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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1258**

In the Matter of the Welfare of the Child of: A. K., Parent.

**Filed January 16, 2018
Affirmed
Florey, Judge**

Ramsey County District Court
File No. 62-JV-16-2201

Patricia J. Stotzheim, St. Paul, Minnesota (for appellant)

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Considered and decided by Florey, Presiding Judge; Connolly, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant-mother challenges the district court's order terminating her parental rights. She argues that the district court abused its discretion when it determined that (1) respondent made reasonable rehabilitative efforts to reunite the family, (2) the statutory grounds for termination were supported by clear and convincing evidence, and (3) the termination of parental rights was in the child's best interests. We affirm.

FACTS

Appellant-mother A.K. gave birth to E.K. in June 2015. While at the hospital, medical professionals noticed that appellant was not consistently feeding E.K. or changing his diaper. The medical professionals reported that appellant misrepresented the amount and frequency that she was feeding E.K., and appeared unable or unwilling to place E.K.'s needs ahead of her own needs. Medical professionals determined that if E.K. was discharged to appellant, she would need to be supervised at all times while caring for him. A 72-hour hold was placed on E.K., and appellant was discharged from the hospital without E.K. after she refused an offer to board at the hospital.

Respondent Ramsey County Community Human Services Department (the county) initiated a child-protection investigation and filed a child in need of protection or services (CHIPS) petition with the district court, alleging that appellant neglected E.K. and was unable to meet his physical needs. The CHIPS petition was dismissed in July 2015 after appellant received therapy and mental-health services directed at reuniting her with E.K. Appellant, who was residing with E.K.'s father at the time, was reunited with E.K.

In September 2015, the county filed a second CHIPS petition after appellant exhibited erratic behavior, demanded to take E.K. from his father's home, and the county learned that appellant had been hospitalized three times over the course of a month for

mental-health issues.¹ In January 2016, the district court found that E.K. was in need of protection or services after appellant admitted to the allegations in the petition.

The county created a case plan requiring appellant to complete a chemical-dependency evaluation, complete a mental-health assessment, take her prescribed medications, attend therapy to assist with her mental-health diagnoses, work with a mental-health case manager, complete a parenting-skills evaluation, and attend parenting education. Appellant was also required to pursue permanent housing for herself and E.K., apply for financial assistance, and attend E.K.'s medical appointments. The case plan informed appellant that she would be required "to address her mental health and chemical health and understand how untreated mental and chemical health impacts the parenting of her child," in order for E.K. to be returned to her care.

In April 2016, appellant secured housing at a home for homeless pregnant women. The home permitted supervised visits with E.K. Appellant had successful visits with E.K. and was progressing toward a trial home visit when she abruptly moved to Grey Eagle, Minnesota in June 2016 without consulting her social worker. A number of appellant's services were disrupted or discontinued when she moved to Grey Eagle, and appellant did not see or care for E.K. for nearly two months following her move. In September 2016, appellant reestablished supervised visits with E.K., though she did not visit him

¹ In August, appellant was placed on two 72-hour holds at a hospital. Once after appellant had delusions that E.K. was possessed by the devil and tried to perform CPR on him, and again after she believed she was poisoned by a household cleaning product. She was also hospitalized after she exhibited odd behavior while camping.

consistently on a weekly basis, and cancelled a number of the scheduled visits. She also began attending therapy and a number of referrals were made to reestablish services.

On August 31, 2016, the county filed a petition to terminate appellant's parental rights to E.K. A trial commenced in February 2017, but was continued after appellant was hospitalized on March 28 and spent three weeks in a psychiatric facility during judicial commitment proceedings in Todd County. The Todd County district court found that appellant was mentally ill for purposes of a judicial commitment, but stayed the commitment for a period of six months on the requirement that appellant satisfy certain treatment conditions.

At trial, appellant's social worker testified that appellant had failed to show sufficient insight into her mental-health issues and to change the behaviors that led to E.K.'s placement out of the home. She also testified that appellant's home was not safe for children at the time of the trial, even though appellant had lived at the home for a year. Appellant testified that, as part of the conditions of the stay of commitment, she would be required to remain at an intensive residential treatment facility for a period of 30 to 90 days. At the time of trial, appellant had not started the treatment program and was awaiting an opening at a facility. E.K. would not be permitted to reside with appellant at the intensive residential treatment facility.

