STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0125

In the Matter of the Welfare of the Children of: K.J.H. and M.E.R., Parents.

Filed June 24, 2013
Affirmed
Stoneburner, Judge

Itasca County District Court
File No. 31-JV-12-2897

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Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and Rodenberg, Judge.

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

STONEBURNER, Judge

Appellant mother challenges the termination of her parental rights to two children, arguing that the record does not support the statutory grounds asserted in respondent-county's petition to terminate her parental rights and that the record does not show that termination of her parental rights is in the children's best interests. Mother also asserts

that the district court should have returned the children to her care under county supervision. We affirm.

FACTS

A.C.R was born to appellant K.J.H. (mother) in September 2006 and, because mother used chemicals during her pregnancy, was the subject of a child-protection report the next day. J.J.R. was born to mother in February 2009. M.E.R. (father) is the father of both children. Before mother and father separated in August 2010, the children were exposed to their parents' drug use and resultant impaired parenting; father's domestic assaults against mother; father's destruction of property when angry; yelling, name-calling, and threats; and interventions by law enforcement. For 14 to 18 months after the parents separated, mother moved the children from residence to residence. During this time, mother and the children were intermittently homeless.

In October 2011, in Itasca County, mother got into a fight with the police who were called to a residence from which mother was under an order to stay away. The children were with mother, and they were sick, cold, hungry, wet, and outside in their pajamas. As a result of the fight, mother pleaded guilty to gross-misdemeanor obstructing legal process. The children were placed on an emergency hold, and the county filed a CHIPS petition asserting that the children were in need of protective services due to mother's inability to provide proper parental care.

Mother admitted the CHIPS petition, and the children were placed in foster care in the temporary custody of the county. The county provided medical checkups and

extensive dental care needed by both children. Some of A.C.R.'s teeth required extraction, and J.J.R. needed dental surgery.

When the county took custody of the children, each child exhibited behavioral problems. A.C.R. was diagnosed with "disruptive behavior disorder" and found eligible for mental health services which were implemented by the county. In October 2012, A.C.R. underwent further assessment and was diagnosed with "anxiety disorder" and "disruptive behavior." The assessor found that A.C.R. "presents as not knowing what to expect from the adults in her life [and] struggles with emotional regulation." Initially, J.J.R. was diagnosed with "adjustment disorder." She was also found eligible for mental health services which were implemented by the county. In a subsequent assessment in the fall of 2012, she was diagnosed with "deprivation/maltreatment disorder[,]" as being "sensory stimulation-seeking impulsive[,]" and as requiring interventions to help her manage difficulties caused by "her behaviors, frequent placements, and recent transitions . . . ."

When the children were adjudicated CHIPS, mother, who was homeless, had a long history of chemical dependency, criminal behavior, and mental health and domestic abuse issues. Mother admitted that, due to drug-related concerns, she had been the subject of nine child-protection reports in St. Louis and Itasca Counties since 2006.

Mother agreed to enter family foster care and to work with an in-home provider on parenting issues. Mother was ordered to (1) complete a chemical dependency evaluation and comply with recommendations of that evaluation; (2) comply with the Recovery Specialist Program; (3) provide proof of support group attendance; (4) complete a

mental-health assessment and comply with any services recommended to meet her mental health needs; (5) complete the shared-foster-care services, and comply with In-Home Services; and (6) cooperate with the county social worker in developing a case plan, and comply with the case plan.

Despite mother's agreement to cooperate with services provided, she continued to use chemicals, and she diluted urine samples that she submitted for UA testing. Assessments showed that mother had chemical-dependency problems, mental illnesses, and limited ability to address the children's special needs. Much of the information mother provided in her assessments turned out to understate mother's issues.

In February 2012, shared foster care was terminated and mother, against county advice, moved into an apartment with monthly rent that exceeded her income. In March 2012, the district court approved a plan to increase mother's visitation with the children, aiming for a trial reunification. On March 31, 2012, mother, having left the children in a car with a drug-using boyfriend, was arrested for misdemeanor theft and giving a false name to a police officer. In April 2012, despite mother's failure to be at home for some in-home services and planned visits, the children were returned to her care on a trial basis.

