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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1303**

In the Matter of the Children of: B.M.T., N.B.T., and C.V.G., Jr., Parents.

**Filed February 11, 2019
Affirmed
Reyes, Judge**

Wright County District Court
File No. 86-JV-18-1779

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Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

REYES, Judge

Mother challenges the district court's termination of her parental rights, arguing that
(1) the district court should have granted her request for a continuance and (2) sufficient
evidence did not support the district court's determination. We affirm.

FACTS

Appellant B.M.T. (mother) is the biological mother of nine-year-old J.R.T. and 16-month-old C.A.G. She appeals the district court's termination of her parental rights (TPR) with respect to both children.

J.R.T. began out-of-home placement on September 15, 2017, after an incident during which mother shoplifted at a convenience store while under the influence of "wet."¹ J.R.T. witnessed mother's arrest. A few days later, the child-protection worker assigned to the case contacted mother to inform her that respondent Wright County Health and Human Services (the county) placed J.R.T. in foster care. Mother appeared confused and unaware of J.R.T.'s whereabouts.

C.A.G. began out-of-home placement on September 19, 2017, at five weeks old. Mother tested positive for THC² and cocaine while pregnant with him. C.A.G. tested positive for THC at birth and later tested positive for both THC and cocaine. Shortly after J.R.T.'s removal, the child-protection worker went to mother's home to check on C.A.G. Mother did not recall her conversation with the child-protection worker regarding J.R.T., nor could she recall when C.A.G. had last eaten. Further, the only baby-related item in the apartment was a portable crib. The child-protection worker administered a drug test to mother, which came back positive for THC and cocaine.

Mother has a significant history of substance use and mental-health issues. She experiences paranoia and confusion, which worsen with drug use. She has been

¹ "Wet" is marijuana laced with embalming fluid.

² THC is the main psychoactive ingredient in cannabis.

hospitalized on multiple occasions due to drug-induced psychotic delusions. Mother also has a history of experiencing domestic violence with J.R.T.'s father, N.B.T. and C.A.G.'s father, C.V.G.

In September 2017, the county filed a child-in-need-of-protection-or-services (CHIPS) petition regarding the children. The district court adjudicated the children as CHIPS and ordered that mother comply with a case plan.

Mother submitted to drug testing throughout this case, which produced positive results on at least fifteen occasions. She also missed a number of tests. Mother had visitation with the children throughout the case, however, due to her failing drug tests and frequently showing up late for visitation with the children, visits were often canceled. The county suspended visitation in November 2017 and again in February 2018 due to mother's drug use and the negative effect that canceled visits had on J.R.T. Mother resumed visits on May 30, 2018.

Mother attended treatment at Sobriety First from November 2017 to February 2018, during which time she continued to use marijuana and cocaine. Mother began inpatient treatment at Recovery Plus in late March 2018. The date of mother's last drug use varies slightly depending on the account, but appears to be in mid-February or March. She met her goals and ultimately graduated from the program on May 8, 2018. Three days later, she began residential treatment at Journey Home, where she remained during trial.

The county filed a TPR petition on March 23, 2018. After a court trial, the district court terminated mother's parental rights on July 23, 2018, concluding that the county showed that clear and convincing evidence supported termination of mother's rights under

Minn. Stat. § 260C.301, subd. 1(b)(4)-(5), (8) (2018), because mother is palpably unfit to parent, reasonable efforts have failed to correct the conditions leading to the children's out-of-home placement, and the children were neglected and in foster care. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion in denying mother's request for a continuance.

Mother argues that the district court abused its discretion in refusing to grant a continuance of its permanency decision because she was in compliance with her case plan at the time she requested a continuance. We are not persuaded.

If a parent maintains contact with the children, complies with the case plan, and if the children would benefit from reunification, the court may continue the matter for up to six additional months. Minn. Stat. § 260C.204 (c)(1)(ii) (2018). It is within the trial court's discretion to grant a continuance, and we will not reverse without a showing of a clear abuse of that discretion. *In re Welfare of J.A.S.*, 488 N.W.2d 332, 335 (Minn. App. 1992) (affirming trial court's denial of continuance request when guardian ad litem (GAL) believed it would be in children's best interests for hearing to proceed as scheduled).

