STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1758

In the Matter of the Welfare of the Children of: R. D. L., Parent.

Filed March 11, 2013
Affirmed
Toussaint, Judge[*]

Hennepin County District Court
File No. 27-JV-1-8351

William M. Ward, Hennepin County Public Defender, Kellie M. Charles, Assistant Public Defender, Minneapolis, Minnesota (for appellant R.D.L.)

Michael O. Freeman, Hennepin County Attorney, Cory Carlson, Assistant County Attorney, Carrie Weber (certified student attorney), Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

Shirley Reider, St. Paul, Minnesota (guardian ad litem)

Considered and decided by Johnson, Chief Judge; Rodenberg, Judge; and Toussaint, Judge.

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

TOUSSAINT, Judge

Appellant-mother R.D.L. challenges the district court's termination of her parental rights, arguing that (1) the termination of her parental rights was not supported by clear and convincing evidence; (2) the district court erred by determining that termination of

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

her parental rights was in the best interests of the children; and (3) the district court's evidentiary rulings violated due process and deprived her of a fair trial. We affirm.

D E C I S I O N

I.

"Parental rights are terminated only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). We "must determine whether the [district] court's findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether those findings are clearly erroneous." *Id.* "Termination of parental rights will be affirmed as long as at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). In addition, we "defer to the district court's determinations of witness credibility and the weight to be given to the evidence." *In re Welfare of the Child of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007).

Reasonable Efforts Failed to Correct Conditions Leading to Out-of-Home Placement

Minn. Stat. § 260C.301, subd. 1(b)(5) (2012) provides that parental rights may be terminated if the district court finds "that following the child's placement out of home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." We presume that reasonable efforts have failed if (1) the child was under eight years old when the CHIPS petition was filed, and the child has remained in out-of-home placement for six months; (2) the court has approved the

out-of-home placement plan; (3) conditions leading to out-of-home placement have not been corrected; and (4) social services has made reasonable efforts to rehabilitate the parent and reunite the family. *Id.* The services provided must go beyond mere matters of form, "so as to include real, genuine help to see that all things are done that might conceivably improve the circumstances of the parent and the relationship of the parent with the child." *In re Welfare of J.A.*, 377 N.W.2d 69, 73 (Minn. App. 1985), *review denied* (Minn. Jan. 23, 1986).

Appellant argues that clear and convincing evidence does not support the district court's conclusion that reasonable efforts failed to correct conditions leading to the children's out-of-home placement. We disagree.

Here, reasonable efforts by Hennepin County Human Services (HCHS) and the Public Health Department (PHD) failed to correct conditions leading to the children's out-of-home placement. Consistent with HCHS's and the PHD's recommendations, the district court adopted a case plan calculated to remedy the issues that resulted in the children's out-of-home placement. The district court specifically credited the testimony of a social worker, who testified that the case plan was relevant to the safety of the children, adequate to meet the children's needs, adequate to meet appellant's needs, culturally appropriate, timely and consistent, and realistic under the circumstances. Nevertheless, appellant failed to complete several case-plan goals: (1) she failed to complete a rule 25 evaluation and follow recommendations because she provided no credible documentation that she attended an alcoholics anonymous program; (2) she failed to provide random, clean urinalaysis tests (UAs); and (3) she failed to obtain safe

and suitable housing free from domestic violence, criminal activity, and use of controlled substances. Moreover, appellant continued to have contact with J.W., Sr., who refused to be involved in case-plan services, violated court orders, and verbally abused appellant at least once during the pendency of this case. Despite the presence of reasonable efforts from HCHS and the PHD, appellant failed to address the issues that led to the children's out-of-home placement.

We conclude that clear and convincing evidence supports the district court's termination of appellant's parental rights under section 260C.301, subdivision 1(b)(5).

Children Neglected and in Foster Care

The district court also concluded that appellant's parental rights should be terminated under Minn. Stat. § 260C.301, subd. 1(b)(8) (2012), which provides that parental rights may be terminated if a "child is neglected and in foster care." This means that (1) the child has been placed in foster care by court order; (2) the child's "parents' circumstances, condition, or conduct are that the child cannot be returned to them"; and (3) the "parents . . . have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child." Minn. Stat. § 260C.007, subd. 24 (2012).

