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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1289**

In the Matter of the Welfare of the Child of: S. A. P., Parent

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

Crow Wing County District Court
File No. 18-JV-16-3314

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Considered and decided by Smith, T., Presiding Judge; Larkin, Judge; and Hooten,
Judge.

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

HOOTEN, Judge

Appellant mother argues that the district court abused its discretion by denying her motion for a new trial and her motion to vacate a default judgment. She contends that (1) the district court should have granted her motion for a new trial on the grounds of irregularity in the proceedings, attorney misconduct, and the interests of justice, and (2) the

district court should have granted her motion to vacate the default judgment entered against her. We affirm.

FACTS

Appellant mother, S.A.P., voluntarily terminated parental rights to her first child in 2011. In 2014, S.A.P.'s parental rights to her second and third children were terminated involuntarily. In the case of the second child, S.A.P.'s parental rights were terminated by default after she failed to appear for trial.

S.A.P. gave birth to a fourth child, D.L.F., on July 11, 2016. The next day, Crow Wing County Social Services (CWCSS) filed a Child in Need of Protection or Services (CHIPS) petition alleging that S.A.P. was "unable to provide necessary care" for her fourth child "because of her long history of mental health concerns and her history of low cognitive functioning." At the emergency protective custody hearing attended by S.A.P. on July 14, the district court granted temporary care and custody of D.L.F. to CWCSS for placement in a foster home.

On July 20, the district court held an admit/deny hearing on the CHIPS petition. S.A.P. did not appear. She explained in a letter to the district court that she had moved unexpectedly and was unable to attend the hearing. Crow Wing County (the county) requested relief from case planning efforts, citing S.A.P.'s two involuntary terminations, and noting its intention to move forward with an immediate permanency filing. The district court granted the county's request for relief from case planning, entered a denial on S.A.P.'s behalf, and set the matter for a pretrial hearing on August 9. At the August 9

hearing, the district court found that S.A.P. was in default and determined that the CHIPS petition “had been proven by clear and convincing evidence.”

On August 5, CWCSS filed a petition for the termination of S.A.P.’s parental rights to D.L.F. alleging that S.A.P.’s parental rights should be terminated for neglect and for palpable unfitness as a parent pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2), (4) (2016). On September 6, the district court held an admit/deny hearing on the permanency file and a disposition hearing on the CHIPS file at which S.A.P. appeared. The district court ordered D.L.F. to remain in the custody of CWCSS. On September 20, the district court conducted another admit/deny hearing. S.A.P. appeared at the hearing, entered a denial of the allegations set forth in the permanency petition, and requested supervised parenting time with D.L.F., which the county opposed. The district court ordered D.L.F. to remain in the custody of CWCSS and permitted supervised visits at CWCSS’s discretion.

On November 15, 2016 and January 17, 2017, S.A.P. appeared at pretrial hearings on the permanency file and an intermediate disposition hearing on the CHIPS file. At the January hearing, S.A.P. requested that custody of D.L.F. be returned to her and the district court denied her request. The district court held a third pretrial hearing on the permanency file and a disposition hearing on the CHIPS file on March 14. When S.A.P. did not appear, the county moved to proceed by default. The district court denied the county’s request but noted that if “[she] failed to appear at the next Hearing the County would be allowed to proceed by default against her.”

On March 28, the district court conducted a fourth pretrial hearing at which S.A.P. appeared. S.A.P. moved the district court to suppress evidence of her prior involuntary

terminations and to find that she rebutted the presumption of palpable unfitness. The district court denied both motions, stating that “[S.A.P.] has offered no evidence to the Court . . . that the conditions that resulted in her prior involuntary terminations have changed or that she has gained the ability to successfully parent a child.”

On May 2, the district court held a fifth pretrial hearing. S.A.P. did not appear, but called her attorney before the hearing to say that she could not find transportation to the courthouse. The county moved to proceed by default; the district court denied the motion.

On the morning of trial, May 23, S.A.P. called court administration inquiring about the time of her trial. She later called her attorney, claiming to be ill with campylobacter (i.e., food poisoning). S.A.P.’s attorney told the district court that “she had informed [S.A.P.] of this court date multiple times and had stressed the importance of [her] being present.” The county moved to proceed by default, which the district court allowed. According to the district court’s termination of parental rights order, a social worker, testifying about her communications with S.A.P. and her assessment of S.A.P.’s “efforts in this case,” indicated that she believed that the termination of S.A.P.’s parental rights would serve D.L.F.’s best interests. The district court granted the county’s motion, finding that S.A.P. “failed to meet her burden to rebut the presumption that she was a palpably unfit parent by failing to appear at the final Court hearing,” that reasonable efforts were made to preserve the parent-child relationship, and that D.L.F. should be placed under the guardianship of the Minnesota Department of Human Services. Pursuant to these findings, the district court ordered the termination of S.A.P.’s parental rights to D.L.F.