At the conclusion of the trial, the district court found that it was in E.K.'s best interests to terminate appellant's parental rights on three grounds: failure to correct conditions, palpable unfitness, and the child is neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(4), (5), (8) (2016). The district court found that the county had

made reasonable efforts to rehabilitate appellant and reunite her with E.K., despite there having been a gap in services after appellant moved to Grey Eagle. The district court found that the provision of further services would be futile and “unlikely to bring about a lasting parental adjustment enabling a return of the child to [appellant’s] care within the reasonably foreseeable future.”

This appeal followed.

D E C I S I O N

A district court may terminate parental rights if clear and convincing evidence establishes that (1) the county made reasonable efforts to reunite the family; (2) a statutory ground for termination exists; and (3) termination is in the child’s best interests. Minn. Stat. § 260C.301, subds. 1(b), 7, 8 (2016); *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We review both a district court’s determination that a statutory basis to terminate parental rights is present and a district court’s ultimate termination decision for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). But we review the district court’s factual findings for clear error. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008). “A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Id.* at 660-61 (quotation omitted). We will give considerable deference to the district court’s decision to terminate a person’s parental rights because the “district court is in a superior position to assess the credibility of witnesses.” *In re Welfare of L.A.F.*, 554 N.W.2d 393,

396 (Minn. 1996). We will also closely inquire into the sufficiency of the evidence to determine whether the evidence was clear and convincing. *S.E.P.*, 744 N.W.2d at 385.

I. Reasonable efforts

Before terminating parental rights, the district court must determine whether the county provided reasonable efforts to rehabilitate the parent and reunite the child and parent, unless the provision of further services would be futile or is not required by statute. Minn. Stat. § 260C.301, subd. 8; *T.R.*, 750 N.W.2d at 664. For efforts to be reasonable, the services the county offers must be: “(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) (2016). The district court must make “specific findings” that the county made reasonable efforts, and “individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family.” Minn. Stat. § 260C.301, subd. 8. The district court “must also consider the length of time the county was involved and the quality of effort given.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 88 (Minn. App. 2012) (quotation omitted).

Appellant argues that the district court clearly erred when it determined that the county provided reasonable rehabilitative efforts aimed at alleviating the issues that led to the out-of-home placement. She argues that the case plan did not adequately address how she could further demonstrate insight into her mental health, when, at trial, she

acknowledged her mental-health issues and testified that medication and therapy are helpful to her.

“The nature of the services which constitute ‘reasonable efforts’ depends on the problem presented.” *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). “The county’s efforts “must conform to the problems presented” and “be aimed at alleviating the conditions that gave rise to out-of-home placement.” *J.K.T.*, 814 N.W.2d at 88. “Reasonable efforts at rehabilitation are services that go beyond mere matters of form so as to include real, genuine assistance.” *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotations omitted), *review denied* (Minn. Mar. 28, 2007); *see T.R.*, 750 N.W.2d at 666 (concluding that a county’s efforts were not reasonable where no services were offered to address the father’s chemical-dependency issues and lack of verbal skills and cognition, and the social worker did not visit his home).

Here, the most significant issues that appellant needed to address for reunification, as directed in the case plan, were her mental-health issues and her understanding of how her mental health impacts her ability to care for a child. To this end, the county required appellant to complete a mental-health assessment, take her prescribed medications, attend therapy for her mental health, and use the services of a mental-health case manager. The district court found that these efforts were offered to address the issues that led to the out-of-home placement and were reasonable. Despite these efforts, appellant denied that her criminal behavior and the behavior that led to the CHIPS petitions were a result of her mental-health issues, instead placing blame on third parties. The evidence supports the

district court's conclusion that the efforts were reasonable and directed at the issues that led to the out-of-home placement.

Appellant also argues that the efforts of the county were untimely and not “the real, genuine assistance” required by law because the county primarily made referrals for services or relied on services that appellant already had in place. The district court determined that there were gaps in some of the services offered to appellant and that some of the gaps were attributable to appellant's abrupt move made without consultation with the county. For example, the move resulted in the loss of a mental-health case manager and a public-health nurse. The move also disrupted parenting-education services and an in-progress parenting-skills evaluation. But the district court also found that the county shared part of the blame for the delay in services and a visit by the social worker to appellant's home. Despite this, the district court found that the efforts of the county to rehabilitate appellant were reasonable.

