STATE OF MINNESOTA
IN COURT OF APPEALS
A12-258

In the Matter of the Welfare of the Child of: T. N. J. G. a/k/a T. J., Parent.

Filed July 9, 2012
Affirmed
Rodenberg, Judge

Blue Earth County District Court
File No. 07JV113171

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Ross E. Arneson, Blue Earth County Attorney, Mark Lindahl, Assistant County Attorney, Mankato, Minnesota (for respondent)

Linda Havemeier, St. Peter, Minnesota (guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and Rodenberg, Judge.

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

RODENBERG, Judge

On appeal from the termination of her parental rights, appellant-mother argues that the record does not support the district court's determination that she failed to rebut the presumption that she is a palpably unfit parent, and that the district court erred in terminating her parental rights to the child. We affirm.

FACTS

Appellant T.N.J.G.'s parental rights to B.B.G., a minor child, were involuntarily terminated following a trial held on December 9, 2011.

B.B.G. is appellant's seventh child. Appellant's first four children were removed from her care after police found conditions in the family residence to be filthy and unsanitary and the children to be neglected. Appellant voluntarily consented to the adoption of those four children by her relatives.

Appellant's fifth child was born on January 1, 2009. Appellant's parental rights to that child were involuntarily terminated by the Ramsey County District Court on March 15, 2010. This termination was upheld by this court on appeal. *In re Welfare of Child of T.N.J.*, 2010 WL 3547211 (Minn. App. 2010). Appellant's sixth child was born on May 15, 2010. Appellant's parental rights to that child were involuntarily terminated by the Ramsey County District Court on December 16, 2010. B.B.G. was born in Blue Earth County, Minnesota, on June 28, 2011.

In July 2011, Ramsey County Human Services contacted Blue Earth County Human Services and reported that appellant's parental rights to two prior children had been involuntarily terminated and that appellant was pregnant and believed to be in Blue Earth County. A Ramsey County social worker indicated that appellant might be staying at a Mankato women's shelter, and a Blue Earth County social worker was able to confirm that a woman bearing appellant's name was staying at the shelter with an infant.

On July 13, 2011, Blue Earth County Human Services filed a child in need of protection or services (CHIPS) petition and obtained an emergency order allowing it to

take custody of B.B.G. for placement in foster care. The social worker and a law enforcement officer found appellant and B.B.G. at the women's shelter. Appellant initially denied that she was the person that Ramsey County had described, and she denied having lost custody of any previous children. However, appellant eventually permitted the social worker to take custody of B.B.G.

B.B.G. was then placed in the same foster home as one of her siblings. This particular foster home is for medically fragile children, which was appropriate given B.B.G.'s special needs, including hearing deficits and concerns with the baby's visual tracking and cognition.

After placing B.B.G. in foster care, Blue Earth County Human Services worked only to ensure that B.B.G.'s needs were being met and to coordinate parental visitation. The county did not prepare a reunification plan due to appellant's two prior involuntary terminations. Blue Earth County Human Services petitioned for termination of appellant's parental rights, alleging palpable unfitness to parent.

At trial, appellant testified that she had implemented her own plan to improve her situation: attending therapy, obtaining a high school diploma from an online school, and finding stable housing. Appellant testified that she was unemployed but looking for work and that her income from social security would be sufficient to meet her needs and B.B.G.'s needs. Appellant expressed her desire to parent B.B.G. and stated her belief that she could succeed despite her previous failures to parent her other children.

B.B.G.'s case manager was aware of some of the efforts made by appellant following the removal of B.B.G. and admitted that those efforts would have been part of

a case plan if the county had been required to prepare one. However, both the case manager and B.B.G.'s guardian ad litem recommended termination. The guardian ad litem noted that appellant had previously been able to make temporary improvements but had never been able to sustain them.

Appellant's therapist testified on appellant's behalf and indicated a belief that appellant could, with sufficient support, parent adequately. However, the therapist admitted on cross-examination that she had not known that appellant had voluntarily surrendered parental rights to four prior children, nor had she known that appellant's parental rights to two other prior children had been involuntarily terminated. The therapist also admitted that her opinion was based on only partial information because appellant had not yet completed the testing required for a full evaluation.

