STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1395

In the Matter of the Welfare of the Children of:
L.K. a/k/a B., a/k/a S., a/k/a L., and B.K., a/k/a S.K., Parents.

Filed April 29, 2008
Affirmed
Wright, Judge

Ramsey County District Court
File Nos. JX-06-551873, J1-06-551874

George E. Rapaich, 325 Cedar Street, Suite 300, St. Paul, MN 55101 (for appellant L.K.)

Susan Gaertner, Ramsey County Attorney, Briana M. Baumgardner, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 560, St. Paul, MN 55102 (for respondent Ramsey County Community Human Services Department)

Considered and decided by Wright, Presiding Judge; Peterson, Judge; and Stoneburner, Judge.

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

WRIGHT, Judge

In this appeal from the termination of her parental rights, appellant argues that the district court clearly erred by finding that (1) a child had suffered egregious harm while in her care; (2) she is palpably unfit to be a party to the parent-child relationship; and (3) she had substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed on her by the parent-child relationship. We affirm.

FACTS

Appellant L.K. is the mother of six children who ranged in age from 3 to 17 years old when L.K.'s parental rights to all of her children were terminated.[1] L.K.'s husband, B.K., is the presumptive father of L.K.s' four youngest children. On March 17, 2006, L.K., B.K. and L.K.'s two oldest children were arrested for kidnapping and false imprisonment of two teenage girls. Ramsey County Community Human Services Department (RCCHSD) subsequently initiated child-protection proceedings, and L.K.'s four youngest children were placed in an emergency shelter.

L.K. subsequently was charged with two counts of soliciting a minor to practice prostitution, Minn. Stat. § 609.322, subd. 1 (2004); two counts of kidnapping to facilitate a felony, Minn. Stat. § 609.25, subd. 1(2) (2004); one count of first-degree arson, Minn. Stat. § 609.561, subd. 1 (2004); and two counts of first-degree criminal sexual conduct, Minn. Stat. § 609.342, subd. 1(e) (2004). Having been convicted after pleading guilty to one count of solicitation of a minor to practice prostitution and two counts of kidnapping, L.K. currently is incarcerated.

In April 2006, RCCHSD filed a termination-of-parental-rights (TPR) petition, seeking to terminate L.K.'s parental rights to her six children and to terminate B.K.'s parental rights to the four youngest children on three statutory grounds: (1) a child has experienced egregious harm in the parent's care, Minn. Stat. § 260C.301, subd. 1(b)(6) (2006); (2) the parent is palpably unfit to be a party to the parent-child relationship,

[1] The children are identified as D.I.S., born August 27, 1989; D.L.S., born July 24, 1990; S.L.L.-K., born April 15, 1995; S.J.L.-K., born May 11, 1999; K.L.-K., born December 1, 2002; and S.P.L.-K., born December 11, 2003.

Minn. Stat. § 260C.301, subd. 1(b)(4) (2006); and (3) the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed by the parent-child relationship, Minn. Stat. § 260C.301, subd. 1(b)(2) (2006).

In May 2007, B.K. voluntarily terminated his parental rights to S.L.L.-K., S.J.L.-K., K.L.-K., and S.P.L.-K. Shortly thereafter, a trial was held on the involuntary termination of L.K.'s parental rights. In its order dated June 13, 2007, the district court terminated L.K.'s parental rights to her six children on each ground alleged. In doing so, the district court also found that termination of L.K.'s parental rights is in the children's best interests. This appeal challenging the district court's findings as to each statutory ground for termination followed.

D E C I S I O N

Our review of an order terminating 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). Because the district court is in a superior position to observe the witnesses during trial, its assessment of witness credibility is accorded deference on appeal. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). But we will "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).

We will affirm the district court's termination of parental rights if "at least one statutory ground for termination is supported by clear and convincing evidence and

termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).[2]

I.

Minnesota law permits involuntary termination of a parent's rights to a child if there is clear and convincing evidence that

> a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care.

