STATE OF MINNESOTA
IN COURT OF APPEALS
A11-232

In the Matter of the Welfare of the Child of: K.T.

Filed July 25, 2011
Reversed and remanded
Stauber, Judge

Hennepin County District Court
File No. 27JV107260

William Ward, Chief Hennepin County Public Defender, Kellie M. Charles, Assistant Public Defender, Minneapolis, Minnesota (for appellant K.T.)

Michael O. Freeman, Hennepin County Attorney, Cory Carlson, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County)

Bruce Jones, Faegre & Benson, Minneapolis, Minnesota (for guardian ad litem)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Ross, Judge.

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

STAUBER, Judge

On appeal from the denial of her motion to vacate her voluntary termination of her parental rights, appellant-mother argues that the district court abused its discretion by denying her motion because she is entitled to relief under (1) Minn. R. Juv. Prot. P. 46.02 for mistake and because the procedures used in procuring her consent were unjust and (2) Minn. R. Juv. Prot. P. 35.03 to correct a manifest injustice. Because the record does

not conclusively show that appellant truly voluntarily consented to the termination of her parental rights, we reverse and remand.

FACTS

The parental rights of appellant K.T.'s first child were involuntarily terminated by an Iowa court in 2002. In April 2008, L.A. was born to K.T. in Minnesota. Following her birth, L.A. was under the jurisdiction of the Minnesota juvenile court. A case plan was established which K.T. successfully completed, including chemical dependency treatment. In light of K.T.'s compliance with the case plan, the juvenile court terminated its jurisdiction in September 2008.

On August 6, 2010, respondent Hennepin County Human Services and Public Health Department (department) filed another petition to terminate K.T.'s parental rights to L.A. after K.T. relapsed and began using crack cocaine again. Although a case plan was ordered, K.T. neglected to participate in her case plan. Instead, K.T. allegedly continued to use crack cocaine and engage in prostitution to support her addiction.

On October 10, 2010, K.T. injured her back when she jumped out of a "John's" car while it was traveling 20 miles per hour. Two days later, she went to the hospital where she learned she was pregnant. Upon learning of K.T.'s history of chemical dependency and prostitution, hospital staff attempted to place K.T. on a 72-hour hold pending a chemical dependency commitment. K.T., however, left the hospital before the 72-hour hold could be served on her.

K.T. appeared for the termination of parental rights (TPR) trial on October 26, 2010, with her friend Ira Scott. Before trial, K.T. met with her lawyer, who advised her

that if she "went to trial the likelihood was that we would lose because [the attorney] didn't have anything to argue on [K.T.'s] behalf because nothing had been done on the case plan." K.T. also claimed that her attorney advised her that if she did not voluntarily terminate her parental rights to L.A., there would be a presumption of palpable unfitness against her with respect to her unborn child.

At the commencement of trial, K.T. requested a continuance, which was denied. K.T. then signed an affidavit voluntarily terminating her parental rights. Although subsequent discussion on the record clearly indicated that K.T. did not want to move forward with the voluntary termination, the district court issued an order stating that K.T. had voluntarily agreed to terminate her parental rights to L.A. Shortly thereafter, K.T. was "committed as chemically dependent."

On December 7, 2010, K.T. filed a motion to vacate the voluntary termination under Minn. R. Juv. Prot. P. 46.02. At the hearing on K.T.'s motion to vacate, K.T. orally amended the motion to include Minn. R. Juv. Prot P. 35.03, subd. 5(a), as an additional basis to vacate the voluntary termination. The district court found that the "only issue I think has merit is the one about whether she detrimentally relied on . . . bad advice or not." Specifically, the court was concerned that K.T. may have agreed to the termination based on the erroneous advice that if she agreed to the termination, she would not have the presumption of palpable unfitness regarding her unborn child. The district court ordered an evidentiary hearing to fully develop the issue.