Mother's noncooperation with UAs continued between March and May 31, 2010. She completed outpatient treatment in May but attended less than one-half of the support-group meetings and failed to provide proof of attendance at sober support groups.

County providers who visited the home expressed concern about mother's continued chemical abuse, mental illness, and other concerns related to mother's painful

degenerative disc condition in her back. In late May 2012, mother had extensive back surgery. After surgery, she abused her prescribed pain medication. Mother developed a temporary but significant infection at the incision site, and the children were returned to foster care on May 31, 2012. Mother continued to abuse chemicals through September 13, 2012, when she reluctantly entered inpatient chemical dependency treatment after a "spree" of chemical use. Twelve days later, the county petitioned for termination of parental rights (TPR) regarding mother. The county also sought to terminate father's parental rights.

After a seven-day trial involving both parents, the district court issued a 59-page order terminating the parental rights of both parents. The district court made 303 findings of fact and 12 conclusions of law, and it incorporated a 16-page memorandum explaining its conclusion that the county had proved statutory grounds for TPR by clear and convincing evidence and that TPR for both parents is in the best interests of the children.[1] Without filing any type of post-trial motion, mother appeals.

D E C I S I O N

I. Scope of review

When, as here, a party appeals a juvenile-protection decision made after a trial without having moved for a new trial, "the questions for review include whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment. Our scope of review also includes substantive legal questions

[1] Some of the district court's findings of fact and conclusions of law addressed the termination of father's parental rights.

not raised in post-trial motions, but properly raised during trial." *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009) (citations and quotations omitted).

II. Permanency deadlines

The law limits how long a child can remain out of the parental home without the county seeking to find a permanent custodial arrangement for the child. Minn. Stat. § 260C.505(a) (2012) (stating that "[a] permanency or termination of parental rights petition must be filed at or prior to the time the child has been in foster care or in the care of a noncustodial or nonresident parent for 11 months . . . ."). Mother argues that "the district court has the inherent authority and discretion to allow for further reunification efforts . . . and should have done so" with this family even though the statutory permanency deadline had passed. To support her assertion, mother cites *In re Welfare of Child of E.V.*, 634 N.W.2d 443 (Minn. App. 2001), and *In re Welfare of M.H.*, 595 N.W.2d 223 (Minn. App. 1999). But because mother did not raise this issue at trial or seek a new trial, this question is beyond the scope of review set out in *S.S.W.*, and we decline to address it.[2]

A. Sufficiency of the evidence to support TPR

1. Mother's back condition

Mother argues that, at the time of the TPR trial, she had made sufficient changes in her life to preclude TPR. *See In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996)

[2] If we addressed this issue, we would conclude, based on the extensive record in this case, and the record's support of the district court's findings of fact and conclusions of law, that the district court did not err or abuse its discretion by declining to exercise any authority it may have had to make a disposition that is not contemplated by the statutes.

(stating that evidence must address the conditions that exist at the time of trial, and the district court must rely on projected permanency of a parent's ability to care for a child rather than past history). Mother contends that her back problem was the "underlying condition" that affected her parenting and that the district court, in terminating her parental rights, relied too heavily on her pre-surgery inability to parent.

But the district court rejected mother's assertion that her back problem was the basis for her inability to care for the children, stating that

> Mother's back surgery may have contributed to her messy house and limited mobility shortly after her surgery; however, Mother's back issues do not explain Mother's failure to utilize services throughout the CHIPS action, Mother's behavior during the failed trial home visit and reunification, or her frequent dishonesty with service providers and the Court.