Minn. Stat. § 260C.301, subd. 1(b)(6) (2006); *see R.W.*, 678 N.W.2d at 55 (standard of proof). "Egregious harm" is defined as "the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care." Minn. Stat. § 260C.007, subd. 14 (2006). The definition also includes a nonexclusive list of specific conduct towards a child that constitutes egregious harm. *Id.*; *In re Welfare of Child of T.P.*, ___ N.W.2d ___, ___, 2008 WL 1747227, at *4 (Minn. Apr. 17, 2008).

Here, the district court found that a child experienced egregious harm in L.K.'s care based on the statements of the two kidnapping victims, J.L.T. and A.C.D., and the testimony of the nurse case manager who assessed them. The district court specifically found that L.K. had kidnapped J.L.T. and A.C.D. and had solicited the minors to engage in prostitution. Soliciting a child to engage in prostitution constitutes "egregious harm."

[2] Although L.K. challenges the statutory grounds for termination, she does not challenge the district court's finding that termination of parental rights is in the children's best interests.

Id., subd. 14(7). The record also establishes that, on numerous occasions, L.K. physically and sexually abused J.L.T. and A.C.D., which also constitutes egregious harm. *See id.*, subd. 14 (6), (9) (including in definition of egregious harm acts constituting assault and criminal sexual conduct). In addition, both girls were for an extended period of time living against their will in L.K.'s household with her family under L.K.'s direct supervision. Thus, there is ample evidence to support the district court's finding that a child experienced egregious harm in L.K.'s care.

L.K. contends that the standard set forth in section 260C.301, subdivision 1(b)(6), has not been met because J.L.T. and A.C.D. were not in her care. L.K. also argues that mere proof that she was involved in criminal activity that harmed children, without a substantiated finding that the children suffering egregious harm were in her "care," is insufficient to establish that she has demonstrated "a grossly inadequate ability to provide minimally adequate parental care." *Id.*, subd. 14.

In advancing these arguments, L.K. purports to interpret the egregious-harm statute in a manner that effectuates all of its language. *See* Minn. Stat. § 645.17(2) (2006) (stating that "the legislature intends the entire statute to be effective and certain"). But in doing so, she erroneously advances a construction of the statute that, if adopted, would lead to an absurd result. *See* Minn. Stat. § 645.17(1) (2006) (stating that "the legislature does not intend a result that is absurd"). L.K.'s interpretation of the egregious-harm statute requires one to ignore a party's intentional acts of egregious harm to a child who, as a result of that party's criminal conduct, is forced to reside with and be victimized by that party's harmful behavior. We decline to adopt a reading that is contrary to the

purpose of this child-protection statute, which is to "secure for the child a *safe* and permanent placement." Minn. Stat. § 260C.001, subd. 3(2) (2006) (emphasis added); *see also* Minn. Stat. § 260C.001, subd. 4 (2006) (requiring liberal construction of child-protection statutes in order to carry out their stated purpose); *T.P.*, 2008 WL 1747227, at *4 (requiring adoption of most logical and practical definition of statutory language).

The egregious-harm statute does not require the egregious harm to have been inflicted on the child who is the subject of a TPR. For example, we have affirmed the termination of parental rights to a child when the parent causes egregious harm to the child's sibling or another child in that parent's care. *See In re Welfare of A.L.F.*, 579 N.W.2d 152, 155-56 (Minn. App. 1998) (affirming termination of parental rights when parent harmed another's child); *see also* Minn. Stat. § 260C.301, subd. 3(a) (2006) (requiring county attorney to file TPR petition when child's sibling has been subjected to egregious harm). And in *In re Child of A.S.*, we affirmed the termination of parental rights because of an egregious-harm finding based on sexual abuse of a nonrelative child. 698 N.W.2d 190, 197-98 (Minn. App. 2005), *review denied* (Minn. Sept. 20, 2005).

These cases, along with the broad language and purpose of the statute, demonstrate that a parent's conduct which causes egregious harm to a child is significant because it demonstrates a "lack of regard for the . . . well-being" of children in general. *See* Minn. Stat. § 260C.301, subd. 1(b)(6) (describing egregious-harm ground for termination). And it is this lack of regard that "demonstrates a grossly inadequate ability to provide minimally adequate parental care," Minn. Stat. § 260C.007, subd. 14, and leads "a reasonable person [to] believe it contrary to the best interest of . . . any child to

be in the parent's care," Minn. Stat. § 260C.301, subd. 1(b)(6). L.K.'s treatment of J.L.T. and A.C.D. demonstrates such a lack of regard.

