STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0792

In the Matter of the Welfare of the Child of: K. R., Parent.

Filed October 21, 2013
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-JV-12-7748

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, James R. Hanneman, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

Bruce Jones, Faegre Baker Daniels LLP, Minneapolis, Minnesota (for respondent guardian ad litem)

William M. Ward, Hennepin County Chief Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota (for appellant mother)

Considered and decided by Schellhas, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

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

WORKE, Judge

Appellant K.R. challenges the district court's decision terminating her parental rights to H.K., arguing that the evidence does not support the district court's termination decision. We affirm.

FACTS

Appellant K.R. is the mother of H.K., born November 29, 2011. In February 2012, K.R.'s sister reported to respondent Hennepin County Human Services and Public Health Department (the agency) that K.R. sent a series of text messages threatening to put H.K. in the trash or to abandon him. K.R.'s sister reported other concerns about K.R.'s mental health. The agency took no action until a Clark County, Nevada social services agency notified the agency in March 2012 that appellant was the subject of child-protection proceedings involving another child. An agency investigator went to appellant's listed residence and had to summon police before appellant would permit the investigator to enter. The apartment had little furniture and was being used as an office. Appellant admitted she had a child but said he was at daycare. The investigator eventually was able to view H.K., who appeared fine.

While conducting its investigation, the agency discovered that appellant had five other children, none of whom were in appellant's care. Appellant had a child, I.T.M., whom she gave up for adoption at birth in 1997. Appellant left her oldest two children, K.U.J., and B.J., at a crisis nursery in Minnesota in 2000, but failed to return to pick them up. As a result, the children were the subject of a child in need of protection or services (CHIPS) proceeding. In 2001 or 2002, appellant voluntarily surrendered custody of these two children to her former domestic partner, J.S., who is not the father of the children. J.S. was awarded permanent custody of the children in 2002.

Appellant had two more children, I.R. and E.R., during her marriage to P.R. In 2005, I.R. was the subject of a CHIPS investigation in Dakota County after appellant

threatened to drown her. Appellant was hospitalized for depression after this incident, but refused to get a psychological examination. Dakota County took no further action because P.R. took custody of the children and obtained an order for protection against appellant. Although appellant eventually regained custody of I.R. and E.R., in 2009 she called P.R. to demand that he pick up the children because she could not care for them. During the course of their dissolution, P.R. discovered through genetic testing that he was not the biological father of I.R. P.R. left I.R., who has significant special needs and is autistic, at a shelter in Nevada, disclaiming any further responsibility for I.R. When contacted by the Nevada agency in 2012, appellant said that she could not care for I.R. and the newborn H.K. At that time, appellant had not seen either I.R. or E.R. for two years. The Nevada agency recommended that appellant's parental rights to I.R. be terminated and established a case plan that mirrored the one set forth by the Minnesota agency for H.K.

In March 2012, in the Minnesota CHIPS action, appellant agreed to a voluntary case plan that included supervised visitation, random urinalyses (UAs), a psychological evaluation, a parenting assessment, and an agreement to follow all recommendations made after those evaluations and to cooperate with the social worker and the guardian ad litem (GAL). After the CHIPS adjudication in June 2012, the case plan became court ordered. A termination of parental rights (TPR) petition was filed in August 2012, and a hearing on the petition was held in February 2013.

At the hearing, social worker Mark Costello testified that appellant completed the psychological assessment, psychiatric evaluation, and the parenting assessment, attended

supervised visitation regularly, and completed parenting education. Appellant refused to submit UAs for claimed religious reasons but ultimately gave two valid UAs that were negative for drugs and negative for alcohol. Costello dropped the UA requirement after the second valid test.

