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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0566

In the Matter of the Welfare of the Child of: T.V., Parent

Filed October 15, 2013
Affirmed
Peterson, Judge

Ramsey County District Court
File No. 62-JV-12-2681

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Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Ross, Judge.

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

PETERSON, Judge

In this appeal from the termination of her parental rights, appellant-mother argues that the record does not support the district court's determinations that: (1) the county made reasonable efforts to correct the conditions that led to her child's out-of-home

placement; (2) she refused or neglected to comply with her parental duties; and (3) she is palpably unfit to parent her child. We affirm.

FACTS

M.V. was born to appellant-mother T.V. on April 24, 2003. M.V. has spina bifida and, due to her physical condition, she requires frequent, specialized medical care and uses a wheelchair; she also has significant cognitive delays. Mother has an adjustment disorder that affects her emotional stability and conduct, and she is cognitively disabled and has limited ability to read and write. Until his death in May 2011, mother's father provided most of M.V.'s care.

In September 2011, an acquaintance of mother's called police to report that mother had left M.V. with her for several days, and she did not know how to care for the child. Police took M.V. to the hospital, where staff discovered that she had a urinary tract infection and that her respiratory machine was filthy. When mother visited M.V. at the hospital, M.V. "became so upset that she began to vomit." Mother was verbally abusive toward hospital staff when they tried to obtain medical information from her; consequently, she was barred from the hospital.

M.V. was released from a 72-hour protective hold after mother agreed to a family assessment and safety plan for the child, which required mother to make proper care arrangements for M.V. and barred mother's friend J.D. from residing with mother and the child. The district court later found that J.D. was convicted of both fourth-degree criminal sexual conduct and failure to register as a sex offender, and that he remains untreated.

In November 2011, after school staff reported that J.D. was seen putting M.V. on the school bus and appeared to be living with mother, M.V. was placed in foster care with her maternal grandmother and step-grandfather, T.S. and G.S. A guardian ad litem was appointed for M.V. in December 2011.

The child-protection caseworker assigned to the family in December 2011, James Brink, prepared an out-of-home placement plan in January 2012, which, according to Brink, mother refused to sign because it did not permit her to maintain contact with J.D. An updated March 2012 plan required mother to address four areas: family connections, violence, her own mental health, and M.V.'s well-being. With regard to the first two areas, mother was required to work toward repairing her family relationships to gain support for M.V. and "to not have anyone with a criminal background that poses a threat to children around her daughter; this specifically includes [J.D.]." With regard to her own mental-health issues, mother was required to obtain an updated psychological evaluation and follow its recommendations, obtain an individual therapist, and sign releases of information as necessary. Mother was also given tasks to support her daughter's well-being, including attending M.V.'s medical and school appointments and participating in visitation. M.V. was adjudicated a child in need of protection or services (CHIPS) on March 15, 2012.

M.V.'s placement with her grandparents was problematic. The relationship between mother and T.S. is highly strained and volatile; mother alleges that her stepfather, G.S., sexually abused her when she was a child. Before Brink recommended M.V.'s placement with the grandparents, he reviewed county records and talked with

workers from another state who were familiar with the abuse allegations, and determined that the allegations were unsubstantiated. At the time of M.V.'s placement, the grandparents were the only family members available to take M.V., and they had done so in the past with mother's permission. Brink concluded that M.V.'s placement with the grandparents was in M.V.'s best interests. The guardian ad litem (GAL) also testified that it was in M.V.'s best interests to live with her grandparents because "[M.V.] has a long relationship with her grandparents. . . . [M.V.] has a whole life in that house, there are pictures, toys, things of hers from the time when she was an infant, and she is very protective of her grandmother. . . ." The district court found the GAL's testimony to be "compelling, credible, and reliable." And mother testified that M.V. "would be sad" if she was removed from that home.

After a four-month period during which she did not participate in the out-of-home placement plan, mother began to comply with some aspects of the plan. She completed a psychological evaluation in April 2012, and saw her long-time therapist on three occasions between May 2012 and July 10, 2012. Mother's therapist identified therapy focus areas of "emotion regulation skills training, self-esteem building, parenting skills training, social skills building, processing family conflict and abuse issues, and life skills training." Mother also met with the GAL, but the GAL testified that most of their telephone conversations "digressed to screaming and yelling," with mother hanging up the phone. Mother also agreed to a parenting assessment that began in June 2012. The evaluator recommended that mother receive support for her reading deficiencies, receive

focused support to assist with M.V.'s care, and participate in individual therapy, family therapy, and parenting classes.

