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STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0732

In the Matter of the Welfare of the Child of: B. R., Mother.

Filed December 21, 2020
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-JV-19-891

Nicole S. Gronneberg, St. Paul, Minnesota (for appellant B.R.)

Robert M. Hamilton, Ramsey County Attorney, St. Paul, Minnesota (for respondent Ramsey County Human Services)

Lisa Lindstedt, St. Paul, Minnesota (guardian ad litem)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Gaïtas, Judge.

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

CONNOLLY, Judge

Appellant-mother challenges the district court's order terminating her parental rights to her child on three grounds: (1) it abused its discretion in concluding that termination of parental rights was in the child's best interests; (2) it erred in finding that respondent was not required to provide reasonable efforts for reunification once appellant

successfully rebutted the presumption of palpable unfitness; and (3) it erred in finding that respondent made reasonable efforts to reunify the family. We affirm.

FACTS

Previous Child Protection Matter and Involuntary Termination of Parental Rights (TPR)

In April 2016, appellant-mother B.R. came to the attention of Ramsey County Social Services Department (RCSSD) after she gave birth to twins who were premature and medically fragile. Appellant had chemical and mental-health issues, and domestic-violence issues; did not cooperate with individuals who attempted to assist her in understanding the infant twins' complex medical needs; and she failed to engage with RCSSD over the course of a year, to address her chemical-health issues, mental-health issues, and domestic-violence issues, to engage in parenting education, and to attend the twins' medical appointments. A TPR petition was filed in February 2017, and her parental rights to the twins and an older child were involuntarily terminated on April 5, 2017.

After the involuntary TPR, and before the birth of K.R. in May 2019, appellant continued to engage in the same behaviors which led to the involuntary termination of her parental rights in 2017. Her domestic-violence issues continued well into her pregnancy with K.R.; when she was six months pregnant, she was involved in a violent altercation with the father of her children after smoking crack cocaine. Her violent episodes were not limited to domestic incidents. Appellant was also involved in numerous assaults with strangers and acquaintances. For example, in April 2018, appellant assaulted a Hennepin County Sheriff's deputy. In December 2018, she set a man's apartment on fire following

an argument. Appellant's mental-health and chemical-dependency issues also persisted. In July 2018, she was hospitalized for an evaluation after police found her heavily intoxicated and under the influence of drugs in public. Her alcohol and drug use was extensive; due to intoxication, she did not recall assaulting the Hennepin County Sheriff's deputy or setting fire to the apartment. Appellant's drug use continued through her pregnancy with K.R., as evidenced by positive drug tests for cocaine and marijuana at his birth.

Birth of K.R. and Current Child Protection Matter

On May 19, 2019, appellant gave birth to K.R. Appellant tested positive for cocaine and marijuana. K.R.'s meconium and urine also tested positive for cocaine and marijuana. K.R. had significant medical conditions, including an inability to gain weight and to remain hydrated, which led to at least three hospitalizations; he also had a flat portion on the back of his skull that hindered brain development as well as frequent eating issues that were attributed to stress and changes in his routine. To correct his skull, K.R. was required to wear a helmet 23 hours a day. Training was required on how to apply and clean the helmet properly. K.R.'s medical conditions required doctor appointments up to three times a week.

Appellant's domestic-violence problems continued after the birth of K.R. The day after K.R. was born, appellant's partner went to her hospital room in violation of a domestic-abuse no contact order (DANCO). He and another male got into an altercation over the paternity of K.R. The fight escalated, and the partner began throwing things and threatened to shoot anyone who tried to intervene. Appellant's drug use also continued

after the birth of K.R. When K.R. was eight days old, police found appellant unresponsive; she was under the influence of narcotics and required hospitalization and detoxification.