Appellant argues that the record lacks clear and convincing evidence to support the district court's conclusion that the children were neglected and in foster care. We agree.

Although appellant ultimately failed to complete her case plan, she made efforts to adjust her circumstances: she completed a rule 25 evaluation and inpatient treatment, underwent a mental health assessment, completed a parenting assessment, and obtained housing at Portland Village. The evidence also shows that appellant consistently visited her children while they were in out-of-home placement. Thus, we conclude that clear and convincing evidence does not support the district court's termination of appellant's parental rights under section 260C.301, subdivision 1(b)(8).

Neglected the Duties of the Parent-Child Relationship

Minn. Stat. § 260C.301, subd. 1(b)(2) (2012), provides that the district court may terminate parental rights if the parent neglects the duties of the parent-child relationship. The district court must find:

> that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable[.]

Id. The district court's decision to terminate parental rights must be based on the parent's failure to care for and nurture the children at the time of the hearing and into the future. *In re Welfare of M.M.D.*, 410 N.W.2d 72, 75 (Minn. App. 1987). Failure to satisfy key elements of the court-ordered case plan demonstrates a parent's lack of compliance with

the duties of the parent-child relationship. *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003).

Appellant argues that clear and convincing evidence does not support the district court's conclusion that she neglected the duties of the parent-child relationship. Because we conclude that the district court erred by admitting into evidence reports from the Colorado Department of Human Services (CDHS) and St. Joseph's Children's Home under the business-records exception, *see infra*, Part III., we agree.

Here, in concluding that appellant neglected the duties of the parent-child relationship, the district court stated that appellant "had child protection cases on four other occasions in four other states. The child protection cases are open due to allegations of drug abuse, domestic violence, and a lack of safe and stable housing." Moreover, the district court concluded, "The opening of child protection cases has caused the parents to move the children, uprooting [them] from a stable home and their schools." These statements show that the district court relied heavily on the CDHS report in concluding that appellant neglected the duties of the parent-child relationship. But as we conclude that the district court erroneously admitted the CDHS report under the business-records exception to the hearsay rule, the record upon which the district court could properly rely lacks sufficient evidence that appellant *substantially*, *continuously*, or *repeatedly* refused or neglected to comply with the duties of the parent-child relationship.

We therefore conclude that clear and convincing evidence does not support the district court's termination of appellant's parental rights under section 260C.301, subdivision 1(b)(2).

II.

"[T]he guiding principle in child-custody matters is to satisfy the best interest of the child, and the law leaves scant if any room for an appellate court to question the [district] court's best-interests considerations." *In re Child of Evenson*, 729 N.W.2d 632, 635 (Minn. App. 2007), *review denied* (Minn. June 19, 2007). "We review a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

Minn. R. Juv. Prot. 39.05, subd. 3(b)(3) enumerates best-interests factors the district court must consider before terminating a person's parental rights, including: "(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." "Where the interests of parent and child conflict, the interests of the child are paramount." Minn. R. Juv. Prot., subd. 3(b)(5). Competing interests include a stable environment, health considerations, and the child's preferences. *J.R.B.*, 805 N.W.2d at 905.

Appellant argues that the district court abused its discretion by determining that termination of appellant's parental rights would serve the children's best interests. We disagree. With regard to the children's best interests, the district court found that "[t]he parents will not be able to care for the children for the reasonably foreseeable future," and "[n]o alternative permanency outcomes were requested by any of the parties, with the

exception of reunification by [appellant], and no alternative permanency options were available." Moreover, the district court concluded that:

> the children's interest in maintaining a safe and stable environment mandates termination of [appellant's] rights. It is well documented that some or all of the children . . . have been exposed to the issues that brought this case to [district court]. There is little question that if the children were reunited with their mother they would very quickly return to living in an unstable, violent and chaotic situation.

