STATE OF MINNESOTA
IN COURT OF APPEALS
A11-894

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

Filed October 3, 2011
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-JV-10-2806

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

James J. Choi, Ramsey County Attorney, Kathryn Eilers, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

Sara Erickson-Nelson, Children's Law Center, St. Paul, Minnesota (for child)

James Laurence, Juvenile and Family Justice Center, St. Paul, Minnesota (for guardian ad litem Kay Kimball)

Considered and decided by Johnson, Chief Judge; Peterson, Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant-mother challenges the district court's termination of her parental rights, arguing that the evidence is insufficient to sustain the termination. Because the district court did not err in concluding that appellant is palpably unfit to be a party to the parent-

child relationship and that termination of parental rights is in the child's best interests, we affirm. We also affirm the district court's denial of appellant's motion for amended findings.

FACTS

Appellant-mother A.B. (mother) has three daughters: Ar. F., born in 1991; Al. F., born in 1994; and Au. B., born in 1998. A.B. (father) married mother in 1999 and is the biological father of Au. B.

In January 2007, Al. F. reported that father had sexually abused her. The Ramsey County Community Human Services Department (department) investigated Al. F.'s allegations. Al. F. told investigators that father began to sexually abuse her when she was eight years old and continued to abuse her until she was removed from home at age twelve. Al. F. reported that father initially touched her breasts and vaginal area. Later, father had sexual intercourse with Al. F. and required her to perform oral sex on him. Al. F. stated that father threatened to hurt her if she told anyone about the sexual abuse. The department found Al. F.'s statements to be credible, determined that sexual abuse had occurred, and opened a child-protection case regarding Al. F.

After Al. F. disclosed the sexual abuse, mother told a child-protection worker that Al. F. was no longer welcome in her home. Mother refused to believe that father had sexually abused Al. F. Mother reasoned that the abuse could not have occurred because she never left her children alone with father. The district court eventually transferred custody of Al. F. to her biological father, and she has not returned to her mother's care.

After the child-protection case was closed, Ar. F. and Au. B. continued to live with mother. A child-protection worker informed mother that she must not allow father to reside in her home until he received sex-offender treatment. Although mother stated that she understood this requirement, she nonetheless allowed father to return to the home without undergoing sex-offender treatment.

In September 2009, Ar. F. told a nurse that father had sexually abused her from the time that she was seven years old until she was twelve years old. She stated that father had sexual intercourse with her repeatedly during this time period. On October 6, the department determined that father had sexually abused Ar. F. The department also determined that mother had failed to protect her daughters by allowing father to live in the family home even though he had not completed sex-offender treatment. Mother again told a child-protection worker that father had no opportunity to sexually abuse her daughter because she never left the girls alone with father.

Ar. F. and Au. B. were placed in an emergency shelter. Mother signed temporary placement agreements, agreeing to continue Ar. F.'s and Au. B.'s out-of-home placements. On November 2, the department met with mother to discuss reunification. The department requested that father complete a psychosexual assessment and that mother participate in therapy and attend educational classes regarding sex abuse. At this meeting, the department asked mother and father to consider the possibility of father moving out of the family home so Ar. F. and Au. B. could return home to live with mother. Mother rejected the proposal, and Ar. F. and Au. B. remained in foster care.

After the November 2 meeting, the assigned child-protection worker drafted out-of-home placement plans concerning Ar. F. and Au. B., which recommended that mother and father comply with services intended to facilitate reunification. The services included a psychosexual assessment for father and therapy and informational sessions regarding sexual abuse for mother. Mother and father continued to deny the sex-abuse allegations and refused to comply with the proffered services on a voluntary basis. On November 18, the department filed a petition alleging that Ar. F. and Au. B. were children in need of protection or services.

On March 18, 2010, mother admitted that Ar. F. was a child in need of protection or services and agreed to place her in long-term foster care. But mother requested an evidentiary hearing regarding the need for emergency protective care of Au. B. An evidentiary hearing was held, and the district court found a prima facie basis to believe that releasing Au. B. to the care of her parents would immediately endanger her health, safety, or welfare. The court also found that it was in Au. B.'s best interests to remain in temporary out-of-home placement.

