STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1087

In the Matter of the Welfare of the Child of:
R.C. and R.G.,
Parents.

Filed March 4, 2008
Affirmed
Lansing, Judge

Hennepin County District Court
File Nos. 27-JV-06-6241, 27-JV-05-9006

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

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

LANSING, Judge

The district court terminated the parental rights of RC and RG to their two-year-old daughter, SG. On appeal, we conclude that clear and convincing evidence supports the district court's findings on the statutory grounds for termination, that termination is in SG's best interests, and that the district court did not rely on inadmissible evidence in reaching its determination. Accordingly, we affirm.

F A C T S

At the time of her birth in November 2005, SG was placed in foster care with a relative and, in April 2006, she was adjudicated as a child in need of protection or services (CHIPS). Two weeks after the CHIPS adjudication, the Hennepin County Human Services and Public Health Department petitioned to terminate the parental rights of SG's mother, RC, and her father, RG.

The year before SG's birth, the department initiated a CHIPS petition for the protection of RC's four older children. The petition alleged that the children were endangered by RC's mental illness and her inability to protect the children from sexual abuse in her home. RC has been diagnosed as schizophrenic, and she has been civilly committed as mentally ill three times. She was first committed in 2002 after she threatened to kill her children and attempted to purchase four coffins for them. Because she failed to remain compliant with her medication requirements, she was committed again in November 2004 and June 2005. The CHIPS action on behalf of the older

children was resolved when RC voluntarily transferred custody of two of the children to their father and the remaining two children reached the age of majority.

SG's father, RG, has also been diagnosed as schizophrenic. He has an extensive history of convictions for violent crimes, and he is currently serving a prison sentence for two aggravated robberies, which were committed just before and just after SG's birth.

At the time of the termination hearing, RC was compliant with her medication requirements and had been substantially following her case plan. But child-protection workers testified that RC nonetheless presented a continuing threat to SG's safety because of the gravity of her previous threats, her conduct that endangered her children, and her past history of failing to take prescribed medication. The department also presented testimony that RG, while in prison, had failed to obtain psychiatric services, take prescribed medication, or obtain parenting services.

The district court found that the evidence clearly and convincingly satisfied four statutory grounds for termination, that the department had provided RC and RG with reasonable services, and that termination was in SG's best interests. Based on these findings, the district court terminated the parental rights of RC and RG to SG. RC and RG now appeal.

D E C I S I O N

In reviewing an order terminating parental rights, we carefully evaluate the record to determine whether clear and convincing evidence supports the decision. *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001). To terminate parental rights, at least one statutory ground for termination must be established by clear and convincing evidence,

and termination must be in the child's best interests. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). Unless reasonable efforts have been excused, the county must demonstrate that it has made reasonable efforts to reunite the family. *In re Children of T.A.A.*, 702 N.W.2d 703, 709 (Minn. 2005). In evaluating the evidence, courts rely "not primarily on past history, but to a great extent upon the projected permanency of the parent's inability to care for his or her child." *In re Welfare of A.D.*, 535 N.W.2d 643, 649 (Minn. 1995) (quotation omitted).

The parents argue that our evaluation of the evidence requires a heightened standard of review because the district court adopted the county's proposed findings of fact "without changing even one word." The record contradicts this allegation. The district court relied in major part on the submitted findings, but inserted credibility findings on two of the witnesses and also made a number of minor changes to the county's proposed findings. One of the credibility findings was on the testimony of RC. The revisions are not extensive, but they demonstrate the district court's exercise of its independent judgment.

I

Although only one statutory ground is required, the district court found that the evidence established four grounds for terminating RC and RG's parental rights. One of the four grounds is that RC and RG are palpably unfit parents.

To support a finding of palpable unfitness, the department must establish:

> 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) (2006).

With respect to RC, the district court's findings of palpable unfitness rely on RC's diagnoses and history of schizophrenia and the gravity of RC's threats to her children's safety. The evidence—which includes findings from three civil-commitment proceedings—showed that RC attempted to purchase coffins for her four older children and made comments about her children being "marked by the devil" and deserving to die. Social workers believed that RC's threats were made seriously. They asserted that RC had active thoughts of wanting to kill her children and made multiple threats against her children. In addition to these direct threats to the children's safety, the record also demonstrates that RC's other conduct placed the children's health and welfare in jeopardy. The department presented evidence that RC failed to protect her four older children from sexual abuse, that she did not provide proper nutrition, and that she does not show any insight into her severe mental illness and instead characterizes it as a problem with concentration.

