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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1825**

In the Matter of the Welfare of the Children of: T. S., M. C., Jr., and B. C., Parents.

**Filed April 21, 2009
Affirmed
Stoneburner, Judge**

Washington County District Court
File No. 82JV08597

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Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and
Collins, Judge.*

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant mother challenges termination of her parental rights to three children,
arguing (1) that an exhibit from Ramsey County was improperly admitted as a business
record; (2) the evidence is insufficient to support a statutory basis for termination of

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

parental rights (TPR); (3) the district court erred in finding that the county made reasonable efforts; and (4) TPR is not in the best interests of the children. Because admission of the Ramsey County document did not prejudice appellant and the record supports the district court's findings that respondent proved statutory grounds for TPR, the county made reasonable efforts, and TPR is in the best interests of the children, we affirm.

FACTS

In October 2002, appellant T.S. and her children, M.S. and T.C., became involved with Ramsey County Child Protection (RCCP) when mother was accused of physically abusing the children. RCCP offered mother services to address her chemical dependency, mental health, physical abuse, and lack of stable housing. Mother's third child, M.C.III was born on January 28, 2004, while mother was still working with RCCP. Mother and the children were placed in whole-family foster care, but mother left that placement because she did not like it. In 2004 and 2005, mother voluntarily transferred legal and physical custody of M.S., T.C., and M.C.III to relatives. Mother gave birth to J.C. on August 3, 2005, and was adequately caring for him when RCCP closed its file in September 2005.

Although M.C.III's legal and physical custody were transferred to his father and paternal grandmother, he unofficially returned to mother's primary care on a date not disclosed in the record. Mother moved to Washington County in May 2006, and she

gave birth to L.C. on October 2, 2006.¹ M.C.III, J.C., and L.C. are the children involved in this proceeding.

On November 7, 2007, police removed M.C.III, J.C., and L.C. from mother's custody to emergency care after it was discovered that mother had burned M.C.III and J.C. with the tines of a hot fork. Respondent Washington County Community Services (the county) filed a petition in district court alleging that the three children were in need of protection or services of the court (CHIPS). On November 26, 2007, mother admitted the CHIPS petition and began to work on court-approved case plans, under which the county provided an array of evaluations and services to mother and the children.

Diagnostic testing revealed that M.C.III and J.C. suffer from Reactive Attachment Disorder (RAD) directly related to mother's parenting. L.C., who is too young for diagnostic testing, is already exhibiting symptoms consistent with RAD. M.C.III, who has a significant speech delay, has also been diagnosed with Alcohol-Related Neuro-Behavioral Disorder. Each child is a special-needs child in need of permanent, highly functional caregivers who can provide daily consistency in meeting the child's needs while remaining emotionally stable.

M.C.III and J.C. are in separate foster homes because even highly experienced therapeutic-foster-care providers were not able to meet the individual needs of these brothers in one home due to their extremely physical and violent relationship with each

¹ M.C. Jr. is the father of M.C.III, J.C., and L.C. Mother remained in an abusive relationship with M.C. Jr. until May 2008. M.C. Jr.'s parental rights were terminated in a separate proceeding. His mother failed to participate in the Washington County proceeding, and her custodial rights to M.C.III were terminated by default in these proceedings.

other. M.C.III's behavior has changed dramatically under therapeutic foster care since he was separated from J.C., who remains in a therapeutic home with L.C. J.C. and L.C. are each becoming more affectionate and J.C.'s destructive behaviors have significantly decreased in their therapeutic foster home.

In May 2008, the county petitioned to terminate mother's parental rights to M.C.III, J.C., and L.C. After a four-day trial, the district court issued 156 numbered findings of fact² and an additional five pages of narrative findings concerning the best interests of the children and the county's reasonable efforts to address the issues that led to out-of-home placement and reunite this family. Based on these findings, the district court concluded that the county proved statutory grounds for TPR under Minn. Stat. § 260C.301, subd. 1(b)(2) (2008) (neglect or refusal of parental duties); § 260C.301, subd. 1(b)(4) (2008) (palpable unfitness); and § 260C.301, subd. 1(b)(5) (2008) (failure of reasonable efforts to correct conditions that led to out-of-home placement). The district court also concluded that the county proved by clear and convincing evidence that TPR is in the best interests of the children and that the county made appropriate reasonable efforts required by law. By order dated August 20, 2008, mother's parental rights to M.C.III., J.C., and L.C. were terminated.

Mother moved for a new trial or amended findings of fact and conclusions of law, arguing only that the district court erroneously admitted Ramsey County Case Closing Plan (exhibit 22), as a business record. The district court denied the motion, and this

² Approximately 16 of the findings of fact related to termination of paternal grandmother's custodial rights to M.C.III.

appeal followed, challenging the admission of exhibit 22 and the sufficiency of the evidence to prove (1) a statutory basis for TPR; (2) that the county made the required reasonable efforts to reunify the family; and (3) that TPR is in the best interests of the children.