The district court held a trial on the child-in-need-of-protection-or-services (CHIPS) petition concerning Au. B. in May. Ar. F. testified that father had sexually abused her. She described incidents of fondling, oral sex, and sexual intercourse. She testified that she knew Al. F. had also been sexually abused by father because there were times when he sexually abused both girls at the same time. Ar. F. further testified that she wrote mother a letter detailing the abuse, but mother did not believe her. Instead, mother forced her to talk to father, alone, and to apologize for making the accusation. Ar.

F. acknowledged her inconsistent testimony at father's criminal trial,[1] where she testified that she had not been sexually abused by father. Ar. F. stated that she testified in support of father at his criminal trial because mother told her that she needed to testify so that father could be released from jail and come home. The district court expressly found Ar. F.'s testimony to be credible reasoning that Ar. F. "felt pressured to deny that she had been sexually abused by [father] and testify on his behalf because she knew how important it was for [mother] to have [him] come home."

At the CHIPS trial, mother testified that father's alleged sexual abuse of Al. F. and Ar. F. was not possible. The district court found that mother's testimony was inconsistent, not credible, and at times, untruthful. The district court also found that father's testimony at the CHIPS trial was not credible. Au. B.'s court-appointed guardian ad litem testified that she was concerned regarding the degree of sexual abuse, physical abuse, and domestic violence that had occurred within the home over the years. At the conclusion of the trial, the district court determined that the department had proved, by clear and convincing evidence, that Au. B. was a child in need of protection or services.

After Au. B. was adjudicated a child in need of protection or services, the child-protection worker provided mother with an updated case plan, which she signed on July 20. The district court ordered the case plan, which provides, "in order for [Au. B.] to return home, [mother] needs to demonstrate that she understands that [father] poses a risk to [Au. B.] and that she is able and willing to protect [Au. B.] from him." The case plan

[1] Father was charged with first-degree criminal sexual conduct for allegedly sexually abusing Al. F., but he was acquitted after a trial.

directed mother to participate in individual therapy with a professional who is skilled in the area of sexual abuse; attend a sexual-abuse group through Sexual Offense Services (SOS); follow through with any spousal involvement that father's psychosexual evaluator might recommend; sign releases of information allowing the department to exchange information with her service providers; and cooperate with a kinship search.

On September 7, the department filed a petition to terminate mother's and father's parental rights to Au. B. Mother attended intake sessions with a therapist on September 29 and October 10, and she participated in her first therapy session about one month later. At the time of the ensuing termination-of-parental-rights (TPR) trial, mother had completed four therapy sessions. Mother also began attending SOS meetings in August. She attended approximately 11 meetings prior to the TPR trial.

The district court also ordered a case plan for father, but he refused to sign or cooperate with the case plan. Among other tasks, father's case plan required him to complete a psychosexual assessment and follow all recommendations, maintain stable employment, and not reside in any home where children are present until a psychosexual therapist deems it safe for him to do so. At the time of the TPR trial, father had failed to comply with any of the tasks in his court-ordered case plan. He had not completed a psychosexual assessment. He had not maintained stable employment. He continued to reside in homes where children were present. Moreover, he did not have stable housing: he reported that he had moved out of the family home and was living with friends and in his truck.

At the TPR trial, mother testified that she does not believe that father poses any risk of harm to Au. B.'s health, safety, or welfare. She further testified that there is no reason that father should not parent Au. B. and that she intends to continue her relationship with father. Father testified that he has not completed a psychosexual evaluation or any type of sex-offender treatment and never intends to do so.

The guardian ad litem testified that the steps taken by mother and father thus far had not addressed her concerns regarding their ability to provide appropriate parental care for Au. B. She further testified that mother and father are still very much a couple even though father has moved out of the family home. The guardian ad litem believes that father poses a risk to Au. B. and that mother is unwilling to protect Au. B.

On February 23, 2011, the district court terminated mother's and father's parental rights to Au. B. On March 10, mother filed a motion for amended findings.[2] On April 26, the district court denied mother's motion. This appeal follows.

D E C I S I O N

I.

Appellate courts "review the termination of parental rights 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). We "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing."

