STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1997

In re the Matter of the Welfare of the Children of:
D. A. M. and R. A. L., Parents.

Filed May 26, 2020
Affirmed
Segal, Chief Judge

Jackson County District Court
File No. 32-JV-19-55

Kenneth R. White, Law Office of Kenneth R. White, P.C., Mankato, Minnesota (for appellant mother D.A.M.)

Sherry E. Haley, Jackson County Attorney, Jackson, Minnesota (for respondent Des Moines Valley Health and Human Services)

R.A.L., Albert Lea, Minnesota (pro se respondent)

Carma Nordahl, Sheldon, Iowa (guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Reyes, Judge.

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

SEGAL, Chief Judge

The district court revoked a stay of the termination of parental rights (TPR) of mother. On appeal, mother argues that (1) the district court's finding that mother engaged in sexual abuse of her children is not supported by the evidence; (2) the county failed to

prove actual harm to the children caused by the sexual abuse; (3) mother was not provided with "reasonable services" for sexual abuse; and (4) it is not in the best interests of the children to terminate mother's parental rights. We affirm.

FACTS

Appellant mother D.A.M.'s child-protection case began on April 30, 2018, when her two daughters, D.L. and F.L., ages 3 and 2, were found alone in a gas station near a highway.[1] D.A.M. stated that she had fallen asleep and was not aware the girls had gotten out of the home. A social worker went to mother's home and noted that the home was cluttered and the kitchen was full of dirty dishes. Additionally, the bathroom was out of order and human feces were smeared on the wall, blankets, and mattress of the children's room. Mother stated that the feces had been there for two to three days.

Respondent Des Moines Valley Health and Human Services (the county) filed a child in need of protection or services (CHIPS) petition, and on May 16, 2018, mother admitted to the CHIPS petition. The district court found that the children were in need of protection or services. The children have been in out-of-home foster placement with the same foster parents since April 30, 2018.

The county filed a TPR petition on June 26, 2019. As the factual basis for the TPR petition, the county alleged that mother struggles with her independent living skills and her support network has historically involved people who are not safe for her children and, at times, not safe for her. The county also alleged that mother is "easily overwhelmed by the

[1] Father R.A.L. consented to the adoption of the children and does not challenge the termination of his parental rights.

various life events and the obligations of adult life" and "[mother's] progress with developing [independent living] skills has been very slow." The petition noted that both children are young and have high needs, with delayed educational and speech development, among other issues. Additionally, the county alleged that "[t]he children are in need of consistency and stability in order to grow and develop their full potential," and that "[c]ontinuing to have uncertainty of who will provide for them, when, where and whether their needs will be met will repeat the cycle of neglect and trauma for the children."

During a settlement conference on September 9, 2019, mother admitted to the TPR petition pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5) (2018). The district court stayed entry of the TPR order, subject to mother's compliance with a set of 18 conditions, including the requirement that she fully participate in therapy; maintain clean, safe, stable and suitable housing for her children; fully cooperate with social workers; "be honest" with the guardian ad litem and social worker "at all times"; live full-time, including sleeping, at her apartment; only allow pre-approved care providers to watch her children; only allow pre-approved adults and teens around her children; develop and maintain a consistent and age appropriate routine for her children; and "demonstrate her ability to consistently meet her children's needs."

Background facts relevant to this appeal, include concerns about the sexualized behaviors of the children reported by the foster parents when the girls first came to live with them. The foster parents observed that both children would lift their shirts up and "wiggle." When asked what they were doing, one of the children said, "that's what back

mom does."[2] The children would also "lay on top of each other" and "do things," and they would "touch[] each other in [in]appropriate spots." Additionally, both children would masturbate with a doll or stuffed animal.

The foster parents told the children's therapist and social worker about this behavior and that it was occurring on a "regular basis." The therapist and social worker suggested that the foster parents redirect this behavior and not let them sleep with the dolls or stuffed animals, which is what the foster parents did. The masturbatory behavior decreased over the time the children lived with the foster parents, but would happen more frequently "after longer visits" to mother's house. This behavior was also reported to mother in July 2018, when the social worker in charge of the case talked to mother about it and mother said she was aware the children had exhibited the masturbatory behavior prior to the children being placed in foster care.

The incident that resulted in revocation of the stay occurred during a trial home visit that began on September 30, 2019. This was the first trial home visit of the children with mother since February 2019. The children returned to their foster parents on October 5, 2019, as planned, for respite care. On October 5, foster father and F.L. were sitting in the kitchen while F.L. was finishing dinner. Foster father asked F.L. if "anything weird happened" when she was home with mother that week. According to the foster parents, "weird" is the phrase the children use to describe "everything that's unusual or inappropriate."

