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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0155**

In the Matter of the Welfare of the Children of:
M. Z., J. P. B., S. C. D. and D. S., Parents

**Filed July 23, 2018
Affirmed
Bjorkman, Judge**

Benton County District Court
File Nos. 05-JV-17-369, 05-JV-17-370, 05-JV-17-371,
05-JV-17-1738, 05-JV-17-1739, 05-JV-17-1740

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Considered and decided by Reilly, Presiding Judge; Bjorkman, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant-mother challenges the termination of her parental rights to five children, arguing that (1) she was denied her statutory right to counsel when the district court neither appointed counsel for her nor obtained her express waiver of that right and (2) the county failed to make reasonable efforts to reunify her with the children. We affirm.

FACTS

Appellant M.Z. is the mother of S.Z., born March 2003; M.S., born March 2004; C.S., born September 2005; Rih.B., born November 2012; and Ric.B., born May 2014. Mother and the children have lived with respondent J.B., the father of the two youngest children, since approximately 2012. The living conditions have been chaotic and abusive, spurring multiple social-services interventions and prompting prolonged out-of-home placements of the children with their maternal great aunt.

The longest such placement began in 2012, when Morrison County Social Services learned that J.B. and his brother were using methamphetamine in the home; J.B.'s brother discharged firearms in the home, leaving bullet holes that frightened the children; and J.B.'s brother sexually abused S.Z. An October 2012 parenting assessment noted concerns about unsafe conditions in the home, the parents' noncompliance with social services, and neglect of the children. The assessor recommended against returning the children to mother's care. But in 2013, the children returned home.

The intervention that led to this termination-of-parental-rights (TPR) proceeding began in February 2017, after respondent Benton County Human Services (the county)

learned that mother, all five children, and J.B. were living in a camper that lacked both running water and toileting facilities. Investigation revealed that the family used plastic buckets for toilets, which the children were responsible for emptying; the family heated the camper with portable heaters, raising concerns about carbon monoxide and fire; and the children feared J.B. because he angered quickly, hit them, and dragged them by their arms.

On February 28, the county filed petitions alleging that the children needed protection or services (CHIPS). The petitions recounted the children's living conditions and noted J.B.'s "extensive criminal record and violent history" and the family's "extensive child protection history." The county again placed the children with their maternal great aunt. Mother retained counsel and admitted that "the children were without proper parental care due to the erratic behaviors of [J.B.] when he was present in the residence and that [J.B.]'s PTSD caused the erratic behavior and angry outbursts toward herself and the children." The district court adjudicated the children CHIPS.

The county developed a reunification case plan for mother, and the district court ordered her to comply with it. Among other things, the case plan required mother to: cooperate with the county; remain law abiding; inform her case manager of her address; allow an in-home worker to teach her parenting skills; demonstrate how she would keep the children safe if she continued her relationship with J.B.; complete a parenting assessment and follow its recommendations; abstain from using chemicals and associating with anyone using chemicals; obtain and maintain safe, stable, and appropriate housing; and attend supervised visits with the children.

Mother complied with some aspects of her case plan, including chemical abstinence, regular visitation, and participating in two parenting assessments. But she refused to provide her current address, which prevented in-home parenting assistance and deprived the county of the opportunity to determine if the housing was appropriate. And she maintained contact with J.B., which concerned the county because he had multiple active arrest warrants, refused to submit to drug testing required by his case plan, and, when arrested during the pendency of the CHIPS case, possessed and tested positive for methamphetamine. Mother also failed to articulate a plan for keeping the children safe from J.B.

In August, mother's counsel moved the district court for permission to withdraw, citing "no communication and no payment of fees." The district court reserved a ruling on the withdrawal motion "to allow [mother] to speak to the attorney regarding payment issues." Mother subsequently dismissed counsel.

On September 12, the county filed TPR petitions with respect to mother and the children's respective fathers. Mother twice applied for court-appointed counsel, each time reporting net monthly income from her full-time job slightly in excess of her monthly expenses. The district court denied both applications, each time finding that mother was "not financially eligible."

