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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1075**

In the Matter of the Welfare of the Children of: E. T.-P., Mother.

**Filed January 7, 2019
Affirmed
Reyes, Judge**

Hennepin County District Court
File Nos. 27-JV-17-1975; 27-JV-15-5735; 27-JV-16-1504;
27-JV-16-4936; 27-JV-17-4506; 27-JV-18-302

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Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Reyes, Judge.

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

REYES, Judge

On appeal from the termination of her parental rights, appellant mother argues that (1) the county failed to make reasonable efforts to reunite the family; (2) the record does not establish that she failed to satisfy the duties of the parent-child relationship; and (3) she is not a palpably unfit parent. We affirm.

FACTS

E.T.-P. is the birth mother of eight children, five of whom are under the jurisdiction of Hennepin County District Court, Juvenile Division. Because these five children have similar names and initials, we will refer to them as “Child 1,” “Child 2,” “Child 3,” “Child 4,” and “Child 5,” according to their chronological birth order (i.e., Child 1 is the eldest). This appeal concerns the termination of mother’s parental rights to three of her children: Child 1 (d.o.b. 8/26/2008), and infant twins Child 4 and Child 5 (d.o.b. 9/19/2017).¹

Child 1’s biological father is S.G.R. Mother and S.G.R.’s relationship began in 2006. He is 25 years mother’s senior, and mother reported that their relationship was plagued with conflict and several breakups. During one of the breakups, mother met A.L.R. through work. A.L.R. is the biological father of Child 4 and Child 5. Mother reported that, initially, A.L.R. took care of her and allowed her to stay with him when she experienced difficult times with S.G.R. Eventually, A.L.R. became abusive to mother and repeatedly threatened her with violence. Mother obtained a first order for protection (OFP) against A.L.R. on or about June 2014, and a second OFP in April 2017.

Mother and her children first became known to Hennepin County Child Protection Services (the county) in June 2015. The county received a report that mother routinely left her children in the care of S.G.R. The county became concerned because S.G.R. suffered from vascular dementia, had difficulty remembering where the children were, and would sometimes forget that he had children to care for. The county conducted a family

¹ Child 2 and Child 3 are under the jurisdiction of the district court for termination proceedings in separate files.

assessment and discovered that S.G.R. required 24-hour care with daily activities. The county assigned mother an ongoing family assessment social worker to offer services and to support a safety plan regarding the care of Child 1.

The county received several subsequent reports of abuse and neglect of the children, including reports that neighbors were woken up by S.G.R. yelling at Child 1 and Child 2, threatening to kill them, that S.G.R. locked Child 1 in a car on a hot day, refusing to let him out, and that S.G.R. had been overheard telling Child 1 to rape people. The county filed a child in need of protection and services (CHIPS) petition and Order to Show Cause for Child 1 and Child 2. The district court held a hearing on the Order to Show Cause and ordered Child 1 and Child 2 to remain in mother's care on the condition that the children not be left alone with S.G.R.

The county subsequently received another report that mother had again left the children alone with S.G.R. all day, who allegedly hit Child 1 on the hand, leaving a mark. The report also indicated that S.G.R. had been driving with the children, which he had been directed by his doctor not to do. The next day, the county filed an amended CHIPS petition with an accompanying ex parte motion for immediate custody, and Child 1 and Child 2 were removed from mother's care. Child 1 was placed in non-relative foster care, and Child 2 was placed in A.L.R.'s care.

Mother admitted to the CHIPS petition, and the district court ordered compliance with a case plan. Two days later, the county received a phone call from mother, who stated that she was suicidal and wanted to "say goodbye to her boys one last time." The county discovered that mother had been "wandering the streets, refusing to return home, [and] was

unable to make a contract for her own safety with the [child protection social worker]. [Mother] was disassociating, confused, and began having hallucinations that both children were dying. She continued to make comments regarding the end of her own life.” Mother eventually agreed to go to her local clinic, and the next day she was put on a medical health-and-welfare hold.

Child 1 was gradually reunited with mother under a Trial Home Visit (THV), on the condition that S.G.R. was not allowed to drive with the children in the car. In December 2016, the THV for Child 1 was converted to protective supervision, and the child was transitioned back to mother’s care.

