.J.F. punched two of his children. Following an initial interview by a social worker, law enforcement assisted in an investigation. Based on statements provided to law enforcement, law enforcement arrested A.J.F., and the state charged A.J.F. with: one count of threats of violence, in violation of Minn. Stat. § 609.713, subd. 1 (2018); three counts of malicious punishment of a child, in violation of Minn. Stat. § 609.377, subd. 1 (2018); and two counts of domestic violence, in violation of Minn. Stat. § 609.2242, subd. 1(2) (2018). The state charged S.A.F. with: one count of threats of violence; one count of contributing to the need for protection of services, in violation of Minn. Stat. § 260C.425, subd. 1(a) (2018); and three counts of malicious punishment of a child.

The county filed child-in-need-of-protection-of-services (CHIPS) petitions involving all the children residing in S.A.F.'s and A.J.F.'s care.

Following an admit-deny hearing in the CHIPS matter related to J.A.F., the district court granted the county's request to proceed with the criminal charges against S.A.F. and A.J.F. before addressing the child-protection matter involving J.A.F.

In February 2019, law enforcement obtained surveillance footage from S.A.F. and A.J.F.'s residence showing S.A.F. nearly hitting two of J.A.F.'s siblings with a car. The state charged S.A.F. in a separate complaint with two counts of second-degree assault (dangerous weapon), in violation of Minn. Stat. § 609.222, subd. 1 (2018). Between March and April 2019, law enforcement also recovered additional surveillance footage from S.A.F. and A.J.F.'s residence. The surveillance footage confirmed allegations that S.A.F. and A.J.F. forced J.A.F.'s siblings to sleep on the concrete basement floor for multiple nights without pillows or blankets, and at times only in the children's underwear.

In April 2019, the county petitioned to terminate S.A.F.'s and A.J.F.'s parental rights to J.A.F. The county sought to terminate appellants' parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4), and (6) (2018), among other provisions. The parties agree that the district court relieved the county of reunification efforts based on egregious harm.[2]

[2] A county must make reasonable efforts to prevent a child's removal from their family and reunite that child at the earliest possible time. Minn. Stat. § 260.012(a) (2018). But a district court may relieve a county from making reasonable efforts for rehabilitation and reunification when the county attorney provides notice "and a determination by the court at the emergency protective care hearing, or at any time prior to adjudication, that a petition has been filed stating a prima facie case that at least one of the circumstances pursuant to Minnesota Statutes, section 260.012, paragraph (a), exists." Minn. R. Juv. Prot. P. 42.08, subd. 1(e)(1). One basis to permit a bypass of reasonable efforts is when "the parent has subjected a child to egregious harm as defined in section 260C.007, subdivision 14." Minn. Stat. § 260.012(a)(1) (2018).

A.J.F. pleaded guilty to one count of malicious punishment of a child and one count of domestic assault. A.J.F. acknowledged that he made one of the children sleep on the basement floor and punched the same child on the arm. S.A.F. proceeded to a combined bench trial for both of her criminal files from which the district court found S.A.F. guilty of three counts of malicious punishment of a child and one count of contributing to need for protection or services. The district court found S.A.F. not guilty of assault in the second degree because of insufficient showing of specific intent to cause fear or harm by use of the vehicle.

In July 2019, the district court held a two-day trial on the county's termination of parental rights petition. Following the trial, the district court found "clear and convincing evidence that [S.A.F. and A.J.F.] inflicted excessive punishments and abuse upon [three of A.J.F.'s children.]" Although appellants rationalized their punishment of A.J.F.'s children because of the children's, purportedly poor behavior, the district court found that appellants' "response to it was extremely inappropriate and not excusable." The district court found that S.A.F. and A.J.F. were palpably unfit to parent and committed egregious harm toward a child in their care and relieved the county of its obligation to provide reasonable efforts to rehabilitate and reunify the family under Minn. Stat. § 260.012(a)(1). Considering the child's best interests, the district court determined that J.A.F.'s best interests supported terminating appellants' parental rights. The district court therefore terminated appellants' parental rights to J.A.F. The parents jointly appeal.

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). An appellate court "exercises great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result." *See In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). A district court's decision to involuntarily terminate parental rights must be supported by at least 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 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).