[2] Mother's motion is captioned, "Notice of Motion and Motion to Reconsider Findings." The district court construed the motion, as does this court, as one for amended findings.

Id.; *see also* Minn. R. Juv. Prot. P. 39.04, subd. 2(a) ("[I]n a termination of parental rights or other permanency matter involving a non-Indian child, the standard of proof is clear and convincing evidence."). "Considerable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

"The [district] court must make its decision based on evidence concerning the conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period." *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007) (quotation omitted). 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, we will affirm the district court's termination of parental rights so long as the county made reasonable efforts to reunite the family, if required. *S.E.P.*, 744 N.W.2d at 385; *see also* Minn. Stat. § 260C.301, subd. 1(b) (2010) (listing grounds for involuntary termination of parental rights).

The district court based its termination of mother's parental rights on three statutory grounds: palpable unfitness; failure to satisfy the duties of the parent-child relationship; and failure to correct the conditions leading to the out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5). The district court also concluded that the county had made reasonable efforts to reunite the family and that it was in Au. B.'s best interests for mother's parental rights to be terminated. Mother challenges the sufficiency of the evidence as to each statutory ground, as well as the district court's best-

interests finding.[3] Because clear and convincing evidence of only one statutory ground is necessary to sustain termination of mother's parental rights, we limit our review of the statutory grounds to palpable unfitness.

A. Palpable Unfitness

A court may terminate parental rights when a parent is palpably unfit to be a party to the parent-child relationship because of a specific pattern of conduct that renders a person incapable "to care appropriately for the ongoing physical, mental, or emotional needs of the child." *Id.*, subd. 1(b)(4). "If a parent's behavior is likely to be detrimental to the children's physical or mental health or morals, the parent can be found palpably unfit and have his parental rights terminated." *In re Children of Vasquez*, 658 N.W.2d 249, 255 (Minn. App. 2003). The district court concluded that mother is palpably unfit to be a party to the parent-child relationship with Au. B. due to "the consistent pattern of conduct and the specific conditions . . . that [are] of a duration and nature that renders [her] unable, for the reasonably foreseeable future, to care appropriately for [Au. B.]'s ongoing physical, mental, and emotional needs."

The district court made the following findings in support of its conclusion that mother is palpably unfit. Mother refused to believe that father had sexually abused Al. F. After Al. F. disclosed that she had been sexually abused by father, mother told a child-protection worker that Al. F. was no longer welcome in her home. Al. F. began living with her biological father. Mother's "statements and actions demonstrated that her

[3] Mother does not challenge the district court's conclusion that the county made reasonable efforts to reunite the family.

loyalty to [father] was more important to her than the welfare of her daughter." Similarly, the district court found that mother refused to believe that Ar. F. had been sexually abused by father. Mother relinquished custody of Ar. F., agreeing to her placement in long-term foster care. The district court once again found that mother "demonstrated that her loyalty to [father] was more important to her than the welfare of her daughter."

The district court also found that father's recent move out of the home was motivated by mother's and father's hope that the department would return Au. B. to their home and discontinue its involvement with the family, and not by a desire to keep Au. B. safe. Lastly, the district court found that Au. B. needs to be in the care of a person who will place her needs above his or her own and protect her health, safety, and well-being. The district court found that neither mother nor father can provide that environment for Au. B., now or in the reasonably foreseeable future.

Clear and convincing evidence supports these findings. Mother's testimony indicates that mother will not be able to protect Au. B. from abuse, or to respond appropriately if Au. B. alleges abuse, now or in the reasonably foreseeable future. Mother is adamant in her belief that father did not sexually abuse her daughters. Thus, she does not believe that father poses any risk of harm to Au. B. Although mother testified that if Au. B. were returned to her care, she would do whatever it takes to protect her and would not allow Au. B. to have contact with father, the district court found these assertions not credible. We defer to this credibility determination. *See L.A.F.*, 554

N.W.2d at 396 ("Considerable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses.").

The guardian ad litem testified that the following combined factors create the likelihood for a continuation of the patterns of abuse and neglect that have plagued this family for years: mother and father's adamant denial that father poses any risk to Au. B.'s safety and welfare; their denial of any need to protect Au. B. from father; and the inherent pressure on Au. B. not to divulge any abuse if it occurs, because her older sisters were "disowned" after they alleged abuse.