On January 20, 2017, mother allowed S.G.R. to drive her to work, with Child 2 in the car, and they got into a car accident. Mother broke her pelvis, and both she and S.G.R. were taken to the hospital immediately. As a result, the district court ordered Child 1 and Child 2 into out-of-home placement. Child 1 was placed in relative foster care, where he remains to this day.

In April 2017, the county filed a petition for Termination of Parental Rights (TPR) for Child 1. The district court held an admit-deny hearing to adjudicate, with respect to Child 1, the TPR petition and a dispositional review of the CHIPS petition. The district court also adjudicated separate matters for Child 2 and Child 3 at the hearing, including a pretrial hearing on a Transfer of Legal Custody (TLC) petition. Mother and S.G.R. entered denials. The district court bifurcated the TPR and TLC matters and set trials for different dates.

When the twins Child 4 and Child 5 were born on September 19, 2017, the county filed a new TPR petition on their behalf. The district court ordered the twins into ongoing out-of-home placement and held an admit-deny hearing for them on October 2, 2017. Pursuant to a motion by the county, the district court combined the two termination petitions for Child 1, Child 4, and Child 5, over mother's objections. On March 2, 2018, S.G.R. died. A court trial as to mother's parental rights to Child 1, Child 4, and Child 5, took place on April 17-18 and May 15-16, 2018. On May 1, 2018, mother petitioned the district court to amend or vacate the second OFP against A.L.R. Mother alleged that she now felt safe with A.L.R., had a renewed confidence in his parenting abilities, and no longer needed the OFP. The district court vacated the OFP against A.L.R.

After multiple days of testimony and the receipt of numerous exhibits, the district court terminated mother's parental rights to Child 1, Child 4, and Child 5 on three statutory grounds: neglecting to comply with the duties imposed upon her by the parent-child relationship, Minn. Stat. § 260C.301, subd. 1(b)(2) (2018); that she is palpably unfit to be a party to the parent-child relationship, Minn. Stat. § 260C.301, subd. 1(b)(4) (2018); and, following the children's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the placement. Minn. Stat. § 260C.301, subd. 1(b)(5) (2018). The district court declined to terminate mother's parental rights on two additional bases as requested by the county. This appeal follows.

DECISION

I. Standard of review

We review a district court's factual findings in a TPR case for clear error and its determination of the statutory bases 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). A finding of fact is clearly erroneous if it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (quoting *In re Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008)). Reviewing courts give considerable deference to the district court's decision because it is in a superior position to assess the credibility of witnesses. *In re Welfare of Children of B.M.*, 845 N.W.2d 558, 563 (Minn. App. 2014). We will affirm the district court's determination if at least one statutory ground for termination exists, it is in the best interests of the child, and there is clear and convincing evidence that the county made reasonable efforts to reunite the family. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). Mother only challenges the three statutory grounds for termination.

II. Reasonable efforts under § 260C.301, subd. 1(b)(5)

Mother argues that the district court abused its discretion in finding that the county proved by clear and convincing evidence that it undertook reasonable efforts to rehabilitate and reunite the family because the county failed to offer services to establish a co-parenting relationship with A.L.R. Mother's argument lacks merit.

A mother's parental rights may be terminated under Minn. Stat. § 260C.301, subd. 1(b)(5), if there is clear and convincing evidence that reasonable efforts, under the direction of the district court, have failed to correct the conditions leading to the child's out-of-home placement. For a court to presume that reasonable efforts have failed, the following elements must be met: (1) the child has resided out of the home, under court order, for a cumulative period of 12 months within the preceding 22 months; (2) there exists a court-approved out-of-home placement plan; (3) the conditions that led to the out-of-home placement persist; and (4) the county has made reasonable efforts to rehabilitate the parent and reunite the family. Minn. Stat. § 260C.301, subd. 1(b)(5)(i)-(iv). Mother disputes only element (4).

In determining whether the responsible county or agency has made reasonable efforts, reviewing courts must consider whether the services provided to the child and family 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) (2018). The efforts must be aimed at correcting the conditions which led to out-of-home placement. *J.K.T.*, 814 N.W.2d at 88. Additionally, courts must consider the length of time a county was involved with the family and the quality of the county's effort. *Id.* In determining which reasonable efforts are appropriate, "the child's best interests, health, and safety must be of paramount concern." Minn. Stat. § 260.012(a) (2018).

