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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-671**

In the Matter of the Welfare of the Children of: L.B. and J.N., Parents,
and In the Matter of the Welfare of the Children of L.B. and J.B., Parents.

**Filed August 22, 2011
Affirmed
Schellhas, Judge**

Big Stone County District Court
File Nos. 06-JV-10-268, 06-JV-10-276

Greta Smolnisky, Smolnisky & Kinney P.C., Willmar, Minnesota (for appellant L.B.)

William J. Watson, Big Stone County Attorney, Ortonville, Minnesota (for respondent
Big Stone County)

Kenneth L. Hamrum, Morris, Minnesota (for respondent J.N.)

Nan Haggarty, Starbuck, Minnesota (for respondent J.B.)

Jan M. Nordmeyer, Glenwood, Minnesota (for respondent A.N.)

Susan Marsolek, Ortonville, Minnesota (guardian ad litem)

Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant mother challenges the termination of her parental rights, arguing that the
evidence is insufficient to support termination and that the district court erred by

terminating her parental rights to her four oldest children after it transferred sole permanent legal custody to their father. We affirm.

FACTS

Appellant L.B. is the mother of seven children. Her former husband, J.N., is the father of her four oldest children, including A.R.N. Mother's current husband, J.B., is the father of her three youngest children, Jac.B., G.B., and Ja.B. Mother first came to the attention of Lyon County Family Services in April 2010, when Jac.B., who was three years old, was twice found wandering unsupervised in a McDonald's restaurant parking lot in Marshall, insufficiently clothed for the weather. Lyon County filed a child-in-need-of-protection-or-services (CHIPS) petition and the district court transferred the case to Big Stone County after mother, J.B., and the children moved to Clinton.

On May 6, shortly after the family moved, mother left the three younger children in J.B.'s care and picked up her four older children from school. When mother returned home, Jac.B. opened the door naked, G.B. was in a dirty diaper, Ja.B. was crying in his crib, and J.B. was in the bedroom sleeping. Mother awoke J.B., and an argument ensued. J.B. hit mother in the face. A.R.N. said to J.B., "Don't hit my mother," and J.B. slapped A.R.N. on the arm and pushed her out of the room. Subsequent investigation revealed that J.B. hit A.R.N. two to three times a week and hit mother about seven times per month.

After the alleged domestic abuse, Big Stone County filed CHIPS petitions concerning all seven children. The district court held an emergency-protective-care hearing and placed the four oldest children (the oldest children) with their father under

protective supervision. The court placed the three youngest children (the youngest children) in foster care. At the adjudicatory hearing, A.R.N. testified about the altercation between mother and J.B. that occurred on May 6 in her presence. A.R.N. testified that J.B. hit mother and her. Mother embraced J.B.'s version of the events, and her testimony contradicted A.R.N.'s testimony. Mother testified that the May 6 argument was about A.R.N. "doing her homework," and that J.B. did not hit A.R.N. or her.

On July 2, 2010, the district court adjudicated the children as CHIPS. The court adopted a case plan for mother and J.B., which identified three goals: safety, permanency, and well-being. The plan required mother to complete an anger-management assessment, participate in a parental-capacity evaluation and in family therapy upon the children's return to her custody, and visit the children as arranged by the county. The court ordered individual therapy for A.R.N. and ordered J.B. to complete a chemical-dependency evaluation. Mother and J.B. indicated that they would follow the plan but did not agree with it and refused to sign it.

In September, the district court ordered J.B. to complete inpatient chemical-dependency treatment and ordered mother and J.B. to participate in in-home clinical parenting observation.

For over six months, mother did not cooperate with the county or make progress on her case plan. Although mother participated in the court-ordered psychological assessment with Dr. Edwin Yerka and parenting-capacity assessment with Dr. Rick Ascano, she falsified her answers by "underreporting symptoms" and "presenting herself in an overly positive light." The results of the assessments were therefore invalid. Due

to the invalid results, Dr. Yerka could not make any specific psychodiagnostic or treatment recommendations for mother, render an opinion concerning her psychological functioning, or determine whether she needed or would benefit from mental-health services. Similarly, Dr. Ascano could not provide an opinion concerning mother's condition or recommend appropriate services to facilitate reunification.