Although appellant completed the psychological assessment in March 2012, she did not begin recommended therapy until July 2012, and although she finally consented to a psychiatric evaluation, this was not done until August 2012. The psychiatric report stated that no medication was necessary because appellant denied any symptoms of mental illness, but also concluded that appellant downplayed any symptoms, blamed others, and had no insight into the "seriousness of her financial and legal situations." Appellant was diagnosed with a mood disorder, not otherwise specified, and Cluster B personality traits.[1] The psychiatrist stated that this type of disorder could not be treated with medication and that appellant should continue with therapy.

The therapist, Natalie Hopfield of Hennepin County Mental Health Clinic (HCMHC), reported to Costello that she could not work with appellant because appellant denied mental health issues, refused to take medications, and would not apply for health insurance to cover the visits. Despite this, Hopfield met with appellant three times to begin dialectical behavioral therapy (DBT). Appellant denied any responsibility for the child-protection intervention, could not identify any goals to work on or changes that should be made, and consistently blamed other people for the problems in her life. After

[1] Cluster B personality traits include borderline personality, anti-social traits, narcissism, and histrionic behaviors. The record shows that there was broad agreement among the professionals that this is an accurate diagnosis.

appellant missed two additional visits, Hopfield concluded that she would be unable to help appellant. Hopfield testified that appellant's actions were consistent with her diagnosis of Cluster B traits. Hopfield also opined that DBT would be unsuccessful because of appellant's lack of interest in therapy; successful DBT requires that a patient be committed to improving through therapy and make a sincere effort to engage in the process.

In November 2012, appellant met with Hilary Stoffel, a therapist at Tubman Center. Stoffel decided to do individual DBT with appellant because she believed appellant would not be successful in group DBT based on her lack of trust. After six sessions, Stoffel and appellant agreed that the therapy was not working, largely because appellant was disinterested and refused to perform tasks, such as completion of diary cards, which are an essential part of the highly structured DBT. Stoffel noted that appellant did not seem particularly upset by the failure of therapy, despite the fact that it was part of her court-ordered case plan.

James Evans, a child-support officer for Hennepin County, testified that appellant refused to cooperate with genetic testing to identify H.K.'s father and became angry when the county contacted the man identified as H.K.'s father on the birth certificate. Evans also testified that appellant was $44,000 in child support arrears for her two oldest children.

The GAL testified that she visited H.K. ten times, met with appellant separately four times, and observed several of the supervised visits. After appellant became verbally abusive during a meeting, the GAL was advised to meet with appellant only

when others were present. She noted that appellant continued to blame others for the child-protection action and appeared disengaged during some of her visits with H.K. The GAL was concerned that appellant did not participate in therapy and felt that appellant would have a more difficult time parenting full time, given H.K.'s sleep issues and temperament. She believed that appellant would not be prepared in the foreseeable future to act as a parent to H.K. and that H.K.'s best interests would be served by terminating appellant's parental rights.

Appellant presented several favorable witnesses. Courtney Williams, who supervised four visits between appellant and H.K., testified that appellant properly cared for him and was engaged during her visits. Williams had no concerns for the child's safety. But the district court found that another visitation supervisor, who did not testify, wrote in the visitation record that appellant "may have some difficulty regulating her emotions and cognitive distortions, exhibited by her raising her voice, having an 'attitude' toward [Costello] . . . . [Appellant] may benefit from . . . DBT to help manage overwhelming emotions, cognitive distortions, and/or abnormal personality traits." Becky Norine, a mental health practitioner, completed appellant's parenting assessment and provided parenting education. Norine recommended a psychological evaluation and individual therapy. Appellant completed 22 parenting-education sessions with Norine, who believed that appellant could parent H.K. Norine felt that appellant's ability to deal with frustration improved during the sessions.

J.S., who raised appellant's two oldest children, stated that appellant was a loving, caring parent. The district court found that J.S. was not credible. J.S. was unaware of

any mental health issues and did not know that there was a child-protection case pending in Nevada. Appellant's oldest daughter, K.U.J., testified that her mother was a good parent and offered to help appellant care for H.K. if he returned home.

