STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2136

In the Matter of the Welfare of the Child of:
L. M.-B. and Unknown,

Parents.

Filed May 23, 2011
Affirmed; motion denied
Ross, Judge

St. Louis County District Court
File No. 69DU-JV-09-1107

Terri A. Port Wright, Cloquet, Minnesota (for appellant)

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

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

ROSS, Judge

The district court terminated L.M.-B.'s parental rights to her son upon holding that she failed to rebut the presumption of parental unfitness triggered automatically when she lost her parental rights to her five older children. On appeal, L.M.-B. argues that she rebutted the presumption and that the district court erred by terminating her parental

rights without having made findings that doing so is in the child's best interests. We hold that L.M.-B. did not present evidence sufficient to rebut the presumption and that the district court made adequate findings regarding the child's best interests. We therefore affirm.

FACTS

L.M.-B.'s parental rights to her five children were terminated in 2007. She had failed to provide medical care for one of them, was married to a violent drug dealer, failed to have them regularly attend school, sought to have her one-year-old daughter adopted, and attended only one-fourth of her scheduled visits with the children after the county removed them from her home. After the district court terminated L.M.-B.'s parental rights, this court affirmed. *In re Welfare of Children of L.M.M.-B.*, No. A07-883, 2007 WL 3261595 (Minn. App. Nov. 6, 2007).

In October 2009, L.M.-B. gave birth to J.L. and St. Louis County filed a termination-of-parental-rights petition under Minnesota Statutes section 260C.301, subdivision 1(b) (2008), alleging that L.M.-B. is presumed palpably unfit to parent based on her previous involuntary terminations.

The district court ordered the county to make reasonable efforts to reunify L.M.-B. with her son. The plan sought to help L.M.-B. remedy her previously identified parental inadequacies. It required that she cooperate with a visitation schedule, seek mental-health treatment, complete a parenting course, abstain from alcohol and illegal drugs and undergo urinalyses, not associate with persons having criminal histories or untreated chemical dependency, appropriately supervise her son, maintain a violence- and

chemical-free home, remain law abiding and follow her probation conditions, and cooperate with social services and the guardian ad litem. Social services personnel agreed to continue case management and facilitate services.

L.M.-B. only initially complied with her plan. She attended all six sessions of a newborn parenting class. She had positive interactions with J.L. The county changed her supervised visits to unsupervised and was planning to reunify mother and child because of her apparent progress. But L.M.-B.'s social worker learned that she was exaggerating her participation in dialectical behavior therapy, a requirement of the reunification plan, and the county ended her unsupervised visitation. L.M.-B. missed one-third of her scheduled visits with J.L., and for most sessions that she did attend, she brought someone else along. She interrupted many of the already-short visits with cigarette-smoking breaks or to make phone calls, leaving someone else to watch the child. She gave last-minute notice of visit cancellations and her reasons were not compelling: she said she wanted to register for school (but she never registered); she claimed transportation difficulties; she slept in; and she said she was sick. She also missed about one-third of her appointments for services.

By fall 2010, the county again sought to terminate L.M.-B.'s parental rights. The district court heard testimony describing L.M.-B.'s progress toward becoming a fit parent. Since her 2007 termination case, L.M.-B. had left a violent marriage, rekindled a relationship with her sister, and had begun attending church. She was more responsive to services, and she attended more scheduled visits with J.L. than she had with the other children. But it also heard the evidence of her deficiencies. L.M.-B.'s social worker

summarized, "We are still back in the stages of, can we get her to visit consistently twice a week one year into her reunification." L.M.-B. admitted, "I think I honestly could try harder . . . [by] [b]eing more responsible, showing up, making my attendance better."

The district court found that L.M.-B.'s parenting had "improved since the time of the termination of her rights to her other children" but that she continues to miss substantial portions of crucial parenting events. It concluded that she failed to rebut the statutory presumption of palpable unfitness, that reasonable efforts were made to rehabilitate her, and that clear and convincing evidence demonstrated that termination of parental rights is in the best interests of the child. L.M.-B. appeals.