RCSSD placed an emergency protective hold on K.R. On May 23, 2019, RCSSD filed an expedited petition to terminate appellant's parental rights. At an emergency protective-care hearing on May 28, 2019, the district court found that RCSSD's petition stated a prima facie case that appellant had a prior involuntary termination of her parental rights. Accordingly, the district court relieved RCSSD of its duty to provide reunification and rehabilitation efforts pursuant to Minn. Stat. § 260.012(a)(2) (2018), and also found that appellant was presumably palpably unfit to parent K.R. pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4) (2018). K.R. was placed in foster care. Despite being relieved of the duty to provide efforts to rehabilitate and reunify, two RCSSD workers attempted to meet with appellant at a detox center but she refused. The assigned RCSSD caseworker provided written contact information and upcoming court dates to detox staff so they could pass this information to appellant. The district court found that the caseworker "credibly testified that despite being relieved of reasonable efforts, she attempted to work with [appellant] toward reunification. [Appellant] did not attempt to contact [the caseworker]."

In August 2019, at the direction of her probation officer, appellant completed a chemical use assessment. She was diagnosed with (1) alcohol use disorder – severe; (2) cannabis use disorder – moderate; and (3) stimulant use disorder (cocaine) – severe. According to the evaluator, "[appellant] failed to understand the negative impact of mental health problems or substance abuse, and had no coping skills to address these issues or to prevent relapse." The evaluator recommended inpatient chemical dependency treatment.

When the caseworker and a guardian ad litem (GAL) tried to meet with appellant after a pretrial hearing on the matter, she refused to meet with them. A short conversation ensued in which the caseworker was able to inform appellant that RCSSD's most immediate concern was her drug use and to provide her with information for an urgent crisis center that provides free assessments and resources for housing and food. The caseworker developed a case plan encapsulating the brief conversation she had with appellant, but she was unable to locate appellant to give her a copy or have her sign it. The district court noted that the caseworker "credibly testified that she attempted to contact [appellant] through the telephone number [appellant] provided, [appellant's] probation officer and [appellant's] outpatient treatment program, which was [appellant's] last reported residence."

Treatment Pending Trial

In September 2019, appellant was cited for drinking alcohol in public. On September 11, 2019, she entered a 30-day inpatient treatment program. From K.R.'s birth on May 19 until she entered the program, appellant was homeless. In October 2019, she completed the inpatient treatment program and was discharged. Her mental health was stable. Her prognosis was "good" but she lacked understanding about relapse issues and coping skills. The treatment provider recommended outpatient treatment. On October 14, 2019, appellant entered outpatient treatment with sober lodging, but she left the sober house and relapsed on October 26, 2019.

Trial Day 1 - October 31, 2019

Trial began on the expedited TPR petition on October 31, 2019. Appellant acknowledged that she had chemical-dependency issues, but testified that she had successfully completed inpatient treatment, was currently in outpatient treatment, and was sober. She did not disclose her relapse to the district court. She admitted that she had not reached out to the caseworker or anyone else at RCSSD since K.R.'s birth five months earlier and that she had not seen him since his birth. Appellant testified her focus was on attending support groups to help her develop coping skills, and outpatient treatment to address her mental-health issues. RCSSD presented no evidence to contradict appellant's statements, and the district court found that she rebutted the presumption of palpable unfitness under Minn. Stat. § 260C.301, subd. (b)(4).

After trial, the caseworker met with appellant, who signed a release giving the caseworker access to appellant's treatment records and permission to speak with appellant's treatment providers. The caseworker and appellant also discussed tasks for reunification; appellant understood that addressing her chemical dependency was the primary concern. A hearing was scheduled for November 21, 2019 for RCSSD to determine whether to continue with trial.

November 2019 – January 2020 Proceedings

At the hearing, RCSSD provided no evidence to rebut appellant's October 31 testimony that she had remained sober and in treatment and RCSSD agreed to work with her toward reunification. Appellant failed to appear because she was in the midst of another relapse which had not yet been disclosed. The matter was continued to January 16, 2020.

Following her relapse on October 26, appellant was placed on a two-week restriction at the outpatient program, with increased attendance requirements at support help groups. The restriction was lifted on November 13, 2019, and appellant relapsed the next day. She returned to the sober home under such heavy influence of crack cocaine and alcohol that she needed to be transported to detox. Appellant never returned to the sober home after detox and was discharged from the program on November 18, 2019. Appellant's discharge prognosis at this time was poor.

