STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0131

In the Matter of the Welfare of the Child of: J. V. B. and D. W., Parents

Filed July 22, 2013
Affirmed
Stauber, Judge

St. Louis County District Court
File No. 69DU-JV-12-242

Amy Lukasavitz, Duluth, Minnesota (for appellant mother)

Mark Rubin, St. Louis County Attorney, Benjamin M. Stromberg, Assistant County Attorney, Duluth, Minnesota (for respondent St. Louis County Public Health and Human Services Department)

Char Matheson, Duluth, Minnesota (guardian ad litem)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Stauber, Judge.

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

STAUBER, Judge

Appellant-mother challenges the district court's termination of her parental rights, arguing that she rebutted the presumption that she is palpably unfit to be a party to the parent-child relationship. In the alternative, appellant argues that the district court erred by transferring custody of the child to the commissioner of human services. We affirm.

FACTS

Appellant-mother, J.V.B., is the biological mother of U.J.W., who was born on March 18, 2010. On March 24, respondent St. Louis County Public Health and Human Services Department (the county) petitioned the district court to terminate J.V.B.'s parental rights to U.J.W. because her parental rights to a prior child had been involuntarily terminated, she has an extensive criminal history, and she tested positive for methamphetamine and marijuana at 38 weeks pregnant with U.J.W. The district court awarded temporary custody of U.J.W. to the county following an emergency hearing, and U.J.W. was placed in out-of-home care.

On July 19, the county amended the termination of parental rights (TPR) petition to a child in need of protection or services (CHIPS) petition. U.J.W. remained in out-of-home placement while J.V.B. worked on a reunification plan. On October 11, the district court returned U.J.W. to J.V.B.'s custody under the county's protective supervision, noting J.V.B.'s cooperation with the reunification plan including maintaining sobriety and appropriate housing, working with intensive family based services to improve her parenting, and working with the public-health nurse. The CHIPS case was closed on December 6.

On February 27, 2012, J.V.B. pleaded guilty to felony manufacturing/delivering methamphetamine in Wisconsin stemming from an incident that occurred in May 2011. On that same day, the county received a report that J.V.B.'s home had been raided by police approximately two weeks earlier due to allegations of drug sales occurring in the home. The report indicated that police had discovered methamphetamine in the home

and that children were present. On March 5, the county petitioned the district court to terminate J.V.B.'s parental rights to U.J.W. An emergency hearing was held, and the district court placed U.J.W. in foster care.

The county provided J.V.B. with a reunification plan, which included undergoing a chemical-dependency assessment and following the recommendations, maintaining sobriety, submitting to urinalyses as requested, participating in visits with U.J.W., attending at least two AA/NA meetings per week, and obtaining a sponsor. J.V.B. submitted to eight urinalyses between March 28 and April 17, all of which were negative, and cooperated with the remaining aspects of her reunification plan. But on April 27, J.V.B. began serving a four-year prison sentence stemming from the Wisconsin controlled-substance conviction.

The district court held a trial on the county's TPR petition over several days in November and December. In the midst of the TPR trial, J.V.B. pleaded guilty to third-degree controlled-substance sale and felony storing methamphetamine paraphernalia in the presence of a child stemming from the police raid of J.V.B.'s home in February. The district court heard testimony from nine witnesses and admitted 22 exhibits into evidence. The district court terminated J.V.B.'s parental rights to U.J.W., and this appeal follows.

D E C I S I O N

J.V.B. makes two arguments on appeal. First, she challenges the district court's termination of her parental rights, arguing that she rebutted the presumption that she is palpably unfit to be a party to the parent-child relationship. In the alternative, she argues that the district court "failed to adequately discover, consider or provide for [U.J.W.'s]

best interest when [the county] failed to identify and engage important relatives." These arguments will be considered in turn.

I.

