STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1661

In the Matter of the Welfare of the Child of : A. G. K. and J. I., Parents.

Filed February 11, 2019
Affirmed
Florey, Judge

Otter Tail County District Court
File No. 56-JV-17-3367

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

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

FLOREY, Judge

Appellant-mother challenges the district court's order terminating her parental rights. She argues that the record supports neither a basis for termination, nor the district court's findings on the child's best interests and the county's reasonable reunification efforts. Because the record supports termination based upon appellant's palpable unfitness,

as well as the district court's findings on the child's best interests and the county's reasonable reunification efforts, we affirm.

FACTS

This appeal concerns G.A.K., the three-year-old daughter of appellant-mother A.G.K. and presumed father, J.I., who is not a party to this appeal.[1] Appellant is also the mother of a one-year-old boy, A.E.E., whose father is R.E. Although A.E.E. is referenced in this opinion, he is not a subject of this termination proceeding.

Appellant has struggled with substance abuse and mental-health issues. She used heroin during the first four or five months of her pregnancy with G.A.K. and continued to use marijuana during the remainder of her pregnancy. G.A.K. was born in July 2015, and the child's meconium tested positive for THC. Appellant was living in Moorhead at the time of the birth.

About one week after G.A.K.'s birth, law enforcement received a report that appellant was behaving erratically. She was found walking two miles from her apartment. She was staggering into traffic, twitching, yelling, and exhibiting a lack of mental focus. Officers and paramedics suspected methamphetamine use, mental illness, or a combination of both. Appellant denied drug use and refused to be treated by paramedics.

Officers noticed a diaper bag, and one officer recalled that appellant was previously pregnant. When asked about her child, appellant was evasive and said that her friend "Sarah" was watching the child. She said that she and Sarah had an argument, she left, and

[1] J.I.'s rights were terminated by default.

although she did not make arrangements, she assumed that Sarah would stay and watch the child. Officers took appellant to her apartment. She did not have keys to the exterior door, so the fire department assisted in gaining entry. Appellant's individual unit was unlocked, and G.A.K. was found alone inside, sleeping in a car seat. G.A.K. was overdue for a feeding, and officers estimated that the child had been alone for three to four hours. G.A.K. was taken into emergency protective custody.

On August 4, 2015, a child-in-need-of-protection-or-services (CHIPS) petition was filed in Clay County. On September 21, G.A.K. was adjudicated CHIPS. An out-of-home-placement plan was adopted, and appellant was given mental-health and chemical-dependency assessments. She received counseling, medication management, and outpatient chemical-dependency treatment. Following a positive test for methamphetamine in October 2015, she submitted to testing showing several months of continuous sobriety, and she completed outpatient treatment. G.A.K. was returned to her custody in June 2016 after being outside the home for 328 days, and the CHIPS proceeding was closed in November 2016.

Approximately three months later, in February 2017, appellant's second child, A.E.E., was born. The child's meconium tested positive for THC and methamphetamine, and he was held in a neonatal intensive-care unit based upon withdrawal symptoms stemming from maternal drug use. Approximately one month after A.E.E.'s birth, officers observed appellant behaving suspiciously at a gas station; she had body tremors and clinched teeth, indicative of stimulant usage. G.A.K. was with appellant, in appellant's vehicle. Appellant failed sobriety testing and was arrested on suspicion of driving while

impaired (DWI). She later admitted to a social-services worker that she used methamphetamine before driving.

Around this time, appellant was residing in Battle Lake with R.E., the father of A.E.E. Otter Tail County became involved and worked with appellant on a voluntary basis; a safety plan was created to ensure that a sober person was always present, a chemical-use assessment was scheduled, and appellant was asked to submit to urinalysis.

On May 24, 2017, appellant underwent a chemical-use assessment, and formal recommendations were completed on June 22. It was recommended that appellant undergo outpatient treatment, and she was referred to a facility, but she failed to contact the facility. All of appellant's urine tests in May and June of 2017 showed invalid results due to abnormal creatinine levels.

On July 3, 2017, due to the suspicious urine tests and difficulties in maintaining contact with appellant, a second CHIPS proceeding was commenced, this one concerning both G.A.K. and A.E.E., and both children were placed with A.E.E.'s father, R.E. However, the guardian ad litem (GAL) became concerned about a lack of bonding between G.A.K. and R.E., and G.A.K. was moved to the home of foster parents. Appellant did not attend the emergency-protective-care hearing held on July 6, and left the courthouse before the admit/deny hearing held on July 13.

Toward the end of July 2017, appellant indicated that she needed inpatient chemical-use treatment. On July 25, she told a drug counselor that she had used methamphetamine the previous week and had injected a prescription opioid that day. An updated chemical-use assessment was completed on August 8; appellant admitted that she had been abusing

prescription opioids, marijuana, and methamphetamine. Appellant was admitted on August 14 to an inpatient facility in Fargo, "ShareHouse." Upon admission, she stated that her last use of nonprescribed prescription pills was July 31, 2017, and her last use of methamphetamine was August 12, 2017.