In December 2019, appellant contacted the caseworker after entering another inpatient treatment program. The caseworker coordinated meetings with appellant and her treatment counselor on December 11, 2019, and January 8, 2020. The parties discussed treatment progress, reviewed expectations, and answered appellant's questions. Appellant requested bus cards at the January 8 meeting; the caseworker received authorization but was unable to deliver the cards because appellant was discharged and was again out of contact.

At the January 16, 2020, hearing, RCSSD informed the court of appellant's misrepresentations on the first day of trial, October 31, 2019. RCSSD did not file a motion to vacate the October 31 order based on appellant's misrepresentations to the court. Appellant failed to appear at this trial, and the matter was continued to February 24, 2020.

Trial Day 2 – February 24, 2020

Appellant appeared at trial. She admitted to her relapses in October and November 2019. Appellant also testified that she considered her October 31 testimony truthful. She reasoned that since her drug of choice was cocaine, she did not consider the use of alcohol

on October 26, 2019, to be a relapse. Appellant continued to lack stable housing. She had mental health services while in treatment but had not received ongoing care following discharge. She was scheduled to meet with a therapist the week that she was discharged from treatment in January 2020.

RCSSD alleged two statutory grounds for appellant's TPR pursuant to Minn. Stat. § 260C.301, subd. 1 (2018): (1) appellant has substantially, continuously or repeatedly refused or neglected to comply with the duties imposed upon her by the parent and child relationship under Minn. Stat. § 260C.301, subd. 1(b)(2); and (2) appellant is palpably unfit to parent K.R. because of a consistent pattern of specific conduct before the child or of specific conditions relating to the parent-child relationship, either of which are of a duration or nature that renders appellant unable to care appropriately for the child's physical, mental, or emotional needs for the reasonably foreseeable future, pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4).

Statutory Ground 1: Neglect of Parental Duties

When evaluating compliance with Minn. Stat. § 260C.301, subd. 1(b)(2), the issue is whether the parent is presently able to assume the responsibilities of caring for the child. The district court made several findings on this matter. First, appellant has been absent for the majority of K.R.'s life – she repeatedly rejected or avoided efforts from RCSSD to help reunite her with K.R.; she did not ask about his welfare for the first six months of his life; she has not seen him; and she has failed to provide any care since birth, including care for his physical, mental, or emotional health. Second, appellant's unaddressed chemical and mental-health issues have made it impossible for her to obtain stable housing. Aside from

completing one 30-day inpatient program, appellant has not successfully completed any treatment program, and she has relapsed on numerous occasions. The district court found that "[t]he one program that [appellant] completed determined that she failed to grasp the underlying reasons for her use and was at risk to relapse. Unfortunately, she did relapse…" immediately after being discharged. Finally, the district court stated, "[t]hese long-persistent and continuing chemical health, mental health, domestic violence, and housing issues – and the volatility and instability that they cause – demonstrate [appellant's] substantial, continuous and repeated neglect of her duties toward [K.R.], his basic needs and his specific needs for his medical issues."

The district court concluded that "RCSSD has established by clear and convincing evidence that [appellant] has substantially, continuously and repeatedly refused and neglected to comply with the duties imposed on her as a parent of [K.R.], within the meaning of Minn. Stat. § 260C.301, subd. 1(b)(2)."

Statutory Ground 2: Palpably Unfit

A parent is palpably unfit if a court determines that there is a consistent pattern of specific conduct or conditions directly relating to the child-parent relationship that render the parent unable to care appropriately for the child. Minn. Stat. § 260C.302, subd. 1(b)(4). "If a parent's behavior is likely to be detrimental to a child's physical or mental health, the parent may be found to be palpably unfit." *In re Children of Vasquez*, 658 N.W.2d 249, 255 (Minn. App. 2003). The district court considered appellant's behavior since her prior TPR. It concluded that appellant "has been involved in numerous incidents where her chemical or mental health resulted in" violence, arrests, and intervention. Appellant's

"chemical and mental health issues are severe and persistent…[s]he has been incapable of addressing these conditions." The district court went on to make a number of findings regarding appellant's inability to stay sober, to find stable housing, to meaningfully engage in treatment, and to understand the reasons for her condition and probability for relapse. Appellant's behavior and conditions "render her unable to safely and appropriately care for [K.R.]" and "are likely to be detrimental to [K.R.]'s physical or mental health." K.R. requires stability and consistency, and appellant's ongoing issues "render her unstable and unpredictable."