"[P]arental rights may be terminated only for grave and weighty reasons." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). A district court's decision in a termination proceeding must be based on evidence concerning the conditions that exist at the time of trial. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007). An appellate court "exercises great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). On appeal we examine the record to determine whether the district court applied the appropriate statutory criteria and made findings that are not clearly erroneous. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 249 (Minn. App. 2003). A finding is clearly erroneous when "it 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). We give the district court's decision considerable deference, but "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

A district court may terminate parental rights to a child if the district court finds that the parent

> is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly

> relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4) (2012). "It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that the parent's parental rights to one or more other children were involuntarily terminated. . . ." *Id.* "Under these circumstances, the parent has the burden of rebutting the presumption of palpable unfitness." *D.L.R.D.*, 656 N.W.2d at 250. Because J.V.B.'s parental rights to her first child were involuntarily terminated, she is presumed to be palpably unfit and bears the burden of rebutting that presumption.

The district court determined that J.V.B. failed to rebut the presumption and is therefore palpably unfit to parent U.J.W, finding that

> [J.V.B.] has, by her own admission, suffered from an addiction to methamphetamine for more than 15 years. Despite her participation in numerous chemical dependency programs, several stints on probation, and having [U.J.W.] removed from her care previously, she managed to last only a few months after the last juvenile protection matter was closed before resuming her criminal activity. Accepting her contention that she was sober when she made the decision to engage in methamphetamine trafficking in Wisconsin does nothing to help her cause when she was undeniably (based on her testimony and recent guilty plea) using and selling methamphetamine in Minnesota several months later.

The court continued:

> Even setting aside [J.V.B.'s] chronic chemical abuse and criminal activity, it would be, at best, at least nine months before [J.V.B.] could be out of prison and in a position to actually parent [U.J.W.]. That is assuming, of course, that her

> Minnesota criminal matters are resolved with no additional incarceration, that she is accepted into [a] bootcamp program, able to start that program immediately, and able to complete it without any significant setbacks. By that time [U.J.W.] would be three and a half years old and would have spent in excess of two of the years being cared for by someone other than [J.V.B.]

J.V.B. does not challenge these factual findings. Rather, J.V.B. argues that at trial she presented

> clear and convincing evidence that she has taken and is taking the steps necessary to correct the issues associated with the prior case, and that she is bonded with her son, has demonstrated the ability to care appropriately for him, and that these skills and abilities will be carried into the future.

First, it is undisputed that J.V.B. is bonded with U.J.W. The district court noted that there is "no doubt that [J.V.B.] desperately loves [U.J.W.]." And J.V.B. has sent U.J.W. numerous letters, pictures, and drawings from prison. But this bond does not preclude TPR. *See In re Welfare of A.D.*, 535 N.W.2d 643, 650 (Minn. 1995) (concluding that mother's love for child and desire to regain custody were not sufficient where she failed to demonstrate requisite parenting skills); *In re Welfare of A.J.C.*, 556 N.W.2d 616, 622 (Minn. App. 1996) (concluding that despite appellant's love for and bond with children, her inability to comply with parental duties due to alcoholism and drug addiction warranted termination), *review denied* (Minn. Mar. 18, 1997). Moreover, as the district court aptly concluded, "[g]iven the severity and chronicity of her addiction, there does not appear [to be] any reasonable probability of [J.V.B.] maintaining sobriety for a significant period of time in the foreseeable future" and "[f]ar from demonstrating

'affirmative and active' evidence of her ability to parent, [J.V.B.] offers only a vague and distant possibility of being in a position to parent [U.J.W.]."

The record indicates that J.V.B. has taken affirmative steps to improve her situation. Before being incarcerated, J.V.B. submitted to eight urinalyses, all of which were negative, and was cooperative with the remaining aspects of her reunification plan. She also testified at trial that she is engaging in prison programming, including participating in the maximum number of religious programs allowed by prison regulations, attending Alcoholics Anonymous meetings, participating in education and vocational programming, and working full-time in the kitchen where she was quickly promoted from dishwasher to cook. But J.V.B.'s recent successes fail to outweigh the fact that only six months after the CHIPS case was closed, J.V.B. was, by her own admission, trafficking methamphetamine in Wisconsin. And less than a year later, police found methamphetamine in her home when children were present. J.V.B. has numerous drug-related convictions and has completed chemical-dependency treatment six or seven times. Moreover, J.V.B. admits that it will be "a few years" before she can resume caring for U.J.W. J.V.B.'s love for her child, her approximately seven-week compliance with the reunification plan, and her commendable actions in prison are simply insufficient to overcome her significant chemical dependency and criminal history stretching back over a decade. *Cf. In re Welfare of J.W.*, 807 N.W.2d 441, 446–47 (Minn. App. 2011) (reversing the district court's conclusion that mother had not rebutted a presumption of unfitness where mother introduced evidence that she had changed in significant and material ways since the prior TPR proceedings, that she had conducted herself