A finding of fact in a termination matter is not set aside on appeal unless, in light of the clear and convincing standard of proof, that finding is clearly erroneous. *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998). Because the record extensively documents mother's failures to cooperate with in-home visits, her noncompliance with her case plan, and her lack of honesty both before and after her back surgery, the district court's rejection of her explanation was not clearly erroneous. *See Wilson v. Moline*, 234 Minn. 174, 182, 47 N.W.2d 865, 870 (1951) (stating that an appellate court need not "discuss and review in detail the evidence for the purpose of demonstrating that it supports the trial court's findings" and that its "duty is performed when [it] considers[s] all the evidence . . . and determine[s] that it reasonably supports the findings").

Mother cites *In re Klugman*, 256 Minn. 113, 97 N.W.2d 425 (1959), to support her argument that her pre-surgery failure to care for the children does not support the TPR. But her reliance on *Klugman* is misplaced. In *Klugman*, a father's World War II injury caused significant financial problems for the family because it limited the father's ability to work. His children—at least two of whom had special needs—were put in the temporary custody of the county, and the father later had surgery that improved his condition and significantly reduced the family's financial problems. *See id.*, 256 Minn. at 115–17, 97 N.W.2d at 427-29. On appeal from the district court's adjudication of the children as neglected and dependent, the supreme court reversed, stating, among other things, that "[m]ere poverty [ ] of the parents is seldom, if ever, a sufficient ground for depriving them of the natural right to the custody of their child or children . . . ." 256 Minn. at 120, 97 N.W.2d at 430.

Mother argues that because the basis for her inability to care for the children was her back problem, and because she corrected that problem, *Klugman* weighs in favor of reversing the termination of her parental rights. But, as discussed above, the record supports the district court's finding that mother's back problem was not the underlying cause of her inability to care properly for the children. Furthermore, mother has not cited, and we have not found, any authority expanding application of *Klugman* from purely financial issues to the type of entrenched and unresolved chemical-dependency and mental-health issues presented in this case. *Klugman* does not support mother's argument.

2. Statutory grounds for TPR

The district court found two statutory bases for TPR: (1) mother failed to correct the conditions leading to the children's out-of-home placement, and (2) the children were neglected and in foster care. S*ee* Minn. Stat. § 260C.301, subd. 1(b)(5), (8) (2012). "We review an order terminating parental rights to determine whether the district court's findings (1) address the statutory criteria and (2) are supported by substantial evidence." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (citations and quotations omitted). In doing so, appellate courts "review the district court's findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W 2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan 6. 2012).

A statutory basis for TPR exists 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). It is presumed that reasonable efforts have failed if (1) a child under age eight when the CHIPS petition was filed has, by court order, resided out of the parental home six months "unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan"; (2) the court has approved an out-of-home placement plan; (3) the conditions leading to the out-of-home placement have not been corrected; and (4) reasonable efforts have been made to rehabilitate the parent and reunite the family. Minn. Stat. § 260C.301, subd. 1(b)(5)(i) – (iv). The district court

ruled both that the statutory presumption applied and that even without the presumption, the record demonstrates that reasonable efforts have, in fact, failed to correct the conditions leading to the out-of-home placement.

In addressing whether county efforts to assist the family are "reasonable" under Minn. Stat. § 260C.301, subd. 1(b)(5), the district court is to consider whether the efforts were, among other things, (1) available and accessible, (2) consistent and timely, and (3) realistic under the circumstances. *See* Minn. Stat. § 260.012(h) (2012). The district court found that the services provided in this case met these requirements.

Without citing to the record, mother argues that the county's efforts in this case were unrealistic, unavailable, and inaccessible because the county attempted reunification in April 2012 when mother lived 30 miles from services and needed major surgery, and because it resumed mother's visits with the children before she was physically able to provide care. But the record reflects that the county provided transportation assistance to mother and transportation for the children. Mother does not explain why this assistance was inadequate to address the distance she lived from services. And we have already rejected mother's assertion that her back problem, surgery, and associated recovery were not adequately considered by the district court.