The district court concluded that

> RCSSD has demonstrated by clear and convincing evidence that [appellant] is palpably unfit to be a party to the parent and child relationship with [K.R.]. Specific conditions directly relating to the parent and child relationship, in particular [appellant's] chemical and mental health, are of a duration and nature that render [appellant] unable for the reasonably foreseeable future to care appropriately for the ongoing physical, mental, or emotional needs of her child within the meaning of Minn. Stat. § 260C.301, subd. 1(b)(4).

This appeal follows.

D E C I S I O N

Parental rights may be terminated only for "grave and weighty reasons." *In re Child of P.T.*, 657 N.W.2d 577, 591 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Apr. 15, 2003). To terminate parental rights, there must be clear and convincing evidence that at least one statutory basis for termination exists, and the termination must be in the best interests of the child. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). "[T]ermination of parental rights is always discretionary with the [district] court."

In re Welfare of Child of R.D.L., 853 N.W.2d 127, 136 (Minn. 2014). An appellate court will sustain the district court's factual findings that a statutory ground for termination of parental rights exist unless they are clearly erroneous. *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995). We review the district court's decision that termination is in a child's best interests for an abuse of discretion. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008).

K.R.'s Best Interests

Appellant asserts that the court erred in finding that terminating her parental rights is in K.R.'s best interests. Even if a statutory basis for TPR exists, a district court cannot terminate parental rights unless it is in the best interests of the child. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "In analyzing the best interests of the child, the 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." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *J.R.B.*, 805 N.W.2d at 905. If a statutory basis to terminate parental rights under Minn. Stat. § 260C.301, subd. 1 exists, and the interests of the parent and the child compete, the child's interests are paramount. Minn. Stat. § 260C.301, subd. 7 (2018). "[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) (quotations omitted).

Here, the district court cited the *R.T.B.* factors and concluded that the termination of B.R.'s parental rights served the best interests of K.R. Regarding appellant's interest in maintaining the relationship, the district court found that while she testified "that she has an interest in parenting" K.R., she did not ask to see him or attempt to learn about his needs for the first seven months of his life. During that time, appellant failed to address her chemical dependency or meaningfully engage in treatment. She only entered treatment when "ordered to do so by her probation officer under the threat of incarceration." Accordingly, "it is not in [K.R.'s] interest to preserve the parent and child relationship." These findings are supported by the record.

It is also clear that the interests of the parent and the child conflict in this case, and K.R.'s interest must be paramount. Minn. Stat. § 260C.301, subd. 7. K.R. requires a stable environment, and he has medical needs that require special and consistent care. Appellant is unable to provide safety and consistency due to her chemical dependency and mental health issues, and the district court found that "she has not demonstrated the basic skills necessary to adequately parent him now or in the reasonably foreseeable future." K.R. has been residing in a nonbiological foster home with his three older siblings, and his emotional, physical, and developmental needs are being met. The district court found that, because the "issues that brought [appellant] to the attention of child protection in 2016 and that led to the termination of her parental rights in 2017 remain unaddressed," it is in K.R.'s

best interests to be "adopted by a caregiver who is able to protect him, provide a safe and healthy home environment, and meet his needs."

Appellant does not dispute the district court's findings on the *R.T.B.* factors. Instead, she relies on the notion that the district court, in making the findings above, "completely disregarded its own findings in its November 21, 2019, order." Appellant cites two of the district court's statements: (1) RCSSD will file a CHIPS Petition enabling appellant to work a case plan toward reunification and (2) that there was good cause to continue the case and that a continuance was "in the best interests of the child so that his mother may work toward reunification." Appellant argues that the district court has "invalidated its own prior order without following any processes to amend its earlier order." This argument fails.

