STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1359

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

Filed February 5, 2018
Affirmed
Jesson, Judge

Ramsey County District Court
File No. 62-JV-17-405

Patrick D. McGee, Forest Lake, Minnesota (for appellant-mother T.H.)

John Choi, Ramsey County Attorney, Kathryn M. Eilers, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County Social Services Department)

Fatima Abdulkadir, St. Paul, Minnesota (guardian ad litem)

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Jesson, Judge.

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

JESSON, Judge

After appellant mother gave birth to a son, E.H., she left the hospital to live with the baby in a Motel 6. Because mother's parental rights to other children were previously terminated, Ramsey County opened an investigation and removed E.H. from mother's care when he was only days old. The district court later terminated mother's parental rights to E.H. Mother appeals, challenging the district court's determination that the termination of her parental rights was in E.H.'s best interest. We affirm.

FACTS

On January 26, 2017, mother gave birth to a son, E.H. E.H.'s father's identity is not documented in the record. Following the birth, hospital staff flagged mother's name because her parental rights to another child were involuntarily terminated. Hospital staff were also concerned because mother wanted to remain at the hospital and did not understand why she and E.H. could not live there. She seemed overwhelmed, yet she refused to engage with possible services to support her and the baby. Mother and the baby were discharged from the hospital on January 30, 2017.

Dakota County received the initial alert from the hospital, but because mother planned to stay with her son at a Motel 6 in Saint Paul, the case was transferred to Ramsey County. On February 2, 2017, a Ramsey County social worker went to the Motel 6, where he found mother and the baby. He noted mother did not have a safe place for the baby to sleep. The social worker told mother he could give her a pack-and-play for E.H. to sleep in and grocery store gift certificates to assist with food, since mother was not breast feeding. He asked mother where they could meet the next day so he could deliver those items. Mother could not provide a meeting place because she did not know where she would be.

On February 3, 2017, the Saint Paul police came to the motel and placed E.H. on a 72-hour child protective hold, removing the baby from mother's care. Mother was upset but cooperated with police. At the time the baby was removed, he was healthy. After the 72-hour hold, the county filed an Expedited Petition to Terminate Parental Rights with Request for Emergency Protective Care and the petition was granted. E.H. stayed in the

county's custody and was placed with a foster family. The baby's transition to the family was positive and the family was willing to adopt him.

E.H. was removed from mother's care largely because mother's parental rights to other children were terminated in the past. Her rights to an older son, I.J.H., born in 2012, were involuntarily terminated in 2013. I.J.H. was removed because mother used marijuana and alcohol during her pregnancy and could neither handle her child properly, nor provide for his basic needs. Mother had a second child in 2014, who was also removed from her care. Concerns continued about mother's care of the baby, her chemical use as well as her unstable housing, mental health, developmental delays, and exposure to domestic abuse. In both child protection cases, mother engaged in services, including therapy to address her mental health.[1] Mother terminated her parental rights voluntarily to her second child because she believed the foster-care family was doing a good job caring for the child, as well as her older son, I.J.H., whom the family had already adopted.

Because mother's parental rights to I.J.H. were terminated without her consent, the district court granted the county's request to be discharged of any duty to provide mother with reunification services to retain her rights to E.H. The county did, however, facilitate supervised visitation. Visitation took place once a week and was supervised by a case aid. At these visits, mother would hold and feed the baby.

This case went to trial to determine whether mother's parental rights to E.H. should be terminated. The social worker testified, detailing concerns he had with mother as a

[1] Mother has been diagnosed with depression, bipolar, posttraumatic stress disorder, and attention deficit hyperactivity disorder.

parent to E.H. He explained that mother sees her child as a possession, she shows poor impulse control and she has no documented long-term treatment for her mental health. The social worker expressed concern that mother is unemployed and currently lives in a shared room in a transition housing facility. This housing is temporary and could not accommodate E.H., according to the social worker.

