STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1215

In the Matter of the Welfare of the Child of C. M., Parent

Filed February 5, 2008
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. JV0610250

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Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and Crippen, Judge.*

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant challenges termination of her parental rights, arguing that the district court improperly applied the presumption that she is palpably unfit to parent, misapplied

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

the presumption that reasonable efforts have failed to correct conditions leading to out-of-home placement, erred by finding that the county made reasonable efforts to reunify, and erroneously terminated her rights based on her incarceration. Because the district court did not err in concluding that there is clear and convincing evidence to support termination of appellant's parental rights and that termination is in the child's best interests, we affirm.

FACTS

J.M., born June 23, 2006, is appellant C.M.'s seventh child. Both C.M. and J.M. tested positive for cocaine at J.M.'s birth. C.M. used a false name at the hospital in an attempt to avoid having J.M. removed from her care based on a 2004 termination of parental rights to another child who was also born cocaine positive.[1] Nonetheless, Hennepin County Human Services and Public Health Department (the county) immediately placed J.M. in emergency protective care and petitioned to have J.M. adjudicated a child in need of protection or services of the court (CHIPS). C.M. acknowledged her true identity prior to the first CHIPS hearing.

The district court granted the petition on June 28, 2006 and approved a permanent case plan requiring C.M. to (1) cooperate with the county child protection social worker and guardian ad litem; (2) complete a chemical dependency assessment and follow the recommendations; (3) provide random urine samples on request; (4) complete a parenting

[1] C.M. voluntarily terminated her rights to the other five children.

assessment and follow the recommendations; and (5) complete a psychological assessment and follow the recommendations.[2]

C.M. completed a chemical dependency assessment on June 30, 2006, and was referred for outpatient treatment at the New Guidance Counseling Center. Once C.M. began treatment however, the center determined that she needed more intensive rehabilitation and recommended inpatient treatment at Meadow Creek. C.M. did not go to Meadow Creek and did not return to outpatient treatment at New Guidance.

The county petitioned for termination of C.M.'s parental rights (TPR) to J.M. on July 14, 2006, asserting that TPR is in J.M.'s best interests because J.M.'s return to C.M. is not possible in the foreseeable future, no relatives are available to accept a transfer of legal custody, and TPR would free J.M. for adoption. The petition asserted that C.M.'s parental rights should be terminated under Minn. Stat. § 260C.301, subd. 1 (b)(2) (2006) (refusal or neglect to comply with duties imposed on parent by parent-child relationship); Minn. Stat. § 260C.301, subd. 1 (b)(4) (palpably unfit to be a party to the parent-child relationship); Minn. Stat. § 260C.301, subd. 1 (b)(5) (reasonable efforts have failed to correct conditions that led to placement of child); Minn. Stat. § 260C.301, subd. 1(b)(7) (pertaining to unknown father's lack of entitlement to notice of TPR), and Minn. Stat. § 260C.301, subd. 1(b)(8) (child neglected and in foster care).

C.M. turned herself in on an arrest warrant at the end of September 2006 and was incarcerated for probation violations. She was in custody in Hennepin, Washington, and

[2] The district court imposed an interim case plan in the June 28, 2006 order, and a permanent case plan in a separate July 28, 2006 order. The two case plans are not substantially different.

Ramsey counties until the end of November. When C.M. was not incarcerated, the county did not know where she was. C.M. visited J.M. a total of eight times after his birth, primarily while she was incarcerated and the county had arranged the logistics of the visits. She visited J.M. only once when she was not incarcerated.

In November 2006, C.M. completed an outpatient treatment program while incarcerated in the Hennepin County workhouse, but she used cocaine within a week of her release. C.M. failed to enter into transitional housing or any type of sober living facility as recommended by the treatment program. C.M. also did not obtain a parenting assessment or a psychological evaluation as required by the case plan.

C.M. did not attend the TPR trial on January 25, 2007. The district court found her to be in default and terminated her parental rights on January 30, 2007. But because C.M. apparently thought the trial was scheduled for January 26, the matter was reopened by stipulation of the parties and rescheduled to May 2, 2007. On January 31, 2007, C.M. was again incarcerated for probation violations and remained in custody at Volunteers of America (VOA) through the date of the trial. She was scheduled to be released shortly after the trial. While at VOA, C.M. voluntarily participated in rehabilitative programming.