On September 27, G.A.K. was adjudicated CHIPS. That day, an out-of-home-placement plan was adopted by appellant and the court. Appellant was required to complete an updated chemical-dependency evaluation as well as a mental-health assessment.

In October 2017, the county filed a termination-of-parental-rights (TPR) petition, seeking to terminate appellant's parental rights to G.A.K. based upon three statutory grounds. The county alleged that appellant refused or neglected to comply with her parental duties, that appellant is palpably unfit to parent G.A.K., and that reasonable efforts failed to correct the conditions that led to G.A.K.'s out-of-home placement. Appellant opposed the TPR petition and sought reunification or a voluntary transfer of parental rights to R.E.

The month that the TPR petition was filed, appellant relapsed while at ShareHouse by ingesting prescription medication. In November 2017, she took a breath test indicating a blood-alcohol content of .052, but it remains unclear whether this result was from appellant's use of mouthwash.

A trial was held in December 2017. Testimony was received from a pediatrician, R.E., the foster mother, two child-protection specialists, a chemical-use assessor, a mental-health diagnostic assessor, appellant's aunt, appellant, and the GAL. Appellant completed

inpatient treatment at ShareHouse, and at the time of trial, she had obtained housing, was employed at a restaurant, and was sober.

The foster mother testified about G.A.K. displaying some concerning behaviors, such as frequent tantrums, night terrors, sensitivity to loud noises, fearfulness, "a lot of hitting her head and biting herself," and frequent shaking. Likewise, R.E. testified that he observed G.A.K. "hitting herself." These concerns were echoed by a diagnostic assessor, who testified about G.A.K.'s anxiety and issues with attachment.

The GAL testified that appellant's sobriety was her main concern, and that appellant had six relapses in the past 12 months, though one of those relapses was the disputed mouthwash incident. She was concerned for G.A.K., who "has spent 491 days of her life in placement," which was "half of her life." The GAL testified that termination of parental rights is in G.A.K.'s best interests.

In January 2018, the district court filed an order terminating appellant and J.I.'s parental rights to G.A.K. The court concluded that appellant was palpably unfit to parent G.A.K. because of her substance-abuse and mental-health issues. Appellant appealed, and in June 2018, this court remanded the matter to the district court for necessary findings on the county's reasonable reunification efforts. In September 2018, the district court filed an order with additional findings. This appeal followed.

D E C I S I O N

I. The record supports a termination of appellant's parental rights to G.A.K. based upon appellant's palpable unfitness.

We review a termination of parental rights "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). A factual finding is clearly erroneous "if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted). "Termination of 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).

Appellant argues that there was insufficient evidence to terminate her parental rights. She attacks all three of the pleaded statutory grounds for termination. But the district court relied upon a single statutory basis; that appellant was palpably unfit. Therefore, we analyze whether that statutory basis for termination was satisfied.

A district court may terminate parental rights to a child if it finds:

> [T]hat a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders 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) (2018). Under this statutory basis for termination, the county was required to prove "a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child." *T.R.*, 750 N.W.2d at 661 (quotation omitted).

The district court found that appellant "has a long history of substance abuse and frequent relapses," and that appellant's substance-abuse and mental-health issues persist and create an ongoing "acute and significant risk" of relapse "which will continue for the reasonably foreseeable future." The court also noted G.A.K.'s particular need for stability. The record supports these findings.

Besides her use of heroin and marijuana during her pregnancy, appellant's inability to maintain sobriety has, on at least two occasions, directly impacted her ability to care for G.A.K. She left the one-week-old child unsupervised, and she drove while impaired with the child in the vehicle. The district court's findings support the determination that appellant's ongoing and persistent pattern of substance abuse renders her palpably unfit.

II. The district court did not abuse its discretion by concluding that termination of parental rights was in G.A.K.'s best interests.

Appellant next argues that the district court's finding that termination is in G.A.K.'s best interests is unsupported by the record. In a TPR proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2018). The district court must consider the child's best interests and address those interests in its findings of fact and conclusions of law. *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App.

2003). The court must balance the child's interests in preserving the parent and child relationship, the parent's interest in preserving the relationship, and any competing interests of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *R.T.B.*, 492 N.W.2d at 4. We review a district court's best-interests determination for an abuse of discretion. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008).

The district court made specific best-interests findings, noting the child's particular need for stability and significant bonds with the foster parents. The district court found that the child's need for stability outweighed appellant's interest in maintaining the parent-child relationship. These findings are supported by the record. Testimony indicated that G.A.K.'s primary needs were stability and permanency, and the GAL testified that termination was in the child's best interests. The district court did not abuse its discretion by finding that termination of parental rights was in G.A.K.'s best interests.

