STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1527

In the Matter of the Welfare of the Child of: A. M. R., Parent

Filed February 15, 2008
Affirmed
Toussaint, Chief Judge

Mille Lacs County District Court
File No. 48-JV-07-863

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Considered and decided by Toussaint, Chief Judge; Crippen, Judge;[*] and Muehlberg, Judge.[**]

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

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

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

TOUSSAINT, Chief Judge

Appellant A.M.R. challenges the district court's termination of her parental rights to her child, M.R. Because the district court's findings address the statutory criteria, are supported by substantial evidence, and are not clearly erroneous, we affirm.

D E C I S I O N

An appellate court reviews an order terminating parental rights to determine whether the district court's findings address the statutory criteria, are supported by substantial evidence, and are not clearly erroneous. *In re Child of A.S.*, 698 N.W.2d 190, 194 (Minn. App. 2005), *review denied* (Minn. Sept. 20, 2005).

Appellant is the mother of four sons, T.O., born in 1997, C.O., born in 1998, D.L., born in 2002, and M.M. (n/k/a/ C.R.), born in 2006, and of a daughter, M.R., born in 2007. Appellant was furloughed from jail to give birth to M.R., who was taken from appellant three days after the birth. Permanent legal and physical custody of the three oldest children was transferred to appellant's mother in 2006. M.M., a full sibling of M.R., was taken from appellant when he was one day old because appellant tested positive for methamphetamine. M.M. was adopted by appellant's brother and his wife after appellant voluntarily terminated her parental rights to him.

A court may terminate parental rights if the parent is palpably unfit to be a party to the parent-child relationship. Minn. Stat. § 260C.301, subd. 1(b)(4) (2006). "It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that . . . the parent's custodial rights to another child have been

involuntarily transferred to a relative . . . ." *Id.* Appellant argues that the permanent transfer of physical and legal custody of her three oldest children to her mother was not an involuntary transfer. *A.S.* rejected this argument:

> [A] mother's consent to the transfer [of custody] did not automatically change the transfer from involuntary to voluntary, and we look to the record to see if there is any support for a conclusion that transfer of custody was voluntary and for good cause.
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> . . . Because [the] mother stipulated that the record supported an involuntary transfer of custody and failed to assert that her agreement constituted a voluntary transfer, we conclude that clear and convincing evidence supports the district court's finding that the transfer of permanent custody of [the] mother's three older children was involuntary, making the presumption of palpable unfitness in section 260C.301, subd. 1(b) (4), applicable to her.
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> . . . Without clear evidence that an agreement relinquishing parental rights is voluntary and for good cause and is not merely an admission of ground for an involuntary placement, the presumption of palpable unfitness may not be avoided.

A.S., 698 N.W.2d at 195-96. Here, each of the orders transferring custody of the three oldest children states that appellant admitted she

> was chemically dependent, her drug of choice being methamphetamine, and she was unable to care for her child. The Court accepted the admission and factual basis provided to this allegation . . . [and ordered appellant] to complete a Rule 25 evaluation and successfully complete all recommendations therein; abstain from all non-prescribed mood-altering chemicals; submit to random testing . . . ; complete a psychological evaluation and successfully complete all recommendations therein; and sign releases as requested. [Appellant] did not successfully complete these recommendations; . . . .

At the hearing on termination of her rights to M.R., appellant's testimony corroborated this order. She answered, "Yes" when asked if, when the first three children were placed in foster care, she admitted "that the underlying placement issue was a

chemical dependency problem on [her] part." She also testified that, with reference to these children, she had "discussed the fact that I would be asking for a transfer of custody of my children instead of the State proceeding with a termination." As in *A.S.*, the record provides support for the finding that the transfer of custody was involuntary, and appellant provides no evidence to refute that finding.

Appellant attempts to rebut the presumption of unfitness by pointing out that she arranged for M.R. to stay with appellant's aunt, to whom she wanted to transfer M.R.'s custody, until appellant is out of jail and could care for M.R. But the grounds for transferring custody of appellant's three oldest children, as opposed to terminating her parental rights to them, do not apply to M.R. At the time custody was transferred, the three oldest were eight, seven, and three, and they had relationships with appellant and with one another as siblings. M.R. has not developed a relationship with appellant, with whom she spent only three days. The relatives (appellant's brother and his wife) who now have custody of M.R. have already adopted her brother, M.M., who is just a year older than M.R., and they are willing and able to adopt M.R., so that the siblings can remain together. Appellant testified that her brother's wife provides care for M.R. during the day now, and when asked who would provide daytime care for M.R. if she resided with appellant's aunt, appellant said she did not know.

The district court acknowledged that appellant "has taken steps to show responsibility and commitment to parenting, namely, making efforts to secure a custodial arrangement for [M.R.] while she finished serving her criminal jail sentence . . . [and] appears sincere in her intent to seek and complete chemical dependency treatment." But

the district court also found that appellant "has not demonstrated an ability to maintain sobriety absent incarceration and/or inpatient programming; she has not demonstrated her ability to remove herself from a negative peer environment; and she has not demonstrated a history of successful parenting," and that she "had sufficient time to demonstrate her ability to parent, but did not utilize that time to her benefit, as evidenced by her failure to complete treatment and follow through with individual counseling."

The district court's conclusion that appellant "had not presented sufficient evidence to rebut the presumption of palpable unfitness" is supported by caselaw.

> [The mother] argues that she rebutted the presumption because she attended chemical dependency treatment after [her child's] birth, had no positive UA's, took advantage of every opportunity to visit her child, displayed no concerning behaviors during the supervised visits, started taking medication for her bipolar disorder, obtained a parenting assessment and took parenting classes, and got a job . . . .
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> The trial court acknowledged that [she] has made some positive steps [but] concluded, however, that based on her repeated inability to stay sober, even after completing multiple treatment programs, her failure to call the chemical dependency counselors who were most familiar with her current treatment and prognosis for continued sobriety, and her slow progress in treatment, [she] did not rebut the presumption that she is unfit to parent.

In re Welfare of Child of W.L.P., 678 N.W.2d 703, 709 (Minn. App. 2004). Appellant's involuntary transfer of custody of her three oldest children carries a presumption of her palpable unfitness to take part in the parent-child relationship with M.R. Appellant's inability to show either that she has been able to abstain from using methamphetamine when not incarcerated or in treatment, or that she has been a successful parent to any of her five children leaves that presumption unrebutted.

Finally, appellant argues that it is in M.R.'s best interests for appellant's rights not to be terminated because they "naturally have a bond." But M.R. was with appellant for only the first three days of her life, and appellant has been incarcerated through much of the remainder. Terminating appellant's parental rights will enable appellant's brother and his wife to adopt M.R., as they adopted M.M., will enable M.R. to be raised with her brother, and will provide M.R. with the permanency that a custodial arrangement in which appellant might regain custody after her release from jail would not provide.

Affirmed.