Mother also claims that the county services were inconsistent and untimely because (1) after she completed inpatient chemical dependency treatment, the county did not continue family therapy, (2) the distance between her and the service providers limited the availability of services, and (3) there was no coordination of services. Mother has not cited the record for any of these allegations, and the record does not support them.

As noted above, the county provided transportation services. And as the district court found, "[o]n multiple occasions during the CHIPS action, Mother agreed that the County was providing her all of the services she required." The district court also found credible the testimony of the social worker and the guardian ad litem that the county had offered mother "all relevant services." In fact, the district court found that the services provided were "beyond what is required by law[,]" and that "no services or efforts are available which could allow the children to safely remain in Mother's home now or within the reasonably foreseeable future." The record amply supports the district court's finding that the county provided reasonable services to mother.

The district court also made specific findings about mother's numerous violations of court orders and failure to utilize services required by the case plan. The record supports those findings, as well as the district court's extensive findings detailing mother's dishonesty, her lack of insight about how her conduct adversely affects her special needs children, her long pattern of putting her needs above the needs of her children, her substance abuse, and her inability now or in the reasonably foreseeable future to properly care for the children. The district court did not abuse its discretion by concluding that reasonable efforts failed to correct the conditions leading to the children's out-of-home placement.

Another statutory basis for terminating a parent's parental rights is that "the child is neglected and in foster care[.]" Minn. Stat. § 260C.301, subd. 1(b)(8). A child who is "[n]eglected an in foster care" is one who (1) is in court-ordered foster care, (2) cannot be returned to the child's parents because of their circumstances, and (3) "whose parents,

despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child." Minn. Stat. § 260C.007, subd. 24 (2012). The district court concluded that the county proved that this statutory ground also supports TPR.

Mother does not specifically challenge this statutory basis for terminating her parental rights. It is undisputed that the children are in foster care. And, as discussed above, the record supports the district court's findings that the children cannot be returned to mother's care and that, despite the provision of services, mother has failed to adjust her circumstances so that the children can be returned to her care. Although only one statutory basis is sufficient to support TPR, the record supports the findings and conclusions that the children were neglected and in foster care, and the district court did not abuse its discretion by holding that this basis for TPR was also established.

3. Best interests of the children

Finding the existence of at least one statutory basis for TPR is necessary but not sufficient for a district court to terminate parental rights; the district court must also find that termination of parental rights is in the child's best interests. *See In re Welfare of the Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009) (stating that "a child's best interests may preclude terminating parental rights even when a statutory basis for termination exists"). Here, the district court made multiple findings about the children's needs and mother's inability to meet those needs, and concluded that the county "proved by clear and convincing evidence, under the totality of the circumstances, that

termination of [mother's] parental rights is in the best interest of the minor children[.]" Mother does not specifically challenge any of the district court's findings as clearly erroneous, but she argues that TPR is not in the children's best interests because (1) the prospects for a stable adoptive home for the children are uncertain and (2) that, having "successfully corrected an underlying medical condition" and having "drastically chang[ed] the chemical dependency treatment outcome . . . [,] [she is] physically, mentally, and emotionally able to parent her children."

Mother's arguments lack merit for several reasons. First, the supreme court has specifically barred consideration of the likelihood of adoption when addressing whether to terminate parental rights. *In re Welfare of P.J.K.*, 369 N.W.2d 286, 292 (Minn. 1985); *see also In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998) (holding that the TPR statute does not require assessment of a child's adoptability). Second, as discussed above, the record does not support mother's assertion that, at the time of the TPR trial she was, or for the foreseeable future would be, "physically, mentally and emotionally" able to parent the children. And finally, the record does not support mother's assertion that she will be able to provide the stability that she appears to admit is necessary for the best interests of the children to be met. As the district court found, mother has not proven that she can "maintain sobriety outside of a structured residential chemical dependency program" and "[m]other has never provided [the children] with stable housing." The

record supports the district court's conclusion that TPR is in the best interests of the children.

Affirmed.