Because there is substantial record evidence that J.L.T. and A.C.D. were in L.K.'s care, and because L.K.'s treatment of them not only meets the statutory definition of egregious harm but also demonstrates a callous disregard for children, the district court correctly determined that a child had suffered egregious harm in L.K.'s care.

II.

Minnesota law also permits involuntary termination of parental rights when there is clear and convincing evidence that the 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); *R.W.*, 678 N.W.2d at 55.

In support of its neglect and palpable-unfitness determination, the district court found that L.K. had educationally neglected her children. In March 2006, none of L.K.'s school-age children was enrolled in school. L.K. testified that she and B.K. had been homeschooling the children because of housing difficulties and concerns about the children's health. The district court rejected this explanation, finding that "[a]ll of [L.K.]'s excuses for the failure of her children to attend school are not credible." Although L.K. testified that the children had been registered as homeschooled, the St.

Paul Public School District had no record of any of the children being registered and L.K. did not have a curriculum for the children. D.I.S. and D.L.S., who needed special education and had individualized education plans, were not receiving the special education that they needed. And educationally, S.J.L.-K. was significantly behind children of his age when he was placed in foster care.

The district court also identified several deficiencies in the medical care of the four youngest children. When she entered foster care, S.L.L.-K. needed eyeglasses. S.J.L.-K. had 11 untreated cavities for which L.K. had administered Tylenol, rather than seeking proper dental treatment. S.J.L.-K. and K.L.-K. were behind in their immunizations when they entered foster care, requiring numerous inoculations over several medical visits.[3] S.P.L.-K. also had high lead levels in her blood, which dropped considerably after her placement in foster care.

Based on the testimony of multiple mental-health professionals, the district court found that each of the children needed treatment for their mental and emotional health. In particular, K.L.-K., who exhibited sexualized behaviors at a very young age, requires substantial mental-health treatment; D.I.S. and D.L.S. are both in sex-offender treatment programs;[4] and D.I.S. reported that he had sexually abused D.L.S., S.L.L.-K., K.L.-K., and S.P.L.-K. for several years.

[3] Although not addressed in the district court's findings, the record reflects that S.P.L.-K. also was behind in his immunizations.

[4] D.I.S. and D.L.S. pleaded guilty to multiple counts of kidnapping and criminal sexual conduct. Both are being held in juvenile facilities under extended jurisdiction juvenile dispositions.

A parent is palpably unfit if the nature of the parent's conduct demonstrates that the parent is "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). L.K.'s convictions of kidnapping and soliciting a minor for prostitution and her violent and sexual conduct toward J.L.T. and A.C.D. support the district court's determination that L.K. is unlikely to be able to meet her children's physical, mental, and emotional needs for the foreseeable future. Although L.K.'s incarceration may not be the sole basis for terminating her parental rights, the violent and sexual nature of her offenses may be considered distinctly from the fact of her incarceration. *See In re Children of Vasquez*, 658 N.W.2d 249, 255 (Minn. App. 2003) (discussing father's murder conviction as supportive of district court's palpable-unfitness finding). Moreover, L.K.'s lengthy sentence, which renders her largely unavailable to parent her children until the four oldest are emancipated and the two youngest are teenagers, may be considered in conjunction with other evidence supporting the termination of her parental rights. *In re Child of Simon*, 662 N.W.2d 155, 162 (Minn. App. 2003).

Thus, viewing the record as a whole, there is ample evidentiary support for the district court's determination that L.K. is palpably unfit to parent her children for the foreseeable future.

Because the district court's decision to terminate L.K.'s parental rights is justified on the two statutory grounds discussed herein, as well as the district court's unchallenged finding that termination of parental rights is in the best interests of L.K.'s children, we need not address L.K.'s challenge to the remaining statutory ground. *See R.W.*, 678

N.W.2d at 55 (stating that one well-founded statutory ground for termination of parental rights is sufficient when such termination is in child's best interests).

Affirmed.