[2] Both of the children refer to mother as "back mom."

F.L. responded that "back mom had taken off her clothes and her underwear and her boo-boo," F.L.'s word for bra. F.L. also said that her mother turned around, unbuckled her bra "and wiggled." F.L. then said that mother "laid on her" without her clothes on and "was wiggling her butt," and her mother "peed on her and she got wet" and had to take a bath. F.L. told foster father that this happened in her bedroom and she tried to stomp on mother's foot and said, "No, back mom. That's disgusting." Foster father "just let her talk" and then asked some follow-up questions to clarify what she said. Foster father said that F.L. was "very matter of fact about the whole thing" when she told him what had happened.

Foster mother came into the kitchen and asked F.L. what happened at mother's house. F.L. then repeated the same story. When retelling the story, F.L. took off her pants and shirt, mimicked unhooking a bra, laid on the floor and "wiggled her butt."

The foster parents had not heard the children suggest that anyone sexually abused them prior to this incident. Neither of the children had previously talked about anyone else engaging in these behaviors with them.

At church the next day, the foster parents shared with their attorney what F.L. had told them the night before. The attorney approached F.L. to see if she would give her the "same story." The attorney asked F.L. if anyone had any accidents and she replied "mommy peed on me." The foster parents then called the social worker and reported what F.L. had told them.

The next day, separate forensic interviews were conducted with the children at the Jackson County Sherriff's Office. F.L. made disclosures in the interview consistent with

her previous disclosures, but in less detail. D.L. also made a disclosure that was consistent with F.L.'s disclosure, but did not reference F.L. as the victim in the forensic interview. Home visits were terminated, and the children remained with their foster parents.

In November 2019, a two-day contested hearing was held on the revocation of the stay of termination of mother's parental rights. Both foster parents testified to F.L.'s disclosure and to the children's previous sexual behaviors. The foster parents' attorney testified to her conversation with F.L. The case manager, the guardian ad litem, and the forensic interviewer testified, and the video and audio recordings of the interviews as well as transcripts were entered into evidence. Mother testified on her own behalf and called one of her friends as a witness.

In a written order, the district court revoked the stay of termination of mother's parental rights. Specifically, the district court found the allegations of sexual abuse against mother to be credible. The district court concluded that there is "clear and convincing evidence that the children were out of the home for over one year, that reasonable services were provided to Mother, and that Mother was unable to correct the conditions which led to the out of home placement" and that termination of parental rights was, therefore, appropriate pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5). The district court noted, specifically, that even with the services provided to mother she was "not able to keep her children in a safe and stable home and to care for them." The district court concluded that, while mother was in compliance with many of the conditions of the stay, she was, nevertheless, in violation because "[h]er acts of abuse failed to meet the children's needs of having a safe and stable home." Finally, the district court undertook an analysis of the

"best interests of the child" as required by Minn. Stat. § 260C.301, subd. 7 (2018), and concluded that, given the findings of sexual abuse by mother, "it is not in [the children's] best interests to be returned to a home that continues to be unstable because Mother cannot provide for their needs and security over her own needs" and that the children's best interests are served by adjudicating the termination of mother's parental rights. Mother appeals.

D E C I S I O N

Mother argues on this appeal that the revocation of the stay must be reversed because: (1) the district court's finding that mother engaged in sexual abuse with her children is not supported by clear and convincing evidence; (2) the county failed to demonstrate actual harm to the children; (3) the district court erred in concluding that reasonable services were provided to mother because she was not offered services for sexual abuse; and (4) the district court erred in concluding that termination was in the best interests of the children because a significant bond existed between the children and mother. We address each argument below.

Standard of Review

When a termination of parental rights is entered due to the revocation of a stay of a TPR order, the record must contain clear and convincing evidence that one or more statutory grounds for the TPR were present at the time of the revocation and that the parent failed to comply with the conditions of the stay such that the revocation is warranted. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 94 (Minn. App. 2008). Appellate review "of an order terminating parental rights is limited to determining whether the district court's

findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether they are clearly erroneous." *Id.* A decision to terminate parental rights must be supported by clear and convincing evidence that (1) at least one statutory ground for termination exists, (2) the county made reasonable efforts to rehabilitate the parent and reunite the parent and child, and (3) termination is in the child's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

I. The record supports the district court's finding of sexual abuse.

Mother alleges that the district court erred in revoking the stay of termination of her parental rights because the county did not prove by clear and convincing evidence that she sexually abused the children.[3] This court reviews a district court's factual findings for clear error, considering whether they are supported by substantial evidence and address the appropriate statutory criteria. *In re Welfare of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018). "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 omitted).