D E C I S I O N

In this appeal, mother does not challenge any of the district court's findings of fact as clearly erroneous or unsupported by evidence in the record. Mother challenges only the admission of one exhibit and the sufficiency of evidence to support TPR.

I. Admission of exhibit 22

Absent an erroneous interpretation of the law or an abuse of discretion, the district court's ruling on whether to admit evidence will not be disturbed. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45–46 (Minn. 1997). But to be entitled to a new trial on the grounds of improper evidentiary rulings, a party must demonstrate prejudicial error. *Id.* at 46.

Exhibit 22 was introduced through mother's Washington County case manager, Catherine Thoemke, who worked with mother from November 2007 throughout this child-protection matter. Thoemke identified exhibit 22 as a "case closing that Ramsey County sent to [Thoemke] regarding [mother's Ramsey County] case." Thoemke stated that it was a document that she kept in her files in the course of her duties for the county. Thoemke testified that the document identifies the Ramsey County case worker responsible for creating the document as Donna Hernandez, and page two contains a list of services provided to mother by Ramsey County. Thoemke testified that she is familiar

with this type of state-mandated case-closing summary and has prepared similar summaries. Exhibit 22 was admitted as a business record over mother's objection to foundation, the same objection that mother advances in this appeal.

Mother makes no argument that admission of exhibit 22 was in any way prejudicial to her, and our painstaking review of the record does not reveal any prejudice to mother from admission of this record. In denying mother's motion for a new trial, the district court noted that it accorded little weight to exhibit 22. Mother testified about her involvement with RCCP. Mother did not dispute that RCCP provided services to her. Mother testified that she did not cooperate with RCCP because she was drinking a lot and that she voluntarily transferred custody of the involved children to relatives to "get rid of child protection." On this record, we decline to address mother's argument that there was inadequate foundation to admit exhibit 22 as a business record because mother has failed to establish that she is entitled to any posttrial relief based on admission of exhibit 22.

II. Sufficiency of evidence: statutory ground for TPR

On appeal from a TPR, we closely inquire into the sufficiency of the evidence to determine whether the evidence is clear and convincing. *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998). We exercise great caution in termination proceedings. *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996).

In this case, the district court found that the county proved all three asserted statutory grounds for TPR by clear and convincing evidence. Because a single statutory ground is sufficient to support TPR if TPR is in the best interests of the children and because the record in this case amply supports TPR under Minn. Stat. § 260C.301, subd.1

(b)(4) (palpably unfit), our analysis of the sufficiency of evidence to support a statutory basis for TPR will begin and end with that statutory provision. *See* Minn. Stat.

§ 260C.301, subd. 7 (2008) (stating that in TPR proceedings the best interests of the child are paramount, where at least one ground for termination is found by the court).

Minn. Stat. § 260C.301, subd. 1(b)(4), provides, in relevant part, that the juvenile court may terminate all rights of a parent to a child if it finds:

that 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.

Mother argues that the district court did not specify the needs of the children that she failed to meet. We disagree: the district court's findings plainly describe mother's long-standing pattern of inability to meet the children's needs. Mother complains that the district court did not specify which findings of fact led to the district court's conclusion that mother is palpably unfit to parent M.C.III, J.C., and L.C., but does not explain how this challenge to the district court's findings constitutes an insufficiency of evidence to support the conclusion that she is palpably unfit to parent these children. Many of the district court's findings support more than one statutory basis for TPR. The following is just a sample of the extensive findings regarding mother's consistently demonstrated inability to meet her children's mental and emotional needs.

The district court specifically credited the findings of psychologist Scott Fischer, Ph.D., who evaluated mother. Fischer diagnosed mother as suffering from a personality disorder. Fischer testified that a personality disorder is not something that can be cured or resolved with medication and is considered relatively permanent and nearly impossible to treat. According to Fischer, individuals with clinical-test results similar to mother's are likely to behave aggressively towards others; their interpersonal relations tend to be conflictual; they tend to seek immediate gratification of impulses; are likely to be very self-depreciating, even martyr-like although beneath this façade they may experience strong feelings of anger and resentment and are often prone to outbursts. Fischer testified that mother's mental-health and substance-abuse issues have impacted her care of her children directly and that her depression and passivity appear to have interfered with her ability even to envision adequate parenting. Fischer testified that mother's prognosis to be an effective parent is poor and noted her lack of insight which limits her ability to even see the need for change.

The district court noted its own observations of mother's repeated outbursts during the trial as a basis for its finding that mother "clearly demonstrates that she has little, if any, ability to moderate her emotions."

