STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1845

In the Matter of the Welfare of the Child of:
C.S. and M.A.Z., Parents.

Filed May 20, 2008
Affirmed
Shumaker, Judge

Meeker County District Court
File No. 47-JV-05-467

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Considered and decided by Willis, Presiding Judge; Shumaker, Judge; and Harten, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving 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

SHUMAKER, Judge

On appeal, appellant-mother argues that district court's permanent-placement order transferring permanent legal and physical custody of her daughter to the child's paternal aunt is not supported by substantial evidence. Because the district court addressed the required statutory criteria and because its findings are not clearly erroneous, we affirm.

FACTS

A.C.S. was born on January 24, 1999, to C.S., mother, and M.A.Z., father. C.S. and M.A.Z. never married or resided together. C.S. has lived in Wisconsin since A.C.S. was born.

Until September 2002, A.C.S. lived with C.S. But then C.S. and M.A.Z. agreed to a Wisconsin court order granting primary placement of A.C.S. with M.A.Z. until January 2003 when M.A.Z. was to enter the military. Around this same time, C.S. also agreed to give physical custody of her other child, D.A.S., to his father.

When M.A.Z. did not enter the military as planned in January 2003, he moved to Minnesota and, without court permission, took A.C.S. with him. C.S. did not seek A.C.S.'s return.

Upon arriving in Minnesota, M.A.Z. and A.C.S. stayed with M.A.Z.'s sister, L.S. They moved out of L.S.'s residence in May 2003. From the fall of 2002, when A.C.S. went to live with M.A.Z., until March 2005, C.S. had irregular contact with A.C.S.; they spoke on the phone at times, but they seldom saw each other. In March 2005, M.A.Z.

was charged with felony child endangerment for injuries to his infant twins, A.C.S.'s half-siblings. While those proceedings were pending, A.C.S. lived with L.S.

C.S. visited A.C.S. over a weekend at the end of March 2005. But instead of keeping A.C.S. with her, C.S. returned the child to L.S.'s home. Apparently, C.S. and L.S. discussed having A.C.S. complete the school year in Minnesota because C.S. needed to find her own place to live. However, from the time that school got out in June 2005 until September 2005, C.S. made no arrangements to care for A.C.S. or take her back to Wisconsin.

In September 2005, Meeker County Social Services Department filed a petition alleging that A.C.S. was a child in need of protection or services (CHIPS). The CHIPS petition contained allegations relating to both parents.

M.A.Z. admitted that A.C.S. was a child in need of protection or services, and the court transferred temporary care, custody, and control of A.C.S. to the county for placement in relative foster care with L.S. The county served C.S. with a copy of the CHIPS petition.

Apparently acting in response to the petition, C.S. contacted Pat Thomas, a county social worker, on October 12, 2005, to inform Thomas that she wanted to take A.C.S. to Wisconsin and to ask why she had to attend a hearing on the CHIPS petition in November. At the November 2005 hearing, C.S. denied the CHIPS petition's allegations. A.C.S. was adjudged to be a child in need of protection or services; care, custody and control of A.C.S. were transferred to the county; and A.C.S. remained with L.S.

At a December 2005 hearing, C.S. admitted, after consulting with counsel, that A.C.S. was a child in need of protection or services within the meaning of Minn. Stat. § 260C.007, subd. 6(1), in that A.C.S. was abandoned or without a parent, guardian, or custodian. Care and custody of A.C.S. continued to be with the county for placement with L.S.

During the winter of 2005, a different social worker, Jennifer Schlangen, was assigned to A.C.S.'s case. She was supervised by Thomas. In December 2005, the county made its first request for the State of Wisconsin's assistance through the Interstate Compact on the Placement of Children (ICPC). Wisconsin denied placement of A.C.S. with C.S. in April 2006 because C.S. did not have a stable income.

Monthly visits between A.C.S. and C.S. in Minnesota began in January 2006. The county paid travel and lodging expenses for those visits. For the February 2006 visit, the county purchased a bus ticket for C.S. The visit was supposed to occur from Thursday through Tuesday, but when the Thursday bus was canceled because of inclement weather, C.S. canceled the entire visit. The April and May 2006 visits occurred at a hotel in St. Cloud. During the May visit, C.S. befriended another couple at the hotel pool. Instead of staying in her hotel room that night, C.S. took A.C.S. to sleep overnight at the couple's home.

