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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1875**

In the Matter of the Welfare of the Children of:
L. M. M. and G. R. M., Parents

Filed April 19, 2011

Affirmed

Minge, Judge

Hon. Patrice K. Sutherland

Dakota County District Court

File Nos. 19-J0-03-055396, 19HA-JV-10-821, 19HA-JV-09-3692

James C. Backstrom, Dakota County Attorney, Kathryn Peterson Scott, Assistant County Attorney, Hastings, Minnesota (for respondent county)

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Considered and decided by Larkin, Presiding Judge; Klaphake, Judge; and Minge, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellants mother and father challenge the decision of the district court to transfer physical and legal custody of their children to the children's paternal aunt. Appellants argue that there is insufficient evidence to support the district court's findings that the county made reasonable efforts toward reunification and that a transfer of custody to the

aunt was in the children's best interests. Because the district court's findings are supported by sufficient evidence, we affirm.

FACTS

Appellant-mother L.M.M. and appellant-father G.R.M. are the biological parents of four children. In January 2003, the county filed a Child in Need of Protection or Services (CHIPS) petition after police discovered a methamphetamine lab in the parents' basement. Both parents were incarcerated and the children were placed with their maternal grandmother for approximately 70 days. On release, mother followed all juvenile court recommendations and regained custody. In November 2003, mother tested positive for methamphetamine and admitted to continued use. When mother could not follow treatment recommendations without court support, the county filed a second CHIPS petition. In March 2004, the children were adjudicated in need of protection and again placed with their grandmother. Because mother had repeated problems following her case plan, the children remained in out-of-home placement with grandmother until November 2004. After November 2004, all four children primarily lived with mother and had limited and infrequent contact with father.

In October 2009, the Dakota County Drug Task Force executed a search warrant at mother's residence. Police seized syringes with methamphetamine residue and other drug paraphernalia in locations accessible to the children. A social worker present during the raid observed fresh track marks on mother's arms and a child's bed soaked with urine, and saw a dog urinate and defecate on the floor. Mother admitted to using methamphetamine intravenously and tested positive for methamphetamine and THC.

Social services again placed the children in emergency foster care with their grandmother.

On October 13, 2009, the county filed a third CHIPS petition. The district court granted the petition, finding neglect by both parents. Case plans for both parents included chemical-health, parenting, and psychological evaluations, compliance with any recommendations from the evaluations, and random urinalysis. Recommendations for mother included individual therapy and for father anger-management training.

In March 2010, the county filed a permanency petition to transfer legal and physical custody of the children to a paternal aunt. After a trial, the district court found that the county made reasonable efforts to reunite the family, including offering chemical-dependency assessment and treatment, psychological evaluations, parenting assessments, regular supervised visits, and assistance in securing stable housing. The district court also found the efforts unsuccessful in important respects because father continued to avoid sufficient anger-management training and mother continued to occasionally use methamphetamine and did not have stable housing. The district court ordered transfer of custody to the paternal aunt because of the history and conditions previously recounted and because the aunt is a family member with adequate housing, is willing and able to give the children the love and affection that can meet their needs, and has offered an opportunity for both parents to remain a part of the children's lives.

Both parents filed separate motions requesting amended findings and a new trial, and the district court denied both motions. The parents appeal the district court's

determinations that the county made reasonable efforts to reunite them with their children and that transfer of custody was in the children's best interests.

DECISION

If children enter out-of-home placement, the county must commence permanency proceedings before the children reach twelve months of out-of-home placement within the previous five years. Minn. Stat. § 260C.201, subd. 11(a) (2010). A district court can then transfer permanent legal and physical custody to a relative of the children if it is in the children's best interests. *Id.*, subd. 11(d)(1) (2010). The district court must make detailed written findings regarding how the order serves the children's best interests and the nature and extent of the county's efforts to reunify the family, among others. *Id.*, subd. 11(i) (2010).

When reviewing a permanent-placement order, we determine whether the district court's findings "address the statutory criteria and are supported by substantial evidence, or whether they are clearly erroneous." *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996). We will set aside the district court's factual findings only if a 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) (quotation omitted).

I. REASONABLE EFFORTS

The first issue is whether there is sufficient evidence supporting the finding that the county made reasonable efforts to reunite the family. To determine whether the county's efforts were reasonable, a district court considers whether the services provided

were relevant to the safety and protection of the child, adequate to meet the family's needs, realistic under the circumstances, and available in a timely manner. Minn. Stat. § 260.012(h) (2010). At a minimum, reasonable efforts require the provision of services that would assist in alleviating the conditions leading to the transfer of custody. *In re Welfare of M.A.*, 408 N.W.2d 227, 235–36 (Minn. App. 1987).

The county developed individual case plans for each parent. Mother's case plan addressed drug abuse, home environment, and mental health. The record discloses that the county offered mother the opportunity to participate in family drug-treatment court, arranged multiple chemical dependency evaluations, referred mother to housing that provided chemical and mental-health support, offered transportation, and referred mother to Adult Rehabilitative Mental Health Services (ARMHS). Mother refused services, delayed appointments, and failed to maintain sobriety, disqualifying her from some programs, including housing.

Mother was dismissed from her last treatment facility in June 2010 after she relapsed and tested positive for methamphetamine. She sought out another facility independently and now argues that the county stopped service after the relapse. However, mother's social worker testified that mother had previously rejected this alternate facility as being too religious and that there was no indication that she had changed her attitude. In addition, mother's social worker made multiple telephone calls trying to reach mother to offer aid after her June 2010 dismissal from treatment, but mother did not respond. The district court found that the county did not have an

alternative means of contacting mother and that it made reasonable efforts to contact her and offer support.