At the evidentiary hearing, the attorney who represented K.T. in the TPR proceeding testified that she advised K.T. that agreeing to the termination of her parental

rights to L.A. might be a "practical social working kind of advantage" because the department had been willing to work with her in the past despite the 2002 TPR by the Iowa court. The attorney said that her advice to K.T. was that "if the presumption that was there was so remote and there was no second presumption in the middle" then the department may be more likely to "work with her with regards to the new baby." Affidavits submitted by K.T., her mother, and Scott contradicted the attorney's testimony and indicated that K.T. was advised that if she agreed to the termination, she would be able to keep her unborn child.

The district court found the attorney "to be a credible witness," and that her "legal advice, when viewed in its entirety, was accurate and correct." The court also found K.T.'s affidavit to be incredible, and gave the affidavits submitted by K.T.'s mother and Scott "very little weight." Finally, the court found that "Rule 35.03 does not apply here." Thus, the district court denied K.T.'s motion to vacate. K.T. filed a motion to reconsider, which was denied. This appeal followed.

D E C I S I O N

K.T. challenges the district court's order denying her motion to vacate the voluntary termination order. Generally, a district court has discretion to decide a motion to vacate a judgment, and this court will not disturb a district court's decision absent an abuse of that discretion. *Nelson v. Siebert*, 428 N.W.2d 394, 395 (Minn. 1988).

The Minnesota Rules of Juvenile Protection Procedure provide that a district court may relieve a party from a final order for any of the following reasons:

> (a) mistake, inadvertence, surprise, or excusable neglect;

> (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
> (c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
> (d) the judgment is void; or
> (e) any other reason justifying relief from the operation of the order.

Minn. R. Juv. Prot. P. 46.02.

K.T. argues that the district court abused its discretion by denying her motion to vacate the voluntary TPR order under Minn. R. Juv. Prot. P. 46.02(a) because she demonstrated a mistake due to her receipt of erroneous legal advice. K.T. also contends that she is entitled to relief under Minn. R. Juv. Prot. P. 46.02(e) because the procedures procuring her consent were unjust and created a reason to justify relief.

The department argues that the grounds under Minn. R. Juv. Prot. P. 46.02 are not sufficient to vacate a TPR order because notwithstanding Rule 46.02, Minnesota law requires a showing of fraud, duress, or undue influence in order to vacate voluntary TPR order. The department claims that because K.T.'s claims do not rise to the level of fraud, duress, or undue influence, the voluntary termination order cannot be vacated and the appeal should be dismissed. We disagree.

The Minnesota Supreme Court has held that when a parent voluntarily consents to the termination of her parental rights, her decision may be vacated only upon a showing of "fraud, duress, or undue influence." *In re Welfare of K.T.*, 327 N.W.2d 13, 18 (Minn. 1982). But in 2000, after *K.T.* was decided, the Minnesota Supreme Court promulgated Minn. R. Juv. P. 81.02. This rule sets forth the grounds under which a district court may

relieve a party from an order terminating parental rights. *See* Minn. R. Juv. P. 81.02.[1] In 2003, the supreme court amended "Rules 37 to 82 of the Rules of Juvenile Procedure and renumber[ed] them as Rules 1 to 47 of the Rules of Juvenile Protection Procedure." *See* Minn. R. Juv. Prot. P. 46.02 historical note. Minn. R. Juv. Prot. P. 46.02, which is identical to former Rule 81.02, provides that a termination order may be vacated for, among other things, "mistake" or "any other reason justifying relief from the operation of the order." Because the supreme court promulgates the Rules of Juvenile Protection Procedure, and Rule 46.02 was promulgated after *K.T.* was decided, we conclude that the supreme court intended for Rule 46.02 to expand on the requirement that in order to vacate a voluntary termination order, a parent must show "fraud, duress, or undue influence."

