STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2297
A10-2302

In the Matter of the Welfare of the Children of:
B. M. and J. M., Parents.

Filed June 6, 2011
Affirmed
Halbrooks, Judge

Ramsey County District Court
File No. 62-JV-10-992

Patrick D. McGee, St. Paul, Minnesota (for appellant B.M.)

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James Laurence, St. Paul, Minnesota (for guardian ad litem)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and Collins, Judge.*

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

HALBROOKS, Judge

In this consolidated appeal, mother and father challenge the termination of their parental rights to their two children, Z.M. and J.M. Because there is substantial evidence

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

in the record to support the district court's findings that establish at least one of the statutory grounds for termination and because termination is in the children's best interests, we affirm.

FACTS

Mother and father were married in early 2008. In spring 2008, mother's son from an earlier relationship, J.J. (then age 7), and mother got into a physical fight. In breaking up the fight, father hit J.J. in the face, leaving a bruise. Because mother did not want social services to become involved, she kept J.J. home from school. But the bruise and the cause of it were discovered when J.J. returned to school. When questioned about the bruise, mother at first told the police that J.J. had fallen and that she kept J.J. home from school due to a stomachache. But father and mother both eventually admitted to the incident. Father was charged with and pleaded guilty to malicious punishment of a child.

Z.M. was born in January 2009. At a routine well-child checkup when Z.M. was 12 days old, the pediatrician discovered a significant bruise on her side. The pediatrician had Z.M. assessed by Midwest Children's Resource Center (MCRC), and the provider there determined that the bruise was suspicious for child abuse. Mother and father were both questioned about the bruise, but neither could provide a plausible explanation. Mother stated to the police that if she had seen the bruise before the doctor's appointment, she would not have brought Z.M. in for her checkup. There was ultimately a determination of maltreatment by father.

As a result of this second determination of maltreatment against father in less than a year, Z.M. was placed out of the home. Respondent Ramsey County Community

Human Services Department initiated a child-in-need-of-protection-or-services (CHIPS) proceeding. Z.M. was adjudicated CHIPS and was placed in foster care. The county contracted with REM Minnesota Community Services to provide in-home supervision of visitation between the parents and Z.M., and a guardian ad litem (GAL) was assigned for all three of mother's children (Z.M., J.J., and S.V.—who was 11 at the time).

During the summer of 2009, supervised visits between Z.M. and mother and father went well, although the GAL had some areas of concern. In particular, the GAL noted that the parents did not have a permanent address or employment, that father was dealing with mental-health issues, and that the parents were "defensive when presented with some parenting skills," "have challenges with blending their families," and "have challenges with making correct parenting decisions when they are under stress." Despite these concerns, mother and father began having unsupervised visits in August 2009.

In September, mother reported to the REM case worker that the previous visit was particularly stressful. Mother showed the worker a bruise on Z.M.'s head that she claimed Z.M. got by falling on a toy drum. Z.M.'s foster mother brought Z.M. to MCRC the day after Z.M. was returned to her care, but the medical provider who looked at Z.M. did not find that there had been maltreatment. Unsupervised visits were discontinued at that time.

REM continued to supervise visits in mother and father's home until November 9, 2009. During a visit on November 9, father stayed in the bedroom and did not interact with Z.M. Father eventually came out of the bedroom and began arguing with the case worker. At this same visit, mother showed the worker a broken entertainment center and

indicated that father had recently damaged it when he threw a chair at it. Following this visit, REM was no longer willing to supervise visits at mother and father's home.

On December 11, 2009, mother and father had another child, J.M., who was immediately placed with the foster family that cared for Z.M. While mother was still in the hospital, father sought medical treatment for himself in the emergency room, leaving mother's two older children, S.V. (then 12 years old) and J.J. (then 9 years old), home alone. J.J.'s father discovered that the boys were home alone, unsure of when an adult might be returning.

On January 6, 2010, there was an incident during a supervised visit at a Ramsey County building. Mother and father got into a loud argument with the case workers and each other. Appellants slammed doors and were boisterous to the point that one of the case workers called the deputy sheriffs to assist with terminating the visit. As a result of this incident, REM canceled all services to the family—even those in public places. Based on the December 2009 and January 2010 incidents, the county recommended that S.V. and J.J. be removed from mother's home.

