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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1176

In the Matter of the Welfare of the Child of: L. P. and F. P., Parents

Filed December 24, 2012
Affirmed
Connolly, Judge

St. Louis County District Court
File No. 69DU-JV-11-1094

Mark Rubin, St. Louis County Attorney, Joseph M. Fischer, Assistant County Attorney, Duluth, Minnesota (for respondent)

Terri Port Wright, Cloquet, Minnesota (for appellant-mother)

Keith Shaw, Duluth, Minnesota (for respondent-father)

Stephanie Carlson, Duluth, Minnesota (guardian ad litem)

Considered and decided by Rodenberg, Presiding Judge; Connolly, Judge; and Hooten, Judge.

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

CONNOLLY, Judge

On appeal from the involuntary termination of her parental rights, appellant-mother argues that the record does not support the district court's determination that the county made reasonable efforts to reunite the family and that the district court erred by not allowing appellant to voluntarily terminate her parental rights. Because the county

made reasonable efforts to reunite appellant and her child and because appellant waived the argument that the district court should have granted a voluntary termination of parental rights, we affirm.

FACTS

Appellant-mother, L.P., has a long and significant history of mental illness. Her history of mental illness began when she was a child and was placed in a children's home for seven or eight years where she was diagnosed with post-traumatic stress disorder, reactive attachment disorder, and oppositional defiant disorder. As an adult, appellant has continued to struggle with mental illness and has been diagnosed with bipolar disorder and personality disorder with borderline features. Appellant has also struggled with chemical dependency.

Due to her mental-health and chemical-dependency struggles, appellant has been civilly committed numerous times in Wilkin and St. Louis Counties. In Wilkin County, appellant was civilly committed as mentally ill on November 3, 2004; as chemically dependent on August 26, 2005; and as mentally ill and chemically dependent on August 7, 2006. In St. Louis County, appellant was civilly committed as mentally ill and chemically dependent on October 1, 2007 and on July 23, 2010.

In 2008, appellant became pregnant with her first child, I.S. Appellant and her husband at the time, G.S., came to respondent St. Louis County Public Health and Human Services Department and requested services to help them prepare for the birth of their baby. From August 29, 2008 to December 29, 2008, appellant received voluntary services from the Family Outreach Services Program. County social workers helped

appellant obtain maternity clothes, arranged for her to resume therapy with her psychologist, and referred appellant for housing, chemical-dependency assessments, and parenting classes. During this time, the county received numerous mandated maltreatment reports that respondent was exposing her unborn child to ongoing drug and alcohol use.

Appellant gave birth to I.S. on December 19, 2008. Due to appellant's continuing struggles with mental illness and chemical dependency, I.S. was placed in foster care upon discharge from the hospital, and the county filed a petition alleging that I.S. was a child in need of protection or services (CHIPS).

As part of appellant's court-ordered reunification plan, appellant was ordered to submit to a psychological evaluation and to follow the recommendations of the evaluation. Licensed psychologist Dr. Anita Schlank, Ph.D., A.B.P.P., evaluated appellant in June 2009 and recommended that appellant be referred to dialectical behavioral therapy (a combination of group and individual therapy aimed at teaching distress-tolerance skills), engage in a sober support network, abstain from mood-altering chemicals, and participate in chemical-dependency treatment and parenting classes. Appellant did not comply with her reunification plan, including the services recommended by Dr. Schlank. Following the filing of an involuntary termination of parental rights (TPR) petition, appellant voluntarily consented to the adoption of I.S. by his foster parents.

In April 2010, the county's initial intervention unit (IIU) received a report that appellant was four-months pregnant (with K.P., the subject of this appeal) and using

methamphetamine. In mid-May, appellant and her adult rehabilitative mental health services (ARMHS) social worker met with an IIU social worker. At that time, appellant did not want to engage in a case plan with the county. Three days later, the IIU social worker learned that appellant had been hospitalized after overdosing on Seroquel.

In July, the IIU received numerous reports about appellant. A mandated child-maltreatment report from the Duluth police department indicated that appellant was intoxicated while pregnant and was making suicidal statements. Another report indicated that appellant was hospitalized for intoxication. At the time of her admission, she was 29 weeks pregnant with a blood alcohol content of .07, and she tested positive for marijuana. A third report indicated that in January 2010, shortly after learning she was pregnant, appellant disclosed that she had used methamphetamine and had bumps and bruises on her arms. Appellant also admitted to drinking alcohol to the point of intoxication at least twice in January.

Appellant gave birth to K.P. prematurely on September 23, 2010. The next day, K.P. was placed on a protective police hold, and she was placed in foster care upon her discharge from the hospital. On September 29, 2010, the county filed a CHIPS petition. Christina Zierman, a child-protection social worker who had worked with appellant during her previous CHIPS case, was assigned to provide ongoing child-protection services to appellant and her husband, F.P. Zierman developed a reunification plan for appellant that appellant agreed to, and that the district court subsequently ordered.