Following M.V.'s placement with the grandparents, mother refused to have contact with T.S. In contacts with T.S. and in her own therapy, mother fixated on her acrimonious relationship with T.S.; mother's therapist testified that "[t]he mere presence of [T.S.] in the room . . . sets off emotional triggers that are hard for [mother] to even understand." Mother's therapist attempted to arrange a meeting for mother and T.S. in September 2012 "to see if there was a potential for co-parenting or better communication," but the meeting lasted only five minutes.

During M.V.'s out-of-home placement, mother also continued to maintain contact with J.D. The GAL testified that she told mother "in no uncertain terms" that she would not recommend family reunification if "[J.D.] was part of her life, and [mother] got very upset." On April 29, 2012, J.D. and mother were together when some cars were vandalized. Both were arrested, and mother was issued a misdemeanor theft citation; J.D. was charged with felony offenses. After J.D. was jailed, mother regularly visited him in jail, and mother acknowledged that she was in contact with J.D. upon his release, which occurred a day or two before the termination trial. At trial, Brink stated, "Even after all the conversations we have had and other people have had with [mother], I think she continues to not understand what impact [J.D.'s criminal activity] has on her or her family."

Visitation between M.V. and mother was very limited after M.V. was placed out of home. In February or March 2012, M.V. began to adamantly refuse visitation with

mother, and M.V. did not see mother again until an August 2012 parenting assessment. Brink and M.V.'s therapist agreed not to force the relationship on M.V., for various reasons. Brink consistently encouraged M.V. to choose to have contact with her mother and attempted to arrange for different types of visitation for them. Three days after the August visit, Brink was informed that M.V. was "hysterical and crying and was really angry and didn't want to see her mom."

In August 2012, the county petitioned to terminate mother's parental rights. At trial, the district court heard testimony from mother, the therapists for mother and M.V., the GAL, the parenting assessor, a special-education teacher, an in-home parenting specialist, and the caseworker. The court also considered their written reports and other materials. The district court ordered mother's parental rights terminated on all statutory grounds alleged in the termination petition, which included that: (1) mother substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed by the parent-child relationship; (2) mother is palpably unfit to parent M.V.; and (3) following M.V.'s placement out of the home, reasonable efforts of the county failed to correct the conditions leading to the placement. The district court denied mother's alternative motion for amended findings or a new trial, and this appeal followed.

D E C I S I O N

On appeal from a decision to terminate parental rights, this court "determine[s] whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). This court "give[s]

considerable deference to the district court's decision to terminate parental rights[,] [b]ut . . . closely inquire[s] into the sufficiency of the evidence to determine whether it was clear and convincing." *Id.* We review the particular question of "whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). We will uphold the district court's 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 Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). Mother challenges each of the three statutory grounds for termination, claiming that the county did not make reasonable efforts with regard to each ground.

Under Minn. Stat. § 260C.301, subd. 1(b)(5) (2012), the district court may terminate 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." "It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan." *Id.*, subd. 1(b)(5)(iii); *see also T.R.*, 750 N.W.2d at 663 ("Failure to correct the conditions leading to the child's removal from the home, as evidenced by noncompliance with a case plan, is a factor for termination under Minn. Stat. § 260C.301, subd. 1(b)(5) . . . ."). In determining whether a social-services agency has made reasonable efforts, the district court must consider whether services offered 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).

Mother challenges only whether the county made reasonable efforts to rehabilitate her and reunite the family, as required by section 260C.301, subd. 1(b)(5)(iv). She claims that the county failed to make reasonable efforts with respect to M.V.'s placement, visitation, mother's support base and home environment, and other aspects of the case plan.

Placement of M.V.

Regarding M.V.'s initial placement with her grandparents, mother argues that the county ignored mother's strong statements about her poor relationship with her mother and her request that M.V. be placed in the home of a paternal aunt. But Brink testified at trial that T.V. "[j]ust recently" talked about the possibility of M.V.'s placement with a paternal aunt and stated that he was unaware of the aunt as a possible placement option "at the beginning of the case." The district court found Brink's testimony "compelling, credible, and reliable." *See Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (stating that "issues of witness credibility . . . are exclusively the province of the factfinder").