Mother also argues that the county did not make her aware of the services she needed and was not helpful in obtaining those services. Specifically, mother argues that the county did not provide her with a copy of her psychological assessment or clarify what type of counseling she should be undergoing. The record contradicts mother's claims. The record establishes that the county had multiple conversations with mother, regarding the services she was receiving, and with personnel at mother's various treatment facilities, regarding her progress and services. In addition, the record indicates that, upon discovering that mother did not receive a copy of the assessment or understand the recommendation for counseling, the county promptly provided an assessment report and pointed out that the recommendation was that she meet weekly with a counselor for therapy, not just monthly with a psychiatrist, as she had been doing.

Father's case plan addressed a lack of involvement with the children, chemical use, anger management, and home environment. Evidence shows that the county provided a separate social worker for father, referred father to a chemical dependency program, recommended multiple anger-management programs, recommended various housing programs, and arranged multiple appointments. Father responded with agitation, often voicing his frustration with the process, and refused to join an available intensive anger-management course.

Father argues that he was complying with the court's recommendations, but he was not provided enough time to complete them. However, father disregards the

extended time that has lapsed in this series of CHIPS proceedings. As a result of the county's intervention from 2003 to 2005, the children had already been in out-of-home placement for an extended time. Everyone, including father, had a duty to give priority to correcting the conditions that led to out-of-home placement. The county only had a few months from the date of the CHIPS petition before it was required by law to file a permanency petition. *See* Minn. Stat. § 260C.201, subd. 11(a). Evidence indicates the county provided father with opportunities to complete anger-management training prior to the permanency trial, but father refused. In addition, father's testimony at trial expressed a lack of interest in following the recommendations of the court and a dismissal of expert opinions regarding his chemical and mental health.

We conclude that sufficient evidence supports the finding that the county made reasonable efforts, including offering mother various mental- and chemical-health services and offering father various anger-management courses, to enable them to overcome the conditions which led to the children's out-of-home placement.

II. BEST INTERESTS

The second issue is whether there is sufficient evidence to support the finding that a transfer of legal and physical custody to aunt is in the children's best interests. The district court is required to make a determination based on whether the parents' inability to care for the child will continue indefinitely or will abate within a reasonably foreseeable time. *See In re Welfare of A.D.*, 535 N.W.2d 643, 649 (Minn. 1995).

All relevant factors are to be considered and evaluated in determining the best interests of the child, including the children's history and past experience, current

functioning and behaviors, and relationship to current caregivers. Minn. Stat. §§ 260C.201, subd. 11(c)(2); .212, subd. 2(b) (2010). When transferring custody to a relative, the court must also review the suitability of the prospective custodian. Minn. Stat. § 260C.201, subd. 11(d)(1)(i).

The district court found that reunification is not in the children's best interests because of mother's continued methamphetamine use and failure to maintain appropriate housing, and father's inability to address his anger and mental-health needs in a timely manner. In addition, the district court found that, at the time of the permanency trial, the children had experienced—and were likely to continue to experience—emotional damage if returned to either parent. But, the district court also determined that the children should maintain a relationship with their parents and ordered custody to the paternal aunt because this family member offered the best opportunity for continuation of the parent-child relationship. Finally, the district court found that the aunt could accommodate the children in her home, has a good relationship with the children, and is willing and able to provide a loving, safe, and secure environment.

Parents argue that the district court's decision focused heavily on their past history and not primarily on their current or future ability to provide for their children. However, several witnesses testified at trial that reunification with either parent is inappropriate in the reasonably foreseeable future. The evaluator who provided the psychological and parenting assessments testified that each parent needs to establish a significant period of stable mental health, housing, and sobriety before either can offer a safe home environment. The children's play therapist testified that the oldest children demonstrate

significant signs of anxiety resulting from the prior out-of-home placements and would benefit from a stable, safe, and healthy home environment. Finally, social workers for mother and father testified that mother would require several years of sobriety and therapy to be capable of reunification and that father could not provide a safe or stable environment until he consistently cooperates with the county's recommendations. The record contains sufficient evidence to show that neither parent is likely in the reasonably foreseeable future to provide a safe and stable environment for the children.

Parents also argue that the aunt's home is not a suitable environment because it will be crowded, with their four children and the aunt's three children. However, mother's social worker, after observing the children with the aunt and inspecting the home, determined that the aunt provides the best opportunity for stability and permanency while allowing the children to retain a relationship with their biological parents. In addition, the children's guardian ad litem (GAL) testified that the children expressed no concern about living with the aunt and that father had expressed a willingness to leave the children at the aunt's overnight.

Parents assert that the GAL's testimony lacked foundation because she did not conduct an independent investigation that included observing the children at the current homes of their mother or aunt. A GAL must independently investigate the facts relevant to the children's situation, including meeting with and observing the children in the home setting. Minn. Stat. § 260C.163, subd. 5(b)(1) (2010).

Here, until about two weeks before the permanency trial, the children were living with their grandmother. This was their "home setting." The record indicates that during

this proceeding, the GAL observed the children at their grandmother's, with father, at school, and at daycare. The record indicates that the GAL has been a party to the proceedings since November 2009. Prior to the permanency petition, the GAL had met with and talked to the children and observed the children visit both the aunt and the parents. Also she had observed father's anger toward the court and case workers. The GAL based her testimony on these extensive interactions and the recent reports of mother's relapse. We conclude the GAL fulfilled her duty to conduct an independent investigation and could provide an opinion on whether a transfer of custody was in the children's best interests.

Because the record indicates that neither of the parents is capable of caring for the children within a reasonably foreseeable time and that the children would suffer emotional damage from reunification with the parents, we conclude that the district court did not err by determining that a transfer of custody to the paternal aunt is in the children's best interests.

Affirmed.

Dated: