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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2293**

In the Matter of the Welfare of the Children of: C. C. a/k/a/ B., Parent

**Filed May 29, 2012
Affirmed
Connolly, Judge**

Blue Earth County District Court
File No. 07-JV-11-2909

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Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Willis, Judge.*

UNPUBLISHED OPINION

CONNOLLY, Judge

On appeal from the termination of her parental rights, appellant-mother argues that (1) the record does not support termination of her parental rights for a failure to satisfy the duties of the parent-child relationship, for palpable unfitness to be a party to the

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

parent-child relationship, for a failure to correct conditions leading to an out-of-home placement, or because the children are neglected and in foster care; and (2) the district court judge should have removed himself from the case. We affirm.

FACTS

Appellant C.C. is the mother of four children: L.D.L. (d.o.b. July 6, 2006), S.C.N.L. (d.o.b. June 29, 2007), T.S.L. (d.o.b. June 29, 2007), and C.J.C. (d.o.b. February 6, 2011). T.L. is the father of L.D.L., S.C.N.L., and T.S.L., and D.A. is the father of C.J.C. At trial, D.A. appeared and voluntarily terminated his parental rights to his daughter C.J.C. for good cause.

On July 23, 2007, L.D.L., S.C.N.L., and T.S.L. were placed in the custody of Blue Earth County Human Services (the county) and were adjudicated Children in Need of Protection or Services (CHIPS) on September 14, 2007. They returned to appellant's custody on March 24, 2008, and the court terminated jurisdiction on June 3, 2008.

On December 2, 2010, L.D.L., S.C.N.L., and T.S.L. were placed on a 72-hour law enforcement hold. The county filed a CHIPS petition on December 6, 2010 seeking custody and continued placement in foster care. At the Emergency Protective Care hearing on December 6, 2010, the district court transferred custody to the county and the children have remained in foster care since that time. At the time, appellant was struggling with her chemical dependency, exposing her children to individuals who jeopardized the children's safety, and struggling to care for her children's significant special needs. On January 4, 2011, appellant admitted that L.D.L., S.C.N.L., and T.S.L. were in need of protection or services and acknowledged that her chemical dependency

had affected her children's wellbeing, making their living environment injurious or dangerous to the children or others. On February 8, 2011, the county filed an amended CHIPS petition, adding appellant's daughter, C.J.C. to the petition. On June 16, 2011, appellant admitted that C.J.C. was also in need of protection or services. C.J.C. was removed from appellant's custody by district court order on June 30, 2011, after appellant was jailed for violating conditions imposed by the drug court, and has remained in foster care since that time.

On November 1 and 2, 2011, a termination of parental rights (TPR) trial was held on the county's petition to terminate appellant's rights to all four children. A child-protection specialist testified that she had developed case plans for appellant which included tasks for appellant to complete. These tasks were grouped into safety, permanency, and well-being categories. The specialist identified three risks in the safety category: chemical use, no positive support network, and poor decision-making about individuals having access to appellant's children. The specialist testified that appellant completed a chemical-dependency assessment and attended the recommended inpatient treatment program. Although appellant successfully completed the residential portion of the treatment program, she did not comply with many of the program's after-care recommendations, including failing to meet with a county worker for medication management or to meet with her assigned therapist at least twice per month. Appellant's therapist testified she discharged appellant as a client because of her failure to attend appointments.

The case plan also required appellant to abstain from the use of all mood-altering chemicals and to attend, comply with, and complete all aspects of drug court. Appellant's probation officer testified that appellant has received nine sanctions for drug court violations and is currently only in phase two of the four-phase program. Her probation officer also testified that, with regard to chemical screening, appellant had one missed test, one diluted test, and one positive test for cocaine. Appellant's case plan also required appellant to build a positive support network through drug court, AA/NA meetings, treatment, and other sober activities. Appellant's sponsor testified that she had difficulty contacting appellant.

The case plan, citing appellant's poor decision-making with regard to who could have access to her children, required that any person having contact with appellant's children while in her care complete a background check. Witnesses testified that appellant continued to have contact with individuals who had not completed background checks and allowed these individuals to be around, and sometimes care for and drive, her children. The case plan further required that appellant demonstrate the ability to provide for her children's basic and special needs. The in-home parenting skills provider for the family testified to the difficulties she had working with appellant and her observations regarding appellant's lack of structure and lack of follow-through on disciplining the children, despite direction. The provider also cited concerns about appellant's supervision of the children, including appellant leaving the children unattended and crossing the street with the children in an unsafe manner.