Mother cites Minn. Stat. § 260C.193, subd. 3(e), as support for her claim that T.S. should have been excluded from consideration as a possible out-of-home placement option for M.V. This statute, which addresses the best interests of children who are placed in foster care, sets forth the circumstances under which a district court must consider a parent's request to exclude a relative as a placement option for a child. The

statute states that "[i]f the child's birth parent . . . explicitly request[s] that a relative . . . not be considered, the court shall honor that request if it is consistent with the best interests of the child and consistent with the requirements of section 260C.221." *Id.* The record does not show that mother made an "explicit request" that T.S. be excluded as a placement alternative, and Brink and the GAL both recognized that M.V.'s best interests favored placing her with her grandparents, even though mother's relationship with the grandparents was poor. The district court found that placement with the grandparents was "realistic under the circumstances" because M.V. knew the placement home, mother was uncooperative with the county at the time of the placement, and mother had no known support group.

In addition, even if we were to construe mother's statement that reunification could not occur if the child was placed with the grandparents as an "explicit request" that T.S. not be considered as a placement option, under section 260C.193, subd. 3(e), that request also needed to comply with Minn. Stat. § 260C.221(b), which provides:

> If a parent makes an explicit request that a specific relative not be contacted or considered for placement due to safety reasons including past family or domestic violence, the agency shall bring the parent's request to the attention of the court to determine whether the parent's request is consistent with the best interests of the child[.]

Brink testified that after investigating mother's abuse allegations and observing the competency of the grandparents in dealing with M.V.'s medical care, he had no safety concerns about placing M.V. with the grandparents. Further, mother's argument is that her relationship with T.S. could not be repaired; she does not argue that M.V. could not

be placed with the grandparents due to safety reasons. Therefore, section 260C.221 does not apply here.

We note that mother's arguments about the certainty of failure of reunification due to M.V.'s placement with her grandparents assume that mother could not possibly cooperate with T.S. The record does not show that cooperation was impossible. For all of these reasons, the district court did not err in concluding that the county's placement of M.V. with her grandparents was reasonable.

Visitation

Mother asserts that the county unreasonably failed to reunify the family by failing to facilitate visitation between herself and M.V. The record establishes that there were valid reasons for suspending visitation due to M.V.'s vehement objections to visitation with her mother. Brink testified that forcing M.V. to visit with her mother could damage their relationship and potentially re-victimize M.V. if she had been abused. Brink testified that he repeatedly addressed the topic with M.V., encouraged visitation by arranging for varied types of visitation, such as mother's attendance at M.V.'s school field trips, and informed M.V.'s therapist about her refusal to participate in visitation. The GAL also encouraged M.V. to participate in visitation with her mother. The district court noted that T.S. "may have been influencing the child," but also found that while there were "many attempts to find out why the child does not want contact with [her mother], . . . the child, so far, has not given an answer." The court found that the county's "handling of the situation was realistic under the circumstances." We observe no error in this determination.

The district court also found that, because M.V. refused to visit with her mother, mother had "not been given the opportunity to comply with the case plan concerning visitation with the child and attending medical appointments." But lack of visitation did not prevent mother from cooperating with service providers or cause her to refuse to participate in most aspects of the case plan, and mother unconditionally refused to participate in the case plan for four months. Mother also failed to attend to other important requirements of the case plan, notably including ending her relationship with J.D., an untreated sex offender.

Support Base

Mother next argues that the county failed to provide any "form of assistance to [her] in building her support base," which was a concern from the inception of the county's involvement in this case. The case plan required mother to "broaden her positive support base to assist her in caring for her daughter" and to avoid "engag[ing] in arguments with [T.S. and G.S.] in the presence of her daughter [and] speak[ing] negatively about them to her daughter." Rather than engage in this aspect of the case plan, mother avoided all contact with T.S. and did not meet with her own therapist until five months after the case plan was developed. On the one occasion when T.S. agreed to participate in a meeting arranged by the county to formulate cooperation and communication between mother and T.S., the meeting ended abruptly because Brink "became concerned that [mother's] actions were not safe emotionally or physically." A parenting assessor summarized the adequacy of mother's support base by stating that mother's "refusal to communicate with her mother and step-father has broken important

links in [M.V.'s] support network." The assessor characterized mother's support network as "very limited because of her strained relationships with her family."