During the first six months of mother's case plan, she continued to deny that J.B. physically abused A.R.N., maintained that A.R.N. was lying about the abuse, and blamed A.R.N. for the family's problems. Mother was consequently estranged from A.R.N., and mother made no efforts to reconcile the relationship. Mother also continued to deny the existence of physical abuse between J.B. and her in the family home. Mother even appeared with a black eye at a meeting with a social worker and denied that J.B. had hit her. Later, she admitted that he had hit her. Mother also was untruthful about J.B.'s alcohol abuse and prevented him from providing random urine samples for analysis, which was part of his case plan. Mother did not demonstrate that she would change her abusive relationship with J.B., protect her children from physical abuse, or that she understood how domestic violence in the family affected her ability to parent her children.

The district court found that mother's supervised visits with the children varied in quality. The court found that during some of the visits, mother's interaction and activities with the children were outstanding, but that during other visits, mother made inappropriate comments to the children, and on one visit, spent little time interacting with them and spent the majority of the time with her head in her hands and eyes closed.

Although the county offered mother numerous additional services, which were not court ordered, she rejected the services, including individual therapy and parenting classes.

In October, while J.B. was in chemical-dependency treatment, he suffered a heart attack and stroke. When mother visited him in the hospital, she suffered a seizure due to stress.

On November 15, the county filed a petition to permanently transfer custody of the oldest children to their father.

On November 16, while J.B. was in mother's care, recovering from his heart attack and physically disabled from the stroke, mother physically assaulted him. J.B. suffered head bruises and fractured ribs as a result of mother kicking him in the head and torso. Initially, mother and J.B. told police that an unknown intruder broke into the home, raped mother, and attacked J.B. Eventually, J.B. admitted that mother had assaulted him, instructed him to clean up his own blood, and left him on the floor for five hours before she assisted him into bed. J.B. said that it was mother's idea to lie about the incident and that she concocted the story to tell to police. As a result of the incident, the state charged mother with felony assault.

On December 2, the county filed a petition to terminate mother's parental rights (TPR) to all of the children and J.B.'s parental rights to the youngest children. Shortly thereafter mother sought the county's assistance to attend individual therapy, and she began therapy with Jane Jost in December.

On January 12, 2011, when mother arrived at the parenting center for a visit with her children, she was extremely intoxicated. A police officer who reported to the scene testified that mother smelled of alcohol, did not answer his questions, did not make much sense, had poor balance, and attempted to take many pills at once out of a prescription bottle. Officers called for an ambulance to transport mother to the hospital, where she resisted medical treatment and was combative towards hospital staff. The hospital placed mother under a 72-hour hold and then discharged her with treatment recommendations. Mother's hospitalization resulted in diagnoses of anxiety disorder NOS; major depression, single episode, moderate; factitious disorder with predominantly physical signs and symptoms versus malingering; and cluster B traits, which represent a combination of traits of anti-social, borderline, narcissistic, and histrionic personality disorders.

On January 19, the district court adopted a new case plan for mother. The plan required mother to participate in individual therapy with Jost with specific therapeutic goals; follow through with her psychiatric appointments; complete a chemical-dependency evaluation and follow recommendations, including any discharge recommendations; and continue visits with her children.

The TPR trial occurred on March 21 through 23. At the commencement of the trial, J.B. voluntarily terminated his parental rights to his children. The trial proceeded only with respect to mother's parental rights.

On April 1, the district court terminated mother's parental rights to all of her children, finding that termination of mother's parental rights is in the children's best

interests pursuant to Minn. Stat. § 260C.301, subd. 7 (2010). As to all of the children, the court concluded that mother is palpably unfit to be a party to the parent-and-child relationship pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4) (2010). Additionally, as to the youngest children, the court concluded that, under Minn. Stat. § 260C.301, subd. 1(b)(5) (2010), reasonable efforts failed to correct the conditions that led to the children's out-of-home placement, and, under Minn. Stat. § 260C.301, subd. 1(b)(8) (2010), the children are neglected and in foster care.

