STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0252

In the Matter of the Welfare of the Child of: M. C., Parent

Filed September 1, 2009
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-JV-08-6419

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Considered and decided by Peterson, Presiding Judge; Connolly, Judge; and Bjorkman, Judge.

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

PETERSON, Judge

In this appeal from an order terminating her parental rights, appellant argues that the evidence was insufficient, the district court erred by not considering foster care instead of termination, and the district court improperly permitted testimony of a witness who lacked first-hand knowledge. We affirm.

FACTS

Appellant M.C. is the mother of L.S. L.S.'s father is deceased. L.S. has developmental disabilities and significant special needs. Appellant began receiving voluntary child-protection services from respondent Hennepin County Human Services and Public Health Department (the department) in February 2007, so that appellant could participate in chemical-dependency services. Appellant agreed to a case plan under which she would complete a chemical-health assessment and follow its recommendations, complete random urinalysis (UA) screenings, participate in a mental-health assessment, cooperate with in-home parenting services, and attend an anger-management program.

L.S. entered a voluntary placement so that appellant could attend treatment. Appellant was offered treatment for her chemical dependency from African American Family Services (AAFS). She completed the intake process but did not return for treatment and was discharged. During this time, she continued to provide UAs that were positive for cocaine and opiates. On June 17, 2007, L.S. returned to appellant's custody.

The department filed a child-in-need-of-protection-or-services (CHIPS) petition, alleging that appellant "has not participated or completed the case plan tasks that she agreed to." On November 30, 2007, the district court held an emergency protective-care hearing and ordered out-of-home placement for L.S. At a hearing on February 8, 2008, appellant waived her right to a trial on the petition and admitted that L.S. was a child in need of protection or services.

In a March 18, 2008, order, the district court adjudicated L.S. a child in need of protection or services. The court granted legal custody of L.S. to the department and adopted a case plan for appellant that required the following:

> 3.1 [Appellant] shall not use alcohol or non-prescribed controlled substances.
>
> 3.2 [Appellant] shall submit to urinalysis testing as requested by the Department social worker. FAILURE TO SUBMIT TO URINALYSIS TESTING AS REQUESTED IS PRESUMPTIVE EVIDENCE OF USE OF ALCOHOL AND NON-PRESCRIBED CONTROLLED SUBSTANCES.
>
> 3.3 [Appellant] shall complete a chemical dependency evaluation and follow all recommendations therefrom.

The case plan also required appellant to complete a parenting-education program, complete a psychological evaluation, maintain safe and suitable housing, and maintain contact with her social worker. Appellant was granted weekly supervised visitation with L.S.

After L.S.'s court-ordered out-of-home placement, appellant participated in several chemical-dependency and parenting programs. She completed a six-hour day treatment program at Fairview Plus Lodging (Fairview) in January of 2008. She began the aftercare program at Fairview but was ultimately discharged four weeks later for absences and failure to comply with the rules. She attended several sessions of a parenting-education course but discontinued the program. She also began a psychological evaluation with Dr. Michael Kearney but began missing appointments and never completed the assessment. An August 19, 2008, rule 25 chemical-health

assessment recommended a dual mental-health/chemical-dependency residential program, but it appears that this recommendation was never followed because the psychological examination was not completed.

Appellant successfully completed court-ordered programs that were not related to her chemical dependency, including an AAFS Effective Parenting program and a Women's Domestic Violence program. Appellant also obtained safe and suitable housing and began participating in church activities.

On June 5, 2008, the department filed a petition to terminate appellant's parental rights. The petition was based on appellant's failure to complete the Fairview aftercare program that was part of the placement plan, her failure to provide requested UAs, and her providing UAs that were positive for cocaine. The petition alleged that appellant failed to sign necessary releases and cooperate with her social worker.

Just before trial, appellant asked the court to consider either transferring legal custody of L.S. to appellant's friend Yvonne Devost or placing L.S. in foster care for a specified period of time. The department was not willing to recommend transferring custody to Devost and did not request the court to consider foster care.