Finally, there was evidence presented at trial that appellant failed to care for her children's educational and special needs. Testimony was presented that the children had missed a significant number of school days while in her care. For example, in 2009-2010, L.D.L. missed 33% of the scheduled school days. While the children were in foster care, appellant did not regularly attend the children's various medical appointments and failed to contact the providers when she was asked to do so. Finally, a physical therapist testified that the children were discharged from Pediatric Therapy Services (PTS) while in appellant's care because of poor attendance. The child-protection specialist concluded that, although appellant had made some progress on her case plans, she did not have the ability to parent her children in the reasonably foreseeable future.

The district court filed an order on November 11, 2011, terminating appellant's parental rights to her four children under Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), and (8) (2010). The district court found that appellant neglected her parental duties and was palpably unfit to be a party to a parent-child relationship, that reasonable efforts had failed to correct the conditions that led to her children's placement in foster care, that her children were neglected and in foster care, and that termination of appellant's parental rights is in the best interests of her children. The district court also terminated T.L.'s parental rights to L.D.L., S.C.N.L. and T.S.L., but he did not appeal. Appellant-mother appeals.

DECISION

I. Termination of Parental Rights

The district court found four bases for terminating appellant's parental rights, holding that appellant's rights should be terminated under Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), and (8). This court reviews a termination of parental rights decision "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 defer to the district court's decision on termination if at least one statutory ground for termination is proved by clear and convincing evidence and termination is in the children's best interests. *In re Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). "[W]e will review the district court's findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). Our review closely evaluates the sufficiency of the evidence, taking into account that it is the district court that assesses the credibility of witnesses. *Matter of Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

A. Failure to comply with parental duties

The district court may terminate parental rights if it finds

that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but

not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable.

Minn. Stat. § 260C.301, subd. 1(b)(2). Failure to satisfy requirements of a court-ordered case plan provides evidence of a parent's noncompliance with the duties and responsibilities under subdivision 1(b)(2). *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003).

Appellant argues that she is employed, has stable housing, provides for her children, is working on her sobriety, attends school conferences, and that personal care attendants (PCAs) would be available to assist her for up to 60 hours per week. However, the district court found that appellant is physically and financially able to provide for L.D.L., S.C.N.L., and T.S.L., but that reasonable efforts by the county failed to correct the conditions that formed the basis of the petition and that further efforts would be futile and therefore unreasonable. This determination is supported by substantial evidence in the record.

Contrary to appellant's arguments, the record supports the district court's finding that appellant is unable to provide a safe and stable home environment and cannot care for her children's significant special needs. Appellant continues to struggle with sobriety. Appellant's sponsor testified that she had difficulty contacting appellant. Her probation officer testified that appellant was admitted to drug court on December 20, 2010, that

appellant was significantly behind in completing the program, and had received numerous drug court sanctions, including jail sanctions in June, July, and October 2011. Appellant's violations included missed curfew checks, spending time with active users, a missed urinalysis, a diluted urinalysis, dishonesty, and obtaining a prescription for, and using, oxycodone without drug court approval. Additionally, just a month before trial, appellant tested positive for cocaine and was sanctioned to seven days in jail, and at the time of trial appellant was serving a 30-day house-arrest sanction for missing a curfew check.

Trial testimony also showed that appellant has failed to monitor her children's safety. An in-home skills provider testified that she observed appellant repeatedly leaving the children unsupervised and crossing the street with the children in an unsafe manner. A visitation supervisor also testified to witnessing unsafe behavior in parking lots and busy intersections. A PCA testified that at one visit, she observed knives in two locations within the children's reach and saw a child pick-up a matchbook off the floor.

Finally, appellant has demonstrated an inability to care for her children's significant special needs. L.D.L. has a seizure disorder, developmental disabilities, and brain and eye abnormalities. He wears leg braces that must be fitted at Gillette Children's Hospital, wears knee immobilizers when sleeping, and uses a walker. He takes daily seizure medications and must do special stretching exercises. S.C.N.L. has been diagnosed with failure to thrive in childhood and fetal alcohol syndrome with developmental delays, and T.S.L. has been diagnosed with failure to thrive in childhood and delayed developmental milestones. C.J.C. has seen a neurologist and an

ophthalmologist. All of the children receive school-district therapy services and L.D.L., S.C.N.L., and T.S.L. all work with PTS. The children's foster mother has scheduled all of the children's appointments and provided transportation for the children and for appellant when she has been able to attend. Because appellant was unable to regularly attend the children's PTS appointments, she was asked to call the provider to check on her children's progress. Appellant failed to do so. Moreover, the director of PTS testified that attendance was an issue while the children were in their mother's care and that the children had been discharged in September 2008 due to poor attendance.