Appellant testified that she had not spoken with I.R. or E.R. for two years. She testified that she had a good relationship with her two oldest children, K.U.J. and B.J. Appellant stated that no one had explained her case plan to her and that it was only in September 2012 that she discovered what she had to do. The district court specifically found that this was not credible. She denied failing to cooperate with Hopfield and Stoffel, but said they did not explain things or went too fast for her. She denied threatening Costello or yelling at the GAL. She said that the GAL only met with her twice. Appellant testified that she had been self-supporting for ten years, cleaning homes, fixing electronics, and doing therapeutic massage; she had rented an apartment that was suitable for H.K.; and she had several friends who could do child care for H.K.

The district court found that appellant's testimony was largely not credible. The district court also found that appellant did not have the capacity to understand her mental health issues or to take the steps necessary to deal with them. The district court concluded that appellant (1) neglected her parental duties; (2) was palpably unfit to parent H.K.; (3) failed to correct the conditions that led to out-of-home placement; and (4) neglected HK, who remained in foster care. The district court also concluded that the county had made reasonable efforts to assist appellant and that terminating appellant's parental rights was in H.K.'s best interests. The district court ordered the termination of appellant's parental rights to H.K. This appeal followed.

D E C I S I O N

Standard of review

An involuntary termination of parental rights must be based on at least one of the statutory grounds set forth in Minn. Stat. § 260C.301, subd. 1(b) (2012). An appellate court reviews a district court's termination decision to determine whether at least one of the statutory grounds for termination is supported by clear and convincing evidence and termination is in the child's best interests. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). "A finding is clearly erroneous if it is manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012) (quotation omitted). Although a district court's findings are reviewed for clear error, an appellate court nevertheless reviews a district court's conclusion that a particular statutory ground for termination exists 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). Even with this deferential standard, we "will exercise great caution in termination proceedings." *Id.* at 902.

Neglect of parental duties

Parental rights may be involuntarily terminated if a parent "substantially, continuously, or repeatedly refuse[s] or neglect[s] to comply with the duties imposed upon that parent by the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(2). These duties include the provision of food, shelter, and clothing, as well as anything else "necessary for the child's physical, mental, or emotional health and

development." *Id.* A social services agency must make reasonable efforts to assist a parent to correct the conditions that led to the TPR petition, unless such efforts would be futile. *Id.*

"Failure to satisfy requirements of a court-ordered case plan provides evidence of a parent's noncompliance with the duties and responsibilities" of the parent/child relationship. *K.S.F.*, 823 N.W.2d at 666. In *K.S.F.*, this court concluded that, although the mother had completed some parts of her case plan, she nevertheless substantially failed to complete others or to comply with her parental duties. *Id.* at 666-67. This court noted that

> the issue is whether the parent is presently able to assume the responsibilities of caring for the child. . . . [A]lthough [the mother] may have completed the case plan to the best of her ability, the record clearly and convincingly shows that [the mother] did not improve her parenting skills to a degree that corrected the conditions that formed the basis for the TPR petition.

Id. at 667 (quotation omitted).

Here, appellant completed some of her case plan, but she failed to address the part of the case plan that most concerned the agency and the district court because she made no meaningful effort to complete mental health therapy. The district court found that appellant "continued to show through her interactions with the [agency] and mental health professionals that she takes no responsibility for the child-protection case being opened" and that she "continually blames others for the problems in her life, and failed to acknowledge the mental health treatment and lifestyle changes needed to safely parent her child."

Appellant argues that there was no evidence "of actual harm, nor actual risk of harm, to H.K. posed by [a]ppellant." She points to the positive assessments of the parenting educator and the visitation supervisor, and argues that the district court based its conclusions on "alleged threatening texts – from one year previously." Appellant asserts that "through scores of supervised and non-supervised visitation with H.K., [the court's] fear of instability from [a]ppellant was never realized. Instead, [a]ppellant was always 'regulated' and attentive to her son."