The district court denied mother's request for a continuance stating that it would "merely delay what has been demonstrated to be inevitable." The district court noted that mother's treatment program discharged her during trial for failure to meet curfew. Further, the district court determined that a continuance is not in the best interests of the children.

The record supports the district court's determination that granting a continuance is not in the best interests of the children. The GAL, social worker, and J.R.T.'s therapist all testified similarly that J.R.T. needed permanency promptly so that he could move on and focus on his own mental health. Moreover, the social worker stated that disrupting the stability that the foster family provides C.A.G. is not in his best interests. The district court did not abuse its discretion in denying mother's request for a continuance.

II. Clear and convincing evidence supports the district court's termination of mother's parental rights.

A. Standard of review

This court reviews a district court's findings of fact in a termination proceeding to determine whether they are supported by substantial evidence, are not clearly erroneous, and address the statutory factors. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). A factual finding is clearly erroneous "if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008). We defer to the district court's determinations as to the credibility of witnesses. *In re Welfare of Children of B.M.*, 845 N.W.2d 558, 563 (Minn. App. 2014) (quotation omitted).

We review the district court's ultimate TPR decision for an abuse of discretion. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). "We will affirm the district court's termination of parental rights when a statutory ground for termination is supported by clear and convincing evidence, termination is in the best interests of the child,

and the county has made reasonable efforts to reunite the family.” *In re Welfare of Children of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018).

B. Reasonable efforts

Mother argues that substantial evidence did not support the district court’s finding that the county made reasonable efforts to reunite her with her children because her treatment providers made little to no effort to maintain contact with her. We disagree.

During a TPR proceeding, the district court must make findings that the county made reasonable efforts to reunify the family, including findings regarding the nature and extent of the efforts. Minn. Stat. § 260C.301, subd. 8(1) (2018). Reasonable efforts are “services that go beyond mere matters of form so as to include real, genuine assistance.” *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Mar. 28, 2007). The services offered must be: “(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). “Whether the county has met its duty of reasonable efforts requires consideration of the length of time the county was involved and the quality of effort given.” *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). What constitutes “reasonable efforts” depends on the facts of each case. *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996).

The district court found that the county made reasonable efforts to reunify mother with the children by offering her tangible and relevant resources. The county’s efforts tried

to address mother's issues of substance use, mental health, unsafe relationships, lack of parenting skills, and her resulting inability to provide safety and stability for the children. These efforts included setting up a psychological evaluation to address mother's substance-abuse and mental-health issues; referrals for treatment and therapy; moving mother's supervised visits with the children to a program closer to her and that provided services to help with parenting skills; continuously advising mother on appropriate conversations with the children; providing transportation tokens and gas cards; and discussing budgeting and finances with mother when she received an eviction notice. In addition, mother attended programming regarding healthy relationships.

The social worker testified that she did not believe that there were any services mother should have been provided that the county failed to offer her. She believed the services were relevant, culturally appropriate, available to her, and realistic. The social worker stated that mother's biggest challenge is that she did not seem to want help. The record supports the district court's finding that the county made reasonable efforts to reunite mother and the children.

C. Palpably unfit

Mother argues that clear and convincing evidence did not support the district court's finding that she is palpably unfit to parent because she provided her children with food, clothing, shelter, and necessities. She contends that she cared for J.R.T. almost exclusively for six years and never had the opportunity to care for C.A.G. for a prolonged period of time. Mother asserts that the evidence showed that, at the time the district court terminated her rights, she was on the road to recovery. We are not persuaded.

