STATE OF MINNESOTA
IN COURT OF APPEALS
A10-585

In the Matter of the Welfare
of the Child of: T. N. J., Parent

Filed September 14, 2010
Affirmed
Klaphake, Judge

Ramsey County District Court
File No. 62-JV-09-4434

Joanne L. M. Flint, St. Paul, Minnesota (for appellant mother T.N.J.)

Susan Gaertner, Ramsey County Attorney, Tamara L. McConkey, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County Community Human Services Department)

James I. Laurence, St. Paul, Minnesota (for respondent guardian ad litem Pam Martensen)

Considered and decided by Shumaker, Presiding Judge; Klaphake, Judge; and Schellhas, Judge.

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

KLAPHAKE, Judge

Appellant T.N.J. challenges the district court's termination of her parental rights to B.I., asserting that the court erred because (1) it concluded that additional services would not result in changes that would permit reunification with the child within a reasonable period of time; (2) respondent Ramsey County Community Human Services Department

(the county) did not make reasonable efforts to reunite the family by providing adequate and appropriate services; and (3) termination was not in the child's best interests.

Because the district court's findings are based on substantial evidence, are not clearly erroneous, and support its conclusions that, despite the county's reasonable efforts, additional services would not permit reunification within a reasonable period of time, and because termination was in the child's best interests, we affirm.

D E C I S I O N

Standard of Review

We review the district court's decision to terminate parental rights to determine whether (1) the district court's findings address the statutory criteria set forth in Minn. Stat. § 260C.301 (2008) and (2) the findings are supported by substantial evidence and are not clearly erroneous. *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001). We will defer to the district court's termination decision, so long as at least one statutory ground for termination is proved by clear and convincing evidence and the termination is in the child's best interests. *In re Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008).

Additional Services

The district court concluded that B.I. was neglected and in foster care, a basis for termination under Minn. Stat. § 260C.301, subd. 1(b)(8). When this statutory ground is a basis for termination, the district court must consider whether "additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time." Minn. Stat. § 260C.163, subd. 9(6) (2008). Appellant asserts that the district court erred in concluding that additional

services would not enable the return of the child to appellant and that the court should have permitted more time to accomplish the goals of her case plan and neuropsychiatric evaluation. Appellant notes that the county did not receive the neuropsychiatric evaluation until October 2009, approximately four months before the termination hearing, which was held on March 1, 2010.

Dr. Nancy Spitzack, the psychiatrist who performed the neuropsychiatric evaluation, made the following recommendations: (1) appellant should be evaluated for seizures and provided with support to manage her medical needs; (2) appellant needed a case manager to help her manage her resources and needs; (3) appellant could benefit from individual psychotherapy; (4) appellant might benefit from depression medication; (5) appellant should be evaluated for chemical dependency; (6) appellant should have parenting classes and support; (7) appellant could benefit from an independent living skills program; (8) appellant should receive information in a variety of ways, including written reminders; and (9) appellant would continue to need ongoing support and supervision in order to effectively parent. Dr. Sptizack referred to the parenting evaluation done by Dr. Frayda Rosen in 2008 concerning appellant's four older children[1] and concurred in several parts with Dr. Rosen's recommendations.

A review of the record establishes that at the time of the termination proceedings the county was complying with or was attempting to offer services that met Dr.

[1] Appellant voluntarily terminated her parental rights to her four older children on May 29, 2009, the same day that B.I. was adjudicated a child in need of protective services. The county provided services to appellant for these four children following a CHIPS adjudication in 2007 until the date of voluntary termination, four months after B.I. was born.

Spitzack's recommendations, with the possible exception of evaluating appellant for seizures. Appellant denied having seizures since she was a child and denied using chemicals. Appellant refused or avoided working with the mental health manager, who could have offered independent living skills training and supported her in managing her medication and health needs. Appellant did not take her prescribed depression medication or participate in the partial hospitalization program arranged for her. The county offered appellant parenting education and a case manager. Finally, for some time prior to Dr. Spitzack's report, the county provided appellant with written reminders and memos and offered her written parenting education materials.

Despite being offered more than three years of services, appellant showed only mild improvement in her parenting skills and continued to be unable to provide stable housing or proof of her income. Even the most optimistic assessment by her parenting educator was that appellant's skills had increased, but not significantly, and that appellant was usually unable to build upon skills that the parenting educator attempted to teach her.

