STATE OF MINNESOTA
IN COURT OF APPEALS
A10-377
A10-408

In the Matter of the Welfare of the Children of: B.A.G. and N.L.G., Parents.

Filed August 17, 2010
Affirmed
Stauber, Judge

Morrison County District Court
File Nos. 49JV09201; 49JV092052; 49JV092051

Timothy M. Churchwell, Gregory A. Peters, Peters & Churchwell, Attorneys at Law, Long Prairie, Minnesota (for appellant B.A.G.)

David W. Buchin, Buchin Law Office, P.A., St. Cloud, Minnesota (for appellant N.L.G.)

Brian J. Middendorf, Morrison County Attorney, Todd. E. Chantry, Assistant County Attorney, Little Falls, Minnesota (for respondent Morrison County)

Jody Cox, Guardian Ad Litem, Little Falls, Minnesota

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

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

STAUBER, Judge

In these consolidated termination of parental rights appeals, appellants argue that the district court erred in terminating their parental rights because (1) the record does not support the conclusion that appellants are palpably unfit parents and (2) appellants corrected

the conditions leading to the children's out-of-home placement by complying with the out-of-home placement plan. We affirm.

FACTS

Appellant B.A.G. is the biological mother of M.C.O., born on January 5, 2006, and R.L.O, born on May 2, 2007. The biological father's parental rights to these children were terminated in December 2009, because he abandoned the children. In September 2008, B.A.G. married appellant N.L.G. B.A.G. and N.L.G. (collectively "appellants") are the biological parents of G.R.G., born September 18, 2008, and M.C.G., born October 7, 2009. Although not the biological father of M.C.O. and R.L.O., N.L.G. considers them to be his children.

In December 2008, N.L.G. was charged with domestic assault after respondent Morrison County Social Services received a report from a doctor that R.L.O. came to the hospital with a large bruise on his forehead and a laceration above his ear. N.L.G. subsequently admitted that he pushed R.L.O., which caused the laceration. Although the charges were later dismissed as part of a plea agreement, the incident prompted an investigation by respondent.

On January 9, 2009, respondent formally opened a child-protection case. An initial agreement was reached between respondent and appellants whereby the children would not be placed in foster care if appellants satisfied certain conditions. The agreement required appellants to (1) participate in in-home therapy and individual therapy; (2) complete the Love and Logic course; and (3) for N.L.G. to complete an anger

assessment. The agreement also required that N.L.G. be excluded from the home and that he not have any contact with the children until the other conditions were satisfied.

On January 30, 2009, social worker Katie Knettel went to B.A.G.'s home for a "drop-in" visit. When Knettel arrived at the home, B.A.G., who was just getting into her car to leave, stated that the children were not at home. After seeing R.L.O. looking out the window, Knettel gained access to the home and discovered that the children were home alone with N.L.G. N.L.G. claimed that he was at the home in order to retrieve his clothes and that it was the first day he had been in the home since he was excluded from the home under the terms of the agreement with respondent.

Because N.L.G.'s presence in the home violated the terms of the agreement, the children were removed from the home and placed in emergency foster care. At the time of the removal, the children demonstrated many unhealthy behaviors; R.L.O. smeared feces on the walls, and M.C.O. and R.L.O. were involved in head banging and pulling out their own hair. In addition, all three children craved attention, displayed frequent temper tantrums, ate quickly and excessively to the point of choking, and were generally uncontrollable.

On February 2, 2009, respondent filed a petition alleging that the children were in need of protection or services (CHIPS) because (1) of physical abuse by a person living in the household; (2) they lacked the necessary care for their mental and physical health; (3) they were without proper parental care; and (4) their condition or environment was injurious or dangerous to them. Following an emergency protective-care hearing, the district court found that the CHIPS petition established a prima facia case for a juvenile-

protection matter. The court transferred physical and legal custody to respondent and approved supervised in-home visits for appellants.

In March 2009, an out-of-home placement plan (OHP) was approved by the district court. The risks identified by the OHP were the use of physical force and excessive discipline, the home environment was hazardous to the children, and illegal substances were being used or prescription drugs were being misused by appellants. In order to address these concerns, appellants were ordered to use no corporal punishment, cooperate with in-home therapy, clean their home, and abstain from the use of controlled substances.

On March 12, 2009, a domestic incident occurred between B.A.G. and N.L.G. N.L.G. was subsequently charged with and pleaded guilty to domestic assault. As a result, N.L.G.'s evaluating psychologist Frank Weber recommended that N.L.G. complete anger-management treatment.