In May 2006, the court denied C.S.'s request for an overnight visit in Wisconsin because a parental capacity evaluation had not been completed, and the court extended the permanency timeline until September 1, 2006. Then in July 2006, the court ordered an overnight visit in Wisconsin. The county could not obtain assistance from Wisconsin

to conduct the visit because social services in Milwaukee County refused to investigate C.S.'s living situation or provide supervision. The county also tried, unsuccessfully, to get a private agency to supervise the visit. Since Wisconsin refused to assist in supervising the visit, the district court ordered the guardian ad litem (GAL) to accompany A.C.S. to Wisconsin to oversee the visit. The county paid more than $1,800 in costs for this visit.

The first parental-capacity evaluation was completed in July 2006 by Dr. Timothy Tinius, Ph.D. Dr. Tinius concluded that it was not in A.C.S.'s best interests to be placed in C.S.'s custody and recommended terminating C.S.'s parental rights to A.C.S., explaining that C.S. was unable to provide for A.C.S.'s emotional needs; did not have, and would not be able to develop, the appropriate parenting skills; could not provide a safe and stable environment; lacked the capacity to parent or provide food, housing, and clothing; could not provide for A.C.S.'s emotional needs; and had no capacity to change.

On August 1, 2006, the county filed a permanent-placement petition, alleging that a permanent-placement decision on A.C.S.'s placement was required because of the length of out-of-home placement. The county also requested that permanent legal and physical custody of A.C.S. be transferred to L.S. C.S. denied the allegations in the permanent-placement petition and a permanency trial was scheduled for October 2006.

Before trial, the parties participated in mediation and reached an agreement, which the court approved. That agreement was intended to give C.S. another opportunity to satisfy Wisconsin's concerns so that it would approve the placement of A.C.S. with C.S. in Wisconsin in accordance with the ICPC. The agreement extended the permanency

timelines for another six months and provided that custody of A.C.S. would be transferred to L.S., unless C.S. fulfilled several conditions within six months. Those conditions required that C.S. secure employment between the hours of 6 a.m. and 6 p.m.; refrain from using mood-altering substances and submit to random chemical testing within 48 hours of the county's request; complete a second parental capacity assessment; initiate and arrange for monthly visits in Minnesota; sign and return releases to the county within seven days; and obtain Wisconsin's approval of the placement.

The monthly visits continued after the parties reached the mediation agreement. During a monthly visit in November or December 2006, a man named "Drey" stayed with C.S. and A.C.S. in their hotel room. Apparently, C.S. had been introduced to Drey by someone she had met at the hotel pool. Drey stayed at the hotel with C.S. and A.C.S. again during the next monthly visit.

Although C.S. visited A.C.S. at the end of January 2007, she missed the February and April visits and failed to contact Schlangen to explain why the visits did not occur. C.S. could not elucidate why she did not contact the county to explain the missed visits. At the permanency trial, she testified that she missed the visits because of pregnancy complications. But she also testified that, during the month of February, she continued to work as a dancer and that she worked in March 2007 either as a dancer or at Hallmark.

The weekend before the permanency trial, C.S. visited with A.C.S. again. A man named "Deuce" stayed with C.S. and A.C.S. at the hotel. C.S. testified that Deuce did not stay overnight, but admitted that he traveled with her from Wisconsin and was present in the hotel room when A.C.S. went to sleep and woke up.

The permanency trial occurred in July 2007. The evidence from the trial indicated that C.S. had failed to meet the mediation agreement's conditions. The county had completed a second ICPC, renewing its efforts to obtain Wisconsin's assistance, but Wisconsin again denied placement, citing C.S.'s failure to secure employment in a daytime position as required by court order. In addition, at the time of the permanency trial, C.S. was unemployed. Schlangen testified that, despite the mediation agreement, C.S. failed to submit to random chemical testing within 48 hours of the request since October 2006 and failed to timely return releases for the testing.

