

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-164**

In the Matter of the Welfare of the Children of:
M. S. R., Parent.

**Filed June 29, 2010
Affirmed
Shumaker, Judge**

Steele County District Court
File No. 74-JV-09-2076

Benjamin M. Cass, Smith, Tollefson & Rahrick, Owatonna, Minnesota (for appellant M.S.R.)

Dan McIntosh, Steele County Attorney, Christine A. Long, Assistant County Attorney, Owatonna, Minnesota (for respondent Steele County Human Services)

David R. Borchardt, Owatonna, Minnesota (for respondent D.L.F.)

Julie Nelson, Owatonna, Minnesota (respondent guardian ad litem)

L.D.B., St. Cloud, Minnesota (pro se respondent)

Q.L.H., Kansas City, Missouri (pro se respondent)

Considered and decided by Larkin, Presiding Judge; Shumaker, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

Appellant mother challenges the termination of her parental rights to her three children, asserting that minor burns on one of her children do not support terminating her parental rights to all three children for egregious harm. We affirm.

FACTS

Appellant M.S.R. challenges the termination of her parental rights to her children, T.R. (born in 2002), D.F. (born in 2004), and E.B. (born in 2008). Each of the children has a different father, and the district court determined that no one has contested that each of the fathers is unavailable or unable to care for his child.

For six years, child protection repeatedly offered voluntary services to M.S.R., but she always declined. The first time child protection was involved with M.S.R. was in 2004, when she attempted to commit suicide by overdosing on Advil and Tylenol. In 2005, child protection investigated a report that M.S.R. was sleeping all day, locking her children in their room, and feeding them only once a day. In 2006, child protection was contacted when M.S.R. and her children were passengers in a car when the driver was stopped for DWI. In February 2009, child protection received a report that T.R. had a bruise on her arm from being hit by M.S.R. M.S.R. did not cause the bruise, but she admitted that she spansks the girls with a belt on their bare bottoms and that she does not consider this abusive. In March 2009, child protection investigated M.S.R. for hitting D.F. for eating her sister's food.

On August 2, 2009, M.S.R. put both T.R. and D.F. in the bathtub at approximately 8:30 p.m. The girls complained that the water was too hot, but M.S.R. did not believe them, and she forced them to sit in the water. T.R. and D.F. were in the bathtub for approximately 20 minutes. The girls went to bed after the bath, but were unable to sleep because they were in pain from the hot bath. They did not tell their mother that they were in pain that evening.

At approximately 9:00 a.m. on August 3, M.S.R. saw redness and blisters on D.F.'s legs and redness on T.R.'s legs. M.S.R. put ointment on D.F.'s burns but did not seek medical attention. M.S.R. noticed that D.F.'s blisters continued to grow throughout the day. She called her daycare provider and her mother for advice, and both told her to seek medical attention. M.S.R. did not seek medical attention but instead took the children to daycare at approximately 4:00 p.m.

At 7:00 p.m., M.S.R. called the children's daycare and was told that D.F. needed to get medical treatment because she could "barely walk." M.S.R. arrived at daycare within 20 minutes and picked up T.R. and D.F. M.S.R. drove to two different locations to have friends look at the burns on D.F. before going to the hospital, where she arrived at approximately 9:00 p.m.

Medical professionals stated that the burns suffered by D.F. were not consistent with the history of hot water submersion, but they did not definitively identify the cause. An examination of M.S.R.'s hot water heater revealed that the thermostat was set at 120 degrees and that the water could reach a temperature of 105 degrees. Nevertheless, it is undisputed that D.F. was injured on the evening of August 2, while in her mother's care,

and that her injuries became worse during the time that M.S.R. did not seek medical attention. On August 5, the district court issued an ex-parte order transferring custody of the three children to human services. An emergency protective-care hearing was held on August 6, and the children have remained in the custody of the county since that time.

A termination of parental rights (TPR) proceeding was held from November 30 through December 7, 2009. The district court filed an order involuntarily terminating M.S.R.'s parental rights on December 31, 2009, reasoning that D.F. experienced egregious harm while in M.S.R.'s care, that M.S.R. is palpably unfit to be a party to the parent-child relationship, and that terminating M.S.R.'s parental rights is in the children's best interests. M.S.R. appeals.

D E C I S I O N

“[Appellate courts] review the 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). We give “considerable deference to the district court’s decision to terminate parental rights.” *Id.* But we also “closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing.” *Id.* We will affirm a district court’s termination of parental rights if “at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child.” *Id.*

Egregious Harm

A court may terminate parental rights if it finds that a child experienced egregious harm while in the parent's care "which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care." Minn. Stat. § 260C.301, subd. 1(b)(6) (2008). "Egregious harm" is defined as "the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care." Minn. Stat. § 260C.007, subd. 14 (2008).

