STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0876

In the Matter of the Welfare of the Children of: R. K.
a/k/a R. T., T. L. B. J. and J. L. R., Parents.

Filed January 20, 2009
Affirmed
Huspeni, Judge[*]

Hennepin County District Court
File No. 27-JV-07-3022

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Considered and decided by Johnson, Presiding Judge; Schellhas, Judge; and Huspeni, Judge.

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

HUSPENI, Judge

In this termination-of-parental-rights proceeding, appellant R.K. challenges the district court's findings supporting four grounds for terminating her parental rights:

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

(1) failure to abide by the duties of the parent-child relationship; (2) failure to rebut the presumption that she is palpably unfit; (3) failure to correct the conditions that led to out-of-home placement; and (4) the children are neglected and in foster care. Appellant also challenges the district court's choice of terminating her parental rights instead of granting her petition to transfer legal custody of the children. Because the record provides clear and convincing evidence to support each of the statutory grounds for termination and establishes that the termination of parental rights is in the children's best interests, we affirm.

FACTS

Appellant R.K. is the mother of six children: Lav. T. (born July 20, 1991); L.T. Jr. (born December 26, 1993); Lar. T. (born October 27, 1997); O.J. (born June 7, 2000); Jow. R. (born June 13, 2002); and Jov. R. (born May 14, 2004). This proceeding addresses the termination of appellant's parental rights as to the three youngest children. L.T. Sr. is married to F.T. and is the biological father of Lav. T. and L.T. Jr. and is the legal but not biological father of Lar. T.

Between 1997 and 2000, appellant was the subject of seven child protection assessments by Hennepin County Human Services and Public Health Department (the Department). Between 2000 and 2005, the Department and the police received numerous reports of domestic violence involving appellant and significant others. In May 2006, appellant brought Jov. R. to the hospital with first- and second-degree burns on the left side of his body. Appellant was so intoxicated that she was unable to hold a conversation with the treating physician and fell asleep during the conversation. On September 23,

2006, appellant and F.T. had a physical confrontation that was witnessed by the children and resulted in appellant being rendered unconscious and being hospitalized with a broken nose and facial lacerations. Appellant and F.T. continued to have hostile encounters, but none of the encounters erupted into violence.

On September 26, 2006, the Minneapolis police responded to an emergency call at appellant's home and discovered an unconscious three-year-old victim of alcohol poisoning. Present in the home were five adults and twelve children. The police report noted that the adults present were too intoxicated to assist dressing the children so that they could be removed from the home. The report also noted that the home was filled with marijuana smoke, soiled clothing, spilled liquor, and vomit. The Department subsequently assumed custody of the children. On September 29, 2006, the juvenile court held an emergency hearing and determined that the petition set forth a prima facie showing that the children were endangered; the children were placed in a shelter home.

On November 6, 2006, appellant waived her right to a trial on the CHIPS petition and admitted that her alcohol abuse had adversely affected her ability to care for her children. The court determined that the children were in need of protection or services and approved a case plan for appellant. Her case plan for reunification required her to: (1) complete a chemical-dependency evaluation and follow recommendations; (2) not sell, use, or possess any illegal drugs in the family home; (3) remain sober; (4) submit to urinalysis testing; (5) complete an updated mental-health assessment and follow recommendations; (6) complete a parenting assessment and follow recommendations; (7) participate in individual counseling; (8) cooperate with the Department and the

guardian ad litem; and (9) cooperate with the mental health assessments as required by the assessors and recommended aftercare.

Appellant worked at completing her case plan. But she was unable to successfully complete six separate chemical dependency programs because she continually tested positive for alcohol use. Appellant did complete a parenting assessment and was referred to Freeport West for in-home parenting sessions. She failed to attend after December 2007, however, and her Freeport West counselor expressed concern that appellant may be using again. Appellant was referred for domestic abuse counseling and was discharged from the Domestic Abuse Program (DAP) for failing to attend on a regular basis. After being readmitted to DAP, appellant successfully completed the program in October 2007, but the next month she was involved in a domestic abuse situation. Appellant was ordered to undergo individual therapy and she attended the sessions for a period of time but failed to attend any therapy sessions after November 2007.

