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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1405**

In the Matter of the Welfare of the Children of: C. L. C., S. D. G., and C. J. D., Parents

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

Wright County District Court
File No. 86-JV-17-1886

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

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the district court's decision to terminate her parental rights to her children, arguing that the district court abused its discretion in concluding that she is palpably unfit to be a party to the parent-child relationship and that reasonable efforts have failed to correct the conditions leading to the out-of-home placement of appellant's children. Because we see no abuse of discretion in either conclusion, we affirm.

FACTS

Appellant C.L.C. is the mother of three children: a daughter, K.G., now 13; a son, E.G., now 10; and another daughter, B.D., now 8. The father of K.G. and E.G. is S.G., the father of B.D. is C.J.D. Since February 10, 2017, the children have been in foster care at the home of C.J.D.'s brother, N.D., and his wife, T.D. Appellant and the children lived with N.D. and T.D. for about a year in 2012.

In 2014, respondent Wright County Health and Human Services (WCHHS) received the first of 28 reports on appellant's children. Nine of those reports concerned appellant's substance abuse and neglect of the children. In the summer of 2016, a report that appellant was using controlled substances in front of the children resulted in a social worker being sent to appellant's home. Appellant was found to be under the influence of a controlled substance and later that day tested positive for methamphetamine. The children were placed temporarily with the paternal grandmother of the two older children, J.G., but, after appellant and C.D. attempted to take the children from her, law enforcement placed a 72-hour hold on them and WCHHS filed a petition to have them declared children in need of

protection or services (CHIPS). Appellant admitted that her chemical abuse had a negative effect on her ability to parent, and the children were adjudicated CHIPS.

In November 2016, the children were returned to appellant for a trial home visit that, by district court order, was at first under 24-hour supervision by a person with no record of chemical dependency or felonies. Then appellant began missing her chemical-use tests and relapsed into heavy use of methamphetamine. In February, after the children had moved into the home of N.D. and T.D. (the paternal uncle and aunt of the two older children), appellant continued to use methamphetamine and missed visits with the children. In April, appellant entered inpatient treatment, and WCHHS filed a petition to terminate her parental rights (TPR petition) on her children.

Appellant successfully completed inpatient treatment in early June and maintained her sobriety for two months. In July, following a trial, the district court issued a TPR order on appellant's children. Except for the unsuccessful trial home visit in December 2016, appellant's children have been in out-of-home placement since July 29, 2016. She challenges that order, arguing that the district court abused its discretion in determining that she was palpably unfit to be a party to the parent-child relationship and in determining that reasonable efforts have failed to correct the conditions that led to her children's out-of-home placement.

D E C I S I O N

Appellate courts

review the termination of parental rights to determine 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. We give considerable deference to the district court's decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing. We affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family.

In re Welfare of Children of S.E.P., 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted).

“[S]ubstance or alcohol use alone does not render a parent palpably unfit; rather, the county must demonstrate that the parent's substance or alcohol use is of a nature and duration that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the child's ongoing needs.” *In re Children of T.R.*, 750 N.W.2d 656, 663 (Minn. 2008) (reversing termination where “the district court made no findings suggesting that there was a causal connection between [the parent's] alcohol and drug use and his inability to care for [the child]”). “[O]n appeal from a district court's decision to terminate parental rights, we will review the district court's findings of the underlying or basic facts for clear error, but we review its determination 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). Further, “[w]e review a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion.” *Id.* at 905. “In terminating parental rights, the best interests of the child are the paramount consideration, and conflicts between the rights of the child and rights of the parents are resolved in favor of the child.” *Id.* at 902.

An appellate court will “neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotation omitted). A reviewing court must defer to these credibility determinations. *See id.* The district court here made several explicit credibility determinations. It found that many witnesses were credible: *e.g.*, appellant’s psychologist; T.D., the children’s foster-mother; the WCHHS family therapist; the Recovery Plus chemical-dependency counselor; the Central Minnesota Mental Health Centers (CMMHC) chemical-dependency counselor; the mental-health therapist; the social worker who went to appellant’s home in July 2016; the social worker assigned to appellant in August 2016; and the children’s guardian ad litem (GAL). However, the district court also determined that “[appellant] was not a credible witness. . . . [Her] testimony was inconsistent, often contradictory, rambling, and intended to convince the Court that she is in a better place now [than at the time the children were taken from her.]” Specifically, the district court found that appellant had lied (1) when testifying about her chemical use, (2) to her chemical-dependency evaluator about her chemical use history and her felony history, (3) to her psychiatrist about her mental-health history, (4) to an assessor in February 2017 about her recent use of methamphetamine, and (5) during her May 2017 inpatient treatment about not having any mental health issues. We defer to all district-court determinations of credibility. *See id.*

I. Palpable unfitness

Parental rights may be terminated when:

A 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) (2016). The “consistent pattern of specific conduct before the child[ren]” in appellant’s case is her use of methamphetamine. Appellant’s own testimony and her psychologist’s reports support the district court’s conclusion that her history of methamphetamine use renders her palpably unfit to be a parent.

At the trial on June 27-28, appellant’s attorney inquired of her, “[Y]ou’re not asking for the children to be returned to your care tomorrow. You’re asking what?” Appellant answered, “Honestly . . . I think that it [the out-of-home placement] would have to go at least three to six months to go back to a CHIPS case. And I think that would benefit me. . . . But not just to hand them over to me right now. . . .”