The reunification plan required appellant to: (1) obtain safe and suitable housing for herself and K.P.; (2) abstain from the use of drugs and alcohol and submit to random

testing; (3) take all medications as prescribed; (4) maintain her mental health by attending therapy, meeting regularly with her psychiatrist, and maintaining consistent contact with her ARMHS worker; (5) attend and successfully complete the First Year parenting program; (6) participate in the Intensive Family Based Services (IFBS) Program; (7) demonstrate the ability to appropriately and independently care for K.P.; (8) submit to an updated psychological evaluation if deemed necessary; (9) cooperate with all service providers; (10) follow the conditions of her probation; (11) cooperate with and attend a consultation with a pain-management physician to determine if attendance at a pain management clinic is appropriate; and (12) attend all visitations with K.P.

Zierman did not recommend that appellant submit to an updated psychological evaluation because she believed the recent evaluation performed by Dr. Schlank 14 months earlier was still relevant and thorough. Appellant also did not want to submit to another evaluation and agreed to follow the recommendations developed by Dr. Schlank.

At the time the reunification plan was developed, there was no indication that domestic violence between appellant and F.P. was a significant issue. Appellant never requested domestic-violence services, and the extent of domestic violence between the two did not become apparent to Zierman until shortly before the TPR trial, when she obtained police and medical records. Moreover, Zierman believed that appellant's mental health and chemical dependency were "the two overriding concerns" that appellant needed to address in her reunification plan and did not want to overwhelm appellant with additional services.

Appellant was unable to comply with her reunification plan. She was unable to consistently maintain safe and suitable housing during the CHIPS proceeding, living in at least six different locations between the filing of the CHIPS proceeding and the TPR trial. While one of these apartments was deemed to be appropriate and suitable for the care of a young child, appellant and her husband were forced to leave this housing by their landlord due to the numerous police calls they generated at the residence.

Appellant was also unable to maintain or demonstrate sobriety and did not take her medication as prescribed. She missed 80% of her scheduled urinalysis tests (UAs) from September 12, 2011 through April 10, 2012. Evidence from law enforcement and medical reports demonstrate that appellant also continued to abuse chemicals during the time K.P. was in foster care. Additionally, appellant did not take her Adderall medication daily, as prescribed.

Appellant did not consistently comply with the mental-health-services component of her reunification plan. She did not meet with her therapist on a regular basis and stopped seeing him altogether in January 2012. She also stopped working with ARMHS staff in January 2012.

Appellant and her husband were referred to the First Year parenting program, a program designed to serve high-risk parents struggling with chemical dependency and mental-health issues. The program meets weekly, and participants are provided with reminder calls and cabs if needed to get them to the program. The program provides services from an infant and childhood mental-health consultant, an early childhood and family education teacher, a county social worker, a public health nurse, and a nutrition

specialist. Despite the extensive services and support provided by this program, appellant and F.P. were asked to leave the First Year parenting program in May 2012 because of their disruptive behavior and failure to follow group expectations.

Following dismissal from the First Year parenting program, appellant and F.P. were referred to the county's IFBS program, which provides one-on-one, in-home parenting education from a social worker and related family services from a therapist. Despite the individualized coaching, appellant and F.P. failed to successfully complete the IFBS program; they were terminated from the program after IFBS staff were unable to meet with them for over two months, despite repeated attempts to do so.

Due to their significant noncompliance with their court-ordered reunification plan, the county filed a petition to terminate the parental rights of appellant and F.P. A trial was held on March 9, April 18, May 10, May 11, and May 23. K.P.'s guardian ad litem recommended that the parental rights of both parents be terminated. At the conclusion of the trial, the district court gave the parties two weeks to submit final written arguments.

Appellant's counsel submitted proposed written findings on May 29, 2012. On June 4, 2012, F.P. appeared before the district court requesting to voluntarily terminate his parental rights, and the district court accepted his consent. Appellant submitted her final argument on June 8, at which time the record was deemed closed. On June 17, appellant's counsel notified the district court that appellant wanted to voluntarily terminate her parental rights. Counsel for appellant and the county met with the district court judge to discuss the matter. Because the record was closed and the county objected to appellant's request, the district court determined that appellant would not be allowed to

voluntarily terminate her parental rights to K.P. On June 25, the district court issued an order involuntarily terminating appellant's parental rights. This appeal follows.

D E C I S I O N

I. Reasonable Efforts

We will defer to the district court's termination decision if at least one statutory ground for termination is proved by clear-and-convincing evidence and if termination is in the child's best interests. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). The district court may terminate a party's parental rights if, "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) (2010). It is presumed that conditions have not been corrected if a parent has not substantially complied with the court's orders and case plan despite reasonable efforts of the social services agency. *Id.*, subd. 1(b)(5)(iii)-(iv).

"Reasonable efforts" means "the exercise of due diligence by the [county] to use culturally appropriate and available services to meet the needs of the child and the child's family." Minn. Stat. § 260.012(f) (2010). In determining whether reasonable efforts have been made, the district court must consider whether the services 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) (2010).

