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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1285**

In re the Matter of the Welfare of the Child of: S. J. H. and J. J. B., Parents.

**Filed February 10, 2020
Affirmed
Bryan, Judge**

Olmsted County District Court
File No. 55-JV-19-2521

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Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Bryan, Judge.

UNPUBLISHED OPINION

BRYAN, Judge

This appeal arises from a juvenile-protection case in which the district court terminated a mother's parental rights to her two-year-old child. Mother argues that the district court erred in the following three ways: (1) by concluding that the petitioner established statutory grounds for the termination of parental rights; (2) by admitting

hearsay evidence; and (3) by incorporating the county's petition into the district court's order. We affirm.

FACTS

Appellant S.J.H. (mother), challenges the termination of her parental rights to her biological child, Q.J.B. (the child). The child was two years old when the district court terminated mother's parental rights based on the petition and evidence of respondent Olmsted County (the county).¹ Before the termination of her parental rights, mother had custody of the child and mother's older son, E.J.H.-L. (the child's half-brother).²

In September 2017, Olmsted County Health, Housing and Human Services (OCHHHS) became involved with mother and the child after it received a report of domestic violence between mother and the child's father, J.J.B. (father). Mother moved into a women's shelter with her children and began working with OCHHHS social workers up until February, 2018 when the social worker on her case determined that the family needed no further services.

OCHHHS received another report of a domestic incident between mother and father on May 9, 2018. Soon after, OCHHHS received a police report describing a different domestic incident between the two on May 12. These disputes led to mother again staying in a women's shelter. OCHHHS assigned a social worker to help mother with housing and

¹ The district-court also terminated the child's biological father's parental rights. The child's father is not participating in this appeal.

² Mother does not appeal the district court decision regarding transfer of mother's parental rights over the child's half-brother.

mental health services. The case was closed on July 11, after mother said she was no longer interested in receiving services.

On July 15, 2018, OCHHHS received a report from law enforcement that father had punched the child's half-brother in the face. Mother told law enforcement that the child's half-brother had lied, though she did admit at a later Child in Need of Protection or Services (CHIPS) hearing that the child's half-brother had been injured during a domestic dispute. OCHHHS placed the child and the child's half-brother into emergency foster care because OCHHHS social workers had significant concerns about mother's ability to keep the children safe and to maintain a no-contact order between father and the child's half-brother. Three days after this incident, mother signed voluntary placement agreements, allowing OCHHHS to place both children in foster care.

OCHHHS investigated the incident and substantiated the allegations of maltreatment of the child's half-brother. It filed a CHIPS petition with the district court, alleging that the child and her half-brother needed protection or services. The district court determined that the child needed protection or services after mother admitted that the domestic violence incidents made the home environment dangerous for the child. It then removed the child from the home and placed the child into OCHHHS's protective care. The child remained in foster care for the rest of the juvenile-protection proceedings. The child's half brother was the subject of a separate child protection proceeding that resulted in an order transferring custody of the child's half brother to the father of the child's half brother.

At the start of 2019, mother signed an out-of-home placement plan which the district court approved and ordered. The plan required her to find stable housing, avoid reports of domestic violence involving father, and consistently follow through with mental health services. Throughout this time, mother's living arrangements were in flux. She reported to social workers that, before moving in with a friend in February, she had stayed in a variety of places, including with friends, with father, and in her car. Mother also received vouchers for gas and food from OCHHHS to help pay bills after she informed an OCHHHS social worker that she had not really eaten for a month after she lost food benefits. Mother was also inconsistent in managing her mental health issues, missing several appointments and running out of medications.

Mother also kept contacting father. In March 2019, the couple got into a fight. Father began driving off in a car while mother was outside the vehicle with her arm stuck in the car window. Mother had recently informed the district court that she was pregnant, but she later told a social worker that she miscarried after the incident in March. The social worker also described an incident in May 2019 where she observed mother chasing father out of a social services building and into the parking lot. Mother explained that she had wanted father to retrieve his belongings.