This appeal follows.

D E C I S I O N

“The district court is vested with broad discretionary powers when deciding juvenile-protection matters.” *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009) (quotation omitted). “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). “[W]e closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing.” *Id.* “Considerable deference is due to the district court’s decision because a district court is in a superior position to assess the credibility of witnesses.” *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

“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). 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) (2010) (listing grounds for involuntary termination of parental rights).

“Our limited scope of review does not allow us to engage in additional fact-finding or to remand for different factual findings supporting different conclusions.” *S.S.W.*, 767 N.W.2d at 733–34. Even if we may have made different factual findings in the first instance, when evidence in the record supports the district court's findings of fact and the findings of fact support the district court's conclusions of law, we may not reverse. *Id.* at 734.

Palpable Unfitness as to All Children

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 unable “to care appropriately for the ongoing physical, mental, or emotional needs of the child.” Minn. Stat. § 260C.301, subd. 1(b)(4). The district court terminated mother's parental rights to all of her children on the basis of palpable unfitness. The court found that mother has “significant emotional deficits” and that “[t]hese deficits, when combined with her refusal to meaningfully and effectively participate in services for over seven months, render her palpably unfit to be a parent.” The court further found

that mother's "lack of progress, despite extensive services . . . , make it highly unlikely that she will be able to appropriately care for her children's physical, mental or emotional needs in the reasonably foreseeable future."

Mother argues that the evidence is insufficient to support the district court's finding of palpable unfitness, stating that her "willingness to accept and benefit from services, together with the mental health professionals' favorable testimony about [her] future prognosis if she does so, discredit the court's finding of palpable unfitness." We disagree. The record contains substantial evidence to support the district court's finding concerning mother's inability to care appropriately for the ongoing needs of her children in the reasonably foreseeable future.

The record shows that mother lacks understanding about the impact of domestic violence on her ability to parent and protect her children. For example, for over six months, mother denied that J.B. abused her daughter and her, resulting in the estrangement of her daughter from her. When mother finally admitted that J.B. was physically abusive, she asked, "Now can I have my kids back?" Additionally, as late as February 2011, mother indicated in individual therapy that she had not yet decided whether she would end her relationship with J.B., who had regularly abused her daughter and her.

The record also shows that mother has mental-health issues that she has not addressed. The incident on January 12, shortly before the TPR trial, when mother arrived for visitation with her children extremely intoxicated, illustrates the severity of mother's

mental-health issues. Mother's level of intoxication necessitated the parenting center's call to police to assist, and necessitated mother's hospitalization.

Mother also lacked veracity on a number of issues, including a psychological assessment and a parental-capacity assessment, which precluded proper diagnoses and treatment recommendations that might have facilitated reunification. As previously noted, for over six months, mother denied that J.B. was physically abusive toward her daughter and her. Mother also concocted the story given to police as an explanation for the injuries mother inflicted upon J.B., admitting to the assault only after J.B. told the truth.

Mother's own therapist, Jost, testified that in therapy sessions through February 2011, mother lacked insight and understanding, and focused on her anger at the county, on blaming the county, and on denying any shortcomings or responsibility for what was occurring concerning her children. Dr. Ascano testified that mother is not a good candidate for psychological intervention because of her pattern of falsification. He also said that the likelihood of continued family dysfunction was probable and that mother's prognosis was guarded unless she was amenable to psychological treatment. Dr. Ascano testified that in light of mother's denial for about the past six months and the recent diagnosis from the hospital, even if mother began to admit to some shortcomings or wrongdoing and seriously address her concerns in therapy, it would take a minimum of two years to be successful.

Based on our review of the record, we conclude that the district court's finding that mother is palpably unfit to be a party to the parent-and-child relationship with all of her children is supported by substantial evidence and is not clearly erroneous.