During the course of the next few months, appellants made little progress addressing the concerns of the OHP. Despite being unemployed and having no other obligations, appellants canceled several in-home visits, did not pick up on the in-home worker's cues, had trouble controlling the children, and did not interact with each other. The parties also struggled to complete the recommended therapy programs, and despite being pregnant, B.A.G. tested positive for opiates in May 2009.

On October 13, 2009, respondent filed a petition to terminate appellants' parental rights. The petition alleged that appellants substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed by the parent-children

relationship, that they were palpably unfit to be parents, that following out-of-home placement they failed to correct the conditions that led to the placement, and that the children were neglected and in need of foster care. The petition also alleged that respondent made reasonable efforts to correct the problems that led to the out-of-home placement.

At trial, evidence was presented that B.A.G. has been diagnosed with bipolar disorder and anxiety disorder. During her psychiatric assessment, B.A.G. revealed that she dropped out of high school her freshman year, was regularly sexually abused by her grandfather from age two until age 16, was physically and sexually abused during her first marriage, attempted suicide at age 12, and her twin sister and younger half-sister died in a motor vehicle accident in 2008. B.A.G. also reported that she miscarried three times, her biological father was absent during her childhood, and her mother was emotionally abusive. According to Judith Weis, one of B.A.G.'s assessing psychiatrists, B.A.G. is a "person [with] serious and persistent mental illness . . . likely [to] have future episodes of mental health problems requiring inpatient mental health treatment unless community support and case [management] services are provided."

Evidence was also presented from N.L.G.'s anger assessment. The assessors found that N.L.G. does not suffer from a major mental illness or episodes of depression. But the assessors found that N.L.G. presents himself as immature and self-centered and appears to suffer from borderline personality disorder, wherein individuals display a pattern of instability in their relationships and self-image, often engage in self-injurious behavior, often fail to follow through with personal goals, and struggle with consistency.

Moreover, Weber concluded that based on his mental health issues, N.L.G. cannot parent effectively unless there is a healthy stable other parent.

Both Jody Cox, the guardian ad litem (GAL), and Melissa Steadman, the in-home worker, testified that appellants were unable to meet the children's ongoing physical, mental, and emotional needs. Cox testified that appellants have not responded to the services offered by respondent, and that appellants would be unable to improve their parenting skills within the next three-to-six months. Moreover, Steadman testified that the parents seemed overwhelmed at the task of parenting, and that despite participating in the parenting programs, they were unable to parent the children without assistance.

On February 8, 2010, the district court issued its order concluding that respondent failed to prove by clear and convincing evidence that appellants "substantially, continuously, or repeatedly refused or neglected to comply with the duties of the parent-children relationship," or "that the children are neglected and in foster care." But the district court also concluded that B.A.G. and N.L.G. "are palpably unfit to be parties to the parent-children relationship," and that "reasonable efforts under the direction of the court have failed to correct the conditions that led to the placement." Thus, the district court granted the petition to terminate appellants' parental rights. This appeal followed.

D E C I S I O N

"[P]arental rights may be terminated only for grave and weighty reasons." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). Accordingly, "[t]his court exercises great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result." *In re Welfare of S.Z.*, 547

N.W.2d 886, 893 (Minn. 1996). This court reviews decisions to terminate parental rights to determine "whether the [district court's] 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). But the reviewing court closely inquires 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).

I. Palpable unfitness

A court may terminate parental rights when a parent is "palpably unfit to be a party to the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(4) (2008). A parent's unfitness is based on showing either "a consistent pattern of specific conduct before the child" or "specific conditions directly relating to the parent and child relationship." *Id.* Either finding must be "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." *Id.*

The district court concluded that B.A.G. and N.L.G. "are palpably unfit to be parties to the parent-children relationship because their mental health problems and marital discord render them unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the children." Appellants argue that this conclusion is unsupported by substantial evidence.

"Mental illness, in and of itself, is not sufficient basis for the termination of parental rights." *S.Z.*, 547 N.W.2d at 892. But a mental disability may preclude a parent from providing proper parental care. *In re Welfare of J.J.B.*, 390 N.W.2d 274, 281 (Minn. 1986).

Here, the record is replete with evidence that B.A.G. and N.L.G. suffer from mental-health deficiencies. B.A.G. has been diagnosed with bipolar disorder since age 11, as well as post-traumatic stress disorder, anxiety disorder, and substance abuse. N.L.G. has been diagnosed with dysthymic (depressive) disorder and has dependent and avoidant personality traits. The record further reflects that both parents have attempted suicide.

Appellants contend that despite their mental health issues, the district court's conclusion that they could not parent the children was based on assessments conducted early in the process with no follow-up evaluations. Appellants contend that without the follow-up evaluations, there is no way of knowing whether they will be in a position to parent the children in the reasonably foreseeable future.

