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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2178

In the Matter of the Welfare of the Children of: L.C., Parent.

Filed April 15, 2008
Affirmed
Collins, Judge[*]

Redwood County District Court
File Nos. 64-JV-07-96/64-JV-07-97/64-JV-07-98
64-JV-07-99/64-JV-07-100

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

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[*] 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

COLLINS, Judge

Appellant-mother challenges a district court's order terminating her parental rights to her five children. The district court concluded that (1) appellant substantially, continuously, and repeatedly refused or neglected to comply with parental duties; (2) appellant was palpably unfit to parent; (3) reasonable efforts failed to correct the conditions in the home; and (4) termination was consistent with the children's best interests. We affirm.

D E C I S I O N

On appeal from a termination order, this court 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). "Considerable deference is due 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). This court will not set aside a district court's findings of fact "unless our review of the entire record leaves us 'with a definite and firm conviction that a mistake has been made.'" *In re Welfare of D.T.J.*, 554 N.W.2d 104, 107 (Minn. App. 1996) (quoting *In re Estate of Beecham*, 378 N.W.2d 800, 802 (Minn. 1985)). Notwithstanding such deference, this court is "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).

I.

Appellant contends that the district court erred by applying the wrong standard in analyzing the best interests of the children. When a district court terminates a parent's rights, "the best interests of the child must be the paramount consideration, provided that . . . at least one condition in subdivision 1, clause (b) [is] found by the court."[1] Minn. Stat. § 260C.301, subd. 7 (2006); *see also W.L.P.*, 678 N.W.2d at 709 (stating that "the primary consideration in every termination case is the child's best interests"). Proper analysis of the child's best interests involves balancing 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," including "a stable environment, health considerations and the child's preferences." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992).

Appellant argues that the district court failed to balance these three *R.T.B.* factors, rendering its findings deficient. A termination order "must explain the district court's rationale for concluding why the termination is in the best interests of the children." *D.T.J.*, 554 N.W.2d at 110. While *R.T.B.* sets forth the preferred analysis, its purpose is to guide the district court in making sufficient findings that facilitate effective appellate review. *See In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003) (holding that the absence of specific findings on the best interests of the children precludes effective appellate review of the district court's termination order). It is not a proper function of this court to conduct a best-interests analysis because "it involves credibility

[1] As will be discussed below, the district court found three such statutory conditions.

determinations" that should remain within the district court's discretion. *Id*. at 625. But as long as the district court makes specific findings that show it adequately considered the children's best interests, this court can properly review the district court's conclusion.

Here, although the district court did not explicitly follow the pattern balancing test suggested in *R.T.B.*, it did make detailed findings on each best-interests factor under section 260C.212, subdivision 2(b), with respect to each child's (1) current functioning and behaviors; (2) medical, educational, and developmental needs; (3) history and past experience; (4) religious and cultural needs; (5) connection with a community, school, and church; (6) interests and talents; (7) relationship to current caretakers, parents, siblings, and relatives; and (8) reasonable preference, if the court deems the child to be of a sufficient age. Minn. Stat. § 260C.212, subd. 2(b)(1)-(8) (2006). Although the best-interests analysis in this statute is intended for use by the child-placing agency when determining out-of-home placement, we conclude that its application by the district court in appellant's termination proceeding was by no means improper.

The district court found that (a) from 1995 to September 2006, two other counties had investigated the family on at least 20 child-protection reports; (b) after September 2006, all five children had extensive and persistent problems with hygiene; exhibited dangerous behaviors, including physical and sexual assault; and suffered from chronic bedwetting and obesity; and (c) the family home was in a deplorable condition for a considerable period of time and was unsafe for the children. The district court found that the children's issues improved upon their out-of-home placement. The district court also

found that appellant "has denied or minimized the problems that have occurred, and this indicates that [she] is unwilling or unable to provide the care the children need."

In addition, the district court considered the oldest child's comparatively stronger relationship with appellant, but found that his preference against termination was heavily outweighed by his developmental and treatment needs. As to the four younger siblings, the district court found that they did not have a strong relationship with appellant, that they were too young to express a preference, and that their relationship to their caretakers and siblings favored termination. Contrary to appellant's assertion, the district court's findings are not deficient and are more than adequate to explain its rationale for concluding that termination is in the children's best interests.

II.

Appellant also asserts that the district court must reconsider its analysis of the children's best interests because the oldest child, who disfavors termination, may prevent his own adoption, which in turn could hinder the adoption of all his siblings. Appellant relies on *In re Welfare of M.P.*, 542 N.W.2d 71, 76 (Minn. App. 1996), for the proposition that a best-interests analysis must include consideration of a child's future adoptability where the child disfavors termination and refuses adoption. *M.P.*'s holding, however, was explicitly rejected by *In re Welfare of J.M.*, 574 N.W.2d 717, 722-24 (Minn. 1998), wherein the supreme court held that "the termination statute does not require assessment of a child's adoptability." 574 N.W.2d at 224. Moreover, nothing in the record shows that the oldest child has refused or will refuse to consent to adoption, or that the adoptability of his siblings will be affected because of his preference or

hypothetical refusal. The district court did not err in assessing the children's best interests.

