STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1324

In the Matter of the Welfare of the Children of:
B.H.C., R.L.G., T.R.K. and J.E.T.,
Parents.

Filed February 5, 2008
Affirmed
Ross, Judge

Swift County District Court
File No. 76-JV-05-48

Kenneth L. Hamrum, Theatre Arcade Building, P.O. Box 70, Morris, MN 56267 (For appellant J.E.T.)

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Considered and decided by Ross, Presiding Judge; Chief Judge Toussaint, Judge; and Muehlberg, Judge.*

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

ROSS, Judge

This appeal requires us to decide whether the district court had sufficient grounds to terminate J.E.T.'s parental rights to her four children. We have carefully assessed the record and considered the district court's well-reasoned, clearly analyzed, and thorough order. Because the record provides clear and convincing evidence to support the district

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

court's finding that J.E.T. is palpably unfit to parent her children and that termination is in the children's best interests, we affirm the judgment terminating J.E.T.'s parental rights.

FACTS

The record very clearly portrays poor living conditions for J.E.T.'s children with a focus primarily on 2005 to 2007—the two years immediately leading to termination of J.E.T.'s parental rights. The matter concerns J.E.T.'s four children: ten-year-old T.T., seven-year-old D.C., three-year-old M.T., and two-year-old E.T. The children were born of three different fathers, none of whom is a party to this appeal. J.E.T.'s history with child protective services spans six years in three counties. In 2001, Chippewa County investigated J.E.T. for medical neglect of D.C. In 2005, Lac Qui Parle County investigated a report of medical neglect of M.T., but J.E.T. moved with her children to Swift County soon after the investigation. Lac Qui Parle County referred the case to Swift County, and Swift County offered services to assist J.E.T., but she declined.

In April 2005, Swift County filed a petition in district court alleging that the children were in need of protection or services after investigating reports that J.E.T. called 911 because M.T. wasn't breathing and because D.C. and T.T. had significant behavioral problems. T.T. was diagnosed with depressive disorder, attention deficit hyperactive disorder, and adjustment disorder with acute anxiety. D.C. was diagnosed with oppositional defiant disorder and attention deficit hyperactive disorder of the hyperactive impulsive type. The district court appointed a guardian ad litem to these three children, and they were then briefly removed from J.E.T.'s care. M.T. remained in

out-of-home placement until August 2005. In October 2005, the court dismissed the petition.

County officials filed a second petition alleging that the children were in need of protection or services in December 2005. The petition alleged that J.E.T. yelled and swore at and threatened her children, that on two different days that month J.E.T. left the children alone in a running vehicle, and that she hit her mother in front of the children. The children were removed from J.E.T.'s care on December 23, 2005. Four days later the court held an emergency protective hearing, and it returned the children to her on the conditions that she not leave them unattended, refrain from yelling and directing obscenities at them, refrain from putting them in fear of their safety, and accept the county's in-home, family-based counseling and individual therapy. The district court appointed a guardian ad litem for all four children in January 2006 and found them to be in need of protection or services in April 2006.

The district court held another emergency protective-care hearing on January 19, 2007, after three personal-care attendants who worked with J.E.T. reported that her home was filthy. The reporters described a foul smell in the house, dishes stacked in the sink, dirty diapers all about, feces smeared on the walls and toilet, and food that had been on the floor so long it had footprints in it. One reporter witnessed baby E.T. eating food that had been left on the floor, but when she brought it to J.E.T.'s attention, J.E.T. simply moved E.T. without cleaning up the food. They also reported that D.C. urinated on the floors of the home. On one occasion, J.E.T. forced T.T. to clean the urine from the bathroom floor, and when J.E.T. did not approve of T.T.'s cleaning, she forced T.T. to

the floor and pressed the urine-dampened mop to her face. She then prohibited T.T. from washing the cleaning product and urine from her face and shirt.

The reporters asserted that J.E.T. physically and verbally abused her children, especially the older two. They witnessed J.E.T. swearing at and calling the children vulgar, demeaning names. One saw J.E.T. hit D.C. with an open hand on at least three different occasions. Another witnessed J.E.T. hit D.C. on his bare back with her hand and with a part from a broken baby crib. The reporter saw a visible hand print and marks from the crib part on D.C.'s back.