The district court also credited the testimony of Carol Starr Carpenter of Therapeutic Services Agency, who conducted a thorough parenting assessment of mother and father based on a differential assessment tool that is research-based and nationally recognized for its clinical validity. Starr attributed the children's lack of secure attachment to mother to deficits in their relationship with both parents and the neglectful

care they received. Starr testified that RAD is caused by parental care that fails to consistently meet the children's emotional or physical needs, often including abuse and neglect during the first 18–24 months of life. Starr testified that all of the skills necessary in a caregiver for each of the involved children are skills that mother does not possess and would not be able to obtain in the reasonably foreseeable future. Starr testified that the children are at a critical age for intervention to overcome RAD.

The district court credited the testimony of visitation supervisor Barbara Chase detailing mother's consistent inability to control her emotions, her anger, and her disruptive behavior during visits with her children. Chase testified about mother's lack of understanding of how her behaviors affect her children. Chase repeatedly observed mother responding to the children's escalating behaviors by escalating her own behaviors.

The district court credited the detailed testimony of in-home therapist Lisa Vaupel about her attempts to provide mother with the skills necessary to parent these special-needs children and her conclusion that, although mother made some initial progress, mother regressed such that the visits had no therapeutic value for the children and, in fact, caused the children's behaviors to escalate after each visit. Vaupel testified that mother does not have the appropriate skills to meet her children's special needs.

This is only a portion of the findings, based on clear and convincing evidence in the record, that support the district court's conclusion that mother has demonstrated a consistent pattern of failing to meet the mental and emotional needs of M.C.III, J.C., and L.C. Because the record plainly demonstrates sufficient clear and convincing evidence to

support TPR under Minn. Stat. § 260C.301, subd. 1(b)(4), we decline to address mother's challenge to the sufficiency of evidence to support TPR under subdivision 1, clauses (b)(2) and (b)(5). But we note that many of the district court's findings that support mother's palpable unfitness also demonstrate that mother has "substantially, continuously, or repeatedly refused or neglected to . . . [provide] her children with the . . . care and control necessary for their physical, mental and emotional health and development" and that mother is "physically able to correct the conditions that form the basis of the petition, but notwithstanding reasonable efforts by [the county] has failed to do so." *See* Minn. Stat. § 260C.301, subd. 1(b)(2) (neglect or refusal of parental duties) and (b)(5) (failure of reasonable efforts to correct conditions that led to out-of-home placement).

III. Sufficiency of evidence: reasonable efforts; best interests of the children

The best interests of each involved child must be the paramount consideration, provided that at least one statutory ground supports TPR. Minn. Stat. § 260C.301, subd. 7. And in a TPR proceeding, the district court is required to make specific findings "that reasonable efforts to prevent the placement and to reunify the child and the parent were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family." Minn. Stat. § 260C.310, subd. 8 (1) (2008).

a. Reasonable efforts

Here, the district court issued five pages of findings regarding the children's best interests and the county's reasonable efforts. Findings based on the testimony of

providers detail the extensive efforts of the county to appropriately address mother's mental-health issues, cognitive issues, chemical dependence, and mother's failure to develop the appropriate parenting skills despite extensive services. The district court supported its decision with "individualized and explicit findings regarding the nature and extent of efforts made by [the county] to rehabilitate [mother] and reunite the family," as required by Minn. Stat. § 260C.301, subd. 8(1). The district court found that the services offered were relevant to the safety and protection of the children; adequate to meet the needs of this family; culturally appropriate; available and accessible; consistent and timely; and realistic under the circumstances. The district court also found that mother "evidenced a consistent pattern of disengaging and disrupting services" despite her initial willingness to participate. The district court found that mother demonstrated no interest in meeting the needs of M.C.III or actively participating in his life. These findings are supported by the record.

b. Best interests of children

Mother's entire argument challenging the sufficiency of the evidence to support the district court's conclusion that TPR is in the children's best interests is a five-line statement that "numerous witnesses" testified that mother has a significant interest in maintaining her relationship with her children; that there is a bond between the children and mother; the children get excited when they see her at the start of a visit; and mother loves them very much. Because mother does not challenge the accuracy of the district court's extensive findings about the emotional and developmental harm these children suffered in mother's care and the progress they have made in the care of skilled

therapeutic caregivers and because the findings amply support the conclusion that TPR is in the best interests of each child, we find no merit in mother's attack on the sufficiency of evidence to support that conclusion, despite unrebutted evidence in the record that mother loves these children and made acknowledged progress in some areas of her case plan in her quest to retain her parental rights. Unfortunately for mother, the children's immediate need for permanent, consistent, emotionally stable caregivers makes it impossible to delay meeting that need for the unforeseeable length of time it would take mother to acquire the skills necessary to meet that need.

Affirmed.