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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-68**

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

**Filed June 15, 2010
Affirmed
Schellhas, Judge**

Pine County District Court
File No. 58-JV-09-184

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Considered and decided by Hudson, Presiding Judge; Schellhas, Judge; and Muehlberg, Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant-mother challenges the district court's termination of her parental rights, arguing that the record lacks clear and convincing evidence to support termination and that termination is not in the child's best interests. We affirm.

FACTS

Appellant-mother M.R.G. gave birth to J.M.M. on May 4, 2009. Although paternity for J.M.M. was not adjudicated, mother and M.D.M. testified at trial that M.D.M. is the biological father of J.M.M., and genetic testing shows the probability that M.D.M. is J.M.M.'s father as 99.99%.

Shortly after J.M.M.'s birth, hospital staff reported to Pine County its concerns about mother's ability to parent J.M.M., based on the following circumstances: (1) after delivering J.M.M., mother did not respond to J.M.M.'s cues about hunger and had difficulty feeding him and keeping track of his feedings; and (2) mother continually awakened J.M.M. to talk to him—not to feed him.

On May 7, the county took J.M.M. into protective custody and continued to assess mother and her circumstances. The county discovered that mother's home was unsanitary, had a strong odor of animal urine, and had a large amount of feces in the upstairs where mother kept her dog.

On May 29, based on mother's admission, the district court adjudicated J.M.M. a child in need of protection or services (CHIPS) and ordered mother and father to comply with a case plan. The case plan required mother to: (1) undergo a psychological

assessment and follow the recommendations; (2) undergo a parenting assessment and follow the recommendations; (3) participate in hands-on role modeling and parenting education; (4) participate in supervised visitation with a county skills worker; (5) provide clean, safe, and stable housing; and (6) not allow anyone to reside in her home who posed a safety risk to her and J.M.M. On August 27, the district court found that reasonable efforts for rehabilitation and reunification were no longer required with respect to mother because the provision of such services were futile and therefore unreasonable under the circumstances, pursuant to Minn. Stat. § 260.012(a)(5) (2008).

At the time that J.M.M. was adjudicated CHIPS, father was incarcerated in the Otter Tail County Jail, serving a sentence for a conviction of a sexual offense committed against another of his children. A county social worker sent father a letter in June and enclosed a copy of the CHIPS petition and case plan. Although father denied receipt of the letter, he called the social worker and asked whether J.M.M. was going to live with mother and whether he could live with mother. Father did not ask for services or supervised parenting time with J.M.M. On November 12, the district court found that reasonable efforts for rehabilitation and reunification were no longer required with respect to father, pursuant to Minn. Stat. § 260.012(a)(1) (2008), because he had been convicted of second-degree criminal sexual conduct against one of his own children, C.M.M., which constitutes egregious harm to a child under Minn. Stat. § 260C.007, subd. 14 (2008).

On September 3, the county filed a petition for termination of parental rights on the grounds set forth in Minn. Stat. § 260C.301, subd. 1(b)(1), (2), (4)-(6), (8), (9) (2008).

On November 23 and 24, the district court held a trial at which it heard testimony from nine witnesses and admitted ten exhibits as evidence. On December 21, the district court terminated the parental rights of mother and father in an order that contains 55 findings and 28 conclusions of law. The court found that: both parents are palpably unfit to be parties to the parent-and-child relationship pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4); mother cannot engage in efforts to improve her ability to parent; as to both parents, reasonable efforts had failed to correct the conditions that led to out-of-home placement pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2); as to father, a child had suffered egregious harm in his care and that father's perpetration of sexual abuse upon his own child, C.M.M., demonstrated a grossly inadequate ability to provide minimally adequate parental care;¹ and termination of the rights of both parents is in the best interests of J.M.M. pursuant to Minn. Stat. § 260C.301, subd. 7 (2008).

This appeal by mother follows.

DECISION

We “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.* “[W]e closely inquire into the sufficiency of the evidence to determine whether it was clear and

¹ This court affirmed father’s conviction of second-degree criminal sexual conduct. *State v. Matson*, No. A09-555, 2010 WL 606775 (Minn. App. Feb. 23, 2010).

convincing.” *Id.* “The [district] court must make its decision based on evidence concerning the conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period.” *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007) (quotation omitted). The district court may terminate parental rights on only those grounds set forth in the petition. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008), *as modified on denial of reh’g* (Minn. July 2, 2008). When at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, we affirm the district court’s termination of parental rights provided that the county has made reasonable efforts to reunite the family, if required. *S.E.P.*, 744 N.W.2d at 385; *see also* Minn. Stat. § 260C.301, subd. 1(b) (2008) (listing grounds for involuntary termination of parental rights).