The record indicates that there was a notice of filing of the district court's order terminating S.A.P.'s parental rights on June 8. The county claimed it received notice of the order on June 9. S.A.P.'s attorney claimed that she did not receive the district court's order until sometime after June 14.

On June 21, S.A.P. filed a motion to vacate the default judgment and for a new trial under Minn. R. Juv. Prot. P. 45.04(a) (irregularity in proceedings) and 45.04(h) (interests of justice) along with an affidavit alleging that she was ill with campylobacter on the day of trial and a physician's note dated June 1 stating that "[S.A.P.] was treated for Campylobacter in the recent past."

The district court denied both motions on July 25. In addressing the motion for new trial to correct an irregularity in the proceedings, the district court found that "there was no trial or irregularity which would make the rule applicable" and that "[t]he failure of a party to appear for trial does not create an irregularity or abuse of discretion." The district court also determined that a new trial would not further the interests of justice, finding that it "made every effort to afford [S.A.P.] her day in court" and had "rejected twice a request to proceed by default so as to allow [S.A.P.] another chance."

The district court's memorandum did not directly address S.A.P.'s motion to vacate the default judgment but emphasized her repeated failures to appear for hearings, the warning she received that the district court may proceed against her by default if she should fail to appear, and the unpersuasive character of the physician's note, which it called "far too vague and obtained a week after the default." The district court also asserted that

“[t]here is no question that [S.A.P.] knew the trial date and time as it had been included in Orders as well as given to [her] personally by the Court on the record.”

S.A.P. appeals.

DECISION

I. The district court did not abuse its discretion when it denied S.A.P.’s motion for a new trial.

S.A.P. argues that the district court abused its discretion by denying her motion for a new trial under Minn. R. Juv. Prot. P. 45.04(a) (irregularity in proceedings), 45.04(b) (misconduct of counsel) and 45.04(h) (interests of justice). An irregularity is a “want of adherence to some prescribed rule or method of proceeding. . . . A failure to conform to the practice of the court.” *Feely v. Kane (In re Estate of Begley)*, 178 Minn. 141, 142, 226 N.W. 404, 404 (1929). To establish a claim for irregularity in the proceedings, a party “must prove (1) an irregularity occurred and (2) they were deprived of a fair trial.” *Boschee v. Duevel*, 530 N.W.2d 834, 840 (Minn. App. 1995), *review denied* (Minn. June 14, 1995).

We review a district court’s denial of a motion for new trial for an abuse of discretion. *E.g., Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010). We find an abuse of discretion when the district court has resolved the question in a manner “that is against both logic and the facts on the record.” *Cisek v. Cisek*, 409 N.W.2d 233, 235 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987).

In support of her argument that the district court abused its discretion by denying her motion for a new trial, S.A.P. claims that there was an irregularity in the proceedings due to the failure of her attorney to file a timely motion for a new trial and that such failure

constituted attorney misconduct. Minn. R. Juv. Prot. P. 45.01, subd. 1, provides: “All post-trial motions shall comply with Rule 15 and shall be filed with the court and served upon the parties within ten (10) days of the service of notice by the court administrator of the filing of the court’s order”¹ Although the county disputed whether the motion was timely at the motion hearing and now disputes the same on appeal,² the district court resolved this issue during the hearing and proceeded to rule on the merits of S.A.P.’s motion. The parties do not dispute that the district court issued notice of the filing of the order terminating parental rights on June 8 and the county received the notice on June 9. At the hearing, S.A.P.’s attorney, who claimed that notice of filing was mailed to her, added three days for mailing,³ which resulted in a notice date of June 11. S.A.P.’s motions were filed on June 21, within ten days of receiving notice. The district court accepted this calculation, stating, “That would put you within the ten days.”

Based upon this record, and the district court’s acceptance of the representation of S.A.P.’s attorney that she received the notice of filing by mail, we conclude that the district court did not err in its determination that the motion for a new trial was timely. Therefore, there is no merit to S.A.P.’s argument that the untimely filing of her motion constituted an irregularity in the proceedings. And, because the motion was timely and there is no

¹ Rule 15 governs motions generally, their forms and practice. *See* Minn. R. Juv. Prot. P. 15.

² The county contests the timeliness of the motion in its appellate brief but failed to bring a cross-appeal under Minn. R. Civ. App. P. 103.02, subd. 2, relative to the district court’s ruling on this issue.