This record provides clear and convincing support for the conclusion that mother is palpably unfit under Minn. Stat. § 260C.301, subd. 1(b)(4). Mother has demonstrated a specific pattern of refusing to believe her children's allegations of sexual abuse, refusing to consider the possibility that the allegations might be true, and subsequently agreeing to permanently displace the children from their home. This conduct renders her incapable of caring "appropriately for the ongoing physical, mental, or emotional needs of" Au. B. *See* Minn. Stat. § 260C.301, subd. 1(b)(4). Mother has twice shown that she either cannot, or will not, appropriately parent children who claim to be the victims of sexual abuse by her husband. Although Ar. F.'s inconsistent testimony, the lack of physical evidence, and father's criminal acquittal, may provide mother with reasons to doubt the sexual-abuse allegations, she nonetheless has an obligation to support and assist her children. And her persistent refusal to even consider the possibility that her daughters' accusations were true, despite her participation in case-plan services designed to help her

understand sexual abuse, provides reason to believe that the conditions giving rise to the TPR will continue indefinitely.

Mother offers several arguments to support her claim that the district court erred in terminating her parental rights. None is persuasive. Mother argues that by requiring father to move out of her home, she demonstrated her commitment to protecting Au. B. The district court was not persuaded,[4] and neither is this court. Mother testified that she intends to continue her relationship with father. She also testified that if child protection had not become involved in their lives, father would not have moved out of their home. Father's move may have been motivated by a desire to return Au. B. home, but it was not motivated by a desire to keep Au. B. safe. Moreover, given mother's history of prioritizing her relationship with father above her obligations to her children, there is no reason to believe that father will permanently reside separately from mother. In sum, the fact that father was residing outside of the home at the time of the TPR trial does not call the district court's decision into question.

Mother also argues that she should not be punished for father's failure to complete a psychosexual evaluation. The district court imposed no such "punishment." The district court terminated mother's parental rights based on her consistent pattern of refusing to respond appropriately to allegations that father sexually abused her daughters, not on the "inaction of her husband."

[4] The district court found that mother's assertion that she would not allow contact between Au. B. and father was not credible.

Lastly, mother insists that "the progress [she] has made during her therapy clearly shows that [she] can parent this child within the reasonable future." The district court, however, found that mother's "participation in the SOS meetings and therapy has not led to any increased awareness of the need to protect [Au. B.] or insight that would assist her in keeping [Au. B.] safe from [father]." This finding is supported by clear and convincing evidence. The record evidence shows that mother's unwavering loyalty to father, at her children's expense, has not been altered by therapy. In fact, mother testified at trial that after participating in the SOS meetings, "she is even more certain that [father] did not abuse her daughters."

Au. B. deserves a permanent home where she will not be at risk of abuse. She also deserves a caregiver who will support and assist her if she reports abuse. Mother has clearly shown the court, and Au. B., that she will not respond appropriately to any allegations of abuse against father because maintaining her relationship with father is her first priority. This specific pattern of conduct, in which mother places her relationship with a man who has twice been accused of sexually abusing her daughters over the needs of her daughters, renders her incapable of caring appropriately for Au. B.'s ongoing physical, mental, and emotional needs. In sum, the evidence clearly and convincingly shows that mother is palpably unfit to be a party to the parent-child relationship with Au. B.

B. Best Interests of the Child

A district court's findings in support of an order terminating parental rights must include a finding that termination is in the child's best interests. *In re Welfare of Child of*

D.L.D., 771 N.W.2d 538, 546 (Minn. App. 2009). In any TPR proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2010).

"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 the 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. During this balancing process, the interests of the parent and child are not necessarily given equal weight." *Id.* (citation omitted).

The district court found that "[p]reserving the parent and child relationship with [mother] is not in [Au. B.]'s best interests. [Au. B.] would not be safe in her care." The department concedes that mother has an interest in preserving the parent-child relationship, but asserts that it is nonetheless in Au. B.'s best interests to terminate mother's parental rights.

