STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1900

In the Matter of the Welfare of the Children of: D. M. D., and R. R., Parents.

Filed April 5, 2011
Affirmed
Stoneburner, Judge

Jackson County District Court
File No. 32JV1045

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Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

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

STONEBURNER, Judge

Appellant mother challenges termination of parental rights to two of her children, arguing that the district court erred by concluding that respondent county proved by clear-and-convincing evidence that termination of parental rights is appropriate under

Minn. Stat. § 260C.301, subd. 1(b)(2), (4) (2010), and is in the best interests of the children. We affirm.

FACTS

A.J.D. (son), born in 2000, and A.C.M.D. (daughter), born in 2002, are the biological children of appellant D.M.D. (mother). Both children have special needs. Son's diagnoses at the time of the termination-of-parental-rights (TPR) hearing included "ADHD–nos" with depressive and anxiety features and adjustment disorder. Son is in need of (1) consistency, structure, and routine and (2) praise and positive support from a caretaker who oversees his medication, models appropriate behavior and social skills, and holds him accountable for inappropriate behavior. Daughter's diagnoses include adjustment disorder with mixed anxiety and depression and ADHD, combined type. Daughter was a victim of sexual abuse twice before she was removed from mother's custody: once by her uncle and once by a neighborhood boy. Daughter has the same caregiver needs as son. Also, as the victim of abuse, she needs a caregiver who is sensitive about bringing men into her life.

When son was first placed in therapeutic foster care, he was having three to four angry outbursts per day. He believed that he was responsible for the breakup of the family. He called himself "stupid" and banged his head. Daughter was reserved, would not make eye contact, and was hyper-vigilant, repeatedly asking if the door was locked. Since placement, the children have been involved in individual therapy and each has thrived in foster care, making progress in behavior, self-confidence, school work, and appropriate socialization. Both have expressed that, although they love their mother, they

do not want to return to live with her. Son would return to mother if she made changes, but daughter fears that mother is not able to keep her safe and has expressed a desire for a "new family." Both children are very concerned about what will happen to them. They are anxious, not knowing if they will be returned to mother or what will happen if they are not returned to mother. They have assumed caretaking roles with mother and are very protective of each other.

In June 2009, mother admitted a petition asserting that the children were in need of protection or services (CHIPS) because they were without necessary care and special care made necessary by their physical, mental, or emotional condition, due to mother's unwillingness or inability to provide such care. Mother blames the situation that led to the children's removal on a "little breakdown" caused by the stress of dealing with a husband who abused her, her children, and his children from an earlier relationship. The county was providing in-home family therapy to the household from 2004 through 2008. Husband's children were removed from the home in 2007, and eventually, mother and husband separated. Husband has custody of the only child of the marriage between husband and mother, and this child is not a subject of the TPR petition.

Mother stated that things "started spiraling out of control" in October 2008, and she began writing bad checks and getting driving infractions. Mother let a number of unsuitable adults live in the house, utility companies threatened to disconnect utilities, and mother avoided foreclosure only by signing her house over to the seller. Mother stated that son saw her and "all the different things that were going on in the house and it was affecting his feelings. . . . [h]e is very sensitive." Mother admits that "[t]here was no

stability back then." While the CHIPS proceeding was pending, mother served time in jail for a conviction of one of several criminal charges brought against her for writing bad checks.

After the CHIPS adjudication, there were five dispositional-review hearings and orders setting out specific provisions of case plans for each child's reunification with mother. For reunification, mother was to (1) refrain from having adults who had not been approved by the county living in her home; (2) use her best efforts to obtain employment that would allow her to provide a stable home for the children; (3) work to resolve all pending criminal cases and have no new criminal offenses; (4) demonstrate that she is able to maintain a clean home and yard; (5) follow recommendations of a chemical-dependency evaluation that she remain abstinent and submit to testing; (6) obtain a parenting and psychological assessment with a provider approved by the county and follow recommendations; (7) fully participate in individual therapy with a provider of her choice approved by the county; and (8) participate in Dialectical Behavioral Therapy (DBT). All of the orders contain similar findings, indicating a lack of substantial progress on any part of the case plans. But mother testified at the TPR trial that she has "gotten rid of" her depression, "fixed" her bad habits, and now can focus on herself and her children, and is in a better position to put the children first. She acknowledges, however, that, due to her past actions, son and daughter still have fears about returning to her care.