The record supports the district court's conclusion. While services and efforts for a trial home visit were delayed over the summer of 2016, the record reveals that the county made efforts to reestablish services throughout the fall of 2016 and into the spring of 2017. Those efforts included referrals to parenting classes, parenting assessments, continued supervised visitations, and attempts to contact appellant for a home visit. The county's service referrals allowed appellant to successfully complete some portions of her case plan. And while appellant had several services in place prior to the county's creation of the case plan, the social worker explained that the prior services were incorporated into the case

plan because they were appropriate and beneficial to appellant. The district court did not clearly err in finding that the efforts of the county were reasonable, despite some delays.

Appellant also argues that the district court clearly erred when it found that any further services would be futile and not likely to bring about lasting parental adjustment within a reasonable period of time. By the end of the trial, appellant had complied with many aspects of her case plan aimed at treatment of her mental health. But the district court found that, although appellant had made progress, she still failed to demonstrate insight into how her mental health has impacted her behavior and the risk that untreated mental health may pose to E.K.

For example, in March 2017, during the pendency of the trial, appellant had a mental-health crisis which led to a three-week hospitalization in a mental-health unit and judicial commitment proceedings. While hospitalized, appellant was diagnosed with bipolar disorder, manic with acute psychosis. A court-appointed examiner opined that appellant presented a risk of harm to herself and others and that she had no insight into her own mental illness. At trial, appellant denied that the hospitalization and commitment proceedings were a result of a mental-health crisis. Instead, she indicated that it was a result of her “irritability and anger” and a probation officer’s attempt “to stir up some trouble.” Likewise, appellant testified that she knew how to be a reasonable and presentable adult so that she could “be off” her medication. The district court found that further services would not enable appellant to effectively provide for E.K.’s physical, mental and emotional needs in the foreseeable future because of her lack of insight into her mental-health issues. The findings are reasonably supported by the record as a whole.

II. Statutory grounds for termination

A district court may involuntarily terminate parental rights if one or more of nine conditions exist. Minn. Stat. § 260C.301, subd. 1(b). The district court must “make clear and specific findings which conform to the statutory requirements for termination” and those findings must “address conditions that exist at the time of the hearing.” *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980).

A. Palpable unfitness

The district court found that appellant is palpably unfit to be a party to the parent and child relationship. A district court may find that a parent is palpably unfit if it finds

a consistent pattern of specific conduct before the child or . . . 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). Proving palpable unfitness is an onerous burden. *T.R.*, 750 N.W.2d at 661. The county must prove “a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child.” *Id.* (quotation omitted). “When considering termination of parental rights, the court relies not primarily on past history, but to a great extent upon the projected permanency of the parent’s inability to care for his or her child.” *S.Z.*, 547 N.W.2d at 893 (quotations omitted).

Appellant argues that the district court's findings do not support a conclusion that appellant is palpably unfit to be a party to the parent-and-child relationship. She argues that "a person who lacks insight into her mental illness, in and of itself, does not permit termination of parental rights," and that the conditions at the time of the hearing established that she was presently able to parent E.K.

A parent's mental illness, alone, cannot be used as the basis for terminating parental rights. *Id.* at 892 ("Thus, while the nature of the parent's [mental] condition may support termination, it does not do so *ipso facto*"). Rather, courts are to look at the parent's conduct to determine the parent's fitness to maintain the relationship "so as to not be detrimental to the child." *Id.* (quotation omitted). If the parent is unable to care for the child within a foreseeable time, the parental rights may be terminated. *Id.*

The district court did not rely solely on appellant's diagnoses to terminate her parental rights. Rather, the district court examined at length appellant's statements and conduct throughout the course of the trial, and found that appellant failed "to demonstrate insight into the mental-health deficiencies that place [E.K.] at risk of harm in her care." The district court cited the following as proof that appellant lacks the present insight into her mental health to adequately parent E.K.: her denial of responsibility for her criminal behavior and any connection of those acts to her mental health; her denial of some of her mental-health issues and the crises that led to multiple judicial commitment cases; her denial of her behavior that led to the CHIPS cases; her belief that she does not need to take her medication, and her statements that caring for E.K. is "too much sometimes." The district court concluded that appellant's failure to recognize how her mental health affects

her behavior has kept her from being able “to permanently provide a safe, stable and healthy home for [E.K].” These findings are adequately supported by the record.