The department argues that even if K.T. could seek to vacate a voluntary TPR order absent proof of fraud or coercion, in order to obtain relief a party must establish (1) a reasonable case on the merits; (2) a reasonable excuse for the failure to act; (3) action with due diligence after entry of judgment; and (4) lack of substantial prejudice to the opposing party. *See Coats*, 633 N.W.2d at 510. The department argues that K.T. is not entitled to relief from the voluntary termination order because K.T. failed to make a showing that, but for her claims under Rule 46.02, she had a reasonable defense on the merits.

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[1] Minn. R. Juv. P. 81.02 was "basically a counterpart" to Minn. R. Civ. P. 60.02. *In re Welfare of Children of Coats*, 633 N.W.2d 505, 510 n.4 (Minn. 2001). Prior to 2000, motions to reconsider or vacate an order terminating parental rights were brought pursuant to Minn. R. Civ. P. 60.02 because the Rules of Juvenile Procedure did not include a rule comparable to Rule 60.02. *Id.*

The factors discussed in *Coats*, were used in civil actions to obtain relief under Minn. R. Civ. P. 60.02. *In re Welfare of Children of M.L.A.*, 730 N.W.2d 54, 61 (Minn. App. 2007). But satisfaction of these factors is not always a prerequisite to obtaining relief. *Id.* at 61–62. The supreme court has declined to apply the four-factor test "when there are 'procedural defects of such consequence that . . . the mere showing of that failure in and of itself is grounds to set aside [a] default judgment.'" *Id.* at 61 (quoting *Lyon Dev. Corp. v. Ricke's, Inc.*, 296 Minn. 75, 84–85, 207 N.W.2d 273, 279 (1973)).

K.T. argues that the procedures procuring her consent to voluntarily terminate her parental rights were unjust and not in accordance with Minnesota law. Thus, K.T. argues that she is entitled to relief under Rule 46.02(e). We agree.

"There is perhaps no more grave matter that comes before the court than the termination of a parent's relationship with a child." *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). Parenthood is a basic civil right, and the integrity of the family unit warrants constitutional protection. *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212–13 (1972) (recognizing this protection in the U.S. Constitution); *In re Child of P.T.*, 657 N.W.2d 577, 588 (Minn. App. 2003) (recognizing that parents have a fundamental right to the custody and companionship of their children), *review denied* (Minn. Apr. 15, 2003). This protection is not lost because one has not been a model parent; every parent has an interest in retaining his or her parental rights and must be provided termination proceedings that are fundamentally fair. *Santosky v. Kramer*, 455 U.S. 745, 753–54, 102 S. Ct. 1388, 1394–95 (1982).

Voluntary terminations are governed by Minn. Stat. § 260C.301, subd. 1(a) (2010), which provides that parental rights of a parent to a child may be terminated "with the written consent of a parent who for good cause desires to terminate parental rights." Upon a petition under section 260C.301, subdivision 1(a), the district court shall conduct a hearing regarding the voluntary termination of the person's parental rights. Minn. R. Juv. Prot. P. 42.08, subd. 2(a). At the hearing, the parent shall be placed under oath for the purpose of (1) "asking that the petition be granted;" and (2) establishing "good cause" for the termination of the parent's rights and that "it is in the best interests of the child to terminate parental rights." Minn. R. Juv. Prot. P. 42.08, subd. 2(b). The court shall also (1) "determine whether the parent fully understands the consequences of the termination of parental rights and the alternatives to termination;" (2) inquire as to whether the parent's consent is "truly voluntary;" and (3) "obtain a waiver of the right to trial on the involuntary petition when the parent is voluntarily consenting to termination of parental rights after an involuntary termination of parental rights petition has been filed." Minn. R. Juv. Prot. P. 42.08, subd. 2(c).