On the first day of the TPR trial, the district court denied C.M.'s request for a continuance. Following the trial, the district court terminated C.M.'s parental rights to J.M. by order filed May 21, 2007. The district court concluded that the county had proved by clear and convincing evidence that C.M.'s parental rights should be terminated under Minn. Stat. § 260C.301, subds. 1 (b)(2), (4), (5), (8), as alleged in the TPR petition

and because there is clear and convincing evidence that TPR is in J.M.'s best interests. This appeal followed.

D E C I S I O N

I. Standard of review

This court's review of the district court's decision to terminate parental rights is "limited to determining whether the findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether they are clearly erroneous." *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997). In so doing, we afford considerable deference 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). But "[w]hile we defer to the trial court's findings, we are required to exercise great caution in proceedings to terminate parental rights." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). "Indeed, parental rights may be terminated only for grave and weighty reasons." *Id*. We "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998).

A district court may, on petition, terminate all rights of a parent to a child on one or more statutory grounds asserted in a TPR petition and on a finding that TPR is in the child's best interests. Minn. Stat. § 260C.301, subds. 1(b), 7 (2006). In conducting its inquiry, the district court must cite evidence "relat[ing] to conditions that exist at the time of termination . . . ." *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001). If a single statutory basis for terminating parental rights is affirmable, this court need not

address any other statutory bases that the district court may have found to exist. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005).

We initially note that the district court's purported findings of fact in this case are merely a recitation of evidence presented at trial and do not constitute findings. *See Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App. 1989) (stating that a recitation of the parties' claims "may be helpful in understanding what the trial court considered" but that findings must be "affirmatively stated as findings of the trial court"). But because there is no dispute about the material facts in this case, and because the district court's "conclusions of law" are actually findings sufficient to support its determination on challenged issues, a remand for additional findings is unnecessary.

II. Palpable unfitness

C.M. first contends that the district court "erred in invoking and applying the statutory presumption of palpable unfitness" that arose from C.M.'s prior involuntary TPR. We disagree. Generally, a natural parent is presumed to be a "fit and suitable person to be entrusted with the care of his or her child," and the petitioner in a TPR case must prove by clear and convincing evidence that a parent is palpably unfit. *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). Palpable unfitness is defined in the statute:

> [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.

Minn. Stat. § 260C.301, subd. 1(b)(4) (2006). The statute also provides a presumption that "a parent is palpably unfit to be a party to the parent and child relationship upon a showing that the parent's parental rights to one or more other children were involuntarily terminated." *Id.*; *see also In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 249-50 (Minn. App. 2003) (noting that the legal analysis for a parent whose parental rights have previously been terminated is different from one involving no prior termination and that the presumption of unfitness relieves the district court from finding the existence of independent reasons for termination). Therefore, once parental rights to one or more other children are shown to have been involuntarily terminated, Minnesota law presumes the parent to be palpably unfit to be a party to the parent-child relationship.

C.M. acknowledges that the alleged presumed fact, palpable unfitness to be a party to the parent-child relationship, flows from the undisputed fact of a prior involuntary TPR. But C.M. argues that "there is a huge dispute as to whether the *presumed* fact, palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4), has in fact been proven by the *predicate* fact, a prior involuntary termination." C.M. also argues that because TPR proceedings are forward-looking and the evidence must address conditions as they exist at the time of trial, the district court should have "paid more attention to [C.M.'s] accomplishments while jailed between January and May, 2007, and less attention to her behavior between June of 2006 and January of 2007."

In a TPR case, the district court "relies not primarily on past history, but to a great extent upon the projected permanency of the parent's inability to care for his or her child." *Matter of Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) (quoting *A.D.*, 535 N.W.2d at 649 (quotations omitted). But, by necessity, this projection relies in part on the history of the parent's condition and circumstances. In this case, the district court's recitation of the testimony demonstrates that the district court was well aware of C.M.'s progress at VOA. But the district court nonetheless concluded that C.M.'s "history of persistent chemical dependency," together with her incarceration and future treatment plans, established by clear and convincing evidence that C.M. is unable to provide appropriately for J.M.'s needs for the reasonably foreseeable future. Although the district court cited the statutory presumption, its conclusion of palpable unfitness is also appropriately based on C.M.'s current circumstances.

