STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1286

In the Matter of the Welfare of the Children of: P. T. and A. T., Parents.

Filed December 22, 2009
Affirmed
Stoneburner, Judge

Brown County District Court
File No. 08JV0958

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Considered and decided by Stoneburner, Presiding Judge; Lansing, Judge; and Johnson, Judge.

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

STONEBURNER, Judge

Appellant father challenges termination of his parental rights to A.T., arguing that the evidence does not support the district court's finding that he is palpably unfit, and that the decision is clearly erroneous. We affirm.

D E C I S I O N

An order terminating parental rights will be affirmed as long as at least one statutory ground 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). Although we defer to the district court's findings of fact unless clearly erroneous, we exercise great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result in accordance with statutory grounds. *In re Welfare of T.M.D.*, 374 N.W.2d 206, 211 (Minn. App. 1985), *review denied* (Minn. Nov. 25, 1985).

A district court may terminate parental rights if it finds that a parent is palpably unfit to be a party to the parent-child relationship because of specific conditions directly relating to the parent-child relationship determined by district court to be of a duration or nature rendering the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child. Minn. Stat. § 260C.301, subd. 1(b)(4) (2008).

In this case, the parental rights of appellant P.T. (father) and A.T. (mother) (collectively "the parents") to four children were involuntarily terminated in 2001 after a jury trial in LaCrosse County, Wisconsin, and their parental rights to a fifth child were involuntarily terminated in 2002 in a Nicollet County proceeding. A parent is presumed to be palpably unfit on a showing that his or her parental rights to one or more other children were involuntarily terminated. *Id.*

At the time of the birth of their sixth child, A.T., on June 12, 2008, the parents were living in Brown County. Brown County Family Services (BCFS) took custody of A.T. approximately three days after his birth and petitioned for termination of parental rights (TPR) to A.T., based on a presumption of the parents' palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4). But the district court denied TPR, finding that the parents had overcome the presumption of palpable unfitness, based on evidence that their living circumstances had changed significantly since their parental rights to their fifth child were terminated in 2001. The district court adjudicated A.T. a child in need of protection or services of the court, continued A.T.'s placement in foster care, and ordered BCFS to develop a case plan.

The case plan included a parenting assessment, parenting education, anger management, and supervised visitation with A.T. Approximately six months later, based on the results of the assessments, the inability of A.T. to be safely placed in parents' care despite their partial compliance with the case plan, and the exigent permanency needs of A.T., BCFS again petitioned for termination of father's and mother's parental rights to A.T. The petition asserted, in relevant part, that father is palpably unfit to be a party to the parent-child relationship under Minn. Stat. § 260C.301, subd. 1(b)(4), and that TPR is in A.T.'s best interests. Mother voluntarily terminated her rights to A.T. prior to trial on the petition.

At trial BCFS presented evidence that father's low intellectual functioning, personality traits, and extreme anger-management issues, first identified in 2000 in connection with the Wisconsin TPR proceedings and confirmed in the 2001 TPR

proceedings in Nicollet County, remain basically unchanged and unlikely to change in the foreseeable future, such that A.T. would be at risk in father's care. Diane Gates, the social worker involved in the Wisconsin TPR, testified about father's anger issues that led to TPR in Wisconsin and stated that the three oldest children involved in that case all expressed an unusual loathing and fear of father and continue to be some of the most traumatized children in LaCrosse County.[1] Gates testified that each of those boys has significant special needs directly related to parental deficits.

BCFS presented evidence of father's continuing problems with anger management, despite his having not maltreated A.T. during supervised visits and his progress in parenting education classes. In addition to father's consistent and extreme anger, examples of which were observed by the district court during trial and noted in the district court's findings, BCFS presented evidence that father has not been able to keep up with A.T.'s developmental changes. Expert testimony was presented that father's intellectual deficits, personality traits, and absolute denial of any anger-management problems or parenting deficits directly affect his ability to adequately parent. And, in part due to father's absolute denial of deficits, these conditions are not likely to change in the foreseeable future.

Dr. Jane Thomas-Klein, the psychologist who performed parental-capacity evaluations of father for Nicollet County in 2001 and for BCFS in 2008–2009, testified that there was no significant change in the evaluation results from 2001 to 2009.