On March 19, 2010, the county petitioned to terminate the parental rights of mother and father to Z.M. and J.M. The county alleged that mother and father are palpably unfit to be parents, that they had both failed to comply with the duties imposed upon them by the parent-child relationship, that the children were neglected and in foster care, and that the parents had failed to correct the conditions leading to the children's placement. After a three-day termination-of-parental-rights (TPR) trial in September and October 2010, the district court terminated mother and father's parental rights to Z.M.

and J.M. The district court found that the county had proven all four alleged statutory grounds by clear-and-convincing evidence and that termination is in the best interests of the children. Appellants moved for amended findings of fact and a new trial, which the district court denied. This appeal follows.

D E C I S I O N

I.

We first address whether the district court erred in concluding that there is a statutory ground supporting termination. This court examines a TPR matter to "determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). Appellate courts "give considerable deference to the district court's decision to terminate parental rights" but "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *Id.* This court will review the record in the light most favorable to the district court's factual findings, which will be set aside only if a review of the entire record leaves the "definite and firm conviction that a mistake has been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotation omitted). Only one statutory ground listed in Minn. Stat. § 260C.301 must be established to support a TPR. Minn. Stat. § 260C.301, subd. 1(b) (2010).

The district court concluded that the county had proven all four statutory grounds for termination with respect to both father and mother. On appeal, both father and mother argue that the district court erred in finding that the county proved the statutory

grounds by clear-and-convincing evidence. We disagree. The child-protection statutes provide, as one ground for termination, that parental rights may be terminated if, "following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). We conclude that there is substantial evidence in the record to support the district court's findings that both father and mother failed to correct the conditions that led to the out-of-home placement, despite respondent's reasonable efforts.

"Reasonable efforts" are defined as "the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services" to meet the specific needs of the child and the child's family in order to reunify the family. Minn. Stat. § 260.012(f) (2010); *see also In re Welfare of M.A.*, 408 N.W.2d 227, 235-36 (Minn. App. 1987) (describing minimum reasonable-efforts requirements as those that "would assist in alleviating the conditions leading to the determination of dependency"), *review denied* (Minn. Sept. 18, 1987). The district court found that the county made reasonable efforts to prevent placement. This finding is not clearly erroneous, nor do the parties argue on appeal that the efforts made were not reasonable. The question is whether the parents actually corrected the conditions that led to the children's out-of-home placement.

Father's maltreatment of Z.M., in light of his earlier conviction of malicious punishment of J.J., led to the out-of-home placements of Z.M. and J.M. The district court found that "[father] has demonstrated a propensity toward physical violence, verbal

abuse, and other angry, threatening and intimidating conduct." The district court noted that father has "smashed furniture in the home," that he "has had loud and angry exchanges with [mother] in the presence of others including the children," that he "was threatening and hostile toward [an] REM in-home parenting counselor," that he "has attempted suicide or threatened to kill or injure himself a dozen times, two times with a knife and as many as ten times with pills," and that his "angry outbursts and hostility led to supervised visits being held at Ramsey County offices and monitored by Sheriff's Deputies." All of these findings have substantial support in the record and demonstrate that father has failed to successfully deal with his anger issues and propensity to violence—despite almost two years of therapy and other services. We therefore conclude that the county proved by clear-and-convincing evidence that father failed to correct the conditions that led to the out-of-home placement.

Although there is no evidence that mother participated in the physical abuse of her children, there is substantial evidence in the record that she failed to prove that she could keep her children safe from father. The district court found that "[mother] has a history of failing to provide a safe, secure, healthy and stable home for her children." In particular, the district court noted that

> [mother] knew [father] had slapped her 7-year-old son and bruised the boy's face. She attempted to cover for [father] by keeping the boy home from school so school officials would not see the bruising on his face. When questioned by the police, [mother] first said [J.J.] sustained the injury when he fell while playing. She also said she kept him home from school because his stomach hurt[.]