Given that the district court specifically weighed the interests of the children and appellant, we will not question the district court's best-interest considerations. The record provides clear and convincing evidence that the children's need for a safe and stable environment outweighs appellant's interests in maintaining the parent-child relationship. We conclude that the district court did not abuse its discretion by determining that termination of appellant's parental rights is in the children's best interests.

III.

Appellant argues that the district court abused its discretion by admitting into evidence various reports under the business-records exception. "The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). "Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Id.* at

46 (quotations omitted). We are bound by the district court's decision unless it "exercised its discretion arbitrarily, capriciously or contrary to legal usage." *Id.*

Hearsay is an out-of-court statement offered as evidence to prove the truth of the matter asserted. Minn. R. Evid. 801(c); *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). The rules of evidence bar admission of hearsay evidence unless it fits under a recognized exception. *See* Minn. R. Evid. 802 (barring admission of hearsay), 803 (listing exceptions to the hearsay rule), and 804 (same).

The business-records exception is a recognized exception to the hearsay rule that permits admission of "[a] memorandum, report, record, or data compilation, in any form," "if kept in the course of a regularly conducted business activity." Minn. R. Evid. 803(6). This exception requires (1) that the evidence was kept in the course of regular business, (2) that it was the regular practice of the business to make it, and (3) that foundation is shown by the custodian of the evidence or other qualified witness. *Nat'l Tea Co. v. Tyler Refrigeration Co.*, 339 N.W.2d 59, 61 (Minn. 1983). Although the custodian need not testify, the witness laying foundation must be familiar with how the business compiles its records. *See Simon*, 662 N.W.2d at 160-61 (holding that a therapist's evaluation letters were inadmissible under the business-records exception because the witness, a social worker, was unfamiliar with the therapist's method for compiling records).

Here, the district court admitted into evidence a CDHS report and four reports from St. Joseph's Children's Home. Respondent offered these exhibits into evidence through a child-protection social worker. The social worker has a master's degree in

social work and has worked as a social worker for Hennepin County for seven years. The social worker was not the custodian of any of the reports; nevertheless, respondent attempted to lay foundation for the reports using her testimony:

Respondent's attorney:	Now, I want to show you Exhibits 12, 15, 16, 17, and 18. You had a chance to look at those prior to testifying?
Social worker:	Yes, I have.
. . .	
Respondent's attorney:	And in your view of those exhibits, were they made at or near the time of the acts, events, conditions, opinions or diagnoses that are indicated in the exhibits?
Appellant's attorney:	Objection, this witness can't answer that.
Respondent's attorney:	She certainly can. She can read the exhibits and tell if they were made at or near the time.
Appellant's attorney:	She can't testify as to [when] other people made reports, your Honor.
. . .	
District court:	I will allow you to try to answer the question if you can.
Social worker:	Yes, I can, because I'm reading the dates of the reports and I have no reason to believe that they are false.

Respondent's attorney:	Were the exhibits made by persons who had knowledge of the acts, events, conditions, opinions, or diagnoses in the exhibits?
Social worker:	Yes.
Appellant's attorney:	Objection. I don't think she can answer that question either, your Honor.

The district court allowed the social worker to answer the question, and she testified that (1) she routinely receives reports from other agencies; (2) she has seen reports like these in the past; (3) the exhibits appear to be made by a person who has knowledge of the acts or conditions and things; and (4) that to her knowledge, the exhibits were kept in the ordinary course of business. Over appellant's objection, the district court admitted into evidence all of the exhibits.

We conclude that, because respondent failed to lay proper foundation, the exhibits were inadmissible under the business-records exception. The social worker was not the custodian of the evidence, nor was she qualified to provide foundation for either agency. In several cases, the supreme court or this court has affirmed the admission of child-protection reports under the business-records exception, even though the custodian did not provide foundation. *See, e.g.*, *In re Welfare of Brown*, 296 N.W.2d 430, 435 (Minn. 1980) (holding that the district court did not commit reversible error by admitting medical and social workers' reports under the business-records exception); *see also In re Welfare of R.T.*, 364 N.W.2d 884, 886 (Minn. App. 1985) ("The reports of social workers and psychologists of the children's emotional condition are admissible as business

records under Minn. R. Evid. 803(6).”). But in *Simon*, we addressed the admissibility of business records for which a social worker, who was not the evidentiary custodian, attempted to provide foundational testimony. 662 N.W.2d at 162. This court ruled the evidence inadmissible because there was no evidence that the social worker “was familiar with how [the therapist] compiled her records” or that the social worker “participated with [the therapist] in an evaluation.” *Id.* at 160.

