STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0761

In the Matter of the Welfare of the Child of: H. R. B. and T. L., Parents.

Filed October 19, 2020
Affirmed
Florey, Judge

Anoka County District Court
File No. 02-JV-18-433

Lucas J.M. Dawson, Halberg Criminal Defense, Minneapolis, Minnesota (for appellant, H.R.B.)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County Social Services)

Sara McKlugell, Minneapolis, Minnesota (guardian ad litem)

Considered and decided by Florey, Presiding Judge; Hooten, Judge; and Gaïtas, Judge.

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

FLOREY, Judge

On appeal from the termination of her parental rights (TPR) after a prior remand, appellant-mother argues that: (1) she was denied due process of law when the district court did not hold a hearing on remand; (2) the record does not support the district court's revocation of the stay of a termination of her parental rights on the basis that she was a

palpably unfit parent at the time of the termination; (3) the record does not support that TPR is in the child's best interests; and (4) the county failed to make reasonable efforts to reunite the family. We affirm.

FACTS

The underlying facts giving rise to the initial termination of appellant-mother H.R.B.'s parental rights are set forth in this court's order opinion issued on April 8, 2020. *In re Welfare of Child of H.R.B.*, No. A19-1866 (Minn. App. Apr. 8, 2020) (order op.). However, it is necessary to set forth the procedural history that resulted in that opinion in order to situate the present appeal.

On April 9, 2018, respondent Anoka County Social Services (ACSS) filed its original petition to terminate H.R.B.'s parental rights based on six statutory bases, including H.R.B.'s palpable unfitness to parent. The district court held a trial on that TPR petition in October and December 2018, and February 2019. Testimony was then suspended, and the matter was set for a review hearing to allow the parties to enter into a settlement agreement.

At the review hearing, H.R.B. entered the following admission:

> Anoka County child protection was involved with [H.R.B.] and [M.I.B.] from August 6, 2014 to April 7, 2017. As part of that, [M.I.B.] was in out-of-home placement for approximately 13 months. One basis for the reunification was [H.R.B.'s] compliance with her mental health needs, including medication. Following closure of the case and reunification, [H.R.B.] stopped taking her prescribed medications in July of 2017, contrary to the closing safety plan. This caused others to be concerned about [H.R.B.'s] mental health which led to a 72-hr hospital hold for [H.R.B.] on April 4, 2018.

> [H.R.B.] agrees that her medication compliance is necessary for [M.I.B.'s] physical, mental, and emotional well-being. [H.R.B.] is committed to taking her medication as prescribed going forward. Not following the recommendations of her mental health providers including stopping her medications is good cause to [terminate] parental rights.

H.R.B. also testified that this statement would be accepted by the district court as the factual basis for TPR.

The district court found that clear and convincing evidence existed to support TPR on the basis that H.R.B. was palpably unfit to parent M.I.B. Pursuant to the parties' agreement, the district court stayed entry of adjudication for up to 180 days on the condition that H.R.B. fully cooperate and comply with conditions set forth in Exhibit A to the district court's order. The district court also provided that "[a]ny final entry of adjudication as to [H.R.B.] must occur after a hearing before the [c]ourt or by a voluntary petition filed by [H.R.B.]"

ACSS moved to revoke the stay in August 2019 due to H.R.B.'s failure to comply with the conditions of Exhibit A. ACSS's motion to revoke was primarily based on two related incidents that occurred on July 26, 2019. In the first incident, H.R.B. became agitated and confrontational during a parent-teacher conference at M.I.B.'s school. During the conference, H.R.B. made disconcerting comments about "the system," slammed a pen or pencil on the table, paced around the room, and used profanity towards M.I.B.'s foster mother. H.R.B. ended the conference early and left with M.I.B., who was crying.

In response to this first incident, a social worker and the guardian ad litem (GAL) visited H.R.B. at her home later that day. H.R.B. displayed similar behavior, this time

using profanity towards the social worker and M.I.B. When H.R.B. would not deescalate her behavior, the social worker and GAL removed M.I.B. from the home.