³ Three days shall be added to a prescribed period when parties are relying on the U.S. Mail. Minn. R. Juv. Prot. P. 4.02.

prejudice to S.A.P., there is no misconduct of counsel. *See Sather v. Snedigar*, 372 N.W.2d 836, 839 (Minn. App. 1985) (stating misconduct of counsel warrants a new trial when it “result[s] in prejudice to the losing party”).

S.A.P. also argues that a new trial is necessary to further the “interests of justice.” Minn. R. Juv. Prot. P. 45.04(h). She claims that termination of her parental rights by default deprived her of a chance to rebut the presumption of palpable unfitness. The county disagrees, maintaining that S.A.P. missed at least five hearings during which the district court denied the county’s motion to proceed by default twice.

We conclude that the district court did not abuse its discretion by denying S.A.P.’s motion seeking a new trial in the interests of justice. At an earlier hearing, the district court verbally gave S.A.P. the trial date and time “personally . . . on the record.” In addition, S.A.P. received a warning in writing that she could lose her parental rights should she fail to appear. On the notice of hearing for the first day of trial provided to S.A.P., it states, in bold, capital letters that “IF YOU FAIL TO APPEAR AT THE HEARING,” the district court, among other things, may enter an order that includes the termination of parental rights. And yet, despite these admonitions and her knowledge of the consequence of her failure to appear—as evidenced by her prior involuntary termination of parental rights by default—S.A.P. did not appear on the day of trial.

The district court, weighing the parent’s procedural rights against the “finality which should be provided to a child in such a case,” emphasized S.A.P.’s truancy during the pretrial phase and rejected the physician’s note as “too vague” and too late. We note furthermore that “the best interests of the child,” and not the parent’s procedural rights,

“must be the paramount consideration.” Minn. Stat. § 260C.301, subd. 7 (2016). Here, at the time of trial, the child had been in out-of-home placement for over ten months. A new trial would add months more to this already protracted process. “While judicial caution in severing the family bonds is imperative,” the supreme court has observed, “untoward delay of the demonstrated inevitable is intolerable.” *In re Welfare of J.J.B.*, 390 N.W.2d 274, 280 (Minn. 1986); *see also In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 134 (Minn. 2014) (“[Juvenile protection] proceedings are expedited because a quick resolution is essential for the best interests of children who are in need of protection. . . . The principle that child protection cases are to receive priority and be resolved quickly is a thoroughly engrained policy that both the legislative and executive branches endorse and support.” (citations omitted)); *In re Welfare of J.R.*, 655 N.W.2d 1, 5 (Minn. 2003) (“Each delay in the termination of a parent’s rights equates to a delay in a child’s opportunity to have a permanent home.”).

S.A.P. knew her date of trial and she failed to appear despite knowing the district court would enter a default judgment. Based upon this record, and the arguments made, we conclude that the district court did not abuse its discretion by denying S.A.P.’s motion for a new trial.⁴

⁴ The county argues that S.A.P. cannot move for a new trial because no trial or evidentiary proceeding has occurred. We disagree with the assertion that no trial or evidentiary proceeding occurred: On the day of trial, although S.A.P. was not present, counsel for both parties appeared before the district court and the district court took testimony before entering the default judgment. The abbreviated proceedings at issue are sufficient to trigger the right to move for a new trial.

II. The district court did not abuse its discretion by denying appellant's motion to vacate her default judgment.

S.A.P. argues that the district court erred in denying her motion to vacate the default judgment on two grounds: first, she deserves relief from the judgment under Minn. R. Juv. Prot. P. 46.02; second, even if rule 46.02 does not apply, there are no facts on the record that warrant the termination of parental rights. We review a district court's denial of a motion to vacate a default judgment for an abuse of discretion. *See, e.g., In re Welfare of Children of Coats*, 633 N.W.2d 505, 510 (Minn. 2001). We find an abuse of discretion when the district court has resolved the question in a manner "that is against both logic and the facts on the record." *Cisek*, 409 N.W.2d at 235.

The Minnesota Supreme Court has established four factors to be met by parties seeking relief from default judgment in a juvenile protection proceeding. *Coats*, 633 N.W.2d at 510. S.A.P. must demonstrate (1) "a reasonable defense on the merits," (2) "a reasonable excuse for her failure to act," (3) "due diligence after the notice of entry of the default judgment," and (4) that "the opposing party will not be substantially prejudiced if the motion to vacate the default judgment is granted." *Id.* All four factors must be met, but a weak argument for one factor may be strengthened by a strong showing on the remaining three. *Riemer v. Zahn*, 420 N.W.2d 659, 662 (Minn. App. 1988). S.A.P. fails to satisfy the *Coats* factors.