C.S. participated in a second parental capacity evaluation, by Dr. George Petrangelo, Ed.D; L.P., as required by the mediation agreement. But the results were not encouraging. Dr. Petrangelo's report called C.S.'s parenting story "one of disbelief" and concluded that she "d[id] not appear to be 'parent-ready' at this time," "ha[d] not demonstrated a convincing level of parental fitness," and "seem[ed] unable at this time, or within the foreseeable future, to provide her children with the stability and security they require." Dr. Petrangelo explained that his report stopped short of making any specific recommendations because he had received information only from C.S., but he testified that he agreed that C.S. should have a job with child-friendly hours and "demonstrate something more than just her convenience about coming up here once or twice a month" to visit A.C.S.

Following the permanency trial, the district court transferred permanent legal and physical custody of A.C.S. to L.S. and ordered that C.S. would have visitation with A.C.S. at her home in Wisconsin during the summer months and over the Christmas

holiday and have the opportunity for telephone contact with A.C.S. C.S. moved for amended findings of fact, conclusions of law, or a new trial, but the court denied the motion. This appeal followed.

D E C I S I O N

The allegations of a permanent-placement petition must be proven by clear and convincing evidence. *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996); *see also* Minn. R. Juv. Prot. P. 39.04, subd. 1 (requiring that the statutory grounds set forth in petition be proven by clear and convincing evidence). If the court decides not to return the child home, it must order one of the dispositions listed in the governing statute, which includes permanently placing the child in the custody of a relative if that decision is in the child's best interests. Minn. Stat. § 260C.201, subd. 11(d)(1) (2006). An order permanently placing a child outside of the home of a parent or guardian must address the following statutory criteria:

> (1) how the child's best interests are served by the order;
> (2) the nature and extent of the responsible social service agency's reasonable efforts . . . to reunify the child with the parent or guardian where reasonable efforts are required;
> (3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
> (4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

Id., subd. 11(i) (2006). And when a court grants custody of a child to a relative, the court must also address the suitability of the prospective custodian. *Id.*, subd. 11(d)(1)(i).

When reviewing a permanent-placement order, this court determines whether the district court's permanency "findings address the statutory criteria and are supported by substantial evidence, or whether they are clearly erroneous." *A.R.G.-B.*, 551 N.W.2d at 261 (quotation omitted). We view the evidence and its reasonable inferences in the light most favorable to the district court's findings of fact and will not disturb those findings unless they are clearly erroneous. *Id.* at 261-62. To successfully challenge a district court's findings, a party "must show that despite viewing that evidence in the light most favorable to the [district] court's findings . . . , the record still requires the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Id.* Whether the district court correctly applied the law is a legal question, which this court reviews de novo. *In re A.R.M.*, 611 N.W.2d 43, 47 (Minn. App. 2000).

The district court's permanent-placement order addresses A.C.S.'s best interests, the reasonableness of the county's efforts, C.S.'s efforts and ability to use the services, C.S.'s failure to correct the conditions that led to the out-of-home placement with L.S., and L.S.'s suitability to be A.C.S.'s guardian. Its findings regarding each of these criteria are supported by substantial evidence in the record and are not clearly erroneous.

Best interests and L.S.'s suitability

"The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2 (2006). The district court found that it was in

A.C.S.'s best interests to have permanent custody transferred to L.S., after considering A.C.S.'s best interests and the suitability of the prospective custodian, L.S.

The district court found that the county had proven by clear and convincing evidence that C.S. was unable to provide proper parental care to A.C.S. In doing so, the court relied on the two parental capacity evaluations, both of which concluded that C.S. could not provide A.C.S. with the safety or stability she needed and would be unlikely to be able to do so in the future. Likewise, the district court found that C.S. had a "very casual attitude toward parenting," as evidenced by transferring custody of A.C.S. to M.A.Z., not attempting to regain custody after M.A.Z.'s criminal charges, and displaying inconsistent efforts to comply with court orders and put herself in a position so that A.C.S.'s custody could be transferred to her. These findings are amply supported by the record.

The court also considered L.S.'s suitability to be A.C.S.'s guardian, finding that L.S. had provided for A.C.S.'s care and physical and emotional needs for the past several years and that A.C.S. was integrated into that home. These findings are not clearly erroneous. A.C.S. was in L.S.'s care since March 2005 and also lived with L.S. from January to May 2003. L.S. testified that she is familiar with A.C.S.'s teacher and doctor and that she enrolled A.C.S. in activities such as dance, baseball, and Girl Scouts. She also testified that she takes A.C.S. to St. Cloud for visits with C.S. and that she is willing to encourage and permit contact between A.C.S. and C.S.

