STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1226, A13-1365

In the Matter of the Welfare of the Children of: S. M. M. and D. A. L., Parents

Filed December 16, 2013
Affirmed
Smith, Judge

Winona County District Court
File Nos. 85-JV-12-367, 85-JV-12-177

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Catherine Schofield, Winona, Minnesota (guardian ad litem for children)

Paul Janzen, Wabasha, Minnesota (guardian ad litem for mother)

Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Smith, Judge.

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

SMITH, Judge

We affirm the district court's order terminating appellant's parental rights because referral of appellant for civil commitment was not a "reasonable service" that the respondent county was required to provide as part of a reunification plan.

FACTS

Winona County Human Services became involved with appellant S.M.M. in 2008 after concerns arose about the effects that her drug and alcohol use might have on her infant child. The county received additional reports throughout 2009 and 2010, by which time S.M.M. had two children. S.M.M. underwent a chemical dependency evaluation in 2010, resulting in a recommendation that she receive inpatient treatment for substance abuse and mental health issues. S.M.M. did not receive inpatient treatment, however.

The county received another report of concerns about S.M.M.'s chemical dependency and mental health in March 2012. The county convened a family group decision making conference. During the conference, S.M.M. "fell apart . . . sobbing hysterically." She reported that she was afflicted with a malign "spirit" that sought to harm her and her children. She appeared "psychotic," but eventually calmed down and consented to the children being placed in foster care.

After the children were placed in foster care, the county developed out-of-home placement plans designed to "get a plan in place to get the kids back home with their parents." S.M.M. signed the plans. The plans included several services to assist S.M.M., including a chemical dependency evaluation, a mental health assessment, and transportation assistance. S.M.M. made no requests for additional services. But S.M.M. made little progress towards addressing her mental health and chemical dependency

issues. The county had difficulty contacting S.M.M. and convincing her to see her psychiatrist. S.M.M. also had little insight into her chemical dependency issues, and she repeatedly tested positive for amphetamines, and on one occasion, marijuana. S.M.M. claimed that her positive drug test results were caused by the malicious spirit that afflicted her. She finally saw a psychiatrist in May, and she was diagnosed with schizophrenia with fixed delusions, but she refused to accept the diagnosis as legitimate.

At another family group decision making conference in June 2012, S.M.M. appeared exhausted, "curled . . . in the fetal position in the chair in the lobby." She was slurring her words and could "barely hold her head up." She wore a hospital band on her wrist, her arm was swollen, and she reported that she had been in the emergency room. The facilitator stopped the meeting because S.M.M. was unable to remain awake. The county social worker recommended that S.M.M.'s companions take her to a doctor. But the social worker did not recommend that S.M.M. be civilly committed because she did not think that S.M.M. was in danger of harming herself or others.

The children were adjudicated in need of protective services in August 2012, and in December the county petitioned to terminate the parental rights of S.M.M. and D.A.L., the children's father. The parental rights of D.A.L. were voluntarily terminated in March 2013. After a two-day court trial, the district court terminated S.M.M.'s parental rights in July 2013.

In support of termination, the district court noted that S.M.M. "is obsessed with the spirit, and spends considerable energy dealing with it," but "has little or no insight into her mental health issues" and "has not followed through with any of the

recommendations from the diagnostic assessment." It found that S.M.M. had been "inconsistent" in attending supervised visits with her children, "prompting a requirement [that] she call before a visit to indicate whether she would be attending." And it found that she failed to follow through with her service-plan requirements and her "circumstances, condition and conduct are such that the children cannot be returned to her now, or in the reasonably foreseeable future." It further found that "[a]dditional services are not likely to bring about lasting parental adjustment enabling the return of the children to [S.M.M.] within a reasonable, ascertainable period of time." It adopted a guardian ad litem's opinion that the children's best interests were served by terminating S.M.M.'s parental rights.

D E C I S I O N

S.M.M. argues that the district court erred by determining that the county had made reasonable efforts to assist S.M.M. before seeking termination of her parental rights because the county failed to seek S.M.M.'s civil commitment. "When a trial court's findings in a termination case are challenged, appellate courts are limited to determining whether the findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether they are clearly erroneous." *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997). The district court "must make clear and specific findings which conform to the statutory requirements" for termination of parental rights. *In re the Welfare of R.M.M.*, 316 N.W.2d 538, 540-41 (Minn. 1982). The district court may terminate parental rights if, following a child's out-of-home placement, "reasonable efforts . . . have failed to correct the underlying conditions leading to the

child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5) (2012); *see also* Minn. Stat. § 260C.163, subd. 9(7) (2012) (requiring the district court to consider whether the efforts made by the "responsible social services agency . . . were reasonable"). When determining whether a county's efforts were reasonable, the district court must "consider whether services to the child and family were: (1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances," or it "may determine that provision of . . . further services for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances." Minn. Stat. § 260.012(h) (2012).