I. The district court properly found that S.A.F.'s parental rights may be terminated based on egregious harm.

"[Appellate courts] review an order [involuntarily] terminating parental rights to determine whether the district court's findings (1) address the statutory criteria and (2) are supported by substantial evidence." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). While a district court's underlying findings of fact are reviewed for clear error, a district court's determination that one statutory basis for involuntarily terminating parental rights is reviewed 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). S.A.F. argues that she did not engage in egregious harm because she did not inflict bodily

harm on a child. This presents an issue of statutory interpretation to determine whether egregious harm may only be found upon the existence of bodily harm.

"Statutory interpretation is a question of law that [appellate courts] review de novo." *See In re Welfare of Child of T.P.*, 747 N.W.2d 356, 360 (Minn. 2008). "The object of statutory interpretation is to ascertain and effectuate legislative intent." *In re Welfare of J.M.*, 574 N.W.2d 717, 721 (Minn. 1998). "Every law shall be construed, if possible, to give effect to all its provisions." *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 728 (Minn. App. 2009) (quotation omitted). When "a statute is unambiguous, our role is to enforce the language of the statute and not explore the spirit or purpose of the law." *In re Welfare of Child of J.P.-S.*, 880 N.W.2d 868, 871 (Minn. App. 2016) (quotation omitted).

We conclude that the statute's definition of egregious harm is unambiguous and defines harm to include acts in addition to bodily harm. The juvenile-protection statutes define egregious harm to mean "the infliction of bodily harm to a child or neglect of a child which demonstrates grossly inadequate ability to provide minimally adequate parental care." Minn. Stat. § 260C.007, subd. 14 (2018). "The definition also includes a non-exhaustive list of specific conduct towards a child that constitutes egregious harm." *T.P.*, 747 N.W.2d at 360. In summary, the legislature unambiguously provided three distinct forms of egregious harm: (1) infliction of bodily harm on a child; (2) neglect of a child; and (3) a non-exhaustive list of specific conduct towards a child. Our review of the facts and the district court's order show that the district court relied on the non-exhaustive list of conduct in finding that S.A.F. committed second-degree and third-degree assault against

a child to support its determination of egregious harm. Our review of the court's findings will focus on the egregious harm via third-degree assault.

The legislature included in the definition of egregious harm "conduct towards a child that constitutes an *assault* under section 609.221, 609.222, or 609.223." Minn. Stat. § 260C.007, subd. 14(6) (emphasis added). These forms of assault include assaults that do not require physical injury. *See* Minn. Stat. §§ 609.222, subd. 1 (criminalizing an assault with a dangerous weapon), 609.223, subd. 2 (criminalizing assaults against a minor that constitutes "a past pattern of child abuse"). These forms of assault use the word assault without a particular definition, so the criminal code's definition of assault applies, which defines assault as: "(1) an act done with intent to cause fear in another of immediate bodily harm or death; or (2) the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Stat. § 609.02, subd. 10 (2018). Had the legislature intended to limit the scope of assaults covered by Minn. Stat. § 260C.007, subd. 14(6), then it would have used similar language as it did in Minn. Stat. § 260C.007, subd. 14(1), which narrowed to criminal conduct that requires the infliction of substantial bodily harm.

S.A.F.'s contention that egregious harm is limited to conduct such as malnourishment, *see In re Welfare of Children of M.A.H.*, 839 N.W.2d 730, 741-42 (Minn. App. 2013), or physical harm to a child, *see In re Welfare of A.L.F.*, 579 N.W.2d 152, 155-56 (Minn. App. 1998), belies the language of the definition of egregious harm provided by the legislature. We therefore construe the statutory definition of egregious harm to include certain conduct that does not inflict bodily harm.

We now review the sufficiency of the evidence to support the district court's determination that a child suffered egregious harm in S.A.F.'s care. The district court found that S.A.F. committed acts consistent with third-degree assault. S.A.F. does not challenge the factual findings reached by the district court.

