STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2116

In the Matter of the Welfare of the Children of: L. S. F., Parent.

Filed April 26, 2011
Affirmed
Kalitowski, Judge

Washington County District Court
File No. 82-JV-10-495

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Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and Randall, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

KALITOWSKI, Judge

On appeal from the district court's order transferring legal custody of her children, A.J. and A.R., appellant L.S.F. asserts that there was not clear and convincing evidence to support the transfer of custody of the children to their fathers, arguing that (1) Washington County Community Services failed to make adequate efforts to reunify the children with her; (2) she successfully used the services provided to her by the county to correct the conditions that led to the out-of-home placement of her children; and (3) there is a substantial probability that the children will be able to return to her in the next six months. L.S.F. also argues that the record does not support the findings that transfer is in her children's best interests because the children's fathers are not suitable custodians. We affirm.

D E C I S I O N

After adjudicating a child in need of protection and placing the child in foster care, a district court can transfer permanent legal and physical custody to a relative of the child if it is in the child's best interests. Minn. Stat. § 260C.201, subd. 11(d)(1) (2010). An order permanently placing a child outside the home of a parent or guardian must address (1) how the placement serves the child's best interests; (2) the nature and extent of the responsible social service agency's reasonable reunification efforts; (3) the ability and efforts of the parent to use services to correct the conditions leading to the out-of-home placement; and (4) whether the conditions leading to the placement have been corrected so that the child can safely return home. *Id.*, subd. 11(i) (2010). When a district court

grants custody of a child to a relative, the district court must also review the suitability of the prospective custodian. *Id*., subd. 11(d)(1)(i).

I.

L.S.F. argues that the evidence is insufficient to satisfy the statutory criteria and support the transfer of custody of her children. The allegations supporting permanent placement must be proven by clear and convincing evidence. *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996). When reviewing a permanent-placement order, we determine whether the district court's findings address the statutory criteria and are supported by substantial evidence or whether they are clearly erroneous. *Id.* We view the record in the light most favorable to the findings and must not disturb the district court's findings absent a firm and definite conviction that a mistake was made. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). We do not independently weigh the evidence or draw contrary conclusions about witness credibility. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

The County's Efforts to Reunite L.S.F. with Her Children

L.S.F. argues that the county did not make reasonable efforts to reunify her with the children. We disagree.

"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) (2010). To determine whether reasonable efforts were made, a district court considers various factors, including the services' relevance to the safety and protection of the child,

adequacy in meeting the family's needs, availability, accessibility, and consistency. Minn. Stat. § 260.012(h) (2010). At a minimum, reasonable efforts requires the appropriate agency to provide services that would assist in alleviating the conditions leading to the determination that a child is in need of protective services. *In re Welfare of M.A.*, 408 N.W.2d 227, 235-36 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987).

The county created an out-of-home placement plan for L.S.F. and provided her with many services to address her mental-health needs, including psychological evaluation, psychiatric consultation, individual therapy, and in-home parenting assessments. The county provided L.S.F. with transportation to the supervised visits and family court hearings, as well as to her criminal, guardianship, and eviction hearings. The county transported L.S.F. to visits with her children early so that L.S.F. could search for a job at the workforce center and make use of the center's phone to arrange job interviews. The county also provided L.S.F. with a cell phone and maintained contact with her by e-mail. When L.S.F. indicated that she had no money for food, the county provided L.S.F. with two bags of groceries, two grocery cards to obtain food, and offered L.S.F. transportation to the food shelf.

L.S.F. argues that "very little was done to inform [her] about the various medications available to treat her mental illness." But the record indicates that when the mental-health professionals who evaluated and treated L.S.F. attempted to discuss medication with L.S.F. she became aggressively resistant to the discussion, adamantly denied having mental-health issues, and refused to take medication. L.S.F. was given a medical-provider opinion form so that she could apply for financial benefits after she was

diagnosed by a psychiatrist or psychologist, but L.S.F. never applied for benefits because she denied her diagnosis of mental illness.