Termination of Mother's Parental Rights to the Oldest Children

Without citation to legal authority, mother argues that the district court erred by terminating her parental rights to the oldest children after the court transferred sole custody of the oldest children to their father, asserting that termination was "unnecessary" and "excessive." Mother's argument is unavailing. Our appellate scope of review is limited to whether substantial evidence supports the district court's factual findings and whether the factual findings support the district court's conclusions of law. *S.S.W.*, 767 N.W.2d at 734. Substantial evidence in the record supports the district court's findings that mother is palpably unfit to parent the oldest children and that termination is in the oldest children's best interests, and these findings support the district court's conclusions of law concerning the oldest children.

Reasonable Efforts Failed to Reunite Mother and the Youngest Children

Mother argues that the evidence is insufficient to support the district court's finding that reasonable efforts failed to reunite her and the youngest children. Mother focuses her challenge on the district court's finding that she did not substantially comply with her case plan. Mother asserts that at the time of trial, she was "significantly compliant" with her case plan.

In its conclusions of law, the district court concluded that the county had established by clear and convincing evidence that reasonable efforts failed to correct the

conditions leading to the out-of-home placement of mother's youngest three children and that the elements required to terminate her parental rights pursuant to Minn. Stat. § 260C.301, subd 1(b)(5), were satisfied. The court found that the youngest children are under eight years of age and have resided out of the parental home in foster care for over six months, that the court approved the out-of-home placement plan, that mother has not substantially complied with the court orders and reasonable case plan, and that the county made reasonable efforts towards reunification. The court made the following findings:

Although [mother] may have actually been physically present at all required evaluations, she was not invested in addressing her problems through the services but rather was content to just go through the motions. The conditions which the reasonable services were designed to address have not been corrected. [Mother] still lacks the insight as to how her anger, actions surrounding abuse, and co-dependency issues affected her children. Indeed, it is still unclear whether she will or will not maintain her relationship with [J.B.], who was found to have been abusive to her children.

The record shows that mother deliberately lied in taking the psychological and the parenting capacity assessments. Her deliberate misrepresentations prevented Dr. Yerka and Dr. Ascano from making diagnoses or recommendations to effectively treat mother's mental-health issues, assist her in improving her parenting skills, or aid reunification efforts. Mother also lied about J.B.'s physical abuse of herself and her daughter for over six months before admitting that physical abuse occurred in the home. Mother seriously assaulted J.B., a vulnerable person in her care, leaving him bleeding on the floor for five hours without assistance. As recently as February 2011, mother refused to acknowledge her shortcomings as a parent or take responsibility for her circumstances and expressed

wanting to maintain a relationship with J.B., in spite of the safety risks to her children. The district court's finding that mother had not substantially complied with her case plan is supported by substantial evidence and is not clearly erroneous.

And, significantly, at trial, mother testified that she obstructed implementation of her case plan by blaming A.R.N. and the county for what was happening to the family, lying on the psychological and parenting capacity assessments, resisting cooperating with the county, interfering with J.B.'s chemical use assessment, and denying that alcohol or physical abuse occurred in the home. Mother also acknowledged that she refused services that the county offered to her.

Additionally, even if mother was "significantly compliant" with her case plan at the time of the trial, the district court found that, "The conditions which the reasonable services were designed to address have not been corrected." This finding is supported by substantial evidence in the record, and the finding supports the conclusion to terminate mother's parental rights to her youngest three children pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5).

Bests Interests of the Children

A district court's findings in support of an order terminating parental rights must include a finding that termination is in the child's best interests. *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009). In any termination-of-parental-rights proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7.

Mother challenges the district court's finding that termination of her parental rights is in the children's best interests. The court acknowledged that mother has a "deep and genuine affection for her children" and that "[h]er children, despite all the issues, appear to have affection for her." But the court also found that mother has continuing issues with lying, avoiding responsibility, and blaming others; sided with her husband over her daughter in denying for over six months that he physically abused A.R.N.; lacks improvement in her parenting skills and in treating her mental health issues; lacks understanding about the effects of physical abuse on her ability to effectively parent; and is unwilling to prioritize her children's safety over remaining in an abusive relationship. The district court's thorough findings, which are supported by substantial evidence and not clearly erroneous, show that it is not in the children's best interests to remain with mother. Thus, the district court's finding that it is in the best interests of the children to terminate mother's parental rights is supported by substantial evidence and not clearly erroneous.

Affirmed.