Reasonable Efforts

The county was required to make reasonable efforts to reunify A.C.S. and C.S. Minn. Stat. § 260.012(a) (2006). "Reasonable efforts" are defined as "the exercise of due diligence by the responsible social-services agency to use culturally appropriate and available services to meet the needs of the child and the child's family." Minn. Stat. § 260.012(f) (2006). To determine whether a social-services agency has made reasonable efforts, courts consider if the services provided were: "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Minn. Stat. § 260.012(h) (2006). Adequate services require "genuine help to see that all things are done that might conceivably improve the circumstances of the parent." *In re Welfare of M.A.*, 408 N.W.2d 227, 236 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987). "Whether efforts to reunite the family are reasonable requires consideration of the length of time the county has been involved with the family as well as the quality of effort given." *In re Children of Wildey*, 669 N.W.2d 408, 413 (Minn. App. 2003) (quotation omitted), *aff'd as modified*, *In re Children of R.W.*, 678 N.W.2d 49 (Minn. 2004).

Here, the evidence shows that the county's efforts were reasonable because the county provided transportation and lodging expenses so that monthly visits between A.C.S. and C.S. could occur; paid $1,800 for the GAL to go to Milwaukee for the overnight visit; performed two separate parental-capacity evaluations; made two ICPC requests to Wisconsin; and worked with C.S. to establish a format in the mediation

agreement so that custody of A.C.S. could be transferred to C.S. Although C.S. contends that the county did not make reasonable efforts to reunite her and A.C.S. because Schlangen did not try to locate resources in Wisconsin, the district court found otherwise, noting that when Wisconsin refused placement of A.C.S., "[t]he case worker, Jennifer Schlangen, attempted to have other agencies intervene and provide assistance to Meeker County in the form of short-term visitation sessions, as well as an evaluation of [C.S.'s] home." The evidence in the record supports this finding. Schlangen testified that, from November 2005 through November 2006, she had 48 contacts to and from the ICPC offices in Minnesota and Wisconsin in an attempt to obtain services in Wisconsin; that she contacted Lutheran Social Services in Milwaukee to arrange supervised or monitored services, but was informed that services would be provided by Milwaukee County; and that she contacted the facilitator of a parenting class taken by C.S. in hopes of finding other resources, but the facilitator told Schlangen that he was not aware of any additional resources.

C.S. next suggests that visits with A.C.S. should have occurred more frequently and that visitation should have been broadened after the overnight visit in Wisconsin. Given the expense involved with the Wisconsin overnight visit, the numerous attempts to arrange visitation in Wisconsin, and the ongoing Minnesota visits, the county's efforts in this case were reasonable.

C.S. also complains that Schlangen should have found a parental-capacity evaluator in Wisconsin who could observe the child and parent in the parent's home environment. The parental-capacity evaluation performed by Dr. Tinius incorporated

observations from the parent-child interaction completed by Kyler Meers, LICSW. C.S. does not cite any authority for her proposition that an observation in the parent's home environment is required under the reasonable-efforts standard and does not clearly explain why Meers's observations are insufficient.

Finally, C.S. contends that the county did not make reasonable efforts to reunite her and A.C.S. because it failed to process the ICPC requests correctly, resulting in the denial of those requests. It appears that the denial of the ICPC request prevented the transfer of custody to C.S. because the ICPC "obligates the receiving state to determine whether placement is suitable, and bars physical transfer of the child until authorities in the receiving state notify the sending agency that the proposed placement does not appear to be contrary to the interests of the child." *In re Welfare of Child of T.T.B. & G.W.*, 724 N.W.2d 300, 303 (Minn. 2006); *see also* Minn. Stat. § 260.851, art. III(d) (2006) (prohibiting a child from being "sent, brought, or caused to be sent or brought into the receiving state until" the receiving state notifies the sending agency that the proposed placement is not contrary to the child's interests).