Following hearings on ACSS's revocation motion, the district court revoked the stay and terminated H.R.B.'s parental rights. H.R.B. appealed, asserting that the district court violated her right to due process and made clearly erroneous findings of fact. During oral argument on H.R.B.'s first appeal, she asserted that the district court incorrectly applied a presumption of palpable unfitness. We agreed, noting that the presumption applied when a parent has had their parental rights to other children involuntarily terminated, which did not occur here.

We noted that, due to the district court's error, we could not determine based on the record whether clear and convincing evidence supported TPR on the basis of H.R.B.'s palpable unfitness. Accordingly, we reversed and remanded in order "for the district court to make findings consistent with [the order] opinion and to reopen the record if, in its discretion, it believes it necessary to make the required findings of fact." Due to the dispositive nature of the district court's error, we did not reach the other issues H.R.B. raised in her initial appeal.

Following remand, the district court ordered additional briefing from the parties regarding whether the district court should reopen the record, and if so, what additional evidence—along with an offer of proof—the parties proposed to submit. In her brief to the district court, H.R.B. took the position that "the record is complete and does not need to be reopened." ACSS took the same position. Therefore, the district court issued amended

findings of fact and conclusions of law, in which it terminated H.R.B.'s parental rights on the statutory basis that she was palpably unfit to parent M.I.B. This appeal followed.

D E C I S I O N

I. Due process

H.R.B. first argues that the district court denied her right to due process by not holding an evidentiary hearing de novo following remand from this court. "The due process standard in parental-termination proceedings embodies the notion of fundamental fairness. Fundamental fairness guarantees a parent facing termination proceedings a right to a meaningful adversarial hearing." *In re Child of P.T.*, 657 N.W.2d 577, 587-88 (Minn. App. 2003) (citation omitted), *review denied* (Minn. Apr. 15, 2003). Whether the district court violated H.R.B.'s right to due process presents a question of law, which we review de novo. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008) (citation omitted).

H.R.B. takes the position that when this court reversed and remanded to the district court for additional findings, her parental rights were effectively restored. Therefore, a new trial needed to be held before her parental rights could be terminated. *See* Minn. Stat. § 260C.307, subd. 2 (2018) (stating that "[t]he termination of parental rights . . . shall be made only after a hearing before the court"). However, H.R.B. does not accurately construe the effect of our prior order opinion.

We did not direct the district court to hold a new trial on ACSS's TPR petition. Instead, we directed the district court "to make findings consistent with this opinion and to reopen the record if, in its discretion, it believes it necessary to make the required findings

of fact . . . However, by our decision, we do not suggest that the district court should alter [M.I.B.'s] out-of-home placement."

In the preceding paragraph of the order, after reciting that we could still affirm the TPR if clear and convincing evidence supported the statutory basis for termination, we stated that "[w]e cannot determine on this record whether the county met this burden without the presumption that the district court applied." Therefore, we did not vacate the prior proceedings, but instead directed the district court to make additional findings that did not apply the presumption of palpable unfitness. Because the termination of H.R.B.'s parental rights occurred after a meaningful adversarial hearing, her right to due process was not violated.

II. Revocation and termination

H.R.B. next argues that the district court erred by revoking her stay of adjudication and finding that TPR was warranted on the statutory basis that she is palpably unfit to parent. If a district court determines that a parent has violated the conditions of a stay of termination, it must next determine "whether the violation warrants revocation." *D.F.*, 752 N.W.2d at 95. We review the district court's finding that H.R.B. violated the terms of the stay for clear error. *See id.* at 96. "[W]e will not reverse the district court's decision to revoke a conditional stay of a voluntary termination of parental rights absent an abuse of that discretion." *Id.* at 95.[1]

[1] In *D.F.*, we treated the stay as a voluntary termination because the parents admitted to the factual basis and agreed to TPR on that admitted basis. 752 N.W.2d at 95.

A. Revocation

The district court found by clear and convincing evidence that H.R.B. violated the conditions of the stay. While the district court did not specifically identify the terms H.R.B. violated, it found that "[b]ased off of the events that took place on July 26, 2019 and [H.R.B.'s] own testimony, it is clear that [H.R.B.] was not compliant with the terms of the agreement." In a previous finding, the district court stated that H.R.B. "is compliant with her medication and continues to struggle with consistent basic cooperation with service providers as evidenced by the July 26, 2019 meeting at Headstart and [H.R.B.'s] behavior with [the social worker] and [GAL] later that day."