Since September 26, 2006, the three youngest children have been in four placements. From August 1 until November 30, 2007, they were placed with their older siblings in the T.'s home. At the time of the placement, F.T. held an emergency foster care license. Several problems arose while the children were with the T.'s. First, in direct violation to the district court's order, L.T. Sr. and F.T. permitted appellant to have unsupervised contact with the children. Second, the children missed several therapy sessions and L.T. Sr. and F.T. would not participate in the session. Third, F.T. failed to abide by the visitation schedule with appellant. Fourth, the guardian ad litem testified that on a home visit F.T. did not interact with the children instead choosing to play a

video game. Finally, there were concerns about the type of discipline used by F.T. because the children reported to more than one adult that F.T. "whooped" them. F.T. was eventually found ineligible for a permanent placement foster care license because of welfare fraud and the assault on appellant.

After F.T.'s disqualification, the three youngest children were placed with the R.'s. Joy R. was O.J.'s first grade teacher and later mentor. During their time with the R.'s, the children's therapist noted marked improvement in their behavior—becoming more open and age appropriate. During the 2007 Christmas season, Joy R. attempted to arrange a sibling visit with the three older children, who still resided with the T.'s. The R.'s and F.T. agreed that the children would come to the T.'s for a visit on January 4, 2008, and would be returned to the R.'s on January 5, 2008. During this visit, F.T. arranged two separate visits that violated the court order. First, F.T. allowed the father of Jow. R. and Jov. R. to come to the house to see the boys. Second, on January 5, 2008, F.T. took the children to appellant's house and left them there overnight. During this unauthorized visit, appellant disabled her alcohol monitoring device. The children were returned to the R.'s on January 6, 2008, smelling of smoke and urine.

On March 19, 2007, the Department filed a transfer-of-legal-custody petition regarding the two oldest children and a termination-of-parental-rights petition regarding the four youngest children. On July 16, 2007, the court heard testimony from appellant's two oldest children and F.T. The two oldest children testified that they had to miss school in order to cook, clean the house, wash clothes, get the younger kids ready for school, and bathe their younger siblings when appellant was either gone or intoxicated.

Additionally, the two oldest children testified that appellant left the children without food or adult supervision and without the ability to contact her for long periods of time. Lav. T. testified that (1) appellant used drugs and alcohol in front of the children; (2) appellant smoked in the house even though some of the children had asthma; (3) various men had lived in the house; (4) appellant was being physically abused by these men; and (5) appellant would discipline Lav. T. by hitting him with a tree stick and used a belt or a broom on the other children.

On October 17, 2007, the legal custody as to the three oldest children was transferred to the T.'s. At a November 27, 2007 status conference, the Department informed the district court that appellant had not complied with her case plan because she failed to remain sober. On January 28, 2008, appellant filed a petition to transfer legal custody of three youngest children to the T.'s. The district court denied appellant's petition to transfer custody and terminated her parental rights. This appeal follows.

D E C I S I O N

A district court may terminate parental rights only if clear and convincing evidence establishes that a statutory ground for termination exists and the termination is in the child's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). In reviewing an order terminating parental rights, we closely inquire into the sufficiency of evidence, taking into account the clear-and-convincing standard, and also taking into account that it is the district court that assesses the credibility of witnesses. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396-97 (Minn. 1996).

Where a single statutory basis for terminating parental rights is affirmable, this court need not address any other statutory bases that the district court may have found to exist. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005). The district court found that terminating appellant's parental rights was supported by the evidence under four separate bases and appellant challenges each of these findings. We will address each statutory basis in turn.

I.

First, appellant challenges the district court's findings that clear and convincing evidence establishes that she neglected her parental duties. District courts may terminate parental rights if the parent "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed" by the parent-child relationship. Minn. Stat. § 260C.301, subd. 1(b)(2) (2006).