The county presented the following evidence at the revocation hearing that demonstrated mother engaged in the alleged sexual acts. The children's foster father testified to the initial disclosure of abuse. When he asked F.L. if anything "weird"

[3] We note that it has not yet been decided whether "clear and convincing" is the proper standard of proof to establish a violation of a condition of a stay for a TPR order. We need not reach or decide this issue, however, because the record supports the district court's finding of sexual abuse, regardless of which standard of proof is applied, "clear and convincing" or "preponderance of the evidence."

happened, foster father testified that: F.L. said "back mom had taken off her clothes and her underwear and her boo-boo, which is her bra, and she mentioned that she had turned around and unbuckled it, and turned around and-and wiggled"; F.L. then said that mother "laid on her" without her clothes on and "was wiggling her butt" and "peed on her and she got wet" and had to take a bath; and F.L. told foster father that this happened in her bedroom and she tried to stomp on mother's foot and said, "No, back mom. That's disgusting."

The children's foster mother and the foster parents' attorney provided testimony that further supported the district court's finding. Foster mother testified about F.L.'s disclosure to her which was consistent with the disclosure to foster father. And foster mother testified that, during the disclosure to foster mother, F.L. took off her pants and shirt, mimicked unhooking a bra, laid on the floor and "wiggled her butt." The foster parents' attorney testified that F.L. told her that "mommy peed on me" when she asked her if anyone had any accidents.

In addition, the foster parents testified about the sexualized behavior of the girls that they had reported early on to the social worker and therapist, including the fact that the children would lift up their shirts and wiggle, saying "that's what 'back mom' does" and that the younger child would pull her diaper down, and lying on top of a doll or stuffed animal, move up and down simulating sexual activity.

The social worker who conducted the forensic interviews (forensic interviewer) also testified at trial. F.L. told the forensic interviewer that "back mom" "put her butt on [her]." And she "wiggle[ed her] butt" on F.L.'s back when mother's clothes were off. She said that mother peed on her when she "wiggled her butt on [her]." She also said that she hid

in her closet so "back mom won't pee on me" and "back mom started wiggling her butt on [D.L.]."

The forensic interviewer asked D.L. if anyone wiggles their butt. D.L. replied "back mom" and that she does this with her clothes off. When asked "does her butt touch anything or touch anybody," D.L. replied, "me." D.L. went on to say that mother touches D.L.'s butt with mother's butt. D.L. said that this happens "all the time" and that mother's "front butt" touches D.L.'s butt. D.L. also stated that mother makes her "put her head to her boo boo," which is her word for breasts. And that mother makes her "put her head to her back butt and front butt." When asked if anyone else makes her do this, D.L. said only her mother. The video and audio files and transcripts of the forensic interviews were also entered into evidence.

In addition, the forensic interviewer testified that she met with mother twice in mother's home after the allegations were made. Mother told the forensic interviewer that she had no idea what the children could be talking about, but it "was possible that the children had witnessed sexual activity between her and their father." The district court noted in her findings that mother had not resided with the father since January 2017, "making it unlikely that the girls would remember something from when they were only two and one years old." Mother told the interviewer that the children never had any accidents, but the interviewer noted a bag of urine soiled children's clothing in the laundry basket at mother's house and that mother could not locate one pair of F.L.'s pajamas.

The district court found that F.L.'s statements were detailed and consistent. The court noted that F.L. also demonstrated what happened as she was describing it. The court

further found that, while the children appeared to be a bit distracted at times during the forensic interview, both children were consistent on two points, that "it is 'back mom' and she wiggles her butt." The district court noted in her findings that it is "highly unlikely that a 3 and 4-year old could . . . get together and create a story, with the same details consistently repeated without it actually happening." The district court thus found that the children's allegations were credible.

On this record, we conclude that the evidence supports the district court's finding that mother sexually abused her children.

II. Evidence of actual harm to the children is not a required statutory element of proof.

Mother next argues that, even if the sexual abuse occurred, the record does not show that the children suffered harm from mother's conduct. However, mother appears to be conflating the requirements for finding a child in need of protection or services under Minn. Stat. § 260C.007, subd. 6(3) (2018), with terminating parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5). The cases cited by mother in support of her argument involved appeals from determinations that a child was in need of protection or services, not a termination of parental rights. The county is not required to show that the children suffered harm as a separate element in order to terminate parental rights. *See S.E.P.*, 744 N.W.2d at 385. Harm to the children is subsumed as part of the "best interests" analysis.[4]

[4] And, as set out in section IV of this opinion, the district court properly concluded that termination was in the children's best interests.