Under the terms of the stay of adjudication, H.R.B. agreed to "[w]ork cooperatively with ACSS and GAL" and also agreed to "[r]espectfully communicate with [M.I.B.'s] teachers at Headstart." Because it is established in the record that H.R.B. acted disrespectfully at the parent-teacher conference at Headstart and did not cooperate with the social worker and GAL later that day, the district court did not clearly err by finding that H.R.B.'s behavior on July 26 constituted a violation of the terms of the stay.

B. Timing of revocation

H.R.B. next claims that the district court abused its discretion by terminating her parental rights because it did not find that the conditions supporting termination existed at the time of the hearing. "[R]evocation of a stay requires a sufficient evidentiary basis to establish the existence of conditions that satisfy a statutory ground for termination of parental rights when the revocation occurs." *Id*. at 94.

Because of the remand for additional findings, H.R.B. asserts that the district court needed to make findings that TPR was warranted as of the time the matter was remanded to the district court. H.R.B. relies on *In re Welfare of Chosa* for the proposition that "evidence relating to termination must address conditions that exist at the time of the hearing." 290 N.W.2d 766, 769 (Minn. 1980).

In its amended TPR order issued following remand, the district court noted that it held evidentiary hearings on September 11, September 26, and October 23, 2019. The district court then observed that following remand both ACSS and H.R.B. argued that the record should not be reopened, and the district court accordingly ordered that the record was closed as of April 23, 2020—the date that H.R.B. submitted her argument that the record should not be reopened. Therefore, consistent with *Welfare of Chosa*, the district court's amended order terminating H.R.B.'s parental rights was based on evidence existing at the time of the termination hearings, which were held in September and October 2019.

C. Palpable Unfitness

H.R.B. argues that the district court's order terminating her parental rights on the statutory basis of palpable unfitness was not based on clear and convincing evidence. Appellate courts "defer to the district court's decision to terminate parental rights. Therefore, if at least one statutory ground alleged in the petition is supported by clear and convincing evidence and termination of parental rights is in the child's best interests, [appellate courts] will affirm." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008) (citation omitted). Appellate courts review the district court's findings of

fact for clear error, and whether a statutory basis for TPR exists for an abuse of discretion. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012).

In essence, H.R.B. claims that the district court based its determination entirely on the July 26 incident, which she asserts is insufficient to support a palpable-unfitness determination. A district court may order TPR on the basis that

> a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4) (2018).

The district court based its determination that H.R.B. was palpably unfit to be a party to the parent-child relationship on the following findings. "Despite [H.R.B.'s] compliance with her medication, therapy, psychiatry, and all other recommended services, [the social worker and GAL] both remain concerned about [H.R.B.'s] mental health. [H.R.B.] still experiences struggles with her mental health that significantly affect her ability to parent" M.I.B. M.I.B. "has consistently reported to [the GAL] and others that she does not want to return to" H.R.B.

The social worker testified that "she does not believe that [H.R.B.] has addressed the issues that would allow [M.I.B.] to be brought back into" H.R.B's care. H.R.B. "is focused on her own needs and not [M.I.B.'s] specific and important needs." "Despite [the] years of services she has received, [H.R.B.] has not progressed and still is unable to manage

her mental health." H.R.B.'s "inability to control her physical and verbal reactions in moments of mental health stress are detrimental to her relationship with" M.I.B.

Ultimately, the district court concluded that H.R.B. "is unable to care appropriately for the ongoing physical, mental or emotional needs of [M.I.B.] There is substantial evidence that [H.R.B.'s] mental health impedes her ability to parent" M.I.B., and that H.R.B.'s "inability to realize the impact her behavior has on [M.I.B.] will likely persist into the reasonably foreseeable future."