A district court may terminate a parent's rights if that parent is palpably unfit to be a parent due to specific conduct or conditions directly related to parenting which the district court finds to be of a duration or nature rendering the parent unable to appropriately care for the child for the foreseeable future. Minn. Stat. § 260C.301, subd. 1(b)(4) (2018). In determining whether a particular statutory basis for a TPR is present, a district court finds the underlying facts relevant to the statute and then, in light of its factual findings, determines whether the basis for terminating a parent's rights is present. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). If a parent's behavior is likely to harm a child's physical or mental health, a parent can be found palpably unfit. *In re Children of Vasquez*, 658 N.W.2d 249, 255 (Minn. App. 2003).

The district court determined that mother was palpably unfit to parent. It noted that mother repeatedly used drugs while caring for her children, she drove with J.R.T. in the car while under the influence, she was hospitalized for drug-induced psychotic delusions and forgot that she had a son, and C.A.G. tested positive for THC and cocaine. *See In re Children of T.R.*, 750 N.W.2d 656, 663 (Minn. 2008) (alcohol or substance use can render parent palpably unfit if directly related to parent's inability to appropriately care for the child for the foreseeable future). Further, the district court stated that, while mother achieved sobriety near the end of the case, she lacks sober support and has not shown the ability to remain drug-free outside of inpatient treatment. The district court found that mother's mental-health issues directly affect her ability to care for her children because they have resulted in harm to the children, and she has not properly addressed them. *See*

id. at 661-62 (parent can be found palpably unfit based on mental illness if it is likely to harm child). Due to mental-health issues, she is unable to manage routine affairs, suffers from delusions and hallucinations, and has disorganized thoughts and behaviors. The district court also found that the children could not be protected under mother's care due to her continued involvement with N.B.T. and C.V.G.

The record supports the district court's findings under this statutory factor. The social worker testified that she is not confident in mother's ability to remain drug free in the community, as she was unable to abstain from using drugs in an unstructured environment throughout the entire case. Despite the social worker's emphasis on the importance of having a sober support network, mother had not yet obtained a sponsor at the time of trial. Moreover, the social worker testified that mother's inability to cease contact with N.B.T. and C.V.G. remains a roadblock to her recovery due to their continued drug use. Mother acknowledged during trial that both men were not good for her sobriety or mental health. The GAL testified that mother still does not understand the full scope of her substance use.

With respect to mother's mental-health issues, she testified during trial that she still has paranoid feelings that someone is watching her. Mother's treatment counselor at Recovery Plus testified that she has concerns about someone's sobriety and stability if they continue to have paranoid delusions. Mother also stated that she inconsistently took prescribed medication for her mental health. She testified that she did not agree with her diagnostic assessment, evincing her lack of understanding of her mental-health issues. The

social worker testified that, instead of addressing her underlying mental-health concerns, mother had only focused on trying to cope with the stress of the case in therapy.

According to the GAL, at the time of trial, mother's continued inappropriate conversations with J.R.T. prevented her from having unsupervised visits with the children. The GAL testified that, because mother has only just begun to address her own mental-health needs, she is not confident that mother can provide J.R.T. with the support he needs for his own mental-health issues. The social worker also testified that she is worried about mother's ability to control herself due to inappropriate behavior in public settings. The social worker testified to patterns of mother's conduct throughout the case, including diminishing the culpability for her behavior, lying about things with which she needs help, and continuing to be non-compliant with her programs. The GAL further testified that mother has put her interests above those of her children throughout the case. A finding of palpable unfitness is supported when visitation notes indicate that the parent lacks adequate parenting skills and when it is unlikely that the parent will be able to put aside his own needs and desires in order to properly care for the child in the foreseeable future. *In re Welfare of J.D.L.*, 522 N.W.2d 364, 368 (Minn. App. 1994). Finally, both the GAL and the social worker testified that mother is not capable of meeting the children's needs. Because the record supports the district court's determination that mother is palpably unfit, we need not address the other statutory bases for termination. See Minn. Stat. § 260C.301, subd. 1(b)(1)-(9) (2018) (district court may terminate a parent's rights if at least one statutory factor is met).

D. Best interests of the children

Mother asserts that the district court improperly determined that termination was in the best interests of the children. We are not persuaded.