Mother appeared pro se at the December TPR trial. The district court took judicial notice of the CHIPS case reports from the guardian ad litem (GAL) and county case worker, received the parenting-assessment reports, and heard testimony from the case worker, the GAL, both parenting assessors, respondent D.S. (father of M.S. and C.S.), and mother. The

district court granted the petition after determining that the county made reasonable but unsuccessful efforts to reunify the family and that termination of mother's parental rights serves the children's best interests.¹ Mother appeals.

DECISION

I. The district court did not err by failing to appoint counsel for mother or obtain her express waiver of the right to counsel.

Every parent has the right to be represented by counsel in a TPR proceeding. Minn. Stat. § 260C.163, subd. 3(a) (2016); Minn. R. Juv. Prot. P. 25.01; *In re Welfare of J.B.*, 782 N.W.2d 535, 540 (Minn. 2010). If a parent appears in court for such a proceeding “and is not represented by counsel,” the district court must advise the parent “of the right to representation.” Minn. R. Juv. Prot. P. 25.04. But this does not mean that a parent “necessarily ha[s] the right to court appointed counsel.” Minn. R. Juv. Prot. P. 25.01 1999 comm. cmt. If the parent “desires counsel but is unable to employ it, the court shall appoint counsel to represent the parent . . . in any case in which it feels that such an appointment is appropriate if the [parent] would be financially unable to obtain counsel under the guidelines [for public defense eligibility].” Minn. Stat. § 260C.163, subd. 3(c) (2016). And a parent may waive her right to counsel. *In re Welfare of G.L.H.*, 614 N.W.2d 718, 723 (Minn. 2000).

We review the decision whether to appoint counsel in a TPR proceeding for abuse of discretion. See Minn. Stat. § 260C.163, subd. 3(c) (permitting the district court to

¹ Neither J.B. nor S.D. (S.Z.'s father) appeared at trial, and the district court ordered the termination of their parental rights by default. The district court did not terminate D.S.'s parental rights.

determine whether it is “appropriate” to appoint counsel for a parent). A finding that a parent waived the right to counsel is reviewed for clear error. *G.L.H.*, 614 N.W.2d at 723.

Mother contends that the district court erred by not appointing counsel to represent her and by failing to advise her of the right to counsel and obtain her express waiver of that right. These arguments are unavailing. First, mother identifies no flaw in the district court’s determination that she was financially ineligible for court-appointed counsel. Because Minn. Stat. § 260C.163, subd. 3(c), makes financial eligibility a prerequisite to appointment of counsel, the court’s unchallenged determination that mother is not eligible is not clearly erroneous and justifies its decision not to appoint counsel.

Second, while the district court did not advise mother of her right to counsel when she appeared for the TPR trial, the circumstances of the case support the district court’s implicit determinations that mother was aware of and waived this right. In *G.L.H.*, our supreme court rejected the argument that a district court must follow the waiver procedures required in criminal cases. 614 N.W.2d at 723. Rather, the determination whether a parent voluntarily and intelligently waived counsel in a TPR proceeding “can be based on the surrounding circumstances of the case.” *Id.* Here, mother was repeatedly notified in writing of the bases for the CHIPS and TPR petitions and that she had the right to be represented; each summons prominently declared that mother’s rights in the proceeding include the “right to be represented by an attorney as authorized under the statutes and court rules.” She retained and then dismissed private counsel in the CHIPS case. And she twice applied for appointed counsel in the TPR case. In short, mother was aware that she had the right to legal representation and knew that she bore the cost of such representation.

By appearing without counsel at the TPR trial, mother indicated that she was waiving that right. She expressed neither surprise nor reservation about representing herself. Rather, she actively participated in the trial, cross-examining the county case worker, both parenting assessors, and the GAL on the relevant issues. And she testified in opposition to the petition.