M.S.R. argues that the burns suffered by D.F. were not egregious harm under the statutory definition because the injuries to the two girls were inconsistent with each other, medical personnel could not explain how the injuries were incurred, and M.S.R. acted reasonably under the circumstances. We disagree.

Although the injuries suffered by the two girls were inconsistent and medical professionals did not agree on the manner in which the injuries were likely incurred, it is not disputed that the burns happened on the evening of August 2 while the children were in M.S.R.'s care.

Despite T.R. and D.F. protesting to their mother that the water was too hot, M.S.R. forced the children to sit down in the bathtub and to remain there for 20 minutes. Because the children were afraid to tell their mother, M.S.R. did not become aware of D.F.'s injuries until approximately 9:00 a.m. on August 3, when she noticed blisters on D.F.'s legs. M.S.R. put ointment on D.F.'s burns, and she called the children's daycare

provider and her mother for advice. Both people told M.S.R. to take D.F. to the doctor. M.S.R. did not take D.F. to the doctor and instead took the children to daycare at 4:00 p.m. as usual, despite realizing that the burn blisters were growing throughout the day.

When M.S.R. called the children's daycare and learned that D.F. could "barely walk" and needed to see a doctor, she arrived within 20 minutes to pick up T.R. and D.F. However, M.S.R. did not go directly to the hospital, but instead drove to two different locations to have friends look at D.F.'s burns.

M.S.R. argues that this case is not comparable to *In re Welfare of the Children of T.L.C.*, despite the district court's comparison. M.S.R. contends that *T.L.C.* is different from this case because it involved a 14-month-old child who was placed in a bathtub alone, showered with 140-degree water, burned on 35% to 45% of her body, and not provided medical attention immediately. No. A08-0090, 2008 WL 3290879, at *1 (Minn. App. Aug. 12, 2008), *review denied* (Oct. 15, 2008). We initially note that *T.L.C.* is an unpublished opinion and not precedential. Minn. Stat. § 480A.08, subd. 3(c) (2008). Further, although D.F.'s situation is less dramatic, and the water was just over 105 degrees, it still remains that M.S.R. forced her children into a hot bath and failed to seek medical attention for 12 hours after realizing that D.F. had blisters from burns on her legs, which became more severe with the passage of time. The harm suffered by D.F. was of a nature that indicates a lack of regard for her well-being, and was therefore egregious.

Best Interests

M.S.R. contends that termination of parental rights does not serve the children's best interests. In this type of proceeding, "the best interests of the child must be the paramount consideration," provided that one of the conditions for termination have been met. Minn. Stat. § 260C.301, subd. 7 (2008). In determining the best interests of a child, the court must analyze three factors: "(1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *In re Welfare of R.T.B., Child*, 492 N.W.2d 1, 4 (Minn. App. 1992). Competing interests include things such as the child's preferences, a stable environment, and health considerations. *Id.* M.S.R. specifically argues that the district court did not provide specific detail as to how it weighed the children's interests in terminating the parent-child relationship and that she is motivated and able to change for her children.

The district court made and relied on 17 pages of findings of fact. It noted that a family therapist recommended, after being involved with M.S.R.'s children, that continued contact between the children and M.S.R. should be well-supervised to ensure their safety because the children had been hurt by their mother, fear their mother, and could be further traumatized by her. The family therapist determined that it would be more damaging to the girls to have continued contact with their mother in an unsafe situation than to never see her again. The court also referred to the guardian ad litem's (GAL) observations and opinions, noting that the GAL observed T.R. and D.F. exhibiting extreme fear of baths and showers after their placement in foster care, an obsession with

food, and pretend play that is violent. The GAL recommended that the children not be returned to M.S.R. because termination of her parental rights will ensure that the children are placed in a permanent home with consistent safety, nurturing, and guidance.

There is sufficient evidence in the record to support the district court's determination that it is not in the children's best interests to be returned to M.S.R. As the district court noted, the children would have to wait in temporary care for an unspecified period of time for the possibility of reunification, which would depend on M.S.R. cooperating with and benefiting from services that she has consistently refused in the past.

M.S.R. argues that an injury to one child cannot support terminating her rights as to all three children. However, the language of Minn. Stat. § 260C.301, subd. 1(b)(6), states that, where egregious harm to a child indicates a lack of regard for the child's well-being, it is not in *any* child's best interest to be in the care of the parent responsible for that harm. Thus, because D.F. experienced egregious harm while in M.S.R.'s care, it is not in her best interests, or the best interests of any child, to remain in M.S.R.'s care.

Because we affirm on the ground of egregious harm, we need not address the issue of palpable unfitness. *See In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005) (stating that because termination was appropriate based on palpable unfitness, it does not address the remaining grounds cited by the district court.)

Affirmed.