Appellant testified at trial that she had been sent to jail in July 2008 and resumed using cocaine after she was released. She also testified that she had completed six to eight chemical-dependency programs since about 1998. She acknowledged that she had gone to the hospital using a false name in May or April 2008 but denied that she had done so to obtain pills. However, she stated that she had been addicted to prescription narcotics and that she had received these pills while in the hospital under the false name.

Deborah Muenzer-Doy, appellant's social worker, testified at trial that appellant was required to provide two UAs per week but, in 2008, she had provided only one in January, five in February, two in March, five in April, one in May, one in June, two in August, four in September, and one in October. She testified that appellant's UAs tested positive for cocaine on June 30, August 29, September 5, and September 12. Muenzer-Doy also acknowledged that she became involved in appellant's case in April 2008 and that her testimony regarding earlier matters was based on her review of the case file and the notes of the previous social worker.

Caryn Pridey, L.S.'s developmental-disabilities worker, testified that L.S. needed to be supervised at all times due to her behavioral problems. She opined that it was in L.S.'s best interests to terminate appellant's parental rights. She also testified that a caregiver who was using drugs would not be able to provide the necessary consistency in parenting L.S. She believed that it would be difficult for appellant to provide for L.S. because of appellant's difficulty in managing emotions and her "sporadic sobriety and support network."

Justina Wagner, L.S.'s guardian ad litem, testified that she was concerned about appellant's inability to maintain sobriety. She acknowledged that appellant was involved in a church organization but noted that appellant still continued to use drugs. She opined that, although it is preferable to unite a child with her parent, it was in L.S.'s best interests to have appellant's parental rights terminated because L.S. needed closure that could not be provided as long as appellant continued to use drugs.

The district court ordered appellant's parental rights terminated on three statutory bases and appointed the department as L.S.'s legal custodian. Appellant filed a motion for a new trial, which the court denied. This appeal followed. At oral argument, appellant waived her argument that the department should have considered placing L.S. with Devost.

D E C I S I O N

"[P]arental rights may be terminated only for grave and weighty reasons." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). Accordingly, "[t]his court exercises great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996).

I.

When reviewing whether the record supports an order terminating parental rights, we "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998). But, "while we carefully review the record, we will not overturn the [district] court's findings of fact unless those findings are clearly erroneous." *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995).

The district court may terminate parental rights when one or more statutory conditions exist. Minn. Stat. § 260C.301, subd. 1(b) (2008); *see also In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) (stating that district court must find "at least one of the eight statutory conditions for termination"). If one statutory condition supports

termination, this court need not address any other conditions that the court may have found to exist. *See In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005) (declining to address additional statutory bases for termination when district court did not err by finding parent palpably unfit).

One of the three statutory bases on which the district court ordered appellant's parental rights terminated is that appellant failed to correct the conditions leading to L.S.'s out-of-home placement. The district court may terminate parental rights if it finds "that 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). "Reasonable efforts at rehabilitation are services that go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Mar. 28, 2007)

The record supports the district court's finding that appellant failed to correct the conditions leading to the out-of-home placement. The March 18, 2008, order for L.S.'s out-of-home placement states: "The child is in need of protection or services due to the following: [Appellant] is chemically dependent. [Appellant's] chemical dependency has negatively affected her ability to care for her child." Appellant continued to use illegal drugs and provided positive UAs as recently as six weeks before trial, which was almost six months after the March 18 order and almost a year after the court originally ordered out-of-home placement. Appellant failed to submit required UAs on numerous occasions and submitted only one during the month before trial.

Appellant argues that reasonable efforts at rehabilitation were not made because she did not receive mental-health services when recommended by Fairview and that these services were necessary to treat her substance-abuse issues. However, the March 18, 2008, court order required appellant to "complete a psychological evaluation and follow all recommendations therefrom." The out-of-home placement plan required appellant to "participate in a mental health/psychological assessment and follow recommendations." Appellant began an evaluation with Dr. Michael Kearney in March 2008, but she did not show up for appointments, and the evaluation was never completed. There is no evidence in the record that appellant ever presented any problems that prevented her from completing this psychological evaluation to her social worker, and she never identified any such problems to the district court during L.S.'s out-of-home placement.