The district court issued an order terminating appellant's parental rights to B.B.G. In its order, the district court acknowledged that appellant had been attending therapy, had completed an online high-school program, and claimed to be looking for work. However, the district court found that these short-term improvements were insufficient to establish appellant's present ability to care for B.B.G. and found that "she has not shown that she is presently able to care for her child" and that she had not demonstrated that she was likely to sustain these improvements. The district court took judicial notice of the two prior termination orders and their findings and concluded that, given the recency of the involuntary termination of appellant's rights to her sixth child, appellant had not offered evidence sufficient to overcome the presumption that she was palpably unfit to parent B.B.G. The district court found that "the delay necessary to determine whether

[appellant] could successfully complete a case plan and demonstrate an ability to parent is not in the child's best interest."

D E C I S I O N

A district court order terminating parental rights is reviewed to determine whether the district court addressed the applicable statutory criteria, whether its findings were supported by substantial evidence, and whether its conclusions were clearly erroneous. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). A district court clearly errs when its decision "is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660–61 (Minn. 2008) (quotation omitted).

When a parent's rights to one or more other children have been involuntarily terminated, the parent is presumed to be palpably unfit to parent a child in all future termination proceedings. Minn. Stat. § 260C.301, subd. 1(b)(4) (2010). The burden of rebutting the presumption falls on the parent. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 250 (Minn. App. 2003). However, the presumption does not shift the burden of proof, and the state must still demonstrate by clear and convincing evidence that the statutory criteria have been met. *In re Welfare of Child of J.L.L.*, 801 N.W.2d 405, 412 (Minn. App. 2011), *review denied* (Minn. Jul. 28, 2011).

In order to overcome the presumption, the parent must introduce sufficient evidence to affirmatively and actively demonstrate her ability to successfully parent a child and allow a fact-finder to find parental fitness. *Id.* This is a "particularly onerous task" because to satisfy this burden, "the parent, with the assistance of counsel, is

inevitably required to marshal any available community resources to develop a plan and *accomplish results* that demonstrate the parent's fitness." *D.L.R.D.*, 656 N.W.2d at 251 (emphasis added).

Appellant argues that her efforts in obtaining a high-school diploma and enrolling in community college, entering individual therapy, participating in domestic abuse counseling, and maintaining stable housing for a five-month period are sufficient to rebut the presumption that she is palpably unfit to parent B.B.G.

The district court considered each of these facts, but concluded that they did not overcome the statutory presumption. It was not clear error for the district court to find that these facts are not "results" that demonstrate appellant's present fitness to parent B.B.G. The evidence with respect to appellant's therapy indicates that any progress is preliminary and that there was not enough evidence from which to draw conclusions as to appellant's long-term prospects. Appellant's receipt of a high-school diploma and enrollment in community college demonstrate commendable personal progress, but are not evidence of appellant's fitness as a parent. Finally, given appellant's long history of housing instability and periodic homelessness, the district court did not clearly err in finding that appellant's maintaining the same address for a five-month period was not a strong predictor of her prospects for long-term housing stability.

While acknowledging that some of the parts of appellant's plan for self-improvement would have been part of a case plan, the district court also properly noted that appellant's efforts had little direct connection with her present parenting ability. For example, appellant's therapist conceded that the treatment program was not focused on

improving appellant's parenting skills and had been prepared without the knowledge that appellant had voluntarily given up custody of four children and had her parental rights involuntarily terminated with respect to two other children.

Appellant also argues that the district court should have determined that appellant rebutted the presumption that she was palpably unfit to parent B.B.G. because appellant personally undertook efforts that would have been part of a case plan, had one been required.

As with her other arguments regarding her efforts at self-improvement, appellant disagrees with the district court's findings. But those findings are supported by the record. Moreover, appellant's parental rights were terminated under Minn. Stat. § 260C.301, subd. 1(b)(4), not under Minn. Stat. § 260C.301, subd. 1(b)(5) (2010) (relating to cases where reasonable efforts under the direction of the district court have not alleviated the conditions that led to the adjudication that a child was in need of protection or services), and the district court was not required to consider or address the latter provision.

To the extent that appellant is arguing that the district court should have allowed her more time to work on her self-imposed case plan, appellant has pointed to no authority that would have required such a delay. Properly focusing on the child's welfare, the district court found that termination without further delay was in the child's best interests. *See* Minn. Stat. § 260C.301, subd. 7 (2010) ("In any proceeding [for the termination of parental rights], the best interests of the child must be the paramount consideration.").

While appellant has made efforts to improve her situation, the district court did not clearly err in finding that she has not affirmatively and actively demonstrated her ability to successfully parent a child. Nor did it clearly err by finding that appellant had not rebutted the presumption that she is a palpably unfit parent. The district court's finding that termination was in the child's best interests is supported by the record.

Affirmed.