Palpable Unfitness

A court may terminate parental rights when a parent is palpably unfit to be a party to the parent-and-child relationship because of a specific pattern of conduct that renders a person incapable “to care appropriately for the ongoing physical, mental, or emotional needs of the child.” Minn. Stat. § 260C.301, subd. 1(b)(4). Here, the district court’s primary reason for terminating mother’s parental rights was mother’s palpable unfitness pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4). Noting that it had “examined all of the assessment data, testimony, exhibits, as well as [mother’s] own testimony,” the court concluded that, “as much as [mother] loves [J.M.M.], she cannot care for him now or into the foreseeable future,” and stated in its conclusions of law that:

15. [Mother's] cognitive limitations prevent her from caring for [J.M.M.] safely. She is unable to learn and retain parenting skills and unable to generalize skills from one situation to the next. [Mother] is unable to make decisions for [J.M.M.] that will keep him safe and help him to develop into a happy, healthy child. . . .

16. The only way that [mother] would be able to safely parent [J.M.M.] is if she had 24-hour assistance and supervision. This is simply not a feasible alternative. The Court has already made its ruling relieving the County of its duty to make reasonable efforts towards reunification. There are no services that can reasonably be offered that would allow [mother] to reunify with [J.M.M.]. No concrete alternative was offered by [mother] in this case, other than to suggest that a group home placement for [mother] and her child might be a possible solution.

Mother argues that the evidence is insufficient to support the district court's finding of palpable unfitness, stating that the "only evidence in the record that [she] has parenting deficits that are permanently detrimental to the physical and mental health of J.M.M. is the parenting assessment, which relied on incomplete and erroneous information." But the record contains substantial evidence to support the district court's findings regarding mother's inability "to learn and retain parenting skills."

Mother's psychological evaluation summary states that her "thought process and content appeared disorganized and chaotic"; her "judgment and insight regarding her ability to care for herself and her child appeared to be limited"; her "concentration, attention, and memory all appeared to be limited"; her current functioning was "within the extremely low (mild mental impairment) range of intelligence on a standardized measure of intellectual ability"; and her performance was "far below her expected age and graduation level." A mental-health expert testified that another mental-health

professional had diagnosed mother with “mild mental retardation” with specific issues in adaptive skills and working memory and that mother’s functioning capacity was unlikely to change in the future. At the time of trial, mother’s prognosis for being able to adequately and safely parent J.M.M. was poor. A family counselor, who provided parenting education to mother and supervised mother’s visits with J.M.M., testified about mother’s inability to consistently use skills and remember or retain information taught her.

The record also contains substantial evidence about mother’s inability to safely care for J.M.M. Much trial testimony focused on father and the likelihood that mother would maintain her relationship with him and allow him contact with J.M.M. The county social worker testified that mother “made it very clear that she loved [father] and wanted him to move back in with her.” A parenting assessor testified that mother “continued to have contact with [father] which raised concerns about her ability to be protective and follow through based on the needs of [J.M.M.]” The district court found that father “is an untreated sex offender who is prohibited from having any unsupervised conduct with minors,” and that he poses a significant safety risk to any children who are unsupervised in his care.” Yet mother testified that father is her fiancé and that she does not believe that father inappropriately touched one of his children. Though mother testified that she would choose J.M.M. over father, mother’s pattern prior to trial of continually reuniting with father, despite knowing the consequences as they pertained to her relationship with J.M.M., is clear and convincing evidence of palpable unfitness because of the serious implications for J.M.M.’s safety. Based on the evidence, the district court did not err by

finding that mother is palpably unfit to be a party to the parent-and-child relationship with J.M.M.

Reasonable Efforts to Reunify

Mother argues that the evidence is insufficient to support a conclusion that the county engaged in reasonable reunification efforts. “A court may not terminate parental rights unless it also finds that social-service agencies made reasonable efforts to reunify the parent and child.” *T.D.*, 731 N.W.2d at 554. Even if one or more statutory grounds for termination exist, we must determine whether there is clear and convincing evidence that the county made reasonable efforts to reunite the family. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005).

Here, the district court stated in its conclusions of law that:

For five months, the county provided intensive parenting education and supervised visitation to determine whether [mother] could parent. The county arranged the parenting assessment and psychological evaluation to determine what services were needed for reunification. The county’s efforts to reunify [mother] and her child were reasonable.