The district court also noted that "[mother] admitted that if she had been aware of [Z.M.]'s injury, she would not have taken the child in for her January 26th check-up" and that "[mother] continues to support and/or join [father] in his denial of child abuse, preferring to protect him rather than ensure her children are protected from him and future abuse." The district court found that mother's "continuing relationship with [father], . . . and her own failure to satisfactorily benefit from recommended services have continued the likelihood that the children will be victimized by physical abuse."

These findings are supported by the testimony of the many professionals involved in mother's case. The psychologist who assessed mother's parenting abilities testified that he "would be concerned about protection of the children" based on the fact that father was "emotionally and behaviorally out of control and that [mother] didn't intervene on behalf of the children in terms of getting them out of that situation." The social worker testified that she "truly believe[s] that [mother] could not protect those two smaller children if [father] was actually going into a rage and the children would go into their behaviors. It's too much for any parent—for her to handle." The social worker also explained that each time it seemed as though the parents were moving forward with their case plans, there would be a setback. She testified that the

> children have been out of [the] home . . . almost two years. This has been a long process. [Father] and [mother] have been given every service, every reasonable effort to re-unite these children with them. . . . [T]he safety issues are still a major concern to [me].

She agreed that "at this time . . . [Z.M.] and [J.M.]'s need for a permanent, stable home outweigh[s] the [parent]'s desire to parent them."

In addition, mother failed to demonstrate to the professionals during supervised visitations that she would respond to input and suggestions about how to keep her children safe. The district court noted that mother inappropriately lifted Z.M. by her arms and was dismissive when presented with literature about shaken-baby syndrome. The district court found that "[mother]'s continuing mistrust of, and antagonism for service providers, child protection professionals, law enforcement and for the foster parents, and her hostility toward the fathers of her older boys, ensures the isolation of children in her care if another instance of abuse occurs." Mother was given numerous opportunities to show the professionals involved in her case that she could act independently from father and prove that she has the capacity to protect her children; instead, she covered up his deceit and alienated the professionals to the extent that they did not believe that she was capable of parenting her children.

Because the district court's findings are supported by substantial evidence in the record and because these findings support the conclusion that the parents failed to correct the conditions that led to the children's out-of-home placement, we affirm this statutory basis for terminating the parental rights of both mother and father. Because only one statutory ground must be established to support termination of parental rights, we do not review the other grounds relied on by the district court. *See S.E.P.*, 744 N.W.2d at 385 ("We affirm the district court's termination of parental rights 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 . . . .").

II.

Even when there is a statutory basis for terminating a parent's rights, a child's best interests are the paramount consideration. Minn. Stat. § 260C.301, subd. 7 (2010); *In re Children of Vasquez*, 658 N.W.2d 249, 254 (Minn. App. 2003). The Minnesota Rules of Juvenile Protection Procedure mandate a specific best-interests analysis in a TPR order:

> Before ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze: (i) the child's interests in preserving the parent-child relationship; (ii) the parent's interests in preserving the parent-child relationship; and (iii) any competing interests of the child.

Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3).

The district court concluded that "[Z.M.]'s and [J.M.]'s best interests are served by terminating the parent[al] rights of their mother . . . and the parental rights of their father." The district court found that

> [Z.M.] has resided in alternative care since January 26, 2009, since she was 12 days old. [J.M.] has resided in alternative care since December 1[1], 2009, the day he was born. These children need placement in a stable adoptive home with parents willing and able to manage the stress of two high-maintenance children and able to meet their physical and emotional needs. It is clear that [appellants] do not have this ability.

This finding is supported by the fact that father and mother did not have permanent, stable housing throughout the CHIPS process and the TPR trial. While acknowledging the parents' interests in preserving the parent-child relationship, the district court also noted that their relationships with their children were undermined by their anger. The district court found that "[appellants] continue to be hostile and

challenging and more focused on their anger than on complying with the directives of the social worker and the [GAL], service providers, [and] the case plan." The district court implicitly concluded through its findings and analysis that the parents' and the children's interests in preserving their relationship are outweighed by the children's competing interest in being raised in a stable home with parents capable of providing for their needs. In making its best-interests finding, the district court sufficiently analyzed these competing interests. *Cf. In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003) (remanding because the district court made no best-interests findings).

Affirmed.