The record demonstrates that appellant made efforts to comply with her case plan by attending parenting classes, a domestic violence program, individual therapy, and chemical-dependency treatment programs. But she was unable to remain sober, did not make any real progress in the individual therapy, and had a domestic violence altercation after completing DAP. Importantly, she was consistently unable to meet her case plan requirements. The record demonstrates that appellant was unsuccessful in conquering her addiction to alcohol and drugs, despite numerous attempts. Appellant's alcohol and drug abuse were major factors in the children being removed from appellant's home initially. Her significant lack of progress on major parts of her case plan show that she has neglected the duties of the parent-child relationship. *See In re Child of Simon*, 662

N.W.2d 155, 163 (Minn. App. 2003) (noting that failure to complete parts of case plan is evidence of "lack of compliance with duties" of parent-child relationship). The district court did not err in concluding that appellant neglected her parental duties and terminating her rights under Minn. Stat. § 260C.301, subd. (1)(b)(2).

II.

Appellant argues that there was insufficient evidence to support the district court's decision to terminate her parental rights under Minn. Stat. § 260C.301, subd. 1(b)(4) (2006), which provides that parental rights may be terminated if 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.

A parent's inability to meet a child's physical, mental, and emotional needs now and in the reasonably foreseeable future justifies terminating parental rights. *In re Child of P.T.*, 657 N.W.2d 577, 591 (Minn. App. 2003), *review denied* (Minn. Apr. 15, 2003). We recognize that substance abuse alone is insufficient to prove a parent palpably unfit; there must be evidence "that the parent's substance or alcohol use is of a nature and duration that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the child's ongoing needs." *In re Children of T.R.*, 750 N.W.2d 656, 662 (Minn. 2008).

Here the district court found that appellant is palpably unfit because she engaged in a consistent pattern of conduct detrimental to the parent-child relationship and that these conditions would continue for the reasonably foreseeable future. The record demonstrates that appellant: (1) neglected her children by choosing to drink alcohol, use drugs, and party in the children's presence; (2) consistently exposed her children to drinking, fighting, and intoxicated adults; (3) consistently failed to provide adequate food, clean housing, and adult supervision; and (4) was unable to remain sober and comply with her case plan despite taking part in multiple treatment programs.

Appellant challenges these findings by arguing that she made serious progress in accordance with the case plan. While appellant did indeed make some progress, she has failed to rebut the finding of unfitness. *See In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004) (noting that parent made positive steps but based on past relapses and failure to call counselors she had not rebutted presumption of being unfit). There was sufficient evidence to support the district court's decision to terminate appellant's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(4).

III.

A district court may terminate parental rights to a child if reasonable efforts fail to remedy the conditions that caused an out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5) (2006). The district court determined that reasonable efforts had failed to correct the conditions that lead to the out-of-home placement, and therefore termination of parental rights was warranted.

Appellant argues that the district court's determination was clearly erroneous because her participation in the case plan allowed her to make remarkable changes in the circumstances that necessitated the removal of the children initially. She stresses her completion of an inpatient treatment program, but acknowledges that she had trouble remaining sober after the inpatient portion of the program was completed. We agree that appellant has achieved success in some respects during the pendency of this case; she has clearly and commendably made efforts to comply with her case plan and to address the issues that led to the children's out-of-home placement. But appellant's assertion that she "had made a remarkable change in her circumstances from the situation which existed in September of 2006" is not supported by the record. The record supports the district court's finding that appellant failed to successfully address her chemical-dependency issues. Moreover, appellant failed to continue therapy sessions, and as recently as approximately two months prior to the trial was involved in a domestic violence incident. Lastly, we note that at the time of the termination of parental rights hearing the minor children (who were then 7, 5, and 3 years old) had been in out-of-home placements for some 16 months. There was clear and convincing evidence supporting the district court's decision to terminate appellant's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5).

IV.

District courts may terminate parental rights if a child is neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(8) (2006). To be neglected and in foster care, (1) a court order must have placed the child in foster care, (2) the "parents'

circumstances, conditions, or conduct" prevent the child from being returned to them, and (3) the parents "have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child" despite "the availability of needed rehabilitative services." Minn. Stat. § 260C.007, subd. 24 (2006). The district court found that (1) the children were placed in foster care by court order; (2) the circumstances are such that the children cannot be returned to appellant; and (3) appellant failed to make reasonable efforts to adjust her circumstances, conditions, and conduct despite the availability of rehabilitative services.