The county made reasonable efforts to assist appellant, including providing ongoing case management services, visitation with the children, transportation for appellant and the children, in-home parenting-skills sessions, random urinalysis, a parenting assessment, and chemical-dependency treatment.

Because the record amply supports the conclusion that appellant failed to comply with her parental duty to provide her children with a safe and stable home and to meet their physical, mental, and emotional needs, the district court did not abuse its discretion in terminating appellant's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2).

B. Palpable unfitness to parent

A parent is palpably unfit to be a party to the parent-child relationship if a "pattern of specific conduct" or "specific conditions" make the parent "unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental or emotional needs of the child." Minn. Stat. § 260C.301, subd. 1(b)(4). Proof of such specific,

“permanently detrimental” patterns or conditions must be established over a period of time. *Matter of Welfare of B.C.*, 356 N.W.2d 328, 332 (Minn. App. 1984).

Appellant argues that she has made strides in maintaining her sobriety. While appellant’s sponsor testified that appellant attends meetings and has been truthful in regard to her recovery, the record clearly shows that appellant has not resolved her chemical-dependence issues. Appellant tested positive for cocaine just one month before trial, and has been sanctioned numerous times by the drug court. Appellant also argues that she was limited in what case plans she could complete due to her incarceration. “The fact that the parent is in prison cannot be enough in itself to render a parent palpably unfit and consequently warrant termination of parental rights.” *Matter of Welfare of B.C.*, 356 N.W.2d at 331. However, the district court did not base its palpable unfitness determination solely on appellant’s incarceration. Instead, the district court found that appellant failed to provide a safe, stable home environment and demonstrated an inability to care for her children’s significant special needs, as discussed above.

Because the record amply demonstrates appellant’s ongoing inability to care appropriately for her children’s physical, mental, and emotional needs, the district court did not abuse its discretion in terminating appellant’s parental rights under Minn. Stat. § 260C.301, subd. 1(b)(4).

C. Failure to correct conditions leading to out-of-home placement

Minn. Stat. § 260C.301, subd. 1(b)(5) allows the district court to terminate a party’s parental rights if, “following the child’s placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to

the child's placement." A presumption of failure of reasonable efforts arises if (1) the child is under age eight and has resided in court-ordered out-of-home placement for six months; (2) the court has approved an out-of-home placement plan; (3) the conditions leading to the out-of-home placement have not been corrected, which is presumptively shown by a parent's failure to "substantially compl[y] with the court's orders and a reasonable case plan;" and (4) the county made reasonable efforts to rehabilitate the parent and reunite the family. *Id.*

Appellant argues that the county did not meet its burden of showing that reasonable efforts were made to correct the conditions leading to the children's placement. As the district court determined, a presumption that the county's reasonable efforts failed arose because the children resided out of the home under a court order for six months and appellant did not comply with the court approved case plans. *See id.*

L.D.L., S.C.N.L., and T.S.L. were in the county's custody for approximately eight months in 2007-2008. They were again removed on December 2, 2010 and remained in the county's custody as of the date of trial in November 2011. They have been out of their home for more than 19 months, and the oldest child is not yet six years old. C.J.C. was removed June 30, 2011, and at the time of trial had been out-of-home for nearly five months—more than half of her life.

Appellant's case manager and therapist both testified about appellant's failure to cooperate with her case plans, including her lack of cooperation with drug court and failure to attend to her mental health. Appellant attended only one medication management appointment and attended only three therapy sessions after her discharge

from her residential treatment program. Appellant has since been discharged as a therapy client. Appellant's in-home parenting skills provider testified that appellant cut visits short or scheduled visits when other providers were in the home, so that the provider was unable to conduct successful parenting sessions. The provider also testified to several incidents in which appellant continued to expose the children to individuals who may have posed a safety risk.

Appellant progressed from supervised to unsupervised visitation with her children in March 2011, but after drug court violations in June and July 2011, appellant was incarcerated until August 2011. After her release, her visitations were again supervised and she did not progress to unsupervised visits again.

The record shows that the county made reasonable efforts to correct the conditions leading to the children's placement, as discussed above, including providing ongoing case management services, visitation with the children, in-home parenting skills sessions, and chemical dependency treatment. Therefore, the district court did not abuse its discretion in terminating appellant's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5).