Appellant argues that there was evidence demonstrating that she is presently able to parent, such as her recent improvements in her mental stability and her positive parenting reports. But multiple witnesses testified that appellant’s lack of insight into her mental-health issues would impede her ability to safely parent her child. The district court’s findings are supported by clear and convincing evidence and they sufficiently support the conclusion that there are “specific conditions directly relating to the parent and child relationship . . . 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). Therefore, the district court did not abuse its discretion in ruling appellant to be a palpably unfit parent. *J.R.B.*, 805 N.W.2d at 901.

B. Failure to correct conditions

The district court also found that “reasonable efforts under the direction of the court have failed to correct the conditions leading to [E.K.’s] placement” out of the home. *See* Minn. Stat. § 260C.301, subd. 1(b)(5) (permitting termination of parental rights for failure to correct conditions). In considering whether a parent’s parental rights should be terminated for failing to correct conditions, “[t]he critical issue is not whether the parent . . . complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child.” *J.K.T.*, 814 N.W.2d at 89.

Appellant argues that the efforts of the county were not reasonable, and therefore this statutory ground for termination is not satisfied. She argues that her compliance with her case plan was a result of her own efforts to coordinate services, instead of timely aid from the county.

As discussed above, the efforts of the county were reasonable, timely, and directed at the issues that led to the out-of-home placement. The district court found that appellant complied with some aspects of her case plan, but that she had not corrected the conditions that led to E.K.'s placement out of the home. See *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 667 (Minn. App. 2012) (indicating that a parent's completion of a case plan does not "necessarily equate[] with a correction of the conditions that led to the out-of-home placement"). The record supports the district court's conclusion. At the time of trial, appellant had not applied for financial support, found suitable housing for a child, attended many of the scheduled visits with E.K., or attended his medical appointments. Although she was in compliance with her therapy and medication requirements, she had not demonstrated that she understood the risk posed to E.K. if she were to have a mental-health crisis or if she stopped taking her medication. The record supports the district court's finding that these circumstances indicate that appellant is not presently able to assume the responsibilities of caring for E.K. Therefore, the district court did not abuse its discretion by ruling that reasonable efforts failed to correct the conditions that led to the out-of-home placement. *J.R.B.*, 805 N.W.2d at 901.

Having concluded that two statutory grounds for termination are supported by clear and convincing evidence, we need not address the other ground cited by the district court.

See *In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005) (declining to address all of the grounds for termination relied on by the district court).

III. Best interests of the child

We review a district court's determination that termination of parental rights is in a child's best interests for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905. A child's best interests can preclude termination of a parent's parental rights, even if the district court finds that a statutory basis for terminating parental rights is present. *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009). "In analyzing the best interests of the child, the court must balance three factors: (1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); see also Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *R.T.B.*, 492 N.W.2d at 4. "[If] the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7.

Appellant argues that "it is not in E.K.'s best interest to terminate [appellant's] parental rights because [she] has demonstrated positive parenting strengths." She cites evidence in the record indicating that she could care for E.K.

The district court found that appellant has an interest in preserving the parent-child relationship, but that E.K. does not have such an interest. The district court found that E.K. needs a safe, stable, and healthy home; a parent that can meet his physical, mental, and emotional needs; and a parent "who will make his health, safety and well-being a priority

and place his needs above the parent's needs." The district court found that appellant has not changed her behavior in order to provide these things to E.K. and that she "cannot meet [E.K.'s] needs now, or in the reasonably foreseeable future."

The district court's findings are amply supported by evidence in the record. Appellant has not procured a safe and permanent home for E.K., nor has she secured sufficient financial assistance, as required by the case plan. The social worker testified that appellant "has a difficult time putting [E.K.'s] needs above hers or being able to respond to his cues as to what he wants." Witnesses doubted that appellant would be able to meet E.K.'s needs and keep him safe because of her unresolved mental and behavioral issues. And as the district court noted, appellant is required, as part of the stayed civil-commitment order, to participate in an intensive residential treatment program, where she would not be able to care for E.K. E.K.'s interest in a permanent and safe home, which appellant is unable to provide now or in the foreseeable future, outweighs appellant's interest in preserving the parent-child relationship.

While there is some evidence in the record to support appellant's position, the district court was required to make credibility decisions when it considered the evidence. Where credibility determinations are required, "[i]n the absence of a clear abuse of discretion[,] the action of the trial court must be affirmed." *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 734 (Minn. App. 2009) (quotation omitted).

Affirmed.