S.M.M. argues that the services she received from the county were not realistic because the nature of her mental health condition made it obvious that she could not comply with the out-of-home placement plan requirements and that the county should therefore have petitioned to have her civilly committed in order "to break through the shroud of mental illness and/or chemical dependency that rendered [S.M.M.] incapable of following through with the Case Plan." She cites the requirement from *In re Welfare of H.K.* that "[s]ervices must go beyond mere matters of form so as to include real, genuine assistance." 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). And she asserts that only a petition for civil commitment could have met that standard in her case.[1] But S.M.M. does not explain how civil commitment would have

[1] We are mindful that S.M.M. was represented by both an attorney and a guardian ad litem at the time of the termination of her parental rights. Since the civil commitment

met the criteria for "reasonable efforts." Most importantly, she does not explain how civil commitment would be "adequate to meet the needs of the child and family." She does not specify the treatments she expects to receive after a civil commitment, and she does not explain how or when these treatments might be effective.

Also, because it is at best uncertain whether S.M.M. meets the statutory criteria for civil commitment, we are doubtful whether civil commitment was "available and accessible" or "realistic under the circumstances." S.M.M. argues that "[i]t seems abundantly clear that [she] meets the statutory definition of mentally ill for purposes of involuntary judicial commitment." But her diagnosis of mental illness and her ongoing symptoms may not be sufficient to justify civil commitment. To justify civil commitment on mental health grounds, there must be "a substantial likelihood of physical harm to self or others." Minn. Stat. § 253B.02, subd. 13 (2012). S.M.M. argues that this criterion is met by the fact that her children were removed from her care in the first place. But we decline to endorse a rationale, an implication of which could be, that every parent who has a child removed for protective reasons necessarily becomes a candidate for involuntary civil commitment. Additionally, the record before us does not conclusively

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statute allows any "interested person" to petition for civil commitment, *see* Minn. Stat. § 253B.07, subd. 2 (2012), and since it defines "interested person" to explicitly include both the "legal counsel" and the "legal guardian" of the proposed patient, *see* Minn. Stat. § 253B.02, subd. 10(1) (2012), we question why, if S.M.M.'s attorney or guardian ad litem believed that her civil commitment would be beneficial to her and helpful in allowing her to retain her parental rights, they did not bring the civil commitment petition themselves as part of their representations in this matter rather than reserving the argument for exclusive use as a hypothetical alternative treatment plan responding to the county's termination petition.

establish that S.M.M.'s mental health and chemical dependency issues posed a threat of "physical harm" to herself or her children.

Even if civil commitment had been available and appropriate to S.M.M.'s needs, that fact would not undermine the district court's finding that the county made reasonable efforts to reunite the family before seeking termination of S.M.M.'s parental rights. "Whether the county has met its duty of reasonable efforts requires consideration of the length of the time the county was involved and the quality of effort given." *H.K.*, 455 N.W.2d at 532. That an alternative program exists also does not demonstrate that the assistance offered by the county was unreasonable. *See id.* Our review therefore focuses on what the county did provide rather than on alternatives it hypothetically could have provided. The record establishes that the county has been offering services to assist S.M.M. in dealing with her mental health and chemical dependency issues since at least 2010, and that those efforts intensified in the 18 months before it sought to terminate her parental rights. The district court described the services that were offered to S.M.M., including a chemical dependency assessment, a mental health assessment, and transportation assistance to allow her to access offered services. These services offered S.M.M. an adequate opportunity to begin addressing her mental health and chemical dependency issues if she had chosen to do so. *Cf. id.* (affirming the district court's finding of reasonable efforts when the terms of a case plan were "clear and reasonable" and the county "provide[d] the necessary arrangements—including costs, child care, and transportation—for appellant to complete chemical dependency treatment"). The record

also establishes that there are no services that S.M.M. requested that were not offered. S.M.M.'s failure to access offered services does not make those services unreasonable.

By rejecting her civil commitment argument and ruling that "[a]dditional services are not likely to bring about lasting parental adjustment enabling the return of the children . . . within a reasonable, ascertainable period of time," the district court also implicitly found that "provision of services or further services for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances." *See* Minn. Stat. § 260.012(h). S.M.M. does not offer any facts to challenge this finding, and it is therefore not clearly erroneous.

Affirmed.