Appellant argues that the record does not support termination under this subdivision in light of her case planning accomplishments and that the district court's findings do not address the factors thoroughly enough. To determine whether a child meets this definition, the district court considers the following factors: (1) the length of time in foster care; (2) parental effort to adjust the "circumstances, conduct, or conditions that" caused the child's removal "to make it in the child's best interest to be returned to the parent's home in the foreseeable future"; (3) the amount of parental visitation for the three months before the petition; (4) regular contact with those "temporarily responsible for the child"; (5) "the appropriateness and adequacy of services" given to the parent for reunification; (6) "whether additional services would . . . bring about lasting parental adjustment" within a definite time period, and (7) the nature of social services' efforts to rehabilitate and reunite and "whether the efforts were reasonable." Minn. Stat. § 260C.163, subd. 9 (2006); *see Matter of Welfare of J.S.*, 470 N.W.2d 697, 703-04

(Minn. App. 1991) (using these factors to determine whether a child is neglected and in foster care), *review denied* (Minn. July 24, 1991).

Here the record demonstrates that (1) the children have been in foster care since September 2006; (2) the children were living with appellant for the three months prior to being placed in foster care, but appellant's extreme neglect necessitated their removal; (3) appellant maintained contact with the Department but failed to make enough of an effort to modify her conduct to make it in the children's best interest to be returned to her (4) appellant failed to maintain sobriety, failed to continue individual therapy, and continued to struggle with domestic abuse; (5) the Department made appropriate efforts to assist appellant in her rehabilitation; (6) additional services would not likely bring about lasting change; and (7) the Department's efforts were reasonable. And our review of the extremely detailed and lengthy findings set forth in the district court's order convinces us that there is no merit to appellant's contention that statutory factors were not thoroughly addressed. Despite appellant's assertions to the contrary, the district court did not err in ruling that the children were neglected and in foster care.

V.

In addition to finding a statutory ground for termination, a court must base its termination decision on the best interests of the child. *In re Welfare of D.J.N.*, 568 N.W.2d 170, 177 (Minn. App. 1997). A child's best interests are the "paramount" concern when addressing whether to terminate parental rights. Minn. Stat. § 260C.301, subd. 7 (2006). The child's interests in preserving the parent-child relationship must be balanced with that of the parent's and any competing interest of the child including the

child's interest in "a stable environment, health considerations and the child's preferences." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992).

Appellant argues that the record lacks clear and convincing evidence that termination is in the children's best interests. The district court stated that "there is overwhelming evidence" to support terminating appellant's parental rights. The district court found and the record supports that (1) appellant neglected the children's basic needs and failed to provide a safe, clean, and stable environment; (2) the children were exposed to adults drinking vast amounts of alcohol and using drugs; (3) the children witnessed fighting and domestic violence; (4) the children were hit with belts and tree limbs; (5) appellant failed to maintain sobriety despite attending multiple treatment programs; (6) appellant admitted that she could not care for the children now or in the foreseeable future; (7) being adopted would provide the children with a stable environment; and (8) being adopted would provide caregivers who are emotionally and psychologically equipped to address the children's needs. The district court appropriately weighed the best-interests factors in its decision and substantial evidence supports the district court's conclusion. Recognizing the heightened standard of clear and convincing evidence that applies in this case, having carefully and thoroughly reviewed the record, and cognizant of the emotional devastation inherent in terminating the relationship of parent and child, we conclude that the decision of the district court that such termination is in the best interests of the minor children is supported by the record and therefore a decision falling clearly within the discretion of that court.

VI.

Finally, appellant argues that the district court lacked clear and convincing evidence to choose termination over a transfer of legal custody. "The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2 (2006). In permanent-placement cases, "the reviewing court determines on appeal whether the [district] court's findings address the statutory criteria and are supported by 'substantial evidence,' or whether they are clearly erroneous." *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996) (quoting *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990)). This court accepts the district court's findings of fact in support of a permanent-placement decision unless they are clearly erroneous. *Id.* at 261-62. "The evidence and its reasonable inferences must be viewed in the light most favorable to the prevailing party." *Id.* at 261.