The district court’s findings are supported by substantial evidence in the record. The social worker, who prepared mother’s case plan, testified that in addition to her visits to mother’s home, mother was referred to a combination of intensive in-home parent education and supervised visitation, was referred to a family service aide to help mother with home cleaning, household management, budget, self-care, and independent living, was referred for psychological evaluation and IQ testing, and was provided volunteer transportation. Additionally, the county offered mother public health services, assistance

with locating affordable housing, and a referral for an adult mental-health worker. Mother cites *In re Welfare of B.L.W.*, 395 N.W.2d 426 (Minn. App. 1986), to support her argument that the county did not engage in reasonable efforts because it did not offer her “full family foster care.” Although “[e]ach CHIPS intervention requires a case plan that reflects the reasonable efforts of the agency to facilitate reunification,” *In re Child of E.V.*, 634 N.W.2d 443, 446 (Minn. App. 2001), mother cites no authority that requires that a parent be offered full-family foster care as part of reunification efforts and we are aware of no such authority.

Mother argues that the district court erred by relieving the county of its duty to engage in reasonable reunification efforts on August 27, 2009, when it determined that further services for the purpose of reunification were futile and therefore unreasonable under the circumstances pursuant to Minn. Stat. § 260.012(a)(5), and that the “short duration of services” provided by the county did not constitute reasonable efforts. The court determined that further services were unreasonable based “upon its review of the parenting assessment and psychological evaluation.” Under section 260.12(a)(5), reasonable efforts are not required “if the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances.”

Here, mother’s psychological testing showed, among other things, that: (1) mother had a full scale IQ of 65; (2) mother’s level of intellectual functioning was extremely low falling into the “mild mental impairment range” of intelligence; (3) mother demonstrated “an extremely low intellectual capacity and an inhibited learning ability”; (4) mother’s language and mathematical skills are “equivalent to that of a seven year

old”; and (5) mother “has clear cognitive deficits that may inhibit her from caring for herself as well as another individual.” Additionally, mother’s parenting assessment showed: (1) inconsistencies in mother’s ability to read J.M.M.’s cues; (2) struggles with mother’s ability to put J.M.M.’s needs in front of her own; and (3) mother’s needs for continuous prompts to reflect the requested parenting changes. Although the mental-health worker who conducted mother’s psychological evaluation opined that mother could be an excellent parent and perform appropriate daily loving skills “with constant support and supervision,” none of the professionals who assessed or worked with mother identified any additional services that could help mother to be reunified with J.M.M. except with constant support and supervision. Moreover, despite the district court’s August 27 order, relieving the county of its duty to engage in further reasonable efforts to reunify, the county continued to provide mother family counseling and independent-living education services through the time of trial. These facts provide clear and convincing evidence that supports the district court’s finding that additional efforts would be futile. We conclude that the court did not err by determining that reasonable efforts were provided and additional efforts would be futile and were therefore unnecessary.

Mother also argues that the evidence is insufficient to support a finding that she failed to correct the conditions that led to J.M.M.’s out-of-home placement. She argues that because she has “demonstrated a consistent ability to care for her own needs and to keep her home clean,” has improved in her ability to read J.M.M.’s cues and put her own desires aside to meet his needs, the evidence is insufficient to support a finding that she is unable to parent. We disagree. The district court found that mother’s “cognitive deficits

prevent her from caring for her son,” noting that she “is not capable of making appropriate, safe decisions for [J.M.M.]” The district court further found that mother “is not able to meet her son’s basic needs” and that her “cognitive functioning is not going to improve in the foreseeable future.” The record contains sufficient evidence to support the district court’s finding that mother cannot correct the conditions that led to J.M.M.’s out-of-home placement. The record also contains substantial evidence to support the district court’s finding that “[t]he tragedy of this case is that because of [mother’s] cognitive deficits, she is not able to safely and appropriately parent [J.M.M.]”

Best Interests of J.M.M.

“Having concluded that statutory grounds for termination exist, the only remaining issue is whether termination is in the best interests of the child[.]” *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 57 (Minn. 2004). Mother argues that the evidence is insufficient to support the district court’s determination that termination of parental rights is in J.M.M.’s best interests. In any termination-of-parental-rights proceeding, “the best interests of the child must be the paramount consideration.” Minn. Stat. § 260C.301, subd. 7. “But as the United States Supreme Court has recognized, the termination of parental rights also implicates substantial and fundamental liberty interests of the parents[.]” *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 672 (Minn. 2008). “Whether termination of parental rights is in a child’s best interests is a decision that rests within the district court’s discretion.” *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008).

The district court balanced mother's and J.M.M.'s interest in preserving the relationship, found that mother did not have the ability to safely parent J.M.M., and concluded that J.M.M.'s safety and well being were the paramount consideration. Our review of the record confirms that the district court's determination as to the best interests of J.M.M. is supported by substantial evidence and is not clearly erroneous. Heart wrenching as it was for the district court to terminate mother's parental rights, and as it is for this court to affirm that termination, we will not disturb the determination of the district court.

Affirmed.