Both the social worker and case aid described problematic interactions they had with mother throughout the case. First, mother was concerned with the race of E.H.'s foster family and fixated on that instead of whether the family was able to care for E.H.. Mother also had two incidents during supervised visitation that raised concern. During one visit, mother became upset when the foster parents sent a pink bottle for feeding the baby. Mother believed a blue bottle, not a pink one, was appropriate for a baby boy and struggled to understand that the importance of feeding E.H. outweighed the color of the bottle. Mother then fed E.H. water when E.H. needed formula. During another visit, mother moved her legs repeatedly, causing the violent shaking of E.H. in an unsafe manner while feeding him. When the case aid directed her to stop and told her this action could hurt the baby, mother became upset and refused. She demanded to speak to the social worker. The social worker was able to defuse the situation and mother stopped and apologized. E.H. was not hurt during the incident.

Mother testified as well, explaining she bonded with her baby and had taken the initiative to improve her situation. Beginning in late April 2017, mother met with a certified nurse specialist about her mental health. Between April and the trial in July 2017, mother attended three to five therapy sessions with that nurse. Mother also began taking

psychiatric medication, but did so only one week prior to trial. Mother met with a life coach multiple times, who provided parenting instruction. Mother attempted to get a job, but remained unemployed at the time of trial. She supported herself with the approximately $900 she receives from social security disability. While mother was homeless prior to E.H.'s birth, she had since secured temporary housing in a transitional housing facility—a shared room for which she pays more than $800 a month. Mother further testified concerning the removal of her older children and how she felt she was better prepared to have E.H. Mother believed retaining her parental right to E.H. served the baby's best interest.

Because mother's parental rights to I.J.H. were involuntarily terminated, there was a rebuttable presumption that she was palpably unfit to parent E.H. The district court held that mother did not overcome this presumption. The court then determined it was in E.H.'s best interest to terminate mother's parental rights, stating that

> [while mother] is planning to seek help for [her] issues, there was no significant evidence presented at trial to show that the help is or will be sufficient. [Mother]'s past issues are simply too chronic and longstanding in nature. The limited services [mother] has accessed are insufficient to demonstrate she is currently able to care for the child, or will be able to do so in the reasonably foreseeable future.

Mother appeals.

D E C I S I O N

Mother challenges only the district court's determination that terminating her parental rights to E.H. was in his best interest.[2] She objects because of (1) the inadequacy of the guardian ad litem's investigation, and (2) the evidence that she could properly care for E.H., as demonstrated by her care for him during his first week of life.

When deciding whether to terminate a parent's right to their child, the best interests of the child are the paramount consideration. Minn. Stat. § 260C.301, subd. 7 (2016). To determine what is in a child's best interest, the district 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." *In re Welfare of J.L.L.*, 801 N.W.2d 405, 414 (Minn. App. 2011) (quoting *R.T.B.*, 492 N.W.2d at 4), *review denied* (Minn. July 28, 2011). We review a district court's 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).

Here, the district court explicitly applied each of these three best-interest factors. It found that E.H. had some interest in maintaining a relationship with his mother but noted

[2] Mother does not challenge the district court's decision that she did not overcome the presumption that she is palpably unfit to parent E.H. *See In re Welfare of Child of J.A.K.*, No. A17-1072, ___ N.W.2d ___, ___ (Minn. App. Jan. 26, 2018) (addressing rebuttal of presumed palpable unfitness).

too that since birth "he has visited with his mother once a week for an hour, and then only under supervision[.] . . . Even one of those visits was interrupted by [mother]'s action in shaking [E.H.] to the extent the behavior posed a safety risk and [mother]'s inability to redirect and refocus." The court credited mother's testimony that she bonded with E.H. and found that mother had an interest in maintaining a relationship with the baby. As a result, the court found that "the first two factors [are] present to some extent."

But it balanced those factors with the third factor, the competing interests of the child, and found E.H. "has an immediate and substantial need for safety and permanence that [mother] is simply not in a position to provide, either now or in the reasonably foreseeable future." The court found this third factor strongly supported termination.

The record amply supports this determination. Mother has significant and long-standing mental health challenges that she only began to address a short time before the trial. For example, mother only began taking psychiatric medication the week before trial. And mother struggled to provide appropriate care for E.H. even when supervised and directed by others. She demonstrated poor judgment regarding the baby's safety by feeding him water instead of formula and shaking him. Mother does not have a job. Nor does she have permanent housing where she and E.H. could live. In considering the competing best interests of a child, a district court appropriately considers a parent's ability to provide a stable environment. *J.L.L.*, 801 N.W.2d at 414. That stable environment, as the district court's findings confirm, was lacking here.