We conclude that the record contains sufficient evidence to support the district court's determination that the county made reasonable efforts to reunify L.S.F. with the children.

L.S.F.'s Use of the Services Provided to Her by the County

L.S.F. argues that she successfully used the services provided to her by the county to correct the conditions that led to the out-of-home placement of her children. We disagree.

The county arranged for an in-home family therapist to conduct a parenting assessment of L.S.F. The therapist supervised three visits between the children and L.S.F. and met with L.S.F. individually. At trial, the therapist testified that interviewing L.S.F. was difficult, and she "believe[s] that there is a mental illness that is going on with [L.S.F.] at this point in time." During the interviews, L.S.F. wanted to talk about her fears and paranoia that there are cameras in her house, that people are always out to get her, and that she cannot trust anyone. During the second supervised visit, L.S.F. also "went on and on, pretty much in a monologue," about how there were people who were going to beat up A.R. and that it was A.J.'s job to take care of A.R. and protect her.

The therapist expressed concern about L.S.F.'s family support system, based on L.S.F.'s delusions that L.S.F.'s mother is not actually her biological mother and that L.S.F. is actually the mother of some of her siblings. The therapist testified that L.S.F.'s history of homelessness, mental-health issues, and lack of insight into her mental-health

needs are all risk factors that affect L.S.F.'s ability to parent. The therapist observed that A.J. took on more of a parental role than a child her age normally would: A.J. monitored L.S.F.'s eating and sleeping and knew how to care for A.R. The therapist opined that L.S.F. cannot safely parent her children now or in the foreseeable future.

The county also arranged for L.S.F. to have a psychological evaluation done by Dr. Liliana Freire-Bebeau. Dr. Freire-Bebeau opined that during the clinical interviews, L.S.F. exhibited acute symptoms of schizophrenia: she was extremely guarded, very difficult to direct, had difficulty staying focused, usually took a long time to answer questions if she provided an answer at all, and was paranoid and suspicious. L.S.F. also exhibited to Dr. Freire-Bebeau her delusions about her mother, giving birth to additional children, and giving birth to her own siblings.

Dr. Freire-Bebeau diagnosed L.S.F. with schizophrenia, paranoid-type, and opined that at the time of her evaluation L.S.F. did not have the psychological capacity to parent her children. Dr. Freire-Bebeau indicated that L.S.F.'s delusions were particular to L.S.F.'s family members and other individuals who could help her, which would likely result in L.S.F. rejecting any efforts to help or support her. Dr. Freire-Bebeau recommended six months of consistent psychiatric treatment, including medication, before having unsupervised contact with her children. But Dr. Freire-Bebeau testified that L.S.F.'s prognosis was very poor because L.S.F. is resistant to services, refuses to take medication, and lacks insight into her illness.

L.S.F. argues that the district court erred in finding Dr. Freire-Bebeau's opinion credible that L.S.F. would not be able to successfully parent her children without

medication because Dr. Freire-Bebeau did not have "any information regarding the current status of the children [who] were predominately parented by [L.S.F.]." But this court defers to the credibility determinations of the district court. *Sefkow*, 427 N.W.2d at 210. Furthermore, the county's social worker and in-house therapist, who did have an opportunity to observe L.S.F.'s parenting skills, had similar opinions of L.S.F.'s capacity to parent.

As part of L.S.F.'s case plan, Dr. Daniel Johnson, a licensed clinical psychologist, provided six sessions of individual therapy to L.S.F. At trial, Dr. Johnson testified that his plan was to help LS.F. gain insight into the symptoms of her mental-health issues and move toward accepting medication as treatment. Dr. Johnson testified that L.S.F. had not yet made any progress in therapy, and when he attempted to discuss medication with her she became defensive and angry. Dr. Johnson testified that further therapy would not relieve L.S.F.'s symptoms without medication and that he had discussed with L.S.F. the possibility that she would be able to retain custody of her children and alleviate her delusions if she took medication. But L.S.F. refused nonetheless, maintaining that she is not mentally ill.