The district court must assess the evidence within the framework of the statutory criteria regarding a permanent-placement order. The statutory criteria are:

> (1) how the child's best interests are served by the order;
> (2) the nature and extent of the . . . reasonable efforts . . . to reunify the child with the parent;
> (3) the parent's . . . efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
> (4) that the conditions . . . have not been corrected so that the child can safely return home.

Minn. Stat. § 260C.201, subd. 11(i) (2006). To successfully challenge a district court's findings, a party "must show that despite viewing that evidence in the light most

favorable to the [district] court's findings . . . the record still requires the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). "That the record might support findings other than those made by the [district] court does not show that the district court's findings are defective." *Id.*

Here, the district court detailed several bases upon which it found that transfer of legal custody to the T.'s was not in the children's best interest. The court noted that: (1) L.T. Sr. was not interested in or capable of caring for the children and was unable to state when the children had lived with him in the past; (2) his response to whether he wanted to have legal custody of the three youngest children was "that's fine with me"; (3) L.T. Sr. is not the biological or legal father of any of the three youngest children; (4) L.T. Sr. testified that he intended to allow appellant to see the children and that he did not have any concerns with appellant seeing the children; (5) the T. family currently has six people living in a three bedroom apartment; (6) when L.T. Sr. was asked how all nine people could live together in that space, he responded the older kids could go outside or stay with friends; (7) L.T. Sr. did not know how much money he and his wife make, causing a question about whether he could support the three children; and (8) he was unable to explain how his driver's license got revoked. In addition, the district court reasoned that the children would likely never get the therapy they require because all had missed numerous therapy sessions while temporarily placed with the T.'s, even though the therapist explained how important therapy was for the children. L.T. Sr. testified that he did not think the children needed therapy because "they act normal to me . . . as far as I know they act fine to me."

Further, the district court found that (1) the children's allegations that F.T. hit them with a belt were believable; (2) that the two youngest children cried when they had to go the T.'s apartment; (3) none of the three youngest children expressed an interest in living with the T.'s; and (4) the testimony of the therapists was persuasive, and the children's demeanor changed when they lived with the T.'s, going from outgoing and active to disengaged and quiet. The G.A.L. testified that during an hour-long visit, F.T. did not interact once with the children. Instead, she chose to play a video game. The district court considered that the violent and volatile relationship between appellant and F.T. would eventually re-traumatize the children. The record demonstrates that F.T. totally disregarded the court order and allowed appellant to have unsupervised visits with the children. Although, appellant argues that F.T. testified that this did not happen, the district court found her testimony "wholly unbelievable."

The district court recognized that a transfer of legal custody would allow half-siblings to live together, but concluded that this advantage was outweighed by the children's need for a safe and stable home, and that contact between the siblings would be allowed even if transfer of legal custody did not occur. And the district court also recognized that a transfer of legal custody would preserve the parent-child relationship between appellant and the children, but found that factor to be secondary to the children's need for a safe and stable environment.

Our thorough review of the record demonstrates the sensitive, conscientious and searching approach taken by the district court in reaching the decisions made in this case. There was testimony from numerous witnesses, 175 exhibits were received, and 242

findings of fact were made. The district court chose to give greater weight and credibility to evidence that favored the denial of the transfer of custody than to that which favored the transfer. *See In re Welfare of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007) (stating that this court "defer[s] to the district court's determinations of witness credibility and the weight to be given to the evidence"). As indicted earlier, we are cognizant of our duty to assure that a clear and convincing standard of proof is observed, and to closely inquire into the sufficiency of the evidence supporting district court determinations. We are also sensitive to the emotional anguish involved when a mother's relationship with her children is terminated. While appellant may disagree with the credibility determinations made by the district court and with the weight afforded by it to the evidence presented, we are persuaded that the district court's decision to terminate the parental rights of appellant rather than grant the petition to transfer legal custody is supported by substantial evidence and not clearly erroneous.

Affirmed.