D. Child neglected and in foster care

Parental rights may be terminated when a child is found to be neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(8). "Neglected and in foster care" means that the child is in foster care by court order; the parent's circumstances are such that the child cannot be returned to the parent; and the parent has failed to make reasonable efforts to correct conditions, despite the availability of rehabilitative services. Minn. Stat.

§ 260C.007, subd. 24 (2010). To determine whether parental rights should be terminated because a child is neglected and in foster care, courts look at the length of time the child has been in foster care; the effort the parent has made to adjust circumstances, conduct, or conditions to allow return to the home; the parent's contact with the children preceding the petition; the parent's contact with the responsible agency; the adequacy and availability of services offered or provided to the parent; and the social service agency's efforts to rehabilitate and reunite. Minn. Stat. § 260C.163, subd. 9 (2010).

Appellant argues that she has made “strides in her parenting” and continues to make progress toward sobriety. However, despite appellant's efforts, her children legally meet the requirements for being neglected and in foster care. As discussed above, all four of appellant's children have been out-of-home and in foster care for a significant portion of their young lives. Appellant does not argue that her circumstances are such that the children can be returned to her—instead she argues that “it is in their best interests that they would be returned to [appellant] if she continues to make strides in her parenting.” However, as discussed above, to date, appellant has failed to make reasonable efforts to correct the conditions that led to her children's placement, despite numerous efforts and services the county provided to address appellant's chemical dependency, mental health, and parenting deficiencies. Therefore, the district court did not abuse its discretion in terminating appellant's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(8).

E. Best Interests

In every termination proceeding, “the best interests of the child must be the paramount consideration.” Minn. Stat. § 260C.301, subd. 7 (2010). Even if a statutory ground for termination exists, the district court must still find that termination of parental rights or of the parent-child relationship is in the best interests of the child. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). In considering the child’s best interests, the district court must balance the preservation of the parent-child relationship against any competing interests of the child. *Matter of Welfare of M.G.*, 407 N.W.2d 118, 121 (Minn. App. 1987). “Competing interests include such things as a stable environment, health considerations and the child’s preferences.” *Matter of Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). The absence of statements noting the importance of the parent-child relationship is not a basis for reversal if the court explains why terminating parental rights is in the child’s best interests. *See* Minn. Stat. § 260C.301, subd. 7 (“Where the interests of parent and child conflict, the interests of the child are paramount.”); Minn. Stat. § 260C.001, subd. 3 (2010) (stating that safety of the child and permanency of the home are factors to be considered in a termination proceeding).

The district court found that termination of appellant’s parental rights is in the children’s best interests, observing that termination will “allow the children to be adopted by a family that can provide a safe, stable home, wherein the children’s needs will be made a priority.” The district court also found that appellant’s “interest in preserving the parent-child relationship is outweighed by the children’s need for stability and

permanency.” The district court’s findings are supported by the testimony of the children’s Guardian ad Litem. She testified that it is in the children’s best interest to be in a “stable and secure home where they can receive consistent and predictable parenting,” and that termination of appellant’s parental rights would be in the children’s best interests.

II. Disqualification of Judge

Finally, appellant argues that the district court judge should have voluntarily removed himself as the judge in this case because he has had previous knowledge of facts outside of the record and presides over the county’s drug court program. However, this issue is not properly before us on appeal because appellant did not object to the judge presiding over her TPR trial in district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that, generally, an appellate court will not consider matters not argued to and considered by the district court).

In any event, we see no basis for removal. The Code of Judicial Conduct provides:

A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances:

- (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.

Minn. Code Jud. Conduct, Rule 2.11 (A)(1). Whether a judge violated the Code of Judicial Conduct is a question of law that this court reviews de novo. *State v. Dorsey*,

701 N.W.2d 238, 246 (Minn. 2005). Appellant does not specify what disputed facts the judge had knowledge of outside of the record. Moreover, any knowledge the judge had of appellant's drug history was obtained in his judicial capacity. "Personal knowledge" under the Code "pertains to knowledge that arises out of a judge's private, individual connection to particular facts" and "does not include the vast realm of general knowledge that a judge acquires in her day-to-day life as a judge and citizen." *Id.* at 247. Any information the district court judge obtained about appellant through her participation in the county's drug court program was acquired in his judicial capacity, not his private life. Therefore, he was not required to disqualify himself under the Minnesota Code of Judicial Conduct.

In conclusion, the record supports the district court's determination that at least four statutory bases for termination of appellant's parental rights exist and the district court's conclusion that termination of appellant's parental rights is in the best interests of the children.

Affirmed.