Although C.S. attempts to blame the county for Wisconsin's denial of the ICPC requests, the ICPC requests explain that they were denied because of C.S.'s unstable income and her failure to secure employment in a daytime position as required by court order. Moreover, C.S. does not indicate what the county should or should not have done, and she does not explain how the county's actions or inactions led to the denial of the ICPC requests. Rather, she simply alleges that because of the social worker's inexperience the ICPC requests "were garbled, delayed, and misinformed." In support of

this argument, C.S. directs this court to Schlangen's testimony admitting that court staff called regarding the ICPC, but this testimony does little to explain what happened or what went wrong with the ICPC process. It is not clear whom the court staff called or even why they called. And C.S. fails to direct this court to any other support in the record that would illuminate the alleged mistakes that occurred. *Cf. Cole v. Star Tribune*, 581 N.W.2d 364, 371-72 (Minn. App. 1998) (discussing importance of citing the record). As a result, it appears that C.S.'s argument that the county's actions or inactions somehow resulted in the denial of the ICPC requests is pure speculation.

C.S.'s efforts and ability to use services

C.S. argues that she used the services provided to her and attempted to change the conditions so that A.C.S. would be placed with her. Her arguments do not show that she was incapable of utilizing the services or explain why she failed to do so. For instance, she admits she missed visits in February and April 2007, but says that those missed visits were the result of complications with pregnancy. A complicated pregnancy does not explain why other earlier visits were missed, why C.S. failed to contact Schlangen when the February and April 2007 visits did not occur, or why she could not identify a reason at the permanency trial for failing to contact Schlangen regarding those visits.

Moreover, C.S. has offered no explanation for her behavior during certain visits. The district court found that C.S. "got distracted" during her visits with A.C.S., noting that on one occasion C.S. had met a couple and then spent the night at their house and had invited male visitors, some of whom she had only recently met, to spend the night with C.S. and A.C.S. in their hotel room on several occasions. "These occurrences," said

the district court, "tend to indicate a lack of focus on the purpose of the visitations, namely a time to be with [A.C.S.]" and "indicate bad judgment by placing [A.C.S.] in potential harm by having contact with strangers." The record supports the district court's findings regarding these occurrences.

C.S. also points out that she followed the only suggestion made by the parenting evaluator and voluntarily enrolled in or completed a parenting class. Although C.S. should be commended for voluntarily taking the class, the fact that she took the class does not show that the district court's findings regarding her use of the services, or more particularly her behavior during the visits, were clearly erroneous.

Conditions leading to out-of-home placement

Of particular note in this case is C.S.'s failure in several respects to correct the conditions leading to the out-of-home placement. The parties reached a mediation agreement, which was adopted by court order in October 2006. That agreement provided that custody of A.C.S. would be transferred to L.S., unless C.S. met several conditions within six months. C.S. agreed to these conditions but failed to meet them. She contends that this failure resulted from the county's decision to keep moving the "finish line" by changing the requirements she had to meet to regain custody of A.C.S. But C.S. agreed to the conditions in the mediation agreement, and thus her argument lacks merit.

Moreover, many of the mediation agreement's requirements were within C.S.'s control, such as arranging the visits, submitting to the parenting evaluation, and taking random urinalysis tests. C.S. failed to take the steps necessary to obtain Wisconsin's approval of the placement, namely securing daytime employment. She suggests she

could not keep employment because of her frequent court hearings and visits to Minnesota. This contention is unpersuasive since the visits occurred only once a month and she missed two of those visits in February and April 2007.

C.S. completed the second parenting evaluation, as the mediation agreement directed. But the results were not encouraging; Dr. Petrangelo concluded that C.S. was not ready to parent, did not have "a convincing level of parental fitness," and would not be able to provide A.C.S. with stability or security now or in the future.

In light of C.S.'s failure to correct the conditions leading to the out-of-home placement, the district court did not clearly err by transferring permanent custody of A.C.S. to L.S.

C.S. also contends that the district court unfairly discriminated against her because she is a Wisconsin resident. The district court's permanent-placement order candidly noted that C.S.'s residence in Wisconsin impeded the reunification progress in this case. Although the court acknowledged the logistical problems regarding C.S.'s residency in Wisconsin, that acknowledgement is not indicative of discrimination. Indeed, rather than relying on her residency, the district court properly relied on C.S.'s parenting behavior and did not impose any requirement that C.S. move to Minnesota or withhold or deny her any benefits because she lived in Wisconsin. Because C.S. has not pointed to anything more in the record to demonstrate discrimination, we conclude her argument is without merit.

Affirmed.