III. The district court's finding that the county made reasonable reunification efforts is supported by the record.

Lastly, appellant argues that "[t]he district court abused its discretion by concluding that reasonable efforts failed to correct the conditions that led to out-of-home placement." While two of the statutory bases for termination alleged by the county require a failure of reasonable efforts, the "palpably unfit" basis relied on by the district court makes no such express requirement. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5) (2018); *T.R.*, 750 N.W.2d at 661. Because appellant references in her brief the quality, quantity, and

reasonableness of the efforts made, we construe her argument as a challenge to the district court's finding that the county made reasonable reunification efforts.

Under Minn. Stat. § 260C.301, subd. 8 (2018), in a TPR proceeding, a district court must make "explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family," *or* the district court must find that reasonable reunification efforts are not required. Under Minn. Stat. § 260.012(a) (2018):

> [o]nce a child alleged to be in need of protection or services is under the court's jurisdiction, the court shall ensure that reasonable efforts . . . are made to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time. . . . Reasonable efforts to prevent placement and for rehabilitation and reunification are always required except upon a determination by the court that [certain conditions exist].

In determining whether the county made reasonable efforts, district courts must consider whether the services provided to the child and family were: "(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." Minn. Stat. § 260.012(h) (2018). The efforts must be aimed at correcting the conditions which led to out-of-home placement. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 88 (Minn. App. 2012).

Here, following this court's remand, the district court made detailed findings on the reasonable efforts made by the county. The district court found that, after G.A.K. was

removed from the home in August 2015, an out-of-home-placement plan was adopted.[2] Appellant was given a mental-health diagnostic assessment; a chemical-dependency evaluation; she underwent outpatient chemical-dependency treatment and urinalysis; she received counseling and medication-management services, as well as other services; and the county facilitated visitation. Ultimately, custody of G.A.K. was returned to appellant after 328 days in out-of-home-placement, and the CHIPS case was closed. After A.E.E.'s meconium tested positive for chemical substances and appellant was arrested for DWI, appellant was initially offered voluntary services. A chemical-dependency evaluation was scheduled, which recommended outpatient treatment, and appellant failed to follow through with that recommendation. The county also requested that appellant submit to urinalysis. After the CHIPS petition in July 2017, the county provided services pursuant to an out-of-home-placement plan. Appellant was required to obtain an updated chemical-dependency evaluation, which recommended inpatient treatment. Appellant was also required to obtain a mental-health evaluation. Appellant engaged in inpatient treatment, mental-health services, and counseling. The record also indicates that appellant had visitation twice a week with G.A.K. These findings reveal that the county provided reasonable services aimed at correcting appellant's substance-abuse and mental-health issues.

[2] While we cannot locate any written case plans in the record, appellant does not challenge the district court's findings that appellant was provided with case plans. *See In re Welfare of Children of A.R.B.*, 906 N.W.2d 894, 898 (Minn. App. 2018) (holding that county was required to provide court-approved, written case plan).

Appellant asserts that she was not afforded enough time to prove her sobriety. However, appellant fails to consider the permanency timelines. "A permanency or termination of parental rights petition must be filed at or prior to the time the child has been in foster care or in the care of a noncustodial or nonresident parent for eleven (11) months . . . ." Minn. R. Juv. Prot. P. 33.05, subd. 2. And "the court shall commence proceedings to determine the permanent status of [the] child by holding the admit-deny hearing . . . not later than 12 months after the child was placed" out of home, with a TPR trial to commence within 60 days after the admit/deny hearing. Minn. R. Juv. Prot. P. 4.03, subd. 3(c), 39.02; Minn. Stat. § 260C.503, subd. 1 (2018). The days that G.A.K. spent outside the home in 2015 and 2016 were required to be included when determining G.A.K.'s permanency timelines. *See* Minn. Stat. § 260C.503, subd. 3(b)(2).

Appellant argues that she was suffering from postpartum depression, and that issue was not addressed by the county's reunification efforts. However, appellant was offered mental-health services and chose to retain services through "Lakeland." Moreover, the district court did not find credible appellant's assertion that the primary cause of her issues was postpartum depression, and noted that, "even if postpartum depression was a contributing factor, the record makes clear that [appellant's] overall substance abuse and

mental health issues are larger in scope."[3] The district court's finding that the county made reasonable reunification efforts is supported by the record.

Affirmed.

[3] Appellant asserts that the district court's finding, on remand, that appellant "was afforded the opportunity to complete [outpatient] treatment . . . even before G.A.K. was placed out of home" is not supported by the record. The finding is supported by the record, as the chemical-dependency evaluator testified that a referral was made to the CARE facility, and appellant failed to contact the facility. Exhibit 30 supports that testimony.