Third-degree assault occurs whenever someone "assaults a minor . . . if the perpetrator has engaged in a past pattern of child abuse against the minor." Minn. Stat. § 609.223, subd. 2. "'[C]hild abuse' means any act committed against a minor victim that constitutes a violation of the following laws of this state or any similar laws of the United States or any other state: section 609.221; 609.222; 609.223; 609.224; 609.2242; 609.342; 609.343; 609.344; 609.345; 609.377; 609.378; or 609.713." Minn. Stat. § 609.185(d) (2018). Moreover, in the criminal context, a pattern of child abuse can be satisfied by two instances proven beyond a reasonable doubt. *State v. Hokanson*, 821 N.W.2d 340, 354 (Minn. 2012) ("[W]e explained that although the State may prove a pattern beyond a reasonable doubt 'even if the State does not prove every claimed predicate act of the pattern beyond a reasonable doubt,' at least two instances must be proven beyond a reasonable doubt to constitute a pattern." (footnote omitted) (quoting *State v. Johnson*, 773 N.W.2d 81, 86-87 (Minn. 2007)).

As the supreme court held in *T.P.*, a parent's parental rights may be terminated for egregious harm that they did not personally inflict. 747 N.W.2d at 362 ("[W]e hold that to terminate the rights of a parent who has not personally inflicted egregious harm on a child, a court must find that the parent either knew or should have known that the child had experienced egregious harm."). A.J.F.'s conduct supports termination of S.A.F.'s parental

rights as well. A.J.F. pleaded guilty to assaulting one of the children by punching him as well as forcing three of his children to sleep on the cold, concrete basement floor multiple nights a month. The district court reviewed footage showing three occasions when the children were sleeping without pillows or blankets on the concrete basement floor and found this constituted multiple instances of malicious punishment. In addition to these facts, the district court found that S.A.F. admitted that she knew A.J.F. used severe forms of discipline towards the children and did not take steps to stop him. S.A.F. therefore knew the children were experiencing egregious harm and yet did not protect them.

S.A.F. also committed acts supporting the district court's finding that she engaged in her own pattern of child abuse against children in her care. The district court found S.A.F. committed repeated acts of malicious punishment against J.A.F.'s siblings. All forms of malicious punishment meet the definition of child abuse as defined in Minn. Stat. § 609.185(d). The district court acknowledged S.A.F.'s criminal convictions for forcing three of J.A.F.'s siblings to sleep on the cold, concrete floor in the basement and on at least one occasion the children did so after taking a shower and refusing to let the children dry off. The district court noted that S.A.F. also directed the children to change positions on the floor to ensure that the children stayed cold. The district court also found that S.A.F. forced the children to run up and down the driveway to the point that their legs ached, and she once forced the children to run for at least one hour. As the district court found, S.A.F.'s behavior towards J.A.F.'s siblings constituted excessive punishment. We agree with the district court that S.A.F. committed multiple instances of malicious punishment that constitute more acts of child abuse.

Because S.A.F. engaged in behavior that meets the definition of egregious harm pursuant to Minn. Stat. § 260C.007, subd. 14, third-degree assault (pattern of child abuse), the district court did not clearly err in ruling that the county satisfied its obligation to prove egregious harm to support a statutory basis to terminate pursuant to Minn. Stat. § 260C.301, subd. 1(b)(6). The district court also did not clearly err in finding, as required by this statutory basis to terminate parental rights, that S.A.F.'s conduct is of such a nature that it shows her lack of regard for the welfare of her children and that any person would reasonably believe it conflicts with the best interests of any child to be in her care. Based on these determinations, we conclude that the district court did not abuse its discretion by finding the existence of egregious harm as a statutory basis to support termination of S.A.F.'s parental rights to J.A.F.

II. The district court properly concluded that J.A.F.'s best interests supported terminating appellants' parental rights.

"The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2(a) (2018). Even if the county establishes a statutory ground for termination, the district court must find that termination is in the best interests of the child. Minn. Stat. § 260C.301, subd. 7 (2018); *In re Children of T.A.A.*, 702 N.W.2d 703, 709 (Minn. 2005). A district court must balance three factors when addressing the child's best interests: "(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); *see also* Minn. Juv. Prot. P. 58.04(c)(2)(ii) (establishing specific best-interest findings that the district court must make when terminating parental rights of a non-Indian child). Competing interests for a child "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).

"[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 the county may overcome that presumption based on the evidence. *See In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995).

Appellants maintain that that the record does not support the district court's best-interest findings in four ways. First, appellants contend that J.A.F. has a bond to his parents so the district court should maintain that bond. Second, appellants argue that they have taken steps to improve their parenting skills and disciplinary skills. Third, appellants emphasize fact that their improper discipline occurred only against A.J.F.'s children and never against J.A.F. or S.A.F.'s children. Fourth, appellants assert that the district court should have delayed termination, as requested by the guardian *ad litem* (GAL), to allow for the parents to engage in rehabilitative efforts to address their parenting skills.