"Efforts to help parents generally are closely scrutinized, because public agencies may transform the assistance into a test to demonstrate parental failure." *In re Welfare of*

J.H.D., 416 N.W.2d 194, 198 (Minn. App. 1987), *review denied* (Minn. Feb. 12, 1988). Whether the county's services constitute "reasonable efforts" depends on the nature of the problem presented, the duration of the county's involvement, and the quality of the county's effort. *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). The assistance must go beyond mere matters of form, such as the scheduling of appointments, so as to include real, genuine help. *Id.* Such help must focus on the parent's specific needs. *In re Welfare of M.A.*, 408 N.W.2d 227, 235-36 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987).

The district court found that clear-and-convincing evidence demonstrated that appellant failed to comply with her court-ordered reunification plan and that the county made reasonable—indeed, made "extraordinary"—efforts to help appellant complete her reunification plan. Appellant argues that the district court abused its discretion in terminating her parental rights on the grounds that reasonable efforts by the county failed to correct the conditions that caused K.P.'s out-of-home placement. She asserts that the county did not assist her in finding safe and suitable housing, require an updated psychological evaluation, investigate whether a dual-treatment program for mental illness and chemical dependency was appropriate, refer her to a domestic-violence program, or provide her with alternative parenting education programs.

Appellant argues that the county did not assist her in finding safe and suitable housing. But appellant had safe and secure housing during her CHIPS matter that she subsequently lost due to her and her husband's behavior at the residence. She also argues that the county's efforts were not reasonable because the county did not require her to

submit to an updated psychological evaluation and instead relied upon the July 2009 evaluation by Dr. Schlank. But at the time appellant's CHIPS case for her daughter K.P. began, Dr. Schlank's evaluation was only 14 months old. There is nothing in the record to suggest that appellant's mental-health and chemical-dependency issues had materially changed in that time, and appellant's social worker believed that the evaluation was very relevant and thorough. Moreover, appellant did not wish to submit to another evaluation, never requested an updated evaluation, and agreed that she would comply with Dr. Schlank's evaluation as part of her reunification plan.

Next, appellant argues that the county's efforts to reunify her with K.P. were unreasonable because the county did not investigate whether a dual-treatment program for mental illness and chemical dependency was appropriate. But Dr. Schlank's psychological evaluation report did not recommend such a program for appellant, and appellant's chemical-dependency evaluator recommended that appellant participate in out-patient chemical-dependency treatment. On this record, there is no evidence to support appellant's contention that the county unreasonably failed to refer her to a dual-treatment program.

Appellant also argues that the county unreasonably failed to refer her to a domestic-violence program. But appellant's social worker testified that appellant's mental health and chemical dependency were the "two overriding concerns" that appellant needed to address in her reunification plan. Zierman testified that she believed appellant needed to address these two issues before addressing more complex issues like domestic violence. Moreover, appellant did not request domestic-violence services, and

Zierman was unaware of the extent of appellant's domestic-violence issues until shortly before the TPR trial when she had access to appellant's police records. On these facts, the county's decision not to add domestic-violence programming to appellant's reunification plan was not unreasonable.

Finally, appellant argues that the county unreasonably failed to provide her with alternative-parenting education programs. She argues that her mental illness affected her ability to do well in group settings and that the county should have provided an alternative program. But an alternative to the First Year group-parenting classes was offered—the IFBS program that appellant subsequently participated in was a one-on-one, in-home parenting program. Appellant was discharged from the program due to her failure to attend sessions, despite repeated reminders and attempts to contact her. The record demonstrates that the county made reasonable efforts to provide appellant with an appropriate parenting program.

II. Voluntary Termination

Appellant argues that the district court erred by allowing F.P. to voluntarily terminate his parental rights, while denying appellant the same right. She argues that she was not given proper notice of the hearing at which F.P. voluntarily terminated his parental rights and that, had she received notice, she may also have taken advantage of the opportunity to do so. *See* Minn. R. Juv. Prot. P. 32.04 (noting that court administration is required to provide written notice at least five days prior to a hearing, unless written notice is provided at a prior hearing).

But appellant has waived this argument. Below, appellant did not request to voluntarily terminate her parental rights until after the record was closed. *See* Minn. R. Juv. Prot. P. 39.03, subd. 2(b)(10) ("[I]f written argument is to be submitted . . . the trial is not considered completed until the time for written arguments to be submitted has expired"). And, while she argues that she may have voluntarily terminated her rights at the same time as F.P., the record shows that appellant had already submitted her final written submissions to the court several days before F.P.'s voluntary TPR hearing, and had not requested a voluntary TPR at that time. Nor did appellant submit the required written statement of good cause that is a prerequisite to the district court accepting her request to voluntarily terminate her parental rights. *See* Minn. Stat. § 260C.301, subd. 1(a) (2010) (providing that the district court may terminate parental rights upon petition and "with the written consent of a parent who for good cause desires to terminate parental rights"). Moreover, she did not file a timely posttrial motion asking for voluntary termination or arguing that she had not received timely notice of F.P.'s voluntary termination. Therefore, appellant did not preserve this issue for appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also In re Welfare of D.D.G.*, 558 N.W.2d 481, 485 (Minn. 1997) ("The gravity of termination proceedings in general is not a sufficient reason to abandon our established rules of appellate argument.").

Affirmed.