On the first factor, the county worked with mother to implement the first court-ordered case plan, which set forth specific tasks aimed at the conditions that led to out-of-

home placement. The county then modified mother's case plan on several occasions as new circumstances became known to the county. For example, when the county discovered that mother continued to leave the children in the care of S.G.R, in spite of the county and S.G.R.'s medical team warning mother not to do so, mother's case plan was modified to include a task to not leave the children unsupervised with S.G.R. This adjustment was relevant, under the circumstances at the time, to the safety and protection of the children.

With respect to the second factor, the record reflects that the county adequately met the needs of mother and her children. In the beginning of the case, the county provided mother with resources about how to obtain daycare assistance so that she did not have to leave her children with S.G.R. Mother did not follow through on the advice, so the county assisted her with completing each step of the daycare-application process. In addition, the county arranged for mother to work with numerous mental-health providers to understand and address mental-health barriers that related to her inability to safely and appropriately parent her children.

As to factors three, four, and five, it is clear from the record that the county endeavored to provide mother services that were culturally appropriate, available and accessible, and consistent and timely. The county selected agencies that had a history or a practitioner familiar with Hispanic families and sought agencies that did not require co-pays or insurance, as mother did not have the financial or insurance resources to make those payments. Mother also had Spanish-language translators from the county during all conferences in which her case plan was discussed. With respect to the final factor, the case plan was realistic, and the county took efforts to modify it to address mother's needs.

Additionally, the county has been involved with the family since the summer of 2015, shortly after it received the first report about the safety of the children. Since then, the county has evidenced a genuine commitment to helping mother through its offering of numerous, individually tailored services. The specific choice of services and service providers also reflected consideration, by the county, as to the children's health, safety, and overall best interests.

Despite this record, mother argues that the county failed to undertake reasonable efforts because no services were offered regarding a co-parenting relationship with A.L.R. However, it was only on May 1, 2018, two weeks before the end of the court trial, that mother requested vacation of the most recent OFP against A.L.R. and testified that she wished to engage in a co-parenting relationship with him. Prior to that, mother had consistently maintained that she was afraid of A.L.R. and that he was a "dangerous man." During her interactions with the county, she repeatedly alleged that A.L.R. made threats of violence towards her and that he had raped her on numerous occasions, resulting in several of her pregnancies. Mother also had two OFPs against A.L.R. during this case. Nevertheless, the record indicates that, while the June 2014 OFP was in place, the county worked with mother and A.L.R. to coordinate drop off and pick up at supervised visits to not violate the OFP. Mother cannot have it both ways; A.L.R. cannot be both a viable co-parent option and a threat to her safety and the safety of her children.

Throughout this entire case, mother had maintained that her children were not safe in A.L.R.'s care due to his verbal, physical, and sexual abuse, until just two weeks before

the end of the court trial. Given these facts, it was neither reasonable nor realistic for the county to attempt to provide mother and A.L.R. with co-parenting resources.

Mother's argument is further weakened by her disingenuousness throughout the proceedings. Testimony from the county and photographic exhibits indicate that mother intentionally lied to the court, her domestic-violence advocate, and the child-protection social worker about maintaining regular and possibly intimate contact with A.L.R. at his residence while an OFP was in place. Mother initially reported to the county that a neighbor in her apartment complex looked after the children and that she had been bringing the children to work with her every day, but later conceded that she had been leaving the children alone with S.G.R. Also, mother provided reports to the county regarding the car accident in January 2017, which were later discredited by eyewitness accounts. At trial, mother changed her report of the accident to be consistent with the eyewitness statements. The district court noted, and we agree, that mother's own duplicity has limited the effectiveness of the services offered and has hindered her progress in making the changes necessary to have her children returned to her care. Because clear and convincing evidence establishes that the county provided mother with a variety of mental-health, parenting, and medical services for the duration of mother's case, we conclude that the district court did not abuse its discretion in finding that the county made reasonable efforts to rehabilitate the parent and reunite the family. Because at least one statutory ground supports the TPR, we need not consider the other two bases. *S.E.P.*, 744 N.W.2d at 385.

Affirmed.