County officials removed the four children from J.E.T.'s home on January 18, 2007. In February 2007, the county filed three petitions to terminate her parental rights to all four children. The petition to terminate J.E.T.'s parental rights to T.T. alleged that the county had made reasonable efforts to reunify J.E.T. with T.T., that J.E.T. was palpably unfit to parent T.T., and that T.T. had experienced egregious harm in J.E.T.'s care. Regarding D.C., the county alleged that J.E.T. had substantially, continuously, and repeatedly refused or neglected to comply with her parental duties imposed by the parent-child relationship, that J.E.T. was palpably unfit to parent D.C., that the county had made reasonable efforts to reunify J.E.T. and D.C., and that D.C. had experienced egregious harm in J.E.T.'s care. Concerning E.T. and M.T., the county alleged that J.E.T. had substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent-child relationship, that J.E.T. was palpably unfit to be a party to the parent-child relationship, and that E.T. and M.T. had experienced egregious harm in J.E.T.'s care.

The county called thirty-one witnesses to testify at the trial, including family members, social workers, medical and school personnel, and community members. Some of J.E.T.'s family testified to their concerns about her parenting. They testified that the children seemed afraid of her and that they frequently saw her yell at them.

The three former personal-care attendants who had reported their concerns in January 2007 testified to what they had witnessed. They testified that J.E.T. yelled at the children daily, pushed or hit them daily, and swore at them often. One attendant testified that the house was filthy, with overflowing garbage, dirty diapers, and dirty sheets. The court heard that J.E.T. tried to entice that attendant to clean the house for her. Another personal-care attendant testified that when she told J.E.T. that she did not think it was appropriate for her to swear at the children, J.E.T. swore at *her*. She also testified that J.E.T. hit T.T. "many, many, many times." She witnessed J.E.T. scream at T.T., strike D.C. with the broken crib part, and threaten T.T. and D.C. physically. She testified that J.E.T. would drag D.C. by his ear to obtain his compliance.

Several nurses and workers from a clinic testified about J.E.T.'s visits to the clinic with her children. They testified that J.E.T. swore and yelled at her children while there. One nurse testified that J.E.T. refused to wait for a doctor to look at M.T.'s lip, which was cut. J.E.T. also refused the assistance of a nurse who saw that J.E.T. was trying to both feed E.T. and pick up M.T. The nurse watched J.E.T. lift then-one-year-old M.T. by the arm. A lab worker at the clinic observed J.E.T. carry then-one-month-old E.T. without supporting his head. On another visit, a medical-records employee watched J.E.T. leave the clinic, put E.T., T.T., and D.C. in her van with the motor running, and

bring M.T. back into the clinic. The employee watched as T.T. and D.C. bumped into one another and baby E.T., pushed buttons, and played inside the vehicle. When J.E.T. returned to the van, the children had locked her out, preventing her from entering for five to ten minutes.

Community members also testified at trial. A neighbor and former friend of J.E.T.'s testified that J.E.T. would often leave her children unsupervised and that she could hear J.E.T. yelling and swearing at them late into the night. A county programs director testified that at a parents'-night-out dinner, J.E.T. swore and yelled loudly at T.T. when T.T. broke a plate while trying to get M.T. into a high chair. T.T. cried as the other attendees at the event looked on in silence. A transit driver testified that J.E.T. was suspended from using the bus for thirty days after she got into an argument with the driver because one of her older children dropped a pop can, which exploded on impact, spraying several riders on the bus. J.E.T. refused to apologize to the driver or to the other passengers.

School personnel testified that T.T. and D.C. had significant behavioral problems and that it was difficult to speak with J.E.T. about resolving them. The principal testified that J.E.T. was like a bulldozer; she would burst into his office without signing in, park in a loading zone, and drive off agitated, in an unsafe manner. School personnel also testified that T.T. came to school with very poor hygiene before she was in out-of-home placement, with her hair unbrushed and her face, hands, feet, and clothing dirty. The school police officer witnessed J.E.T. swearing and yelling obscenities at T.T. The school's special education teacher testified that T.T.'s significant behavioral problems

have improved since T.T. began taking medication for her epilepsy and was removed from J.E.T.'s home. She testified also that D.C.'s significant behavior problems had improved since mid-January 2007.

One county social worker testified to seeing bruises on D.C. and both social workers witnessed J.E.T. yell at and threaten her children, and they asserted concerns about J.E.T.'s harsh parenting style. J.E.T.'s primary social worker testified that the county provided numerous services to J.E.T., including in-home therapy, respite services, personal-care-attendant services, child-protection case management, and community support for the children. J.E.T. also received daycare services, a parent mentoring referral, bus passes, and gas and phone cards when the children were placed out of her home. The social worker testified to finding the four children in J.E.T.'s van with the motor running outside of the courthouse in mid-December. Both social workers testified that J.E.T. resisted parenting suggestions.