The county provided supervised visits between L.S.F. and the children twice a week for a total of 48 visits. The purpose of the visits was for L.S.F. to interact with her children during the hour but the record indicates that L.S.F. engaged in unrelated activities during many of the visits. L.S.F. had to be warned during 13 of the visits to stop her comments about giving birth to additional children, that people were "doing

fraud" in her and her children's names, that they would be returning home soon, and that the girls' fathers were not actually their fathers.

Finally, L.S.F. repeatedly made statements reflecting her ongoing delusions at trial. She testified that she has been the victim of identity theft; people have impersonated her; people have changed her date of birth; she has given birth to additional children who were abducted at birth; her children were switched at birth; her children were kidnapped and molested; people have tried to murder and rape her and sexually abuse her daughters; she is the real mother of some of her siblings; there are ongoing cover-ups by people trying to kill or harm her; and her children's fathers are not really their biological fathers.

L.S.F. has adamantly denied having mental-health issues, has refused to take medication, and does not recognize that her beliefs about her family are delusional. We conclude that the record contains sufficient evidence to support the district court's determination that L.S.F. did not successfully use the services provided to her by the county.

Likelihood that Children Can Return Home Safely

L.S.F. argues that "there is a substantial probability that the children will be able to return home" to her in the foreseeable future. To support this argument, L.S.F. states that the children were removed from her care because of a single incident on December 18, 2009, when police were called to her residence by A.J., who had a bloody nose after being struck by L.S.F. L.S.F. contends that there was no testimony at trial to indicate that this incident was a result of, or even related to, her delusions. Thus, she

argues that medication is not necessary to correct her parenting, and the children could be returned to her "following parenting classes to educate her on proper discipline." We disagree.

The record indicates that concerns about the children's physical safety and emotional well-being also contributed to their removal. And although L.S.F. has been the primary care provider, the record shows that other family members provided care and support to the children over the years, including their fathers and L.S.F.'s mother. D.D.R., the father of A.R., lived with L.S.F. for five years and testified that recently L.S.F.'s condition has made him fearful for the safety of his child.

Moreover, Dr. Freire-Bebeau stated that she was concerned that at the time of her evaluation, L.S.F. was "extremely rejecting her mother's assistance," and "was very isolative . . . and refused any kind of opinion that would help her get [necessary] services." Dr. Freire-Bebeau also reported that L.S.F.'s delusions occur even when her cognitive and intellectual abilities remain relatively intact, and L.S.F.'s delusions create significant concerns regarding the safety and well-being of the children.

We conclude that the record contains clear and convincing evidence to support the district court's determination that the conditions leading to the out-of-home placement have not been sufficiently corrected to allow the children to safely return to L.S.F.

II.

L.S.F. argues that transferring permanent legal and physical custody of A.J. and A.R. to their respective fathers is not in the children's best interests because the fathers are not suitable as permanent custodians. We disagree.

When transferring permanent legal and physical custody to a relative, the district court must review the suitability of the prospective custodian. Minn. Stat. § 260C.201, subd. 11(d)(1)(i). Placement decisions are guided by multiple factors, including the children's history and past experience, current functioning and behaviors, medical and educational needs, and relationship to current caretakers. Minn. Stat. § 260C.212, subd. 2(b) (2010). The state has the burden of proving by clear-and-convincing evidence that a transfer of legal and physical custody to a particular custodian is in the best interests of the children. *See In re Children of T.A.A.*, 702 N.W.2d 703, 709 (Minn. 2005) (discussing burden of proof for termination of parental rights); *A.R.G.-B.*, 551 N.W.2d at 261 (stating that standard of proof is the same for permanent transfer of custody and termination of parental rights).

An order permanently placing a child outside of the custodial parent's home requires "detailed findings" on "how the child's best interests are served by the order." Minn. Stat. § 260C.201, subd. 11(i). The best interests of the child include "all relevant factors to be considered and evaluated." *Id*., subd. 11(c)(2) (2010). A district court's best-interests findings should provide insight into the facts and opinions most persuasive of the court's decision. *In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990). The law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness*, 607 N.W.2d at 477. It is inappropriate for an appellate court to comb "through the record to determine best interests . . . because it involves credibility determinations." *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003).