III.

Appellant contends that the evidence supporting the district court's order was not clear and convincing. This court will affirm a district court's termination order "as long as 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); *see also* Minn. Stat. § 260C.301, subd. 7 (stating that the child's best interests are paramount as long as the court finds at least one statutory condition). In this case, the district court concluded that three conditions under section 260C.301, subdivision 1(b), existed to support termination: (1) appellant "substantially, continuously, and repeatedly refused or neglected to comply with" her parental duties under subpart (b)(2); (2) appellant was "palpably unfit" to parent under subpart (b)(4); and (3) reasonable efforts "failed to correct the conditions leading to the children's [out-of-home] placement" under subpart (b)(5). *See* Minn. Stat. § 260C.301, subds. 1(b)(2), (4), (5) (2006).

Appellant does not specify which statutory condition she believes is unsupported, and in fact relies almost completely on the district court's findings in her brief on appeal. Instead, appellant makes two general assertions regarding the district court's credibility determinations. First, appellant argues that "[p]rofessional support for the proposition of terminating Appellant's rights hinged on psychological treatment that Appellant did not feel she needed," which "is contradicted by other evidence."

Appellant fails to explain the nature of that other evidence, and her argument is belied by the district court's comprehensive findings, which are based on a number of professional sources that describe appellant's unsafe household, her maladjusted and unhealthy children, her lack of parenting skills, her refusal to maintain the parent-child relationship and participate in county services, and her unwillingness to acknowledge any of these problems. In addition to this evidence, the psychologist who conducted appellant's assessment testified that appellant has serious psychological disorders and that she needs intense counseling to resolve them. The district court found that despite appellant's testimony that she did not need psychological help, the psychological "report and its conclusions [are] thorough, well-reasoned, and credible along with [the psychologist's] testimony." Appellant also overlooks the fact that she admitted as much in her brief when she stated that she "is likely to continue to exhibit the same type of behavior that she has exhibited up to this point without treatment for her disorders." *See Wehner v. Wehner*, 374 N.W.2d 569, 571 (Minn. App. 1985) ("Statements of facts made in briefs are to be taken as binding admissions.").

Next, appellant asserts that her "testimony contradicts and calls into question the credibility of the testimony favoring termination." Again, appellant does not point to any particular testimony or evidence, nor does she seem cognizant of "the role that credibility plays in trial court decisions of this type." *See R.T.B.*, 492 N.W.2d at 3-4 (rejecting appellant's argument that the district court's decision was unsupported by sufficient evidence because witness testimony contradicted the court's findings). The district court's decision to give certain testimony greater weight does not mean that its findings

are unsupported by the evidence and require reversal. "To the contrary, on appeal this court must defer to the [district] court's assessment of credibility of witnesses and the weight to be given to their testimony." *Id.* at 4 (quotation omitted).

This court will affirm a termination order "where there is clear and convincing evidence of statutory grounds for termination and the prognosis for change of the conditions is poor." *In re Welfare of T.M.D.*, 374 N.W.2d 206, 211 (Minn. App. 1985), *review denied* (Minn. Nov. 25, 1985). We conclude that substantial evidence amply supports the district court's conclusions that appellant historically and persistently refused or neglected her parental duties and is palpably unfit to parent, and that reasonable efforts could not correct conditions that led to the children's out-of-home placement.

Leading to its termination order, the district court enumerated 35 detailed findings based in part on reports, photos, and testimony presented in a two-day hearing. As described hereto, the record shows that the family has a decade-long history of documented child-protection problems which, as the record demonstrates, appellant refused to acknowledge or remedy. The record shows that appellant's home was unclean and unsafe, and the district court found that appellant's "testimony that the home was only in that state for a short period of time is not credible." The district court found, and appellant does not dispute, that the county attempted to provide at least 24 different services to the family in an effort to protect the children and help appellant address parenting weaknesses. According to the record, appellant steadfastly opposed in-home parenting help, failed to follow through on the in-home worker's recommendations, and

was physically and emotionally distant from her children during supervised visitation. The district court found that supervised visitation ceased in May 2007 because appellant failed to appear, and appellant admitted in her brief that she visited her children only three times in the four months before the termination hearing. Appellant also does not dispute that she moved out of the family home and has refused to reveal her location to her children, the county, or the court.

The district court's findings are carefully drawn from the fully developed record, are based on substantial evidence that is clear and convincing, and are virtually uncontroverted.

Affirmed.