J.E.T.'s former in-home therapist corroborated the testimony that J.E.T. is usually very hesitant or oppositional toward any suggestions. She testified that this resulted in J.E.T. having difficulty either learning or incorporating useful suggestions. The therapist opined that T.T. has now also learned these oppositional behaviors. D.C. has been diagnosed with oppositional defiance disorder.

At the close of the state's case, the district court dismissed the allegations of egregious harm because the state had not made the requisite showing.

Three friends of J.E.T.'s, her two sisters, and J.E.T. testified against termination. One friend characterized J.E.T.'s parenting style as strict, but without fault. He opined

that J.E.T does a "good job" as a parent. He had seen J.E.T. yell at and spank her children. A second friend also testified that she had not witnessed J.E.T. do anything that made her uncomfortable or that seemed inappropriate.

J.E.T.'s older sister testified that she and J.E.T. came from a yelling family. She did not feel there was anything inappropriate about the way J.E.T. yelled at or physically disciplined her children, but she did acknowledge that she had previously raised concerns to the guardian ad litem about J.E.T.'s parenting and that she would not feel comfortable putting her own infant on the floor of J.E.T.'s home. She explained that J.E.T. just had too many obligations as a single parent of four children. J.E.T.'s younger sister testified that she had not seen J.E.T. inappropriately yell at her children, that the profanity J.E.T. used toward her children was minimal, and that the dirty floors were "not horrible."

J.E.T. testified on her own behalf. She claimed that she could not recall ever swearing at her children, but she could recall swearing in front of them. And she denied ever hitting D.C. with a crib part, slapping or kicking T.T., or pushing T.T.'s face into a urine-soaked mop. J.E.T. asserted that her spankings were usually "swift little pat[s]," and she denied that she has ever spanked them harder than necessary. She denied that she had interfered with her children's medical care and claimed that when witnesses saw her leave three of her children in her van, her sister was actually in the van with them. She maintained that T.T. was always dirty at school because she played in the dirt before school. J.E.T. maintained that her house was cluttered, not dirty, and that she cleaned the house while her kids were asleep.

The district court ordered that J.E.T.'s parental rights to T.T., D.C., M.T., and E.T. be terminated on the basis that J.E.T. is palpably unfit to be a party to the parent-child relationship. The court issued a 31-page order with detailed findings as to each child. The order concluded that clear and convincing evidence demonstrated that J.E.T.'s parental rights should be terminated because she is palpably unfit to parent each of her four children, that the county had made reasonable efforts to reunify J.E.T. with them, and that termination of her parental rights was in the best interests of all the children. J.E.T. appeals from the judgment entered on that order.

D E C I S I O N

J.E.T. argues that because there was no motion for a new trial, this court reviews only whether the evidence supports the findings of fact and whether the district court's findings of fact support the conclusions of law. But a motion for a new trial is not a prerequisite for appellate review of a substantive question of law that was previously considered and addressed by the district court. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003). On review of a district court's order to terminate parental rights, this court determines whether the district court's findings "address the statutory criteria, whether those findings are supported by substantial evidence, and whether those findings are clearly erroneous." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). At oral argument, J.E.T. clarified that she does not contend that any specific finding is unsupported by the evidence. Her argument is that, based on those findings, clear and convincing evidence does not support the district court's decision to terminate. This court will affirm the district court's decision to

terminate when clear and convincing evidence supports the decision and termination is in the child's best interests. *In re Welfare of T.D., a/k/a T.B.*, 731 N.W.2d 548, 553–54 (Minn. App. 2007). Whether the termination is in the child's best interests is the paramount consideration. *Id.*; *see* Minn. Stat. § 260C.301, subd. 7 (2006).

I

We first examine whether the district court's order terminating J.E.T.'s parental rights is supported by clear and convincing evidence. "A district court may involuntarily terminate parental rights when clear and convincing evidence supports a statutory basis for termination." *In re Welfare of T.D.*, 731 N.W.2d at 553. Only one statutory basis is needed to support termination of parental rights. *In re Welfare of the Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). The district court's decision to terminate must be based on evidence that relates to "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 P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001). A court may not terminate parental rights unless it finds that social-service agencies have made reasonable efforts to reunify parent and child. *In re Welfare of T.D.*, 731 N.W.2d at 554.