Here, a review of the record demonstrates that the voluntary termination of K.T.'s parental rights was both procedurally and substantively defective. The petition to terminate K.T.'s parental rights began as an involuntary termination proceeding under Minn. Stat. § 260C.301, subd. 1(b) (2010). But after K.T. purportedly agreed to voluntarily terminate her parental rights, the petition was never amended and to a voluntary termination petition under Minn. Stat. § 260C.301, subd. 1(a). And, more importantly, a thorough review of the proceedings at the October 26, 2010 hearing clearly

indicates that, notwithstanding her affidavit, K.T. did not want to voluntarily terminate her parental rights and did not establish good cause or that a termination of parental rights was in her child's best interest.

The record reflects that just before the October 26, 2010 hearing, K.T. first met with her attorney to discuss her legal rights and options. The record also reflects that after this meeting, a hearing was conducted where K.T. asked for a continuance so that she could have another opportunity to work on a case plan. Specifically, K.T. told the district court: "Sir, I want my daughter back." The court denied the motion for a continuance and counsel then informed the district court that K.T. was willing to voluntarily terminate her parental rights. K.T. was placed under oath and signed an affidavit agreeing to voluntarily terminate her parental rights. But when the government asked K.T. if the voluntary termination was in her daughter's best interest, K.T. expressed extreme dissatisfaction with the system and stated that "I want my baby back." The district court then inquired as to whether K.T. wanted to go forward with the voluntary termination, to which K.T. responded "I don't know what to do, Judge." And, after further discussion, K.T. stated "- - don't want to voluntarily give up my rights. I want to stay here and take my baby." A brief discussion between K.T. and her attorney was then held off the record. Following this discussion, the court asked K.T. again if she wanted to go forward with the voluntary termination. K.T. replied that "[t]his is what I have to do. It's the only thing that's necessary for my daughter." K.T. then asked the district court: "So, am I allowed to check on her? Am I allowed to do anything? I mean,

it's not right." When the court responded by stating "[y]our rights will be terminated," K.T. left the courtroom.

The record very clearly indicates that K.T. was not certain that she wanted to voluntarily consent to the termination of her parental rights, and did not fully understand the consequences of agreeing to terminate her parental rights. The record also reflects that the parties were aware, or should have been aware, of K.T.'s significant chemical dependency issues and her instability stemming from her daily use of crack cocaine. Nevertheless, despite these many "red flags," neither the government, nor K.T.'s public defender, nor the district court, took the time to further explore, on the record, whether K.T.'s consent to terminate her parental rights was truly voluntary. Any question as to voluntariness must be resolved in favor of K.T. and the matter tried pursuant to the involuntary TPR petition. Moreover, it was not established on the record that there was good cause for K.T. to voluntarily terminate her parental rights and that it was in the best interests of the child to terminate K.T.'s parental rights. The procedural safeguards set forth in the Minnesota Rules of Juvenile Protection Procedure mandate the procedures that must be followed to ensure that the voluntary termination of a parent's parental rights is truly voluntary. *See* Minn. R. Juv. Prot. P. 42.08, subd. 2(c)(3) (stating that during the hearing following the filing of a petition to voluntarily terminate one's parental rights, the district court "shall . . . inquire as to the true voluntary nature of the parent's consent"). And in light of the constitutional protections afforded the integrity of the family, common sense and fundamental fairness dictate that these procedural precautions are carefully taken in order to ensure that the process is not corrupted by nominally voluntary

termination proceedings that are not truly voluntary. Because the procedure here not only does not conclusively establish that K.T. actually consented to the voluntary termination of her parental rights, but also affirmatively shows that her consent was not truly voluntary, we conclude that this is the rare case where relief is warranted under Minn. R. Juv. Prot. P. 46.02(e).

Because the district court abused its discretion by denying K.T.'s motion of vacate under Rule 46.02(e), we need not address K.T.'s other claims that the voluntary TPR order should be vacated for mistake due to her claim that she received erroneous legal advice, or to correct a manifest injustice under Minn. R. Juv. Prot. P. 35.03.

Reversed and remanded.