The county assessed the children's fathers for their suitability as permanent custodians. Both the county social worker and in-home family therapist determined that placing the children with their fathers was appropriate and in the children's best interests.

Suitability of A.J.'s Father

B.R.J., father of A.J., has maintained contact with A.J. throughout her life. He attended her school conferences and enrolled her in basketball for the past three years. A.J. previously lived with B.R.J. for approximately a year, which included the 2008 school year. After the county social worker inspected B.R.J.'s home, A.J. was placed with him in April 2010. The social worker visited A.J. and her father in their home. The family therapist and social worker observed that B.R.J. and A.J. have a close relationship with each other. B.R.J. testified that he is employed part time, that when he is at work he arranges for his family members to care for A.J., and that she is active in after-school programs. Significantly, 11-year-old A.J. told both the in-home family therapist and the social worker that she would like to live with her father.

L.S.F. claims that she did not have a sexual relationship with B.R.J. and that he is not the father of A.J. But B.R.J. was present at the birth of A.J. and signed a recognition of paternal rights at that time. In addition, A.J. was given the same last name as B.R.J., and L.S.F. treated B.R.J. as the father of A.J., facilitating his parenting time and accepting money and clothing from him for A.J.

Suitability of A.R.'s Father

D.D.R., father of A.R., lived with L.S.F. for a period of five years, including after the birth of A.R. He separated from L.S.F. approximately two years ago. Although he

contacted L.S.F. regularly, she limited his visits with A.R. After A.R. was placed with D.D.R. in May, the social worker visited his home and observed him with A.R. The social worker testified that D.D.R.'s housing was satisfactory and that the relationship between D.D.R. and A.R. was "very comfortable." In addition, A.R.'s guardian ad litem visited A.R. twice at D.D.R.'s home and observed that the child was happy and that A.R.'s speech delays improved after she began living with D.D.R.

L.S.F. claims that she did not have a sexual relationship with D.D.R. and that he is not the father of A.R. But A.R. was given the same last name as D.D.R., and completed DNA paternity testing arranged by the county, which confirmed that he is A.R.'s biological father.

At trial, D.D.R. explained an incident that occurred in October 2009 that L.S.F. argues undermines D.D.R.'s fitness to parent A.R. D.D.R. testified that L.S.F. asked D.D.R. to come to her apartment late at night because she thought someone was trying to break in. D.D.R. testified that he had been drinking and had his cousin drive him to L.S.F.'s apartment where he decided to spend the night. D.D.R. stated that he was awakened around 6:00 a.m. and that L.S.F. was "going crazy," yelling at the children and telling them to put their clothes on. Believing that his daughter was in a "dangerous environment," D.D.R. stated that he left the apartment with A.R., who was dressed only in a diaper. L.S.F. was on the phone with the police when D.D.R. knocked the phone out of her hand. D.D.R. put A.J. in the car but did not put her in a car seat and drove away. D.D.R. was subsequently stopped by police and was given a preliminary breath test that revealed an alcohol concentration over the legal limit. D.D.R. testified that he was not

drunk at that time but that the alcohol was "still in [his] system." D.D.R. pleaded guilty to a driving-while-impaired charge and interfering with a police call, and all other charges were dropped.

L.S.F. argues that this incident demonstrates that D.D.R. is not a suitable custodian for A.R. But the social worker testified that she contacted D.D.R.'s probation officer and learned that he is currently on a low level of supervision and has been cooperative in completing the terms of his DWI sentence. And the social worker completed a criminal background check on D.D.R., and testified that she had no concerns about his ability to parent.

We conclude that the record contains sufficient evidence to support the district court's determination that both fathers are suitable permanent custodians and that the transfer of custody of the children to their fathers is in the children's best interests.

Affirmed.