C.M. argues that this court has overstated the burden and type of proof that a parent must offer in order to rebut the presumption of palpable unfitness and has been inconsistent in the manner in which it has described that burden of proof. After discussing this allegation at length, C.M. asserts that the 2004 involuntary TPR has "nothing to do with the presumed fact" that C.M. is palpably unfit to parent J.M., who was born 30 months later. C.M. argues that because J.M. has never been in C.M.'s custody, C.M. has not committed the "consistent pattern of specific conduct before the child" required by the statute to establish palpable unfitness.

We disagree with C.M.'s assertion that there is confusion about what burden a parent has in overcoming the presumption of palpable unfitness, but we find it

unnecessary to address C.M.'s arguments on this issue at any length. The district court took judicial notice of and received into evidence C.M.'s prior TPRs which show that termination of C.M.'s parental rights to all of her other children was primarily due to C.M.'s chemical dependency and mental health issues. Despite services offered by the county, C.M. had not adequately addressed her chemical dependency and mental health issues at the time of the TPR trial in this case. As noted above, the district court based its finding of palpable unfitness primarily on C.M.'s current circumstances and did not terminate her rights to J.M. based solely on the presumption of unfitness.

Moreover, the fact that C.M. has never had custody of J.M. is irrelevant to the district court's finding that the county has shown by clear and convincing evidence that C.M. is currently palpably unfit to parent J.M. C.M. ignores statutory language providing that a finding of palpable unfitness can be based on "specific conditions directly relating to the parent and child relationship" which the district court determines "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." Minn. Stat. § 260C.301, subd. 1(b)(4). C.M.'s recent progress and positive changes mirror her sudden compliance with services just prior to the TPR trial in 2004 and are insufficient to overcome the clear and convincing evidence of her current palpable unfitness to parent J.M. *See In re Welfare of J.K.*, 374 N.W.2d 463, 466 (Minn. App. 1985) (declining to hold findings of palpable unfitness clearly erroneous where a parent showed improvement immediately before the termination proceeding but the parent's

overall history contains no evidence that the parent will become a fit and suitable parent in the future), *review denied* (Minn. Nov. 25, 1985).

At oral argument on appeal, C.M. asserted that because adoptive parents had not been identified for J.M. at the time of the TPR hearing, the district court should have granted her motion to continue the matter, at least until adoptive parents were identified, to give her more opportunity to demonstrate that this time the changes she wants to make in her life will be permanent. But the supreme court has stated that "the best interests of a child are not served by delay that precludes the establishment of parental bonds with the child by either the natural parent or adoptive parents within the foreseeable future," and the best interests of a child "are not served by delaying [the child's] availability for permanent placement." *In re Welfare of S.Z.*, 547 N.W.2d at 893. Leaving J.M. in limbo while C.M. focuses on her treatment needs, which cannot be adequately addressed unless she also focuses on her mental health issues, is not in J.M.'s best interests.

III. Incarceration

Because we affirm the district court's finding under Minn. Stat. § 260C.301 subd. 1 (b)(4), we need not address C.M.'s challenge to the additional statutory grounds cited to support TPR. We will, however, briefly address C.M.'s allegation that the district court erred in terminating parental rights based on C.M.'s imprisonment.

Incarceration, although not a sufficient basis to alone support TPR, may be considered in conjunction with other factors, and there is no prohibition on terminating parental rights while a parent is incarcerated. *In re Child of Simon*, 662 N.W.2d 155, 162 (Minn. App. 2003). C.M. was incarcerated in three different counties while the case plan

was in effect and was confined at the time of the TPR trial on May 2, 2007. She was scheduled to be released soon after the trial and stated that she intended to go to an outpatient facility following release. But while the district court mentioned C.M.'s consistent pattern of incarceration but did not base TPR on C.M.'s incarceration alone. We find no error in the district court's reference to C.M.'s repeated incarcerations as a factor in her inability to parent J.M.

IV. Best interests of child

C.M. does not challenge the district court's finding that TPR is in J.M.'s best interests. In every proceeding under Minn. Stat. § 260C.301, "the best interests of the child must be the paramount consideration" provided that at least one statutory ground for TPR exists. Minn. Stat. § 260C.301, subd. 7. C.M.'s expressed intention to correct the conditions that have led to loss of her rights to seven children and her efforts to that end are laudable. But C.M. has only just begun the long process of recovery, and the district court did not err in finding that it would not be in J.M.'s best interests to accompany C.M. on this journey.

Affirmed.