appropriately when engaged in supervised visits of her biological children, that she had made significant progress in her parenting skills through parenting classes and dialectical behavioral therapy, that she had a greater support network than she previously enjoyed, and that she had a more stable living environment than in the past), *review denied* (Minn. Jan. 6, 2012); *In re Welfare of the Child of J.L.L.*, 801 N.W.2d 405, 412–13 (Minn. App. 2011) (affirming the district court's conclusion that mother had rebutted a presumption of unfitness where, among other things, mother had been sober for more than two years at the time of trial, was committed to avoiding unhealthy relationships that might affect her sobriety or the child's safety, participated in individual therapy, and sought and participated in supervised visitation with the child), *review denied* (Minn. July 28, 2011). Appellant has therefore failed to rebut the presumption that she is palpably unfit to parent U.J.W.

In sum, substantial evidence clearly and convincingly demonstrates that J.V.B. "is palpably unfit to be a party to the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(4).

II.

J.V.B. argues that "[i]n transferring guardianship to the commissioner of human services, the [district] court failed to adequately discover, consider or provide for [U.J.W.'s] best interest when social services failed to fulfill its duty to identify and engage important relatives." J.V.B. therefore asks this court "to reverse and remand the

[district] court order for transfer of legal and physical custody of U.J.W. to his known but unrecognized, suitable and welcoming relatives, Julie and Larry Koski."[1]

The district court concluded that "[i]t is in the child's best interest that all parental rights of the mother, [J.V.B.], to the child, [U.J.W.], be terminated and guardianship be transferred to the Commissioner of Human Services for purposes of adoptive placement." The district court noted that "although much of the testimony at trial concerned the issue of the possible placement of [U.J.W.] with the Koskis, that is not the issue before the Court because no competing permanency petition has been filed," and that "a termination of parental rights does not foreclose the possibility of the Koskis seeking placement of [U.J.W.] in a subsequent adoption proceeding."

"When the court terminates parental rights of both parents . . .

> [t]he court *shall* order guardianship of a child to the commissioner of human services when the responsible county social services agency had legal responsibility for planning for the permanent placement of the child and the child was in foster care under the legal responsibility of the responsible county social series agency at the time the court orders guardianship to the commissioner.

Minn. Stat. § 260C.325, subd. 1(a), (b) (2012) (emphasis added). In this case, the county had legal responsibility for planning for the permanent placement of U.J.W. and placed U.J.W. in foster care. The district court therefore had no option but to transfer

[1] The Koskis are close personal friends of J.V.B., and she considers them family. For juvenile-protection purposes, "'[r]elative' means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact." Minn. Stat. § 260C.007, subd. 27 (2012).

guardianship of U.J.W. to the county following termination of J.V.B.'s parental rights. *See* Minn. Stat. § 645.44, subd. 16 (2012) ("'Shall' is mandatory.").

J.V.B. could have petitioned the district court to transfer custody of U.J.W. to the Koskis in lieu of a termination of her parental rights. *See* Minn. R. Juv. Prot. P. 33.01, subd. 4(b) ("[A]ny other party may seek . . . termination of parental rights or transfer of permanent legal and physical custody to a relative."). She failed to do so. The district court therefore only had one permanency petition to consider: the county's TPR petition. And, after deciding that termination of J.V.B.'s parental rights was in U.J.W.'s best interest, the district court was statutorily mandated to transfer guardianship to the county. *See* Minn. Stat. § 260C.325, subd. 1(a), (b).

Affirmed.