Furthermore, the record demonstrates that reasonable efforts were made to correct appellant's chemical-dependency problem. After the department became involved, but before the court ordered out-of-home placement, appellant was offered an opportunity to participate in chemical-dependency treatment from AAFS. But she completed only the intake process and did not return for treatment. During this time, appellant also participated in a methadone program at Alliance Clinic. She was discharged from this program on October 31, 2007, because she continued to provide UAs positive for cocaine. After the court ordered out-of-home placement, appellant completed a program at Fairview but was discharged from their aftercare program for lack of attendance. Appellant does not appear to argue that any of these chemical-dependency treatments was unreasonable. Therefore, the record reflects by clear and convincing evidence that,

despite reasonable efforts at rehabilitation, appellant failed to correct the conditions leading to the out-of-home placement. Because the record supports termination on this statutory basis, we will not address the additional statutory bases for the termination order.

II.

Appellant argues that the district court erred by denying her request to place L.S. in foster care for a specific period of time. "Any permanent placement petition filed by the county attorney or agent of the Commissioner of Human Services may seek alternative permanent placement relief, including . . . placement of the child in long-term foster care." Minn. R. Juv. Prot. P. 33.02, sub. 4(b). The district court may order foster care for a specified period of time only if "the sole basis for an adjudication that the child is in need of protection or services is the child's behavior," the court finds that foster care is in the best interests of the child, and the court approves of the agency's compelling reasons that other dispositional options are not in the child's best interests. Minn. Stat. § 260C.201, subd. 11(d)4(i) (2008).

The department did not ask the court to consider foster care, and appellant argues that the department should have considered it as an option. But even if the department was required to consider it, the court could not have placed L.S. in long-term foster care because the basis for the CHIPS adjudication was appellant's drug use, not L.S.'s behavior. Therefore, the district court did not err by refusing to grant appellant's request for long-term foster care.

III.

Appellant argues that because Muenzer-Doy did not have first-hand knowledge of events that occurred before she became appellant's caseworker, the court erred by allowing Muenzer-Doy to testify regarding these events. Respondent argues that the district court did not err because appellant did not object to the testimony at trial and cannot raise the objection for the first time on appeal.

Appellant argues that this evidentiary issue was properly preserved because she raised it in her motion for a new trial. "Generally, to preserve issues, including evidentiary rulings, arising during the course of a trial, counsel must make timely objections *and* move for a new trial." *In re Gonzalez*, 456 N.W.2d 724, 727 (Minn. App. 1990) (emphasis added). "[A] party may not raise an issue for the first time in a new-trial motion." *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 553 (Minn. App. 2007). This rule applies here because appellant knew that Muenzer-Doy was testifying regarding events that occurred before she became the caseworker. *See In re Trusteeship of Trust of Williams*, 631 N.W.2d 398, 407 (Minn. App. 2001) (articulating an exception to general rule for the situation in which party "first learns of the existence of an underlying fact during trial."), *review denied* (Minn. Sept. 25, 2001). Because appellant raised Muenzer-Doy's lack of firsthand knowledge for the first time in her new-trial motion, she did not properly preserve this issue on appeal.

Also, there is no indication that Muenzer-Doy's testimony affected appellant's substantial rights. *See* Minn. R. Evid. 103(a) (stating that error may not be predicated on ruling admitting evidence unless party's substantial right is affected). Appellant has not

identified which parts of the testimony were not based on firsthand knowledge, and the documentary evidence provided at trial, including documentation of appellant's treatment at Fairview and incomplete psychological evaluation with Dr. Kearney, provided clear and convincing evidence to support the termination of parental rights. This evidence was admitted under the business-records exception to the hearsay rule, and appellant does not challenge the admission of this documentary evidence on appeal.

Affirmed.