When asked on cross-examination if, during March and April when the children were with N.D. and T.D., she had missed some visits with them, appellant said, “Yes, because I was using”; she also said her phone time with the children had been cut off for the same reason. When asked why her visits with her children at the time of trial were occurring in a therapeutic setting, she said it was because she had texted her daughter K.G. that appellant “wanted [the children] to be more supportive of [appellant’s] situation.”¹

¹ T.D. testified that she overheard a speaker-phone conversation in which appellant “basically told [her daughter, K.D.] it was partly [K.D.’s] fault too and it wasn’t all [appellant’s] fault” that “the kids [were] in out[-of-home] care and . . . taken away from

The psychologist who had evaluated appellant in December 2016 was asked to update his assessment and answer some specific questions in June 2017, shortly before trial. The first assessment found appellant “at-risk for relapse not only to substance abuse, but to fall to the extreme stress of full-time parenting” and “at some elevated risk for ‘breaking the rules’ and returning to a destructive pattern of behavior which would find her children, once again, faced with turmoil and separation from the family.” The update noted that the first assessment had been “somewhat ‘prophetic’” because, during the trial home visit, appellant “faltered and failed to maintain sobriety² and to attend [to] her children’s needs appropriately. Her meth use in late January 2017 approached ‘binge’ proportions.” The psychologist noted that, at the time of discharge from inpatient treatment 25 days before trial, appellant’s “risk level for relapse remained at 4, the highest rating” and that her children “have become even more angry with their mother for her drug abuse, but also frustrated and angry that their lives have become so unsettled due to her behavior.” From the recent (post-December 2016) data, the psychologist deduced that appellant “continues to struggle in maintaining sobriety or in achieving a deeper understanding of her behavioral motives” and that “her (intractable) drug addiction and her pattern of relapse would suggest she has continued to remain at high-risk for relapse (only 2 months of sobriety to-date)”³

home.” T.D. also testified that appellant “had told the kids that if [appellant] doesn’t win this [TPR] case they may not ever get to see her again. And that really upset the kids.”

² The psychologist uses the term “sobriety” to refer to appellant’s abstinence from methamphetamine.

³ The first of those two months had been spent in inpatient treatment.

and “[a]ny expectation for her to assume full-time parenting responsibilities anytime soon would be premature and predictably unsuccessful.”

Asked whether appellant was better prepared to reunify with her children in June 2017 than she had been in November 2016, the psychologist answered in the negative: “She was at high-risk then and is at high-risk now. . . . [F]ull-time parenting was too much for her to handle. She relapsed into drug use, which is most likely the result of the stress associated with full-time parenting.” Asked if appellant had made the necessary permanent changes to her parenting that would enable success, the psychologist again answered negatively, “The only thing ‘permanent’ in her life has been the predictability of her instability; the ineffectiveness of self-management; and her inability to recognize her own limitations and vulnerabilities which would first require her to admit that she has limitations.” Finally, the psychologist concluded that appellant is not being realistic about her capacity to parent the children:

Her reality borders on fantasy; particularly in the manner [in which] she transfers symptoms of trauma to her children from . . . sources other than her own maladjustment. [Appellant] does not face her own reality well and does not recognize her limitations. The failed Trial Home Visit [December 2016 – February 2017] is one example; her false sense of confidence in sustaining her sobriety is another.

The district court did not abuse its discretion in concluding that appellant is palpably unfit to be a party to the parent-child relationship.

II. Failure of reasonable efforts to correct conditions

A district court must make findings of fact and conclusions of law as to whether a county made reasonable efforts to prevent the placement of children in foster care. Minn.

Stat. § 260.012(h) (2016). Reasonable efforts are those relevant to the safety and protection of the children, adequate to meet the needs of the children and parents, culturally appropriate, available and accessible, consistent and timely, and realistic under the circumstances. *Id.* Parental rights may be terminated for failure to correct the conditions leading to the children’s out-of-home placement despite a county’s reasonable efforts to rehabilitate the parent and reunify the family. Minn. Stat. § 260C.301, subd. 1(b)(5) (2016).

The district court found that WCHHS made 13 separate initiatives to help appellant reunify with her children and that those initiatives met the statutory requirements. It also found that appellant “did not utilize the services provided to her by WCHHS”; she “continually denied the services” and “would lash out at employees of WCHHS that were attempting to help [appellant] comply with her case plan.” These findings are not clearly erroneous.

Appellant blames WCHHS for “not refer[ring her] to outpatient chemical-dependency treatment until after her relapse nearly eight months after the initial removal of the children, after the trial home visit had already begun.” But the record shows that appellant received a chemical-dependency evaluation in August 2016, at which she lied to the assessor by saying she had used methamphetamine only twice since 2005, and another evaluation in February 2017, at which she said she had used methamphetamine only three to five times in the last year; she also testified that the reason she was not offered treatment was her lies about her use.

Moreover, appellant never mentions the consequences to her children of returning them once more to a parent who has demonstrated an inability to abstain from methamphetamine and of continuing to deny them a permanent home. Appellant's arguments focus on her rights and her best interests, not the rights or best interests of her children. But in termination cases, the rights of the child, not the rights of the parent, are paramount. *J.R.B.*, 805 N.W.2d at 902.

We conclude that the district court did not abuse its discretion in determining that appellant is palpably unfit to be a party to the parent-child relationship, that reasonable efforts to correct the conditions leading to the out-of-home placement of appellant's children had failed, and that the termination of appellant's parental rights is in her children's best interests.

Affirmed.