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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1044**

In the Matter of the Welfare of the Child of: A. F., Parent.

**Filed December 23, 2008
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 27-JV-07-9249

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Considered and decided by Kalitowski, Presiding Judge; Stoneburner, Judge; and Huspeni, Judge.*

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant mother A.F. challenges the district court's denial of her motion to vacate her voluntary termination of parental rights (TPR). Appellant argues that the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

district court erred when it determined that the TPR was not void due to undue influence. We affirm.

DECISION

I.

At the time of the pretrial hearing, appellant was nine months pregnant with her second child. Appellant asserts that when she voluntarily terminated her parental rights to her then 22-month old son, B.F., she was acting under undue influence because she was forced to make a choice between B.F. and her unborn child. Thus, appellant argues that the district court erred in denying her motion to vacate the voluntary TPR petition. We disagree.

The Minnesota Supreme Court has emphasized the importance of the best interests of the child when considering rescission of a voluntary termination order:

In general, a voluntary termination order may be rescinded only upon a showing of fraud, duress, or undue influence. 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. As in all termination cases, our paramount concern is for the child's best interests.

In re Welfare of D.D.G., 558 N.W.2d 481, 484 (Minn. 1997) (citations omitted). Undue influence is “coercion, amounting to a destruction of one’s free will, by means of importunities, flatteries, insinuations, suggestions, arguments, or any artifice not amounting to duress.” *In re Welfare of N.M.C.*, 447 N.W.2d 14, 16 (Minn. App. 1989) (quotation omitted).

Appellant alleges that the Department of Human Services and Public Health (the Department) told her, before the pretrial hearing began, that if she voluntarily terminated her parental rights to B.F., the Department would not open a new CHIPS file on her unborn child. Appellant asserts that this “choice” between her two children meets the criteria outlined above in *N.M.C.* to satisfy undue influence. But appellant fails to address the TPR statute, which states that once parental rights to one or more other children have been involuntarily terminated, “it is presumed that a parent is palpably unfit to be a party to the parent and child relationship.” Minn. Stat. § 260C.301, subd. 1(4) (2006). And this presumption of palpable unfitness is grounds for the juvenile court to, “upon petition, terminate all rights of a parent to a child.” Minn. Stat. § 260C.301, subd. 1 (2006). In contrast, a voluntary TPR does not result in this presumption. *See In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 249-50 (Minn. App. 2003) (noting that the analysis for a parent whose parental rights have previously been terminated differs from the analysis for a parent who has no prior termination because the presumption of unfitness relieves the district court from finding the existence of independent reasons for termination).

Thus, under the statute, the “choice” appellant had to make, was the difficult choice any parent in appellant’s situation would have to make. By deciding to voluntarily terminate her parental rights, appellant chose not to subject herself to the possible presumption of palpable unfitness that would result from an involuntary TPR, and the possibility that a TPR proceeding on her unborn child could be commenced on that basis alone. Moreover, the record indicates that the district court accepted

appellant's voluntary termination on the ground of appellant's inability to parent B.F. due to her young age, not on the ground of palpable unfitness. We conclude that the fact that the Department informed appellant about the consequences of an involuntary TPR does not rise to the level of undue influence.

Furthermore, appellant's undue influence argument is contradicted by her testimony and actions at the pretrial hearing. Both appellant's attorney and the district court judge inquired about appellant's understanding of the TPR and appellant acknowledged understanding the consequences of the TPR. Appellant stated on the record that she had discussed her decision with her attorney and her aunt. Appellant's attorney read through the TPR petition with her line-by-line and appellant stated she understood the consequences of her decision. Finally, both appellant's testimony and signed affidavit acknowledged that she was not promised anything by the Department in return for the voluntary TPR and that she did not consent to the voluntary TPR due to any duress, undue influence or fraud. *See D.D.G.*, 558 N.W.2d at 485 (concluding appellant's claims of undue influence meritless when he testified, with the assistance of counsel, that he clearly understood the finality of his decision and did not testify that he consented to a TPR based on coercion or "any promises"). Accordingly, the record provides substantial support for the district court's denial of appellant's motion to vacate the voluntary TPR petition.

In considering undue influence arguments, this court has agreed with the statement that:

[i]f the courts were to always allow the argument that an individual was unduly influenced or placed under duress during an otherwise emotional decision to give up a child for adoption, the door of certainty and finality would never be closed and the best interests of the child could never be served.

N.M.C., 447 N.W.2d at 17. Ultimately, the overriding concern in termination proceedings is the child's best interests and when "the interests of the parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7 (2006); see *In re Welfare of J.R. Jr.*, 655 N.W.2d 1, 5-6 (Minn. 2003) (stating it is the child's best interests that are the overriding consideration in TPR cases). And as the Minnesota Supreme Court has noted, "[a]t some point permanence for the child and adoptive parents becomes more important than the natural parent's right to reconsider her decision." *In re Welfare of K.T.*, 327 N.W.2d 13, 18 (Minn. 1982).

Here, B.F. has now been in some type of nonpermanent foster care for the last two years of his life. And appellant has not been B.F.'s primary caregiver for the past 18 months. At the pretrial hearing, appellant acknowledged that she believed it would be in B.F.'s best interests for her parental rights to be terminated, and that he was doing well in his foster home. Additionally, the foster care family that B.F. has lived with for the past 18 months hopes to adopt him. It is in B.F.'s best interests to have permanence in his life and the record reflects that this can be achieved in his current foster home.

The district court properly recognized that appellant had to make a very difficult decision when she decided to terminate her parental rights as to B.F. But Minnesota caselaw mandates that "[s]ome serious and compelling reason must exist in order to once

again uproot the child and dramatically change his living environment.” *Id.* The district court correctly determined that appellant failed to show that she was acting under undue influence when she voluntarily terminated her parental rights. And because it is in B.F.’s best interests that appellant’s parental rights be terminated, we conclude that the district court did not err in denying appellant’s motion to vacate the voluntary TPR petition.

II.

Appellant also argues on appeal that good cause did not exist to terminate appellant’s parental rights. Appellant did not raise this issue below in the district court. A party generally waives issues on appeal not fully presented to the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Appellate waiver applies in child protection proceedings. *In re Welfare of T.D.*, 731 N.W.2d 548, 553 (Minn. App. 2007). This argument, therefore, is waived and not properly before us in this appeal.

Affirmed.