S.A.P. claims only a "willingness to parent" to support her reasonable defense on the merits. However, she has already had her parental rights involuntarily terminated to two other children and therefore bore the burden of rebutting the presumption of palpable

unfitness. See Minn. Stat. § 260C.301, subd. 1(b)(4); *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 543–44 (Minn. App. 2009). To rebut the presumption, “the parent needs to produce only enough evidence to support a finding that the parent is suitable to be entrusted with the care of the [child].” *R.D.L.*, 853 N.W.2d at 137 (quotation omitted). Approximately two months before the trial, a motion hearing was held relative to S.A.P.’s request that the district court find that the presumption of palpable unfitness had been rebutted. The district court, in denying her motion, found that S.A.P. offered no evidence that the conditions that resulted in her prior involuntary terminations had changed or that she had gained the ability to successfully parent a child.

Moreover, in a case that did not involve a presumption of palpable unfitness, a willingness to parent was rejected by the supreme court as a basis for a defense on the merits in a motion brought by a parent to vacate a default termination of parental rights. *Coats*, 633 N.W.2d at 511. The court explained that a parent must show more than a desire to parent or an interest in the child’s well-being but rather that she has “undertaken the hard work necessary to correct the conditions resulting in the child[’s] out-of-home placement.” *Id.* Based upon this record, we conclude that S.A.P. has failed to demonstrate that she has a reasonable defense on the merits.

S.A.P. also notes that she had a reasonable excuse for her failure to attend the trial, claiming that her illness excused her absence and that she requested a continuance on the morning of trial. However, the district court, highlighting that she was absent at least five times during the course of the proceedings, found that her excuse for failing to attend trial was not persuasive. In support of her motion to vacate, S.A.P. submitted a doctor’s note

dated June 1, 2017 (nine days after the default judgment) that reads: “To whom it may concern: [S.A.P.] was treated for *Campylobacter* in the recent past.” The district court found that the note was “far too vague” and obtained too late to justify her absence from trial. Because S.A.P. failed to challenge this finding, the record does not support the claim that she had a reasonable excuse for her failure to appear.

The third *Coats* factor tends to support S.A.P.’s argument: S.A.P. did exercise due diligence and the district court accepted her motion as timely. But the fourth *Coats* factor weighs against her. Although the county concedes that it would incur no substantial prejudice should the proceedings be reopened, there is another person to consider: the minor child, in whose best interests it is to establish permanency. The supreme court has “observed the importance of emotional and psychological stability to a child’s sense of security, happiness and adaptation, as well as the degree of unanimity among child psychologists regarding the fundamental significance of *permanency* to a child’s development.” *J.J.B.*, 390 N.W.2d at 279 (emphasis added). As we note above, over ten months had passed since D.L.F. was settled in out-of-home placement. Further delay would have substantially prejudiced the child’s interests.

Unable to demonstrate a reasonable defense on the merits, a reasonable excuse for failing to appear, and that no opposing party would incur prejudice, S.A.P. cannot prevail on her appeal for relief under rule 46.02. The district court did not abuse its discretion by denying S.A.P.’s motion to vacate the default judgment.

Alternatively, S.A.P. seeks relief from the default judgment on the premise that parental rights may only be terminated for “grave and weighty reasons” and that the district

court has failed to present any such reasons.⁵ *In re Welfare of K.T.*, 327 N.W.2d 13, 18 (Minn. 1982) (“This court has adopted very stringent standards which must be met before parental rights will be terminated. These rights will be taken away only for grave and weighty reasons.”).

The supreme court has held that “erratic” and “unstabilized” behavior, in the absence of any “detrimental effect upon the child,” are not grave and weighty reasons. *McDonald v. Copperud*, 295 Minn. 440, 440, 444, 206 N.W.2d 551, 551, 553 (1973). But “5 months of absence, silence, and total disregard” along with a “lack of interest and refusal to cooperate in establishing a plan for the return of the children” do amount to grave and weighty reasons. *In re Welfare of HGB*, 306 N.W.2d 821, 825 (Minn. 1981). S.A.P. missed at least five hearings, despite the fact that one of her earlier involuntary terminations was entered by default when she failed to appear for trial. S.A.P. knew *first-hand* that she may lose parental rights to D.L.F. and yet she failed to appear at trial and failed to provide sufficient justification for her absence. Furthermore, we again recognize D.L.F.’s interest in having a permanent, stable environment. See Minn. Stat. § 260C.301, subd. 7 (“[T]he best interests of the child must be the paramount consideration.”). We conclude that the record presents grave and weighty reasons that warrant the termination of parental rights.

Affirmed.

⁵ S.A.P.’s motion to vacate the default judgment did not raise this argument, which appears for the first time in the principal brief. However, the county does not reply to the argument nor does it argue forfeiture.