OCHHHS filed a petition for termination of parental rights in April 2019. At trial, mother sought to make a motion in limine to prevent certain documents from entering into evidence. She objected to the introduction of the following items: (1) police reports describing the domestic violence incidents between her and father as inadmissible hearsay; (2) placement agreements and out-of-home plans that referred to those police reports and

other hearsay; and (3) the findings of fact from earlier hearings as substantive evidence. She tried to file a motion in limine the night before the trial, but the district court stated that it had not had time to consider the motion and would consider mother's objections as they arose. The district court overruled various hearsay objections made by mother's counsel. After the trial, the district court issued an order granting OCHHHS's petition to terminate mother's parental rights with respect to the child.

This appeal follows.

D E C I S I O N

I. The district court findings were supported by clear and convincing evidence and established at least one statutory criterion supporting termination.

Mother argues that there was not clear and convincing evidence to support the district court's decision to terminate her parental rights to the child. Appellate courts review an order terminating parental rights "to determine whether the district court's findings address the statutory criteria and whether those findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001). A finding is clearly erroneous when it is manifestly contrary to the weight of the evidence. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008). Appellate courts will generally affirm the district court's termination of parental rights when: (1) clear and convincing evidence supports at least one statutory ground for termination; (2) the county made reasonable efforts to reunite the family; and (3) termination serves the best interests of the child. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). Appellate courts "give considerable deference to the

district court's decision to terminate parental rights," but "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *Id.* (citation omitted).

Mother does not argue with the district court's determinations that termination was in the best interests of the child or that the county made reasonable efforts to reunite the family. The record supports both determinations. The district court determined that termination was in the child's best interest because, while there was a clear bond between mother and the child, the child also needs a safe, stable home with caregivers who can meet her basic, medical, emotional and developmental needs. The district court reasonably concluded that mother was unable to provide this environment for the child based on how mother had struggled to meet her own needs. The record also shows that OCHHHS offered various services to the family to help reunify mother and the child, including "Family Group Conference, housing referrals, transportation, well-child check-ups, supervised visits, gas and grocery vouchers, storage unit payment, and foster care." These services show that the county made reasonable efforts to reunite the family. Thus, we turn to whether at least one statutory ground for termination is supported by clear and convincing evidence.

The district court determined that the county had shown by clear and convincing evidence that there were two, independent statutory grounds for termination: paragraph (b)(2) and paragraph (b)(8). Minn. Stat. § 260C.301, subd. 1(b)(2), (b)(8) (2018). First, the district court determined that the county had shown that mother had substantially and continuously neglected to comply with the duties imposed upon her by the parent and child

relationship, under paragraph (b)(2). Second, the district court determined that the county had shown that the child was neglected and in foster care, under paragraph (b)(8).

Pursuant to paragraph (b)(2), a parent's duties include, but are not limited to, "providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development" *Id.* The district court must also determine that "either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable." *Id.* "Failure to satisfy requirements of a court-ordered case plan provides evidence of a parent's noncompliance with the duties and responsibilities" *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 666 (Minn. App. 2012). Therefore, parents have a duty to provide physical and emotional protection for their children.

Mother argues that the district court failed to provide any factual support for its finding of neglect under paragraph (b)(2). The district court did not separately identify what facts it was relying on when it reached its conclusions regarding paragraphs (b)(2) and (b)(8). Nevertheless, its factual findings clearly and convincingly support the determination of neglect. The district court based this conclusion on testimony admitted during the trial. For instance, the district court relied on testimony from multiple social workers and the child's guardian ad litem to find that mother did not have independent, stable housing, was struggling to pay her bills, was not consistently addressing her mental health, and had failed to complete the out-of-home placement plan. The district court also noted that, based on testimony of a social worker, mother reported not eating for a month

after losing her food benefits, and that mother was unable to care for the child when she could not care for herself. The district court also relied on the testimony of the child's guardian ad litem, who expressed similar concerns. Finally, mother's own testimony supports the district court's findings that mother breached her court-ordered plan, which required her to find stable housing, avoid reports of domestic violence involving father, and consistently follow through with mental health services. While mother eventually found housing with a friend, up until that point she had slept in her car and bounced between friends' homes. Mother's testimony also corroborated the other witnesses who testified that mother did not consistently take her mental health medication, follow treatment recommendations, or attend scheduled appointments with mental health service providers. Moreover, the district court determined that by continuing to contact the child's father, despite the allegations of domestic abuse, mother created an unsafe environment for the child.