But the district court found that (1) the child-protection case was initiated because of the threatening texts and information about a child-protection proceeding in Nevada; (2) appellant made threatening comments to Costello and the GAL; (3) appellant refused to comply with genetic testing, which could have identified H.K.'s father; (4) appellant was sometimes "emotionally disconnected" during visitation; (5) supervised or limited visitation may not be the best predictor of the stresses appellant would encounter in parenting H.K. by herself; and (6) appellant "displayed threatening behaviors and consistently acted 'disregulated,' which [is] defined as erratic and manic behavior and speaking without listening." The district court noted the visitation entry that suggested that appellant was volatile during at least one visit. The district court also was troubled because appellant had voluntarily given up custody of five of her children, one of whom was the subject of a pending child-protection case in Nevada. Finally, the district court found that appellant refused to take any responsibility for her actions that caused the child-protection case to be opened.

Given appellant's extensive history of mental illness and her parenting history, the district court's findings that she failed to address the most important aspect of her case plan are supported by clear and convincing evidence. We conclude that the district court's determination that appellant neglected her parental duties was not an abuse of discretion.

Failure to correct conditions

The district court concluded that appellant failed to correct the conditions that led to H.K.'s out-of-home placement, despite reasonable efforts by the agency, a second statutory ground. Minn. Stat. § 260C.301, subd. 1(b)(5). It is presumed that reasonable efforts have failed if (1) the child is under eight years old and has been in placement for more than six months, unless the parent has maintained regular contact with the child and is complying with the case plan; (2) there is a court-approved plan; (3) the conditions that led to the out-of-home placement have not been corrected; and (4) the social services agency has made reasonable efforts to reunite the family. *Id.* A failure to correct conditions can be "evidenced by noncompliance with a case plan." *In re Children of T.R.*, 750 N.W.2d 656, 663 (Minn. 2008). A parent may comply with a case plan but nevertheless fail to correct conditions leading to out-of-home placement. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012).

The major concern of the agency and the district court was appellant's mental health. Although appellant satisfied some of her case-plan requirements and attended a number of therapy sessions, the consensus opinion of the therapists was that appellant was not engaged in the therapy and therefore made no progress in addressing her mental

health. Appellant argues that DBT was not suitable and that she did not find a therapist whom she trusted, but the evidence shows that appellant delayed entry into therapy, made no effort while in therapy, and showed no insight into her mental health problems. The condition that led to the child-protection proceedings was concern about appellant's mental illness; it is a repeated theme in her earlier involvements with child protection and in the Nevada proceedings. *See id.* ("The critical issue is not whether the parent formally complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child.")

A social services agency must make reasonable efforts to assist a parent in correcting the conditions that led to out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5). "Reasonable efforts" include services that eliminate the need for removal and reunite the child with its family. Minn. Stat. § 260.012(a) (2012). "Reasonable efforts" are "(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." Minn. Stat. § 260.012(h) (2012). Appellant's sole challenge to the county's reasonable efforts is that the agency continued to recommend DBT, despite reservations about appellant's chances of success. But these reservations were based on appellant's disinterest in therapy: a person must be engaged in DBT in order to benefit from the therapy and appellant was not. Appellant also asserted at trial that she had begun individual therapy but offered no further evidence. *See In re Welfare of D.C.*, 415 N.W.2d 915, 918-19 (Minn. App. 1987)

(opining that minimal cooperation undertaken shortly before trial was not sufficient to avoid termination).

We see no abuse of discretion in the district court's conclusion, based on clear and convincing evidence, that appellant's parental rights should be terminated because of failure to correct conditions leading to out-of-home placement.

Palpable unfitness

Because TPR may be based on a single statutory ground under Minn. Stat. § 260C.301, subd. 1(b), we need not consider the district court's other conclusions, but we will nevertheless briefly address them. The district court found that appellant was palpably unfit to be a party to the parent/child relationship. Minn. Stat. § 260C.301, subd. 1(b)(4). A parent is palpably unfit

> because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Id. The agency must prove "a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child." *T.R.*, 750 N.W.2d at 661. Mental illness alone is not sufficient to terminate parental rights unless it affects a parent's ability to recognize a child's needs or to undertake the daily functions of parenting. *Id.*; *see also In re Welfare of R.T.B.*, 492 N.W.2d 1, 3-4 (Minn.