The parenting and psychological assessments resulted in a diagnosis of antisocial-personality disorder and recommendations against reunification. The county did not seek

TPR immediately, but after consulting with the assessor, the county recommended group and individual DBT therapy, the only known effective therapy for personality disorders. Mother started group and individual therapy only because the county required it. Mother continuously asserted to her therapist and the group that she was being treated unfairly, that she had no problems, and that she did not need to work on any issues in therapy. Evidence in the record demonstrates that DBT therapy is only effective if the individual receiving therapy is motivated and wants to make changes. Even then, the therapy takes at least one year and, according to one expert witness, two years of therapy would be required to make mother's type of disorder manageable.

The evidence demonstrates that mother has made many untruthful statements and unfulfilled promises to everyone involved, including the children, social workers, landlords, creditors, and her therapist. The DBT therapist opined that this is due to mother's "grandiosity" and her inability to recognize her actual talents and challenges. Her particular diagnosis is described by expert testimony as the most difficult of personality disorders to treat.

The evidence supports the district court's finding that mother is unrealistic about her circumstances, including her living situation, work, finances, and parenting skills. According to expert testimony, one of the hallmarks of her disorder is that she lies without remorse.

During the pendency of the CHIPS case, mother fraudulently obtained a default dissolution-of-marriage judgment in Nobles County, giving her custody of her youngest

child. That judgment has since been vacated, and the matter has been turned over to the county attorney for possible charges.

Mother's visits with the children have been supervised from the beginning due to her testing positive for marijuana on an early visit. After mother was released from jail in February 2010, her visits were reduced from two to one visit per week, based on the children's reactions to the visits. Although mother asserts that staffing limitations have precluded expanded visits, every professional involved with the children recommended against increased contact. The children's foster mother testified that both children made the most progress during the months when mother was in jail and had no contact with the children, after a single traumatic jail visit.

During supervised visits, mother had to be prompted not to spend the majority of the visitation time texting and receiving text messages. She involved the children in movies or in play with each other, rather than interacting with them, and she talked mostly about herself, rather than asking the children about their lives and interests. She has had limited involvement in their school and extracurricular activities and has frequently made promises to the children that she did not keep. Mother has violated visitation rules by allowing unauthorized men to be present and discussing inappropriate subjects with the children. At a visitation during the TPR trial, she gave each child a limited time to tell her what changes they required her to make before they would want to live with her. Although hesitant to respond, when mother demanded, they asked her to stop lying, stop writing bad checks, stop bringing men into their lives, and stop making promises she would not keep.

The district court made numerous findings of fact detailing mother's lack of progress in meeting the goals of the case plans and evidence about mother's inability, in the reasonably foreseeable future, to make the changes required to permit mother to meet the special needs of the children for consistency and stability by a child-focused caretaker. The district court also made numerous findings about the children's needs, how their lives have been, and continue to be, affected by mother's lies, unfulfilled promises, and inability to make necessary changes for reunification, and the progress the children have been making in therapeutic foster care.

The district court concluded that clear-and-convincing evidence supports TPR because (1) mother has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed by the parent-child relationship, *see* Minn. Stat. § 260C.301, subd. 1(b)(2); (2) mother is palpably unfit to be a party to the parent-child relationship because of a consistent pattern of conduct before the children and a consistent pattern of specific conditions directly relating to the parent-child relationship that are of such a duration and nature rendering mother unable, for the foreseeable future, to parent these children, *see id.*, subd. 1(b)(4); and (3) following the children's out-of-home placement, reasonable efforts by the county have failed to correct the conditions that led to the out-of-home placement, *see id.*, subd. 1(b)(5). The district court also concluded that TPR is in the best interests of the children. The district court ordered TPR, and mother appealed.

D E C I S I O N

We examine a TPR to "determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). Appellate courts "give considerable deference to the district court's decision to terminate parental rights" but "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *Id.* "The [district] court must make its decision based on evidence concerning the conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period." *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007) (quotation omitted).

I. Statutory grounds for TPR

Only one statutory ground listed in Minn. Stat. § 260C.301 must be established to support TPR. Minn. Stat. § 260C.301, subd. 1(b). In this case, mother directly challenges only two of the three statutory bases relied on by the district court for TPR. Although mother implies that the county's services were not reasonable, she has waived a challenge to TPR under Minn. Stat. § 260C.301, subd. 1(b)(5), by failing to brief this issue. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating that issues not briefed on appeal are waived).