A. J.A.F.'s bond with his parents

The district court acknowledged that J.A.F. exhibits a bond with appellants. This bond, however, is limited in that J.A.F. does not show signs of being upset when he leaves appellants' care except for one instance during the first supervised visit in April 2019. Even with this bond, the district court weighed J.A.F.'s interest in maintaining his bond with his parents against J.A.F.'s "strong, competing interest to grow up in a safe, permanent home that is free from abusive and excessive 'discipline.'" J.A.F. has not experienced the same abuse inflicted on his siblings. However, the district court found that J.A.F. would engage in behavior similar to his siblings so that "[t]he risk [was] too great that the [appellants] will then revert to their same abusive behavior to parent him." In reaching this finding, the district court identified appellants' psychological and personality characteristics, and appellants' denial and minimization of the abuse against their children.

B. Appellants' efforts to rehabilitate their parenting skills

The district court found that appellants failed to accept responsibility for their abuse of J.A.F.'s siblings and how that abuse harmed those children. Even though appellants, as the district court explained in its termination of parental rights order, at the "last minute[] claim[ed] to recognize that their conduct was abus[ive,]" appellants "failed to accept responsibility for those actions and failed to recognize the impact of those actions on their children, including [J.A.F.]." The district court also found that appellants' rehabilitative efforts failed to "address their serious mental health needs through dialectical behavioral therapy and [that they] had not genuinely acknowledged their wrongdoing in abusing the

children for the course of two years."[3] Finally, the district court determined termination was best because S.A.F.'s prognosis to become a non-abusive parent was "very poor" and A.J.F., although not as resistant to treatment as S.A.F., "will not likely be therapeutically resolved in time for it to benefit [J.A.F.]."

C. Limited improper disciplining behavior

In its best-interest analysis, the district court addressed the fact that the child abuse inflicted by S.A.F. and A.J.F. did not involve abuse directed at J.A.F. The district court again acknowledged appellants had not subjected J.A.F. to abuse like they had to his siblings. However, the district court found that the risk they would commit abuse to J.A.F. in the future could not be overlooked. This finding is supported by appellants' failure to respond to their psychological and personality characteristics, and the appellants' denial and minimization of the abuse that they inflicted on J.A.F.'s siblings.

D. Opportunity to engage with rehabilitative services before termination

The district court noted that the GAL requested a delay before terminating appellants' parental rights because she believed "that it [was] premature to terminate the parents' parental rights" and, instead, she "support[ed] adjudicating [J.A.F.] a child in need of protection or services and extending this matter for 60-90 days to give the parents more time to acquire the skills needed to be better parents." Although appellants contend that

[3] The district court made specific findings related to "long-term ingrained deficits" in appellants' parenting skills that it found, when coupled with their refusal to accept responsibility, "render[ed] them unable to parent any child for the reasonably foreseeable future in a fashion that adequately protects the child's physical, mental and emotional security."

"[t]he GAL testified credibly that the termination was premature," the district court rejected the suggestion noting that "it will certainly take longer than the 60-90 day extension requested by the [GAL]" to address the parenting deficiencies at issue.

The district court weighed J.A.F.'s best interests when addressing whether to terminate appellants' parental rights. Although appellants are correct that the county moved quickly in seeking termination of their parental rights, we are satisfied with the record presented that the district court placed J.A.F.'s best interests at the forefront in deciding whether to grant termination. The district court weighed J.A.F.'s interests in maintaining a relationship with appellants and appellants' desire to maintain that relationship against J.A.F.'s competing interests. The district court is correct that J.A.F.'s competing interests support termination of appellants' parental rights and is in the child's best interests. J.A.F. has a competing interest in a stable environment that does not place him at risk of abuse by appellants. J.A.F.'s competing interest is made clear by appellants' refusal to adequately address their conduct and minimization of how their conduct negatively impacted their other children. We therefore conclude that the district court did not abuse its discretion in finding that termination of appellants' parental rights is in J.A.F.'s best interests.

The district court properly determined that S.A.F.'s parental rights may be terminated because she engaged in behavior constituting egregious harm against a child. Additionally, the district court did not abuse its discretion determining that termination of appellants' parental rights is in the child's best interests. We therefore affirm.

Affirmed.