[1] The youngest of the four was an infant at the time of TPR in Wisconsin and the social worker did not present any testimony concerning that child.

Dr. Klein testified that father's relatively low IQ of 77 makes it hard for him to understand events and easy for him to misperceive situations. Dr. Klein testified that father's results on the State Trait Anger Expression Inventory indicated that he denies any difficulty with anger but would express anger aggressively. The district court found these "indications" consistent with its own observations of father and with testimony of his continuous confrontations with service providers. Dr. Klein testified that father has antisocial personality traits that make him resistant to authority, and his condition cannot be treated with medication. Dr. Klein testified that treatment through group therapy can take "years, years, years," even with a person who is willing to address problems, which father is not.

Father failed for many months to schedule anger-management therapy that was part of his case plan, although he made an appointment with his therapist in the week before the TPR trial and testified at trial that he would voluntarily continue that therapy. But the therapist with whom he had started treatment indicated that father is not amenable to the therapy. And, at trial, father consistently denied that he has an anger problem. Father misconstrued the opinion that he is too dangerous for group therapy to have been a finding that his anger issues were not sufficiently significant to warrant group therapy.

The district court found that father is wholly in denial about his anger problem and that his problem is so bad that he cannot be safely and productively put into group therapy "which is the setting in which that problem would be best dealt with in the ordinary course." The district court found that until father acknowledges his anger issues, anger-management treatment would be futile and that his inability to control his

anger creates a significant risk to the health, safety, and welfare of A.T., particularly as A.T. grows up and is capable of contradicting or disobeying father. *See In re Welfare of J.D.L.*, 522 N.W.2d 364, 368 (Minn. App. 1994) (affirming a determination that a parent is palpably unfit, in part, because parent had no understanding of parenting deficiencies and denied domestic abuse).

BCFS presented evidence of A.T.'s special needs and of father's disagreement with pediatrician recommendations and the care given by A.T.'s foster parents. The district court noted that father expresses dissatisfaction with everything and everybody involved in the case and exhibits a "prevalent and nearly constant attitude that nobody does the right thing except for himself." The district court found that father had the same complaints about service providers in Wisconsin and that father lacks insight into the fact that he has parenting deficiencies in need of improvement.

The district court made detailed findings about father's actions that led to its further finding that despite father's compliance at times with programming offered, father has not received any lasting benefit from that programming. The district court found that "father simply does not have the capacity to [make] lasting improvements sufficient to permit him to be an adequate parent to [A.T]." The evidence in the record supports this finding.

The district court's findings address the statutory criteria for TPR, the record supports the district court's findings, and the findings support the district court's conclusion that father is palpably unfit due to specific conditions directly related to the parent-child relationship that are of a duration or nature rendering father unable, for the

reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of A.T. The district court did not err in concluding that father is palpably unfit under Minn. Stat. § 260C.301, subd. 1(b)(4).

Father challenges the district court's finding that BCFS proved that reasonable efforts did not correct the conditions that led to A.T.'s placement. Father's argument appears to be that he attended everything that he was scheduled to attend. But, as the district court noted, father fails to appreciate that change as a result of services, not attendance, is the issue. The record supports the district court's finding that BCFS provided reasonable services and expended reasonable efforts to reunify A.T. with his parents. And the record supports the district court's finding that A.T. cannot be safely returned to father's care despite the programming offered and father's participation in that programming.

Father also argues that the district court wrongly relied on *In re Welfare of A.V.*, 593 N.W.2d 720 (Minn. App. 1999), to terminate father's parental rights because, in that case, the father had sustained permanent brain injury that affected his ability to control his anger and he had manifested his anger by hitting a human-services intern who was supervising visitation. Although we agree that father's situation is not identical to the situation of the father involved in *A.V.*, the district court correctly cited *A.V.* for the proposition that low cognitive functioning and inability to control anger has been held to render a parent palpably unfit, warranting TPR. The evidence in the record indicates that father's disabilities are sufficiently permanent and threatening to A.T. to fit the definition of palpably unfit.

Father does not challenge the district court's finding that TPR is in the best interests of A.T.

Affirmed.