Mother's challenges to TPR under subdivisions 1(b)(2) and (4) consist of her assertions that she has "demonstrated improvement" in attempting to provide for her children. Mother does not challenge any of the district court's findings as unsupported

by clear-and-convincing evidence in the record. Instead, mother faults the district court for not crediting her version of many of the facts and for not crediting the progress she made, making the district court's findings not "sufficiently balanced."

The items of progress mother points to are (1) that her current house and yard are now clean and suitable for the children and (2) that she has provided food during supervised visits. The district court found that mother complied with the goal of maintaining a clean house and yard. But the district court also found that mother has failed to demonstrate her ability to provide a stable home for the children due to her precarious financial circumstances. The district court noted that mother's testimony was consistent with her diagnosis, and found that mother is "unable to recognize the truth of her circumstances and thus is unable to recognize that her financial skills, educational prospects, and parenting abilities are limited and unlikely to improve."

Mother also argues on appeal that the county did not reasonably address the underlying cause of all of her problems: poverty. And she asserts that the county did not provide reasonable services in the form of job training, placement assistance, or housing assistance. But the argument that poverty is at the root of mother's problems was not raised in the district court. There is evidence in the record that mother consistently refused assistance in budgeting and that mother's financial problems are not due to mother's inability to earn money, but to her inability to account for how it is spent. Because the issues of whether poverty caused mother's problems and whether mother's alleged poverty problems were reasonably addressed by the county were not asserted in the district court, we decline to consider them. *See Thiele v. Stich*, 425 N.W.2d 580, 582

(Minn. 1988) (stating that this court will generally not consider matters not argued to and considered by the district court). We note, however, that, contrary to mother's assertions, the clear-and-convincing evidence in the record is that mother's lack of insight into her situation and her inability in the foreseeable future to make necessary changes because she does not see the need for change, rather than poverty, are at the root of mother's inability to make sufficient progress to address the conditions that led to out-of-home placement, her neglect of parental duties, and her palpable unfitness to parent her son and daughter.

The district court's findings address the statutory criteria and are supported by clear-and-convincing evidence in the record, and the findings support the district court's conclusion that TPR is appropriate under all of the statutory grounds asserted by the county.

II. Best interests of the children

Even when there is a statutory basis for TPR, a child's best interests are the paramount consideration, and TPR is precluded if it is not in a child's best interests. Minn. Stat. § 260C.301, subd. 7 (2010); *In re Welfare of M.P.*, 542 N.W.2d 71, 74–75 (Minn. App. 1996), *overruled in part on other grounds by In re Welfare of J.M.*, 574 N.W.2d 717, 722–24 (Minn. 1998). In considering a child's best interests, the district court must balance preservation of the parent-child relationship against any competing interests of the child. *In re Welfare of M.G.*, 407 N.W.2d 118, 121 (Minn. App. 1987).

Mother asserts that the district court's best-interests analysis is flawed because the district court failed to fully account for the impact that TPR will have on the children.

Mother argues that she and the children share a strong bond and that the district court's finding, that "[t]here would be some sadness as [the children] say good-bye to their mother, but because they know they cannot live with her safely and do not trust her, they will be able to work through this in therapy," is clearly erroneous because it is a "trite dismissal of the love that the children have for appellant and is contrary to the weight of the evidence." We disagree. The evidence is clear and convincing that both son and daughter love mother, but their bond is more as her caretakers than as her children. Both children recognize mother's inability to meet their needs as a caretaker without making significant changes that she had not been able to make as of the time of the TPR hearing. Even during the TPR trial, mother placed a burden on the children to act as caretakers when she demanded that each tell her what she needed to change.

Mother was unable to keep the children safe when they were with her and both came to foster care with significant special needs that have diminished with consistent, stable, child-focused care and therapy, that mother, as the children recognize, is unable to provide. Both children love their foster mother, and even mother recognizes that the children will experience a significant loss if they are separated from their foster mother. The guardian ad litem testified that the children will have to work through any loss in therapy but have already decided that they do not want to live with mother. The best-interests factor was adequately analyzed by the district court, and the district court's finding that TPR is in the children's best interests is supported by clear-and-convincing evidence in the record.

. **Affirmed.**