Regarding her support network, mother does not identify any county assistance that should have been provided but was not. She rejected her most likely source of support, her own mother, and clung to an exclusive relationship with J.D., which all professionals repeatedly warned mother was a risk to the family. Mother labels the requirement of repairing her relationship with T.S. "unrealistic and not appropriate for this family." But this statement is simply a conclusion, and mother does not explain why this case-plan requirement was unrealistic or inappropriate. The record includes substantial support for the district court's determination that mother did not comply with this part of the case plan.

Safe Home Environment

With regard to the requirement that mother exclude J.D. and others from her home because of the risk they posed to the family, mother asserts that J.D. did not pose a risk and that he provided "one of the only supports that T.V. had after her father died, and as a result their relationship is complicated."

Minnesota recognizes that criminal-sexual-conduct perpetrators pose a risk of predation. Minn. Stat. § 243.166, subd. 1b (requiring predatory offenders to register with the BCA). Further, the district court found that during the pendency of M.V.'s out-of-home placement, J.D. committed other crimes that made him a threat to the family's safety and to M.V.'s stability. While mother now claims that she is willing to end her relationship with J.D., her conduct during the pendency of this case has shown otherwise,

despite the fact that she signed a safety plan for M.V. in September 2011 in which she agreed to prohibit J.D. from having any contact with M.V. The record provides substantial support for the district court's determination that mother did not comply with this aspect of the case plan.

Other Case Plan Requirements

Finally, mother alleges that the county failed to offer her specific services, such as assistance in interpreting case plans, failed to provide her the opportunity to fulfill certain case-plan requirements, and failed to follow up on parenting-assessment recommendations. She also points out that she complied with certain case-plan requirements, such as addressing her mental-health issues.

Many of these allegations are affected by events that unfolded during the course of these proceedings or by mother's ill-timed response to the case-plan requirements. As noted repeatedly in the district court's findings, mother did not begin to participate in the case plan until four months after M.V. was removed from her care. When she did begin to participate, she was offered services that included a psychological assessment, individual therapy, parenting assessments, and in-home parenting assistance, among others. The services offered were geared toward the case-plan objectives, and the failure to resolve the concerns expressed in the case plan appears to be related, in large part, to mother's delay in participating in the case plan. The district court found that "it was [mother's] actions that shortened the amount of time she had to work on the entire case plan," and "it was [mother's] actions that interfered with [the county] providing active support." The district court also found that mother's "lack of cooperation" "delayed the

start of any evaluations or assessments, which then delayed the start of services." Brink identified mother's lack of progress or slow progress on elements of her case plan as support for his opinion that termination of parental rights was in M.V.'s best interests.

Further, while mother completed some of the case-plan requirements, such as obtaining a psychological evaluation, she did not meet with her therapist until May 2012 and therefore did not have sufficient time to complete the recommendations of her therapist, who testified that her therapy would be long term. Under these circumstances, mother's conduct, coupled with the permanency mandates of the termination statute, may have foreclosed her from achieving rehabilitation in time to be reunited with her child. *See* Minn. Stat. § 260C.505(a) (stating that "[a] permanency or termination of parental rights petition must be filed at or prior to the time the child has been in foster care . . . for 11 months"). In addition, termination was not based on mother's failure to comply with case-plan requirements regarding her participation in M.V.'s medical, therapy, or school appointments.

The record includes substantial evidence to support the district court's determination that reasonable efforts to rehabilitate mother and reunite the family were made in this case, but failed. Various services offered to the family were pinpointed to the special needs of both the mother and the child but did not effect a change that would lead to reunification. *See In re Welfare of Children of A.J.C.*, 556 N.W.2d 616, 622 (Minn. App. 1996) (terminating mother's parental rights when county provided numerous services over 16-month period to assist mother and children in reunification but services failed to lead mother to become competent parent), *review denied* (Minn. Mar. 18, 1997).

Professionals who worked on the case were aware of and sensitive to mother's and the child's special circumstances. As required, the county's efforts were "aimed at alleviating the conditions that gave rise to out-of-home placement, and . . . conform[ed] to the problems presented." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 88 (Minn. App. 2012). The district court made at least 20 factual findings supporting its conclusion that the county made reasonable efforts to rehabilitate mother and reunite the family, within the meaning of Minn. Stat. § 260C.301, subd. 1(b)(5). We therefore conclude that the district court did not abuse its discretion by concluding that this statutory basis supports termination of mother's parental rights. Because we affirm on this statutory ground, we do not address the additional statutory termination grounds for termination relied upon by the district court.

Affirmed.