We review a district court's best-interests determination for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 900. In a termination proceeding, the children's best interests are the paramount consideration. *Id.* at 902. We "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). The district court "must consider a child's best interests and explain its rationale in its findings and conclusions." *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). Conflicts between mother's interests and the children's interests are resolved in favor of the children. *J.R.B.*, 805 N.W.2d at 902. Competing interests may include "a stable environment [and] health considerations." *R.T.B.*, 492 N.W.2d at 4.

The district court found that clear and convincing evidence supported its best-interests determination. Mother argues that the district court placed too much emphasis on the fact that this case has exceeded the permanency deadlines, which cannot be the sole basis for granting a TPR. But the district court considered a number of factors in addition to the children's need for permanency. The district court emphasized J.R.T.'s needs, including managing his ADHD, his negative behaviors including wetting and defecating himself, his anger, and processing the trauma he has endured. He also needs a caregiver who can provide boundaries, routines, and stability. Further, C.A.G. needs support in his

developmental progress and medical needs. The district court stated that the children need caregivers who are stable, sober, and who will protect them from unsafe people.

Based on trial testimony, many of the county's concerns regarding the children have improved since their placement in foster care. When the county first placed J.R.T. in foster care, he had many behavioral issues, anger, aggression, and he was behind in school. The GAL stated that, since being in foster care, he has made progress in school, he has been better at verbalizing his emotions, and his negative behaviors have improved. The social worker also testified that J.R.T. has become better at coping with his emotions and expressing his feelings instead of lashing out and becoming aggressive. The social worker testified that when J.R.T. began taking medication while in foster care, it helped his concentration. Mother did not want him to go on this medication. J.R.T.'s therapist also testified that during the period of time when visits were suspended, J.R.T.'s behaviors had improved. Further, since being in foster care, C.A.G. has achieved developmental milestones and his eczema has improved.

Moreover, mother continues to associate with N.B.T. and C.V.G., each of whom have a history of domestic abuse and substance use. At one point, mother had taken J.R.T. to see N.B.T., and when she tried to leave, N.B.T. put a gun to her head and said she had to leave J.R.T. there. As a result, J.R.T. resided with N.B.T. for a period of time during which N.B.T. abused him. Mother knew about J.R.T.'s issues with wetting his pants and stated that it usually happened during times of inconsistency, such as when his father would come around. The fact that N.B.T. continues to be present in mother's life indicates that returning to mother's care is not in the children's best interests. Mother also stated that she

had an order for protection (OFP) against C.V.G. but still had contact with him. On one occasion during this case, she gave law enforcement her sister's name when they pulled her over with C.V.G. in the car to avoid getting in trouble for violating the OFP.

The GAL testified that J.R.T. needs a caregiver who is stable and can create routine to help with his behaviors and emotions, to maintain contact with school, and meet his medical needs. The social worker testified that J.R.T. needs a support system to help him through the trauma that he has experienced. The record indicates that mother may not be supportive of helping J.R.T. work through his trauma and mental-health needs. In addition, C.A.G. may have fetal-alcohol syndrome. He needs someone to ensure regular doctor's visits, take care of his eczema, and to help him reach developmental milestones. The social worker testified that both children need a caregiver who can give them structure and stability as well as a caregiver who is mentally healthy and sober. She did not believe mother could be that caregiver.

Mother argues that the district court failed to consider J.R.T.'s preference to return to mother's care. She points to the testimony of the GAL and J.R.T.'s therapist that he wished to return to her care. However, the district court did consider J.R.T.'s wishes and found that he has an interest in maintaining his relationship with mother. It noted that J.R.T. is attached to mother, and that he "loves her, misses her, and wants to be with her." While mother loves her children and wants to care for them, the children's needs outweigh mother's interests in maintaining her relationship with the children. Both the GAL and the social worker believe that the foster parents can provide the children with the care they need and ultimately testified that termination is in the best interests of the children, which

the district court credited. Based on this record, the district court did not abuse its discretion.

Affirmed.