III. The county provided relevant services to mother to address the issue that resulted in the termination of her parental rights.

In order to terminate parental rights,

> the court shall make specific findings: (1) that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family; or (2) that reasonable efforts for reunification are not required as provided under section 260.012.

Minn. Stat. § 260C.301, subd. 8 (2018).[5]

"Reasonable efforts" means "the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family." Minn. Stat. § 260.012(f) (2018). The district court, when determining whether reasonable efforts were made, "shall consider whether services to the child and family were: (1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and 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).

"The court shall review the out-of-home placement plan and may modify the plan." Minn. Stat. § 260C.202(c) (2018). A case plan is "presumptively reasonable" if it has been approved by the district court. *S.E.P.*, 744 N.W.2d at 388. After the district court has

[5] Minnesota Statutes provide that reasonable efforts for reunification are not required in limited circumstances. *See*, *e.g.*, Minn. Stat. § 260.012(a)(5) (2018). The county did not bring this case under those statutory provisions.

approved a case plan, "the appropriate action for a parent who believes some aspect of the case plan to be unreasonable is to ask the court to change it." *Id*.

Mother argues that sexual abuse of the children was neither identified as an issue in any of the case plans nor was she offered treatment for sexual abuse. At the contested hearing to revoke the stay of the TPR, however, the guardian ad litem testified about the original case planning surrounding the children's sexualized behavior. She testified that case planning occurred regarding the children's behavior when they required mother to make sure that "people she was around and allowing access to her children were safe people that would not sexually harm her children." At the initiation of the CHIPS case, the guardian ad litem had expressed concern about the people mother affiliated with when her children were present because some of these people had "prior sexually abusing behaviors with other children" and mother, at the time, was living with a registered sex offender.

While mother's case plan did not specifically address sexual abuse, there were substantial services provided to mother over a long period of time, including individual and family therapy, a parenting-capacity assessment and parenting classes, as well as mental-health services. Moreover, the case plan was modified multiple times during the course of mother's case, and mother had an opportunity to ask for additional services, but from the record it does not appear that she did so. Additionally, on September 9, 2019, when mother entered an admission on the grounds for termination of her parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5), she admitted that the conditions that led to out-of-home placement had not been corrected, and that reasonable services had been provided to her to help her correct those conditions.

"Whether the county has met its duty of reasonable efforts requires consideration of the length of time the county was involved and the quality of effort given." *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). Here, the county was involved with case planning with mother for approximately a year and a half. It provided multiple services, all of which were aimed at helping mother provide safety and stability for her children and to help her meet the needs of her children. The fact that mother was not offered services specifically related to her sexual abuse of her children is not the fault of the county. Mother had many opportunities during therapy and otherwise to disclose the issue and seek assistance. The district court's conclusion that reasonable services were provided by the county is supported by the record.

IV. The record supports the district court's best-interests determination.

"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 children. *In re Children of T.A.A.*, 703 N.W.2d 702, 709 (Minn. 2005). A district court must balance three factors when addressing the children's best interests: "(1) the child[ren]'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[ren]." *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). Competing interests for the children "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).

"[D]etermination of a child's best interests is generally not susceptible to an appellate court's global review of a record, and . . . an appellate court's combing through the record to determine best interests is inappropriate because it involves credibility determinations." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quotation omitted).

Mother argues that it is not in the children's best interests to terminate her parental rights. The district court noted that both children "care about their mother, however they are too young to express a clear preference." It also noted that mother "would like to parent her children and demonstrate that she can meet their needs and care for them." The district court then went on to analyze the third factor, competing interests of the children, and noted:

> [The children] have an interest in having a stable home. While mother has shown a willingness to work at services, it has been over a year and a half of working with her to build her independent living skills and to provide the children [with a] safe and stable home. Now, after the children only being returned home for a week, that safety and stability is again disrupted by their removal again due to mother's abuse.

A stable environment, health considerations, and the child's preferences may be competing interests. *R.T.B.*, 492 N.W.2d at 4. Here, the district court focused on the need for the children to have a stable home and noted that the children's stability is "disrupted" by mother's actions. The court also noted that the children's allegations of sexual abuse were credible and "given those findings it is not in [their] best interests to be returned to a

home that continues to be unstable because mother cannot provide for their needs and security over her own needs."

Because the district court considered and balanced the three best-interests factors, it did not err when it determined that revocation of the stay of termination was in the children's best interests.

Affirmed.