These findings adequately support the statutory criteria for TPR on the basis of palpable unfitness, namely, that specific conditions directly relating to the parent and child relationship render H.R.B. unable to care appropriately for the ongoing physical, mental, or emotional needs of M.I.B. for the reasonably foreseeable future. Minn. Stat. § 260C.301, subd. 1(b)(4). Therefore, the district court did not abuse its discretion by terminating H.R.B.'s parental rights on the basis of her palpable unfitness to be a party to the parent-child relationship.

D. M.I.B.'s best interests

H.R.B. also asserts that the district court erred by determining that TPR is in M.I.B.'s best interests. "[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). Appellate courts review a district court's determination

that TPR is in a child's best interests for an abuse of discretion. *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 657 (Minn. App. 2018).

H.R.B. argues that the district court failed to make specific findings and improperly relied on M.I.B.'s preferences because M.I.B. was five years old at the time of the hearings. *See In re Klugman*, 97 N.W.2d 425, 431 (Minn. 1959) ("The preference of a child who is of sufficient age to exercise discretion in choosing its custodian is entitled to considerable weight . . . but it is not controlling. Where the child is too young to choose with discretion, its preferences have little or no weight." (quotation omitted.)). Here, the district court made multiple findings that M.I.B.'s interest in TPR outweighed H.R.B.'s interest in preserving the parent-child relationship, which were based largely on credibility determinations.

The GAL testified that it is in M.I.B.'s best interests that H.R.B.'s rights be terminated. The social worker also testified that termination is in M.I.B.'s best interests. The district court stated that despite H.R.B.'s "clear interest in continuing to parent [M.I.B.,] the [c]ourt finds the testimony regarding [M.I.B.'s] interests in termination [of] parental rights more compelling." If, as here, a statutory basis for the TPR exists, M.I.B.'s best interests become the paramount consideration. Minn. Stat. § 260C.301, subd. 7 (2018). Therefore, the district court did not abuse its discretion by determining that TPR is in M.I.B.'s best interests.

III. Reasonable Efforts

Finally, H.R.B. argues that ACSS did not make reasonable efforts to reunify the family. Appellate courts will affirm a district court's TPR order "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) (citation omitted); *see also* Minn. Stat. § 260.012(a) (2018). We review the district court's determination that ACSS made reasonable efforts to reunite the family for an abuse of discretion. *See In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 323 (Minn. App. 2015), *review denied* (Minn. July 20, 2015).

H.R.B. argues that the district court abused its discretion because ACSS: did not communicate with H.R.B.'s mental-health workers; stopped providing services following the July 26 incident; and did not allow H.R.B. to have lengthy visits with M.I.B. District courts are required to consider the following factors to determine whether the services provided 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) (2018).

Here, the district court made numerous findings regarding ACSS's efforts to reunify the family. The district court found that ACSS "has recommended medication management, therapies, and other services for [H.R.B.]. [ACSS,] through the recommendations and conditions outlined in Exhibit A, reasonably targeted services and recommendations for the family to be reunified. The [c]ourt finds that these efforts were adequate to meet the needs of this family."

In addition, the district court found that "ACSS and [the] GAL have exhausted all available resources and services in an effort to reunite" the family. The district court found

that H.R.B. regularly met with her social worker and the GAL, and that all three met with H.R.B.'s psychiatrist in a group setting. The district court also found that "[t]o address her mental health, [H.R.B.] uses Bridgeview; works with an ARMHS Worker, with whom she is currently doing DBT skills; sees her therapist and psychiatrist; takes her medication . . . and has regular contact with her mental health case manager."

The district court acknowledged H.R.B.'s testimony that ACSS and the GAL do not promptly respond to her, but then found that the social worker testified that "she responds to [H.R.B.'s] emails and texts as soon as she can and has done everything that she can to respect [H.R.B's] beliefs and opinions," and noted that copies of responses to some of H.R.B.'s communications were offered into evidence. The district court noted that a trial home visit was set to take place in August, 2019, but that plan was altered by the July 26 incident. Finally, regarding H.R.B.'s contention that ACSS stopped services, the district court found that H.R.B. "continues to engage in services" and that H.R.B. "has services in place but nothing is helping." In light of these findings, the district court did not abuse its discretion by finding that ACSS provided reasonable efforts to reunify the family.

Affirmed.