Guardian Ad Litem Investigation

Mother argues that because the guardian ad litem's investigation was inadequate, an independent investigation into this case must be conducted prior to the district court's decision on her baby's best interest. We disagree.

A guardian ad litem is required to, among other things:

> [C]onduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case.

Minn. Stat. § 260C.163, subd. 5(b)(1) (2016). Here, the guardian testified that termination of parental rights was in the baby's best interests. But the guardian did so without ever meeting mother. She only reviewed mother's previous child-protection files and talked to the county social worker. While the guardian visited E.H. in his foster home and commented on his positive relationship with his foster family, she made no such visit to mother and never observed mother's visits with E.H. The guardian never considered mother as a parenting option for E.H.

There was a stark failure by the guardian ad litem in this case.

But the district court acknowledged the inadequacy of the guardian's investigation. The court found the guardian's investigation to be "incomplete and inadequate. It fell far below any reasonable standard for a guardian" and rejected her testimony. And while we agree with the district court's assessment, the guardian's failure does not invalidate the decision that the termination of mother's parental rights was in E.H.'s best interest. The

court heard from other witnesses who interacted with mother, investigated her history, and observed her visits with E.H., namely the social worker and case aid. The court specifically found the social worker to be credible. And "[c]onsiderable deference is due to the district court's decision because a 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). These witnesses explained their concern with mother's ability to parent E.H. at the most fundamental levels, such as basic care and adequate housing. And the court heard from mother, herself. While a guardian ad litem makes recommendations on a child's best interest, it is the court that is the ultimate decision maker. *See* Minn. Stat. § 260C.163, subd. 5(b)(5) (2016) (stating a guardian makes written recommendations to the court). Because the court's decision here was supported by sufficient facts, reversal based on an inadequate guardian ad litem investigation is unwarranted.[3]

Mother's Efforts to Care for E.H.

Mother further argues that termination is not in E.H.'s best interest because she was able to care for his basic needs for the short time she had him in her custody and she has taken positive steps to improve her own health and parenting since E.H. was removed.

[3] Mother argues that, in fast-track termination cases like this one, an independent voice is particularly important. We do not foreclose the possibility that, in a future close case, reversal might be appropriate where a guardian's investigation was similarly deficient. But that is not the case before us. Here, mother does not even challenge the district court's determination that she did not meet her burden of presenting evidence to overcome the presumption of palpable unfitness found in Minnesota Statutes section 260C.301, subdivision 1(b)(4) (2016).

Mother asserts that she had housing and food for E.H. when they left the hospital and that when the baby was removed from her care he was healthy and happy. But when a social worker met with mother at the Motel 6, he was concerned that E.H. did not have a safe place to sleep and that mother needed assistance with food for the baby. Hospital staff expressed concerns as well. And mother struggled at times to provide for E.H.'s needs even after he was removed from her care.[4] Further, mother was unable to acquire housing that would accommodate a baby. These facts provide a relevant counterbalance to mother's assertions that she could care for the child's needs.[5]

In summary, the district court properly considered mother's efforts in making its best-interest determination, alongside the serious concerns raised by credible witnesses who interacted with and investigated her. At the time of trial, mother had only just begun to address her extensive mental health challenges. There were significant parenting concerns. And mother had no way to support or house E.H. The district court's findings that mother could not care for E.H. in the foreseeable future, and the baby needs permanency to best support his wellbeing, are supported by clear and convincing evidence.

[4] While mother denied shaking the child violently, the district court credited the testimony of the case aid, and we defer to this credibility determination. *L.A.F.*, 554 N.W.2d at 396.

[5] Mother notes she did not put E.H. at risk during her pregnancy because she stopped using marijuana. This is a marked improvement from her previous pregnancy with I.J.H., where she smoked marijuana multiple times a day while expecting a child. But while mother asserts that chemical dependency is no longer an issue for her, the district court expressed concern that she had not meaningfully engaged in treatment to address her chemical dependency. Given this concern, mother's ability to abstain from drug use during pregnancy is insufficient to challenge the district court's best interest determination.

The district court's determination that the termination of mother's parental rights to E.H. was in the child's best interest was an appropriate exercise of the court's discretion.

Affirmed.