The evidence against RC was not stale. The district court reasonably relied on evidence that RC irrationally denies the seriousness of her mental-health condition and has, in the past, demonstrated a recurring pattern of refusing to take her prescribed medication. Thus, RC's past conduct establishes that she will remain unable to care for her children in the foreseeable future.

With respect to RG, the evidence established that he has a long history of committing violent crimes, that he committed two violent crimes within days of SG's birth, and that he has been diagnosed as schizophrenic. The record contains clear evidence supporting these conclusions. RG's decision to commit two violent robberies immediately before and after SG's birth establishes a sufficient nexus between RG's conduct and SG to demonstrate that he would be unable to provide appropriate care for the child. We therefore conclude that clear and convincing evidence established that RG is palpably unfit to parent SG for the reasonably foreseeable future.

Because we conclude that clear and convincing evidence established that RC and RG are palpably unfit to parent SG, we need not address the district court's remaining three grounds for terminating their parental rights. *See* Minn. Stat. § 260C.301, subd. 1(b) (requiring only one statutory ground for termination).

II

In every termination proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2006). Even if a statutory ground for termination exists, the district court must still find that termination is in the best interests of the child. *Children of R.W.*, 678 N.W.2d at 55. In considering the child's best interests, the district court must balance the 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).

The record indicates that SG could not safely be reunited with either parent. RC's mental illness presents an ongoing threat to SG's safety. And RG's history of violence

and untreated mental illness presents a similarly unsafe prospect for reunification. Thus, SG's interest in preserving her parent-child relationship is relatively low. SG does, however, have a need for permanency, and termination of parental rights will facilitate addressing that need. Therefore, the record supports the district court's decision that termination is in SG's best interests.

The parents challenge the admission of opinion testimony on SG's best interests. For example, they challenge the admissibility of testimony from a child-protection worker with a master's degree in social work that, in her opinion, termination is in SG's best interests. But experts are permitted to testify to ultimate factual issues if they are qualified and their opinion is helpful. Minn. R. Evid. 704 (allowing opinion testimony that embraces ultimate issue). The parents do not argue that the witness is unqualified or that the fact-finder could not find the testimony helpful. We also reject the parents' argument that the testimony was inadmissible because the witnesses relied on the reports of others. An expert opinion can be based on facts "perceived by *or made known to the expert* at or before the hearing." Minn. R. Evid. 703(a) (emphasis added). The facts need not be admissible in evidence if they are "of a type reasonably relied upon by experts in the particular field in forming opinions." *Id.* The district court therefore did not rely on inadmissible evidence in finding that termination of parental rights is in SG's best interests.

III

RC and RG also contend that the district court relied on inadmissible evidence to determine that statutory bases exist for the termination of parental rights and that the

district court's reliance on this evidence violated their due-process rights. The department offered thirty-three documents into evidence. These documents included court records, police reports, medical records, criminal-history reports, recognition-of-parentage forms, and the department's own records. The parents objected on hearsay grounds and argued that the department had failed to provide a foundation for admitting the documents under the business-records exception. The department does not dispute that these documents are hearsay. The district court concluded that exceptions to the hearsay rule applied, overruled the objection, and admitted the thirty-three documents.

We review the district court's evidentiary rulings for an abuse of discretion. *Peterson v. BASF Corp.*, 711 N.W.2d 470, 482 (Minn. 2006). A hearsay statement is a statement made by someone other than the declarant, while testifying at trial, offered to prove the truth of the matter asserted. Minn. R. Evid. 801(c). Hearsay is inadmissible unless an exception to the hearsay rule applies. Minn. R. Evid. 802.

First, we conclude that the medical reports were admissible under the business-records exception. A medical report is admissible if (1) it was made at or near the time of the event recorded, (2) it was based on personal knowledge, (3) it was the regular practice of the business to make the report, and (4) it was kept in the course of regularly conducted business activity. Minn. R. Evid. 803(6). These foundational facts must be established by "testimony of the custodian *or other qualified witness*, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness." *Id.* (emphasis added).

The phrase "other qualified witness" in rule 803(6) "should be interpreted broadly." *A & L Coating Specialties Corp. v. Meyers Printing Co.*, 374 N.W.2d 202, 204 (Minn. App. 1985). "[O]ne business entity may submit the records of another business entity to establish a proposition at trial." *Nat'l Tea Co., Inc. v. Tyler Refrigeration Co., Inc.*, 339 N.W.2d 59, 61-62 (Minn. 1983). In evaluating whether a third-party's business records should be admitted, the district court must consider (1) whether the report was made by an independent or hired agency and (2) whether the nature of the organization preparing the report was such that it was "established to do exactly the kind of work involved in preparing the report." *Id.* at 62. A report made by an independent agency established to do the work involved is preferable. *Id.* Documents admitted under the business-records exception cannot have been prepared solely for litigation. Minn. R. Evid. 803(6); *Nat'l Tea Co.*, 339 N.W.2d at 62.