Mother's complaint that because she was unrepresented, the county "was able to get its entire case in without any challenges" is unpersuasive. She does not identify any specific objections counsel might have made to the county's documentary evidence—including the written reports of the two parenting assessors, the case worker, and the GAL—or any of the witness testimony consistently describing the underlying concerns about the children's environment and mother's failure to demonstrate that she can provide the children a safe and stable home. Nor does mother challenge the bulk of the district court's findings based on that evidence.

Overall, the record reflects that mother was aware of her right to counsel, sought and was properly denied appointed counsel, and thereafter elected to represent herself rather than retain private counsel. The district court did not err by failing to obtain mother's express waiver.

II. Substantial evidence supports the district court's determination that the county made reasonable efforts toward reunification.

Termination of parental rights requires clear and convincing evidence that (1) the county has made reasonable efforts to reunite the family, (2) there is at least one statutory ground for termination, and (3) termination is in the children's best interests. *In re Welfare*

of Children of S.E.P., 744 N.W.2d 381, 385 (Minn. 2008). Because mother challenges only the first of these requirements, we focus our analysis on the county’s reunification efforts. We review a district court’s factual findings for clear error and will not disturb a finding that the county made reasonable efforts if it is supported by substantial evidence. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901, 904 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

When a child is removed from the family home, the responsible social services agency—here, the county—must make “reasonable efforts” to reunify parent and child. Minn. Stat. § 260.012(a) (2016). “[T]he nature of the services which constitute reasonable efforts depends on the problem presented.” *In re Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008) (quotation omitted). In determining whether the county made reasonable efforts, a district court considers whether the county offered services that 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) (2016). The 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). Efforts described in court-approved case plans are presumptively reasonable. *S.E.P.*, 744 N.W.2d at 388.

Mother contends that the county did not make reasonable reunification efforts and instead worked “from the beginning to break the parent-child relationship.” We disagree. The record reflects that the county afforded mother weekly visitation with her children to

maintain their relationship and made numerous reasonable efforts to address the principal concerns that led to the children's removal—mother's long-standing inability to provide the children a safe and stable home. In this proceeding, the concerns were manifest in mother's failure to provide an appropriate living environment and failure to protect the children from J.B.

The county sought to remedy these concerns by providing services to J.B. and by working with mother to establish a safe and stable environment for the children regardless of J.B.'s cooperation or success. To that end, the unchallenged, court-approved case plan directed mother to: obtain and maintain appropriate housing; inform the case manager of her address and allow an in-home worker to teach her parenting skills; complete a parenting assessment and follow recommendations; abstain from using chemicals and associating with anyone using chemicals, including J.B.; and demonstrate how she would keep the children safe if she continued her relationship with J.B. The record reflects that the county's efforts to assist mother in completing these tasks were stymied by her refusal to cooperate.

Mother told the case manager that she obtained permanent housing but refused to provide the address. This refusal prevented the county from providing in-home parenting-skills assistance and evaluating the living arrangement and need for housing assistance. Mother's initial acknowledgment that J.B. presents a danger to the children and promise to separate from him or establish a safety plan for the children gave way to increased contact with J.B. and broken promises about keeping the children safe from him. And while mother ostensibly cooperated with the parenting-assessment requirement (which the county

facilitated by coordinating a second assessment after mother disagreed with the recommendations of the first), her attitude precluded the implementation of the recommendations. Mother's argument that the parenting assessments occurred too late in the process to be productive is unavailing. The district court credited the assessor's determination that mother's unwillingness during those assessments—and throughout the CHIPS process—to take responsibility for her actions made it unlikely that she would be able to adequately address the “repetitive cycle of neglect, maltreatment, housing insecurity, and high family conflict” in the foreseeable future. We see no clear error in this finding.

In sum, substantial evidence indicates that the county identified and attempted to provide numerous supportive services to help mother address the long-standing barriers that prevent her from providing her children a safe and stable home. The district court did not clearly err by finding those efforts were reasonable.

Affirmed.