STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0536
A12-0645

In the Matter of the Welfare of the Children of: C. L. M. and B. D. M., Parents.

Filed August 27, 2012
Affirmed
Schellhas, Judge

Mower County District Court
File No. 50-JV-11-3019

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

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

SCHELLHAS, Judge

In this case to which the Indian Child Welfare Act applies, appellant-parents challenge the district court's termination of their parental rights to their two sons, arguing that the district court erroneously concluded that respondent-county engaged in active efforts to reunify them with their children. We affirm.

FACTS

In late April 2011, the Mower County Department of Human Services (the county) petitioned to terminate the parental rights of appellants B.D.M. and C.L.M. over their children, T.F., born February 28, 2003, and E.M., born August 22, 2005. C.L.M. is a registered member of the Cherokee Nation, which is a federally recognized tribal organization under the Indian Child Welfare Act (ICWA). T.F. is a registered member of the Cherokee Nation, and E.M. is eligible for membership as a biological child of the Cherokee Nation. C.L.M. is the biological mother of both children. B.D.M. is the biological father of E.M. The biological father of T.F. is unknown.

In April 2011, the county received a report that appellants were chaining the boys to a crib and depriving them of food. E.M. informed one of the county's child-protection workers that "Mommy or Daddy will put the chain on his leg, that the chain has a key, and . . . that it goes on the fence around his bed, and that he has to have a chain because he's naughty and he gets up at night and steals food." Upon entering E.M.'s bedroom, an investigator with the county sheriff's office smelled the "absolutely overpowering" smell of urine; discovered an 18-inch chain that, when attached to E.M. and his crib was too short for E.M. to even "sit at the edge of the bed"; and discovered that E.M. slept on a urine-soaked "board." T.F. informed the investigator that T.F. finds E.M. already chained to his bed when T.F. comes home from school. T.F. informed a child-protection worker that E.M. "has to wear the chain because he hasn't learned to stay in bed and not steal food" and that T.F. "was very proud . . . that he had learned not to get up and steal food so [he] didn't have to wear the chain anymore." T.F. also informed the investigator that

T.F. is hungry "every day"; that E.M. cries when he is hungry and cries every day; and that T.F. stole food at school because he was hungry. The investigator noted that T.F. was "[v]ery small . . . both in height and weight for a child his age." When the child-protection worker took T.F. and E.M. out to eat, the boys ate their meals, ate the child-protection worker's meal, and "proceeded to take all of the jellies and creamers and stuff them into their pockets." T.F. stated, "We might need them later."

In May 2011, in connection with their abuse of the children, appellants each pleaded guilty to false imprisonment—unreasonable restraint of a child, a gross misdemeanor; and malicious punishment of a child, a gross misdemeanor. The district court dismissed other criminal charges, based on the parties' plea agreement. On June 14, 2011, appellants and Darcee Brooks, the county social worker assigned to their case, signed out-of-home placement plans that listed tasks for completion by appellants to ensure that they adequately parent T.F. and E.M. and provide them with a safe home environment.

On July 21, 2011, the district court issued findings of fact, conclusions of law, and an order, adjudicating the children as children in need of protection or services but denying the county's petition to terminate parental rights because the county failed to prove that it engaged in active efforts to reunify appellants with the children. In its order, the court found that the county proved the following: (1) C.L.M. and B.D.M. have substantially, continuously, and repeatedly refused or neglected to comply with the duties imposed upon them by their parent-child relationship with T.F. and E.M.; (2) C.L.M. and B.D.M are palpably unfit to be parties to a parent-child relationship with T.F. and E.M.;

(3) T.F. and E.M. have experienced egregious harm while in the care of C.L.M. and B.D.M.; and (4) returning T.F. and E.M. to the care of C.L.M. and B.D.M. would result in serious physical and emotional harm to both children.

On July 22, 2011, appellants began to serve their sentences of incarceration for their convictions of false imprisonment and malicious punishment of their children. While incarcerated, appellants met with Brooks, the social worker, five times; Brooks responded to numerous letters from B.D.M. regarding how he could satisfy the placement plan while incarcerated; Brooks assisted the parents' completion of several goals in their placement plans; and Brooks engaged in weekly communications with the guardian ad litem (GAL) regarding this case. On November 28, 2011, the county filed another petition to terminate appellants' parental rights. On January 22, 2012, C.L.M. and B.D.M. were released from prison.

After trial on the county's second petition to terminate parental rights, the district court took judicial notice of its June 2011 findings and issued findings of fact, conclusions of law, and an order on March 15, 2012, terminating appellants' parental rights to T.F. and E.M. Among other things, the court found that the county proved beyond a reasonable doubt that it had engaged in active efforts to reunify the parents with their children.

These appeals by C.L.M. and B.D.M. consolidated by this court follow.

D E C I S I O N

Appellants' sole argument on appeal is that the district court's termination of their parental rights was erroneous because the county failed to engage in active efforts to

reunify them with T.F. and E.M. Appellate courts "give considerable deference to the district court's decision to terminate parental rights." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). But appellate courts reviewing termination-of-parental-rights cases "closely inquire into the sufficiency of the evidence" and must determine "whether the district court's findings address the statutory criteria." *Id*. The party petitioning to terminate parental rights to an Indian child bears the burden of proving beyond a reasonable doubt that termination of parental rights is warranted. *See* Minn. R. Juv. P. 39.04, subd. 2(b) ("[I]n a termination of parental rights matter involving an Indian child, the standard of proof is beyond a reasonable doubt."); *Matter of Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980) ("The burden of proof is upon the petitioner [for terminating parental rights] and is subject to the presumption that a natural parent is a fit and suitable person to be entrusted with the care of a child.").