We disagree. The record reflects that appellants were slow to participate in the recommended therapy and counseling programs and, at the time of trial, appellants had failed to complete many of the programs despite having ample time to do so. The record also reflects that the assessing psychiatrists, the GAL, and the in-home worker all concluded that appellants were palpably unfit to parent the children. Steadman testified that despite participating the parenting programs, appellants made little progress and failed to demonstrate the ability to parent the children without assistance. Steadman also

testified based on her experience working with appellants, she believed that they would be unable to meet the basic needs of the children because of their mental health issues and N.L.G.'s demonstrated lack of ability to cope with his diabetes. Similarly, the GAL testified that appellants have not responded to the services provided by respondent and that appellants are unable to consistently meet the needs of the children. Moreover, Weis, one of B.A.G.'s assessing psychiatrists, reported that B.A.G. is a "person [with] serious and persistent mental illness . . . likely [to] have future episodes of mental health problems requiring inpatient mental health treatment unless community support and case [management] services are provided." And Weber reported that based on N.L.G.'s personality deficits, he is unable to parent effectively unless there is another healthy, stable parent. This evidence and testimony supports the district court's conclusion that appellants' mental health precludes them from providing proper parental care. *See L.A.F.*, 554 N.W.2d at 396 (stating that his court gives deference to the district court's credibility determinations).

Appellants also contend that the district court's conclusion that they are palpably unfit to parent the children based on parties' marital discord is unsupported by the record. But the record reflects that appellants were involved in a domestic dispute in March 2009 in which both parties demonstrated fault. The record also reflects that N.L.G. pleaded guilty to domestic abuse after he pushed R.L.O. in December 2008. Moreover, the record reflects that N.L.G. has taken a far more passive role in helping with the parenting during the supervised visits, and the GAL testified that N.L.G.'s lack of participation in parenting frustrates B.A.G. The record supports the district court's findings that marital

discord is a factor contributing to appellants' inability to parent their children. Accordingly, the record supports the district court's conclusion that appellants are palpably unfit to be parties to the parent-children relationship.

II. Reasonable efforts

A district court may terminate parental rights to a child if it finds that "following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5) (2008). There is a rebuttable presumption that reasonable efforts have failed if "(i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months"; (ii) the out-of-home placement plan has been filed with and approved by the court; "(iii) conditions leading to the out-of-home placement have not been corrected"; and "(iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family." *Id.* Proving "noncompliance with a case plan" is one way to prove a failure to correct pursuant to subdivision 1(b)(5). *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 663 (Minn. 2008).

Appellants argue that they substantially complied with the case plan. Thus, appellants contend that the district court erred in terminating their parental rights because they corrected the conditions that lead to the out-of-home placement.

We agree that there was some compliance with the case plan. But minimal improvement is not enough to overcome the conclusion that parent's past problems make his or her future performance as a parent uncertain. *See In re Welfare of Maas*, 355

N.W.2d 480, 483 (Minn. App. 1984). Here, the record reflects that although they participated in some of the therapy and parenting programs, appellants were slow to participate despite prompts by social workers. Moreover, any lack of maltreatment of the children is misleading because appellants never had unsupervised contact with the children after they were initially placed out of the home. A similar conclusion can be reached regarding the requirement that appellants clean and maintain the home. The record reflects that despite being unemployed, appellants were very slow to clean the home, and their ability to maintain the home with the children present was never assessed because appellants failed to progress to the point where the children were allowed back into the home.

Appellants' minimal compliance with the case plan and palpable unfitness is also reflected by evidence that despite participating in some of the parenting programs, appellants made very little progress, demonstrating that they are unwilling or unable to benefit from services offered. As both the GAL and in-home worker testified, appellants did not interact consistently with each other, did not pick up on parenting cues, demonstrated few new parenting skills, had trouble controlling the children, and were increasingly tired during visits. The record also reflects that, as visitation with the children progressed, N.L.G. remained uninvolved during many visits, and B.A.G. often took cigarette and phone breaks away from the children. The excessive breaks are significant in light of the limited visitation appellants had with their children.

Also of important significance is the fact that despite being unemployed, appellants canceled seven visits with the children within the first few months of the

children being placed out of the home. Moreover, the record reflects that when appellants' visits with the children were decreased, appellants did not protest the decreased visitation, but instead seemed to welcome the decreased responsibility. Appellants' actions indicate a lack of desire to parent their children. The district court made extensive findings on the termination issues, and those findings are supported by the record. Therefore, the district court did not err in terminating appellants' parental rights on the basis that reasonable efforts have failed to correct the conditions leading to the out-of-home placement.

Affirmed.