The district court found that Au. B. needs a safe, stable home with caregivers who will protect her from abuse and neglect. Mother is unable to provide such a home, because she refuses to acknowledge that father might pose a risk to Au. B. The district court also found that Au. B. needs a caregiver who will place her needs above their own and protect her health, safety, and well-being. Mother has repeatedly demonstrated that her relationship with father has significant priority over her relationship with her children and that she is therefore unable to place Au. B.'s needs above her own. For example,

when she was given the opportunity to have Ar. F. and Au. B. returned to her care, she refused to reside separately from father as a condition of reunification. And she cut Al. F. and Ar. F. out of her life because they alleged that father sexually abused them. Mother's unwavering loyalty to father, despite her daughters' accusations of sexual abuse and their placement out of home, demonstrates mother's inability and unwillingness to put her children's needs—including those of Au. B.—above her own.

Au. B.'s need for permanency is another interest that must be considered.

> The prolonged uncertainty for children of not knowing whether they will be removed from home, whether and when they will return home, when they might be moved to another foster home, or whether and when they may be placed in a new permanent home is frightening. This uncertainty can seriously and permanently damage a child's development of trust and security.

In re Welfare of J.R., 655 N.W.2d 1, 5 (Minn. 2003) (quotation omitted). Au. B. has been in out-of-home placement for nearly two years. And at the conclusion of the TPR trial, the district court found that very little had changed since Au. B. was first removed from home. Mother did not begin to work her case plan until she was ordered to do so, and Au. B. had been out of the home for almost a year. And despite participating in case-plan services, mother has failed to gain the insight necessary to keep Au. B. safe. Au. B. is entitled to permanency in her life—delaying it any longer is not in her best interests.

Mother emphasizes the fact that Au. B. has stated that her first preference is to return home. But the guardian ad litem testified that Au. B. said that her first choice is to return home, that her second choice is to remain in her foster home, and that the choices were not far apart. Au. B. also said that she would be comfortable remaining in her foster

home. We agree with the district court's implicit reasoning that Au. B.'s need for permanency in a safe and stable home where she is protected from abuse and neglect, and her need to be in the care of a person who will place her needs above his or her own, outweigh Au. B.'s preference to return to mother's care and custody.

Mother also finds it ironic that she has lost her parental rights to a daughter who has never alleged abuse but that "[s]he did not lose her parental rights to the daughters who alleged sexual abuse by [father]." We acknowledge the peculiarity of the circumstances, especially because mother has shown little or no interest in maintaining her parental relationships with Ar. F. and Al. F. In fact, she has made it clear that they are no longer welcome in her home. But decisions in child-protection matters, including permanency determinations, must be based on the unique needs of the individual child. *Cf. D.L.D.*, 771 N.W.2d at 547 (holding that, despite the district court's prior findings that termination was in the best interests of the child's siblings, "every child who is the subject of a TPR proceeding deserves the court's full consideration"). Moreover, the record does not indicate that the court was presented with an alternative permanency petition. *See* Minn. R. Juv. Prot. P. 33.01, subd. 4(b) (stating, "A party, including a guardian ad litem for the child, shall file a permanent placement petition if the party disagrees with the permanent placement determination set forth in the petitions filed by other parties."). In conclusion, the record evidence supports the district court's determination that termination of mother's parental rights is in Au. B.'s best interests, regardless of the permanency outcomes for her siblings.

II.

"When considering a motion for amended findings, a district court must apply the evidence as submitted during the trial of the case and may neither go outside the record, nor consider new evidence." *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006) (quotations omitted), *review denied* (Minn. Nov. 14, 2006). "This court reviews denials of such motions under an abuse-of-discretion standard." *Id.*

In her motion for amended findings of fact, mother argued that the district court "did not even consider any testimony or evidence we presented on our behalf." But "[t]he weight to be given any testimony . . . is ultimately the province of the fact-finder." *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 167 (Minn. App. 2005). The district court made express credibility determinations and gave more weight to some testimony than to other testimony. Mother's disagreement with these determinations is not a basis for amended findings, especially where the evidence presented at trial clearly and convincingly supports the district court's findings. Thus, the district court did not abuse its discretion by denying mother's motion for amended findings.

Affirmed.

Dated:

Judge Michelle A. Larkin