At trial, a child-protection worker testified about her knowledge of the medical records and substantively addressed all four of the factors listed in Minn. R. Evid. 803(6). This testimony provides a basis for admission and adequately addresses the considerations discussed in *Nat'l Tea Co.* Because the worker testified that the authors had discretion in determining what they report, it is reasonable to infer that the agencies are independent agencies. Hospitals and the other medical providers are established to do medical work and to prepare medical reports. Thus, the medical reports were properly admitted. This conclusion is consistent with evidentiary determinations in other termination appeals that have found similar records to be admissible. *See, e.g., In re*

Welfare of Brown, 296 N.W.2d 430, 433-34 (Minn. 1980) (upholding admission of similar records).

Second, any objection to admission of the department's own records has been waived. In addition to introducing medical records, the department also included two of its own records—the case plan for RG and the out-of-home placement plan for SG—among the thirty-three documents. The parents did not specifically object to these documents and do not address these particular documents in their brief. Consequently, any objection has been waived. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (finding waiver of issues not supported by argument or authority); *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that appellate courts generally only consider claims raised in district court).

Third, the court records, police reports, and criminal-history reports were admissible under the public-records exception to the hearsay rule. Records prepared by public offices and agencies are admissible under the public-records exception to the hearsay rule unless the sources of information or other circumstances indicate lack of trustworthiness. Minn. R. Evid. 803(8).

The court records are admissible as public records of the court's investigatory findings. In "civil actions and proceedings . . . factual findings resulting from an investigation made pursuant to authority granted by law" are admissible as public records. Minn. R. Evid. 803(8)(C). Factually based opinions and conclusions can be included within the exception. *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 170, 109 S. Ct. 439, 450 (1988). The three court records introduced were (1) the commitment

orders for RC and related documents, (2) the custody order resolving RC's prior termination-of-parental-rights case involving her older children, and (3) the order adjudicating SG as a child in need of protection or services. All of these documents consist of findings made as part of an authorized investigation and the documents are therefore admissible under the public-records exception. In addition, Minn. R. Juv. Prot. P. 3.02, subd. 3, permits the district court to "take judicial notice only of findings of fact and court orders in the juvenile protection court file and in any other proceeding in any other court file involving the child or the child's parent or legal custodian." Thus, the district court could take judicial notice of the court records as well.

The criminal-history reports consist of the district court's case histories and an "offender information" report printed from the Minnesota Department of Corrections website. These reports are also admissible as reports of "the activities of the office or agency" under Minn. R. Evid. 803(8)(A). The voluntary recognition-of-parentage forms filed with the state registrar are similarly admissible under rule 803(8)(A).

We also conclude that the district court did not abuse its discretion by admitting the police reports as public records under Minn. R. Evid. 803(8)(B). The public-records exception includes reports of "matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases and petty misdemeanors matters observed by police officers and other law enforcement personnel." Minn. R. Evid. 803(8)(B). The termination proceeding is a civil action and the police reports, provided in response to a legal duty to report, are admissible.

The parents argue that the reports contain inadmissible "double hearsay" or "hearsay within hearsay." The parents have not identified which statements contained in the reports constitute inadmissible hearsay. Our review of the challenged records indicates that the vast majority of the statements are independently admissible as statements by a party-opponent under Minn. R. Evid. 801(d)(1). Because no inadmissible hearsay was indentified at the hearing or in this appeal, we cannot conclude that the district court abused its discretion in admitting the records.

Finally, the parents argue that the district court's evidentiary rulings denied them the right to confront the witnesses against them. The parents have cited no authority that supports this argument. The rules specifically provide that parents must be able to "cross-examine witnesses." Minn. R. Juv. Prot. P. 21.02(j). But the right to cross-examine under the rule does not create a parallel constitutional right to *confront* the witnesses that inheres in criminal trials. For evidentiary purposes, termination proceedings are civil cases. Minn. R. Juv. Prot. P. 3.02, subd. 1. Thus, we conclude that the constitutional right to confront witnesses in criminal cases does not extend to termination proceedings. Other jurisdictions have reached the same result. *Cabinet for Health & Fam. Servs. v. A.G.G.*, 190 S.W.3d 338 (Ky. 2006) (reversing appellate court decision applying confrontation rights to termination proceedings).

Affirmed.