App. 1992) (concluding that a father who suffered from a character disorder with anti-social features that was not amenable to treatment was palpably unfit).

A parent is presumed to be palpably unfit if the parent's rights to one or more children have been involuntarily terminated or the parent's custodial rights have been involuntarily transferred to a relative. Minn. Stat. § 260C.301, subd. 1(b)(4). This presumption does not apply to appellant, because she voluntarily transferred her custodial rights to her other five children and the Nevada child-protection proceeding had not concluded by the time of this hearing. We nevertheless are troubled by appellant's extensive history of child-protection intervention and the undisputed fact that she has not been able to parent five other children. While mental illness alone cannot provide a basis for termination, appellant's persistent refusal to address this issue affects her ability to recognize her child's needs and undertake the daily functions of parenting. The district court's conclusion that appellant is palpably unfit is not an abuse of discretion.

Neglected and in foster care

The district court concluded that H.K. was neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(8)(2012). A child is neglected and in foster care if the child (1) is in court-ordered out-of-home placement; (2) cannot be returned home because of its parents' "circumstances, condition, or conduct"; and (3) cannot return home because the parents have failed to make reasonable efforts to adjust their circumstances, condition, or conduct. Minn. Stat. § 260C.007, subd. 24 (2012).

The district court found that H.K. was in foster care and that he could not return home because appellant failed to address her mental health issues and was "unable to take

responsibility for the effect her mental health has on parenting and has not made any progress in addressing her mental health concerns," even though the agency provided "available rehabilitative services." The district court's findings are supported by clear and convincing evidence.

Best interests of the child

In addition to identifying a statutory ground, the district court must also consider whether termination is in the child's best interests. Minn. Stat. § 260C.301, subd. 7 (2012). The child's best interests, taken alone, are not a sufficient reason to terminate parental rights. *R.W.*, 678 N.W.2d at 54-55. But "a child's best interests may preclude terminating parental rights even when a statutory basis for termination exists." *In re Tanghe*, 672 N.W.2d 623, 625-26 (Minn. App. 2003) (quotation omitted). The district court must make findings explaining why its decision is in the child's best interests. *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546-47 (Minn. App. 2009).

Here, the district court found that, although appellant wanted to maintain a parent/child relationship with H.K., she had failed to cooperate with the case plan and had not corrected the conditions that led to out-of-home placement. The district court noted that H.K. has special needs that require a stable environment and an attentive caregiver; the district court found that appellant was successful in the "controlled and predictable environments" of the supervised visitation and parenting classes, but was concerned that appellant "is not capable of safely parenting [H.K.] on a full time basis." The district court stated that this concern is supported by the CHIPS adjudication order and appellant's significant past involvement with child protection. The district court

found that appellant would be unable to care for H.K. for the reasonably foreseeable future and that there were no relatives available to accept a transfer of custody of H.K.

The district court had the option of continuing protective supervision, with the child either in foster care or with the parent. *See* Minn. Stat. § 260C.201, subd. 1 (2012) (outlining a district court's potential remedies). But H.K. had been in placement for 17 months; appellant did not cooperate with the part of the case plan the district court considered to be most critical until shortly before the TPR hearing; the district court cited H.K.'s need for stability; and appellant's significant child-protection history weighs against her. While the district court's findings must be based on clear and convincing evidence, we review its ultimate conclusion as to whether a parent's rights should be terminated for an abuse of discretion and defer to its assessment of witness credibility. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990). The district court's best-interests findings are supported by clear and convincing evidence and its conclusion that appellant's rights should be terminated is not an abuse of discretion.

Affirmed.