D E C I S I O N

L.M.-B. challenges the bases for the district court's decision to terminate her parental rights. A district court may involuntarily terminate parental rights when clear and convincing evidence supports a statutory basis for termination. Minn. Stat. § 260C.301, subd. 1 (2010); Minn. R. Juv. Prot. P. 39.04, subd. 1. On appeal, we examine the record to determine whether the district court applied the appropriate statutory criteria and made findings supported by substantial evidence. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 249 (Minn. App. 2003). We will affirm when clear and convincing evidence supports the decision and termination is in the child's best interest. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007).

I

L.M.-B. argues that the district court erred by concluding that clear and convincing evidence supports termination of her parental rights. A court may terminate

parental rights when a parent is palpably unfit to be a party to the parent-child relationship. Minn. Stat. § 260C.301, subd. 1(b)(4). When a parent has previously had her parental rights involuntarily terminated, the district court presumes that she is unfit to parent another child. *Id.* The parent can rebut this presumption with "sufficient evidence that would allow a factfinder to find parental *fitness.*" *T.D.*, 731 N.W.2d at 554.

The record supports the district court's decision that L.M.-B. has not so substantially complied with the reunification plan that she has rebutted the presumption of unfitness. We recognize that L.M.-B. made some progress against the presumption. But some progress does not demonstrate sufficient evidence to rebut the presumption. *See id*. And most of the evidence stood against her. Contradicting L.M.-B.'s insistence that she would do "whatever it took" to get her son back, for example, she missed many of her two-hour twice-a-week visits on matters of convenience and failed to meet other key terms of her plan. The district court was not sufficiently persuaded that she had fundamentally improved on her fitness to parent, leaving it no basis on which to hold that she had overcome the statutory presumption.

We also do not believe that the district court erred by concluding that the county provided reasonable reunification efforts. When a person has previously had parental rights terminated, an agency is not required to make efforts to reunite the parent and child. Minn. Stat. § 260.012(2) (2010). But the county voluntarily made what the district court fairly described as "extraordinary efforts to help her succeed."

L.M.-B. maintains, and the county concedes, that the district court erred by terminating her parental rights also under Minnesota Statutes section 260C.301,

subdivision 1(b)(5) (providing grounds for termination where reasonable efforts failed to correct the conditions that led to the child's out-of-home placement). That statutory basis for termination was not alleged in the petition. Because only one ground needs to be present for termination, this error concerning a second ground is harmless. *See In Re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

II

L.M.-B. next argues that the trial court erred by omitting fact findings regarding whether the termination of her parental rights was in J.L.'s best interests. Whether termination is in the child's best interests is the chief consideration. Minn. Stat. § 260C.301, subd. 7 (2010). A child's best interests may preclude termination of parental rights even when a statutory ground for termination has been conclusively proven. *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009). So a district court is required to make findings regarding best interests in all termination proceedings. *Id*.

L.M.-B. asserts that "there was no evidence presented that addressed the best interest of the child" and that the district court erroneously merged its analysis of unfitness and best interests. The district court did hear evidence about J.L.'s interests and found that the county "demonstrated by clear and convincing evidence that termination of [L.M.-B.'s] parental rights is in the best interests of the child." It found that J.L. requires a loving and stable home where his needs are met and that L.M.-B. cannot meet those needs. It concluded that it was not in J.L.'s best interest to be subjected to the neglectful treatment that L.M.-B.'s other five children faced and that L.M.-B. had not demonstrated that she could provide a better childhood for J.L.

L.M.-B. contends that the rules require more specific best-interest findings. The rules describe the requirement as follows:

> Before ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze: (i) the child's interests in preserving the parent-child relationship; (ii) the parent's interests in preserving the parent-child relationship; and (iii) any competing interests of the child.

Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). The district court could have elaborated more, but its analysis reflects that, in making its best-interests finding, it did sufficiently analyze these various interests. *Cf. In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003) (remanding because the district court made *no* best-interests findings or conclusions).

III

The county moved to strike L.M.-B.'s statement of facts from the record, claiming that the statement is inaccurate and argumentative in violation of the appellate rules. The facts in an appellate brief "must be stated fairly, with complete candor." Minn. R. Civ. App. P. 128.02, subd. 1(c). We need not "strike" L.M.-B's statement of facts; we simply refuse to consider any mischaracterized or unfair material when reaching our decision on the merits. *See State v. Lyons*, 423 N.W.2d 95, 99–100 (Minn. App. 1988), *review denied* (Minn. July 6, 1988).

Affirmed; motion denied.