First, the statements referred to by appellant were made by the district court when it was unaware that appellant had misrepresented her sobriety and her enrollment in treatment. In compliance with the district court's finding that K.R.'s best interests would be served by allowing appellant to work towards reunification, RCSSD continued to attempt to work with appellant. However, as respondent RCSSD noted, "[a]ppellant continued engaging in the same patterns of behavior she had shown over the case's first six months, including not communicating with RCSSD, being discharged from multiple treatment programs, collecting multiple warrants, and showing minimal interest in K.R.'s well-being." Moreover, appellant's arguments are largely based on reasonable efforts, which RCSSD was not required to offer. In light of appellant's patterns of behavior and

K.R.'s unique needs, the district court did not err by determining that termination was in the child's best interests.

RCSSD was properly relieved of the reasonable-effort requirement

Appellant argues that, pursuant to the Equal Protection Clause of the U.S. Constitution, RCSSD should have been required to provide reasonable efforts to reunify her with K.R. "following her successful rebuttal of the presumption of palpable unfitness." She also argues that, "if a parent successfully rebuts the presumption of palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4), that parent has an equal-protection right to reasonable efforts to reunify."

The district court rejected appellant's argument. First, "[n]o statutory language requires reasonable efforts where a parent is found to have rebutted the presumption of palpable unfitness." *See* Minn. Stat. § 260.012(a) (2018); Minn. Stat. § 260C.001, subd. 3(3) (2018). Second, appellant's argument is not supported by caselaw. She relies on *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 133, 136-38 (Minn. 2014). (Holding, in relevant part, that the presumption of palpable unfitness that attaches to a parent following an involuntary termination of parental rights does not violate equal protection because the presumption is easily overcome). Appellant states that "[t]he logical inference to be drawn" from *R.D.L* "is that a higher bar for rebutting the presumption of palpable unfitness would render [the presumption] a violation of [equal protection]." Even if this court were to accept appellant's interpretation of the law, the argument still must fail.

The district court found that appellant did not successfully rebut the presumption of palpable unfitness. As the district court stated, the ruling that appellant "rebutted the

presumption" was based on her misrepresentations to the court regarding her sobriety and treatment. The district court noted that appellant "does not stand in the same shoes as a parent who has actually made meaningful changes in their life to overcome the presumption," and to find otherwise would "encourage dishonesty" and "would not be in the best interest of a child needing an able parent, particularly when the subject of the parent's misrepresentation is a material reason" for the child's out-of-home placement.

RCSSD provided reasonable efforts

In any event, we conclude that reasonable efforts were made. Generally, if statutory grounds for terminating parental rights exist and termination is in the best interests of the child, there must also be clear and convincing evidence that the county made efforts to reunite the family. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). The district court found that, despite being relieved of the obligation to provide reunification efforts based on appellant's prior involuntary TPR, RCSSD made reasonable efforts "from the beginning of the case through [appellant's] discharge from her second treatment program" and listed seven specific reunification efforts made by the caseworker beginning in May 2019.

These efforts included providing appellant with contact information for the social worker, as well as emergency services that could provide, free of charge, the services that appellant most needed, including chemical health, mental health, and housing assistance. The caseworker developed a written case plan but was unable to reach appellant despite contacting the number appellant provided and the possible locations where she could have been residing. Once appellant contacted the caseworker in December 2019, they met on

two occasions where appellant's questions and needs were addressed. Reasonable efforts also included obtaining and acting on information about K.R. to provide him with safe housing and critical medical care. The district court found, and we agree, that "RCSSD established by clear and convincing evidence that its efforts were reasonably directed to reuniting [K.R. and appellant], despite [appellant's] failure to meaningfully engage in these efforts."

Because terminating appellant's rights is in the best interests of K.R. and the record shows that RCSSD provided reasonable efforts to reunify, although it had been relieved of that obligation, the district court did not abuse its discretion in terminating appellant's parental rights to K.R.

Affirmed.