The district court here terminated J.E.T.'s parental rights because it found by clear and convincing evidence that J.E.T. was palpably unfit to parent T.T., D.C., M.T., and E.T. A parent is palpably unfit to be a party to the parent-and-child relationship when there is a consistent pattern of specific conditions directly pertaining to the parent-and-child relationship that are "of a duration or nature that renders the parent unable, for the

reasonably foreseeable future, to care appropriately for the ongoing . . . needs of the child." Minn. Stat. § 260C.301, subd. 1(b)(4) (2006).

J.E.T. contends that there was insufficient evidence to support the district court's determination that she was palpably unfit to parent her four children. The record counters this contention. More than thirty witnesses testified about deplorable conditions. Family members, neighbors, friends, medical and school personnel, social workers, and support workers testified. Nearly all of these witnesses had observed J.E.T. yelling at, swearing at, threatening, derogating, and striking her children. Many heard J.E.T. call D.C. and T.T. obscene names. There was ample testimony that J.E.T. interfered with her children's medical care, did not ensure that they were well fed or clean, and habitually became very angry when confronted about her parenting or given reasonable suggestions to improve. As to T.T. and D.C., the evidence is overwhelming that J.E.T. consistently failed to meet their ongoing needs despite the assistance she was offered from numerous service providers.

J.E.T. has similarly failed to meet M.T. and E.T.'s ongoing needs and provide appropriate care. Multiple witnesses testified that J.E.T. relied heavily on T.T. to bathe, change, and tend to her younger siblings. At very early ages in mid-winter, she left M.T. and E.T. with their older siblings in her running vehicle. J.E.T.'s home was filthy and in disarray.

J.E.T. points to no compelling evidence to suggest that she will improve her parenting skills, and the record suggests that she is not open to suggestions to do so. The district court expressly found her version of T.T. cleaning D.C.'s urine less credible than

the personal-care attendant's eyewitness testimony. The court also disbelieved J.E.T.'s claim that her sister was in the van with her children when she left them in it. And the court was unpersuaded by J.E.T.'s claim that she did not hit D.C. with a part from the broken crib. The court also found that J.E.T.'s constant yelling and swearing at and around the children has aggravated the unhealthy environment. It specifically found that J.E.T. does not accept parenting advice or suggestions, cannot admit her shortcomings, and that her personality disorder makes it difficult for her to change her behavior. The court found that her inability to improve has had an adverse impact on D.C. and T.T., and will inevitably have an adverse impact on M.T. and E.T. Because clear and convincing evidence establishes that the conditions that existed at the time of trial demonstrate unfitness and will continue for a prolonged, indeterminate period, the district court appropriately determined that J.E.T. was palpably unfit to parent T.T., D.C., M.T. and E.T.

The court noted that the county has provided abundant resources to J.E.T. in an effort to improve her parenting techniques. From the time that J.E.T. and her children arrived in Swift County, substantial services were offered to her. Despite these, J.E.T. has missed appointments and misused resources. The district court appropriately found that the county had made reasonable efforts to resolve J.E.T.'s parenting problems and reunite her with her children.

II

A district court is also required to consider whether termination of parental rights is in the children's best interests and "explain its rationale in its findings and

conclusions." *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). The district court's analysis must include 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.*, 492 N.W.2d 1, 4 (Minn. App. 1992). The district court followed this analysis.

The district court found that termination of J.E.T.'s parental rights was in the best interests of the children. It noted that T.T. and D.C. expressed a desire to return to J.E.T., who in turn expressed a desire for her children to be returned to her. The court highlighted that all four children "have the right to grow up in a functional, secure home with consistent parenting," but it found that "none is able to have this if returned to [J.E.T.]" It found that T.T. and D.C. must have consistent parenting, which J.E.T. has not provided for them or shown that she can provide, and that T.T.'s and D.C.'s negative behaviors improved greatly when out of J.E.T.'s home. The court found that the evidence on the whole clearly demonstrates that J.E.T.'s parenting pattern shows that she is not capable of caring for the four children by herself. Because these findings are not challenged and are well supported, the district court did not abuse its discretion by relying on them to conclude that it would be detrimental to the children's health and safety to be returned to J.E.T. and in their best interests that J.E.T.'s parental rights be terminated.

Affirmed.