Under ICWA, a "party seeking to effect . . . termination of parental rights to[] an Indian child under State law" must exert "active efforts . . . to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." 25 U.S.C. § 1912(d) (2006); *see also In re Welfare of Children of J.B.*, 698 N.W.2d 160, 165 (Minn. App. 2005) ("In Minnesota courts, proceedings to terminate parental rights to an Indian child must comply with the Indian Child Welfare Act (ICWA)."). The active-efforts standard is "a standard higher than the reasonable efforts required to reunify a family under Minn. Stat. § 260.012(c)" and requires the county to prove beyond a reasonable doubt that it engaged in "a rigorous and concerted level of case work that uses the prevailing social and cultural values,

conditions and way of life of the Indian child's tribe to preserve the child's family and to prevent placement of an Indian child." *In re Welfare of Child of E.A.C.*, 812 N.W.2d 165, 174 (Minn. App. 2012) (quotation omitted), *review denied* (Minn. Mar. 27, 2012).

Appellants argue that the county's efforts to reunify them with T.F. and E.M. were not active. We disagree, based on (1) the county's reunification efforts; (2) testimony supporting the sufficiency of those efforts; and (3) our "considerable deference" to a district court's decision to terminate parental rights. *S.E.P.*, 744 N.W.2d at 385 (regarding this court's "considerable deference").

The district court took judicial notice of the following findings from the June 2011 termination-of-parental-rights proceeding. Brooks began serving as the county's case manager for appellants' case in April 2011. In May 2011, Brooks met with appellants "to discuss services [appellants] would need so they could be reunited with T.F. and E.M.," and the three of them "developed a draft of an Out-of-Home Placement Plan." Approximately three days later, Brooks discussed the proposed placement plan with a Cherokee Nation Indian expert. Less than two weeks later, in June 2011, Brooks contacted appellants regarding the placement plan, "[t]he Plan was amended," and Brooks met with appellants three days after that "to review a draft of the Plan," of which Brooks gave individual copies to appellants and faxed a copy to each of their attorneys. The placement plan recommended, among other things, that appellants (1) "prepare a safety plan and present it to [the county]," (2) "complete a parenting assessment," (3) "complete a specific psychological evaluation," and (4) "follow recommendations of the children's therapist."

The district court's following findings are substantially supported by the record, and the record demonstrates that the county actively attempted to reunify appellants with T.F. and E.M., as particularly evidenced by the county's regular contact with appellants. *See Matter of Welfare of T.J.J.*, 366 N.W.2d 651, 656 (Minn. App. 1985) (concluding that the record supported district court's conclusion that county engaged in active efforts to reunify Indian family where county's social worker was in contact with appellant-parent "on a monthly basis . . . with the goal of reuniting her with the children"). The court found that Brooks twice assisted appellants to complete their child-safety plans, once when they first met in May or June 2011 to draft the placement plan, and once on or around January 13, 2012, concerning necessary improvements to their safety plans. The court further found that during appellants' six-month incarceration, Brooks visited them five times, arranged to have a therapist conduct their parenting assessments and psychological evaluations, and provided appellants with a list of county-approved therapists in November 2011 to assist them in obtaining individual therapy. Moreover, B.D.M. testified that Brooks responded to numerous letters from him regarding "what [he] could do while [he] was incarcerated to still stay within the case plan and to follow what [he] needed to do [to] work through the case plan." And T.F.'s and E.M.'s GAL testified that he discussed this case with Brooks "at least weekly . . . maybe in person or on the phone or via e-mail."

Testimony regarding the county's reunification efforts supports the district court's conclusion that the county's efforts were active. In compliance with ICWA, a tribal expert witness testified regarding the county's petition to terminate parental rights and the

children's welfare. Based on the tribal expert's 22 years of experience as a tribal child welfare worker, substantial knowledge in tribal customs relating to the social and cultural standards and childrearing practices of the Cherokee Nation, and a review of the case file, the tribal expert opined that "active efforts were achieved," noting that there are no other services available to assist appellants, T.F., and E.M. The GAL testified that "there are [not] attempts at reunification that are possible at this time that are not being made," explaining that he had not "referred [T.F. and E.M.] for any services" because "[t]he services I would have recommended for the children have all taken place." And T.F.'s and E.M.'s psychiatrist testified that "there is [not] anything that can be done, programming, services with the boys at this time, that could . . . reunify these children with their parents."

Moreover, the district court found and the record substantially supports that appellants' therapist testified that B.D.M. is "incapable" of developing necessary parenting skills because "he does not take responsibility for his actions" and "the children will suffer even more harm if they are returned to his care." The court also found and the record substantially supports that the intensive therapy necessary to reunify appellants with their children would take a minimum of nine months to one year and could be indefinite, with appellants' relationship with T.F. and E.M. never improving because the children have no bond or attachment with appellants. Nothing in the record supports a finding that additional active efforts would lead to reunification between appellants and T.F. and E.M.

Appellants argue that various facts in the record indicate that the county's efforts to reunify them with T.F. and E.M. were not active, stressing that Brooks did not meet with them regarding the development of their child-safety plans between May or June 2011 and January 2012 and that the county provided them insufficient assistance to begin individual therapy. Appellants' arguments are unpersuasive in consideration of the evidence demonstrating the county's active reunification efforts, testimony corroborating that the county engaged in active reunification efforts, and this court's "considerable deference" to a district court's decision to terminate parental rights. *Id.*

Affirmed.