As mandated by statute, the district court must conduct a permanency hearing within six months after a child of B.I.'s age is placed in out-of-home care. Minn. Stat. § 260C.201, subd. 11a(a) (2008). This may be extended to a total of six additional months. *Id.*, subd. 11a(d). B.I. was in out-of-home placement for 14 months before the termination hearing. Further, although the district court must consider current conditions in making a termination decision and may not rely solely on past conduct, *see In re Welfare of L.J.B.*, 356 N.W.2d 394, 396 (Minn. App. 1984), appellant received ongoing services beginning in 2007 with respect to her four older children; these services covered

much of the same areas as the current services offered with respect to B.I. Based on this evidence, the district court's conclusion that it was unlikely that additional services would bring about a lasting parental adjustment within a reasonable period of time is not erroneous.

Reasonable Efforts

Before parental rights can be terminated, the district court must make specific findings that the responsible agency made "reasonable efforts to prevent the placement and to reunify the child and the parent." Minn. Stat. § 260C.301, subd. 8. Findings must be "individualized and explicit." *Id.* "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." *T.R.*, 750 N.W.2d at 664.

Appellant argues that the county's efforts were not reasonable, appropriate, or adequate because it failed to follow the recommendations of the neuropsychiatric evaluation. Appellant asserts that the county did not receive the evaluation until October 2009, but filed the termination petition in December 2009, not allowing adequate time to provide appropriate services as outlined in the evaluation. In particular, appellant states, "The neurological evaluation made it very clear that the difficulties [appellant] was exhibiting in following through with her case plan and remembering appointments and things she had been taught were to be expected given her deficits. The evaluation also

made it clear, however, that with the appropriate supportive measures, the deficits in [appellant's] ability to learn and remember could be overcome."[2]

Dr. Spitzack made specific recommendations to compensate for appellant's memory problems, including that that the county should present all information repetitively, in different formats, including a written format, should ask appellant to paraphrase all instructions to assure her comprehension, and should encourage her to use a planner. The record before us shows that the county consistently engaged in all of these practices, even before Dr. Spitzack made such recommendations. Despite this concerted effort to assist her, appellant continued to struggle with management of her affairs.

Appellant does not specifically challenge the county's efforts in other areas of her case plan and the record provides substantial evidence that the county provided appellant with services to help her accomplish her case plan goals, including (1) housing support with help filling out applications and cash assistance for rent and deposits; (2) in-home parenting education services; (3) mental health services, including an in-home mental health manager; (4) supervised visitation; (5) monthly bus passes, bus tokens, cab fare, rides to court, and referrals to Martha's Closet for suitable work clothing; and (6) a psychiatric hospitalization followed by a referral to a "partial hospitalization" program for mental health services.

[2] This last conclusion is somewhat optimistic; Dr. Spitzack states, "I am in agreement with Dr. Rosen that if [appellant] demonstrates that she is addressing her medical, psychological, and psychosocial needs, and building her parenting skills, that visits with her children could gradually increase and that the children could eventually transition into her care on a trial basis. However, she is likely to require ongoing support and at least check in supervision, given the children's as well as her own complex needs." This is a fairly guarded assessment posited on substantial conditions precedent.

Best Interests of B.I.

In a termination proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7. "Where the interests of the child and parent conflict, the interests of the child are paramount." *Id.* The district court must weigh competing considerations to determine the child's best interests: "(1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). Here, B.I. has not lived with appellant at any time in her young life, so the child's interest in maintaining the relationship is speculative at best. Appellant asserts that she is very interested in preserving the relationship, but her failure to address the goals of her case plan suggests that preservation of the relationship might be beyond her abilities. Finally, the district court noted that the child "needs a safe, stable home and appropriate parental care from a caregiver who can meet her needs. [Appellant] cannot provide this for [B.I.] now or in the reasonably foreseeable future" and the child "is in need of permanency. Her need for permanency outweighs [appellant's] desire for more time to attempt to develop the necessary skills to parent a child." While appellant may have made some progress in parenting, the progress is insufficient. It is not in the best interests of the child to wait for years for appellant to become a competent parent.

Affirmed.