This case is analogous to *Simon*. Here, the social worker testified that to her knowledge, all of the exhibits (1) were made at or near the time of the acts and the events; (2) appear to be made by a person who has knowledge of the acts; (3) were kept in the normal and ordinary course of business of those agencies; and (4) were kept as part of the regular practice of the business. But there was no evidence that the social worker was *actually* familiar with how the other agencies compiled their records, or whether she *actually* knew the people who prepared those records, or when the records were *actually* prepared. The social worker testified to the best of her “knowledge” and to the best of her “understanding”; however, her knowledge and understanding of the reports were naturally limited. The social worker seemed to be more familiar with St. Joseph’s recordkeeping, stating that “[e]very child that comes through St. Joseph’s has this report.” But again, the social worker’s knowledge that every child has these reports does not establish that she was familiar with how St. Joseph’s compiles its records. Like the social worker in *Simon*, there was no evidence that the social worker here was familiar with how either agency compiled its records, or that the social worker participated with

either agency in making the reports. Consequently, we conclude that the district court abused its discretion by admitting the exhibits under the business-records exception.

Relying on *State v. Salazar*, 504 N.W.2d 774 (Minn. 1993), respondent argues that, in child-protection cases, social workers are always qualified to lay foundation for the records of other agencies because "they work as part of a team." But the Department's reliance on *Salazar* is misplaced. In *Salazar*, the issue was whether a child's "statements to a social worker who interviewed her as part of the team examination at the hospital" were admissible. *Id.* The supreme court held that the social worker "was a member of the medical diagnostic team and therefor Rule 803(4) applied." *Id.* at 778. Rule 803(4) deals with the hearsay exception for statements made for the purpose of medical diagnosis or treatment, not the business-records exception. Thus, the Department's reliance on *Salazar* is unpersuasive.

Even if the district court erred, the errors were harmless unless they were prejudicial. *Simon*, 662 N.W.2d at 162. Appellant argues that the district court's errors were prejudicial because she had no opportunity to cross-examine the custodians.

But the exhibits were not necessarily prejudicial to appellant; her parental rights would have been terminated regardless of whether the district court erroneously admitted the exhibits. The CDHS report did not factor into the district court's conclusion to terminate appellant's parental rights under section 260C.301, subdivision 1(b)(5) (reasonable efforts failed to correct conditions leading to children's out-of-home placement), which we affirm today. Rather, the district court relied almost exclusively on the testimony of a child-protection social worker, who testified that the court-ordered

case plan was calculated to provide a meaningful opportunity to address the issues that led to the children's out-of-home placement. The social worker testified that the case plan was adequate to meet the children's and appellant's needs, and that the case-plan was realistic under the circumstances. Nevertheless, appellant failed to meet several key components of the case-plan and thereby failed to address the issues that led to her children's out-of-home placement. Thus, the district court's errors were harmless with regard to the district court's termination decision for failure of reasonable efforts to correct out-of-home placement conditions under section 260C.301, subdivision 1(b)(5).

The district court relied almost exclusively on the CDHS report when it concluded that appellant neglected the duties of the parent-child relationship. Without the CDHS report, the record lacks clear and convincing evidence that appellant substantially, continuously, and repeatedly neglected her duties. Therefore, we conclude that the district court's error was prejudicial to appellant with regard only to the district court's conclusion under section 260C.301, subdivision 1(b)(2).

Finally, because we previously concluded that insufficient evidence supported the district court's determination that appellant's children were neglected and in foster care, *see supra*, Part I., we need not address whether the error was prejudicial to appellant under section 260C.301, subdivision 1(b)(8).

Affirmed.