This record supports the district court's conclusion that the county established, by clear and convincing evidence, the statutory ground for termination in paragraph (b)(2) (neglect of parental duties). Because only one statutory basis for termination is needed to affirm, we need not decide whether or not the district court erred when it concluded that the county also established the statutory ground for termination found in paragraph (b)(8).

II. The admission of the police reports did not prejudice mother.

Mother argues that the district court inappropriately permitted the county to introduce hearsay statements into evidence through police reports. The county responds that the rules permit law enforcement reports under either the business-records or the public

records hearsay exceptions and that, even if the district court did err in admitting the records, the error was harmless.

This court applies an abuse-of-discretion standard of review to evidentiary rulings in a trial regarding termination of parental rights (TPR). *In re Child of Simon*, 662 N.W.2d 155, 160 (Minn. App. 2003). Upon an improper evidentiary ruling, a new trial will be granted only if the complaining party shows prejudice. *Id.* Generally, a district court may admit evidence in a TPR proceeding only if the evidence would be admissible in a civil trial. Minn. R. Juv. Prot. P. 3.02, subd. 1. Hearsay is not admissible as evidence unless it falls under a hearsay exception. Minn. R. Evid. 802. For this court to remand for a new trial, mother must show prejudice caused by the district court's evidentiary ruling. *See Simon*, 662 N.W.2d at 160 (requiring showing of prejudice caused by the district court's evidentiary ruling).

At trial, mother objected to the admission of police reports, placement plan agreements referring to the contents of the police reports, and the use of court orders as substantial evidence. Her appeal brief, however, focuses on the admission of the police reports and social worker testimony that referred to conversations with police officers.³ In light of mother's own admissions and testimony, as well as the testimony of other witnesses

³ This may be in recognition of the provisions of subdivision 3, of rule 3.02, permitting courts, sua sponte or upon motion of any party, to "take judicial notice only of findings of fact and court orders in the juvenile protection court file and in any other proceeding in any other court file involving the child or the child's parent or legal custodian." Minn. R. Juv. Prot. P. 3.02, subd. 3. The district court did not err in taking judicial notice of previous court findings in the juvenile protection case.

properly admitted at trial, mother fails to identify any prejudice caused by admitting this evidence.

For instance, the district court did not rely on the May 12, 2018 police report to establish that the child's father abused mother or that mother exposed the child to domestic violence. Rather, the report at Exhibit 3 is only specifically cited as a basis for its finding that mother was taken to the hospital after expressing suicidal thoughts. While this incident does show the mental-health struggles that mother faced, the record still establishes mother's struggles independent of this incident. Both mother's own testimony as well as the non-hearsay testimony of the social workers established mother's mental-health challenges and that she failed to consistently address those needs. While the July 15, 2018 and the August 9, 2018 police reports relate to allegations of domestic abuse between mother and the child's father, the district court's findings are supported by other, independent evidence. Separate and apart from any police reports, mother's own admissions in court before the trial, mother's trial testimony, and the testimony from the social workers based on their personal knowledge and observations, independently establish the exposure to and impact of domestic violence in this case.

Thus, even if the district court should have excluded the police reports as hearsay evidence, which we assume but do not decide, there was an independent basis in the record for each of the facts found by the district court by relying on the reports. Because mother does not allege any prejudice caused by admitting the police reports as evidence, and we cannot discern any prejudice in the record, we conclude that mother was not prejudiced by the admission of the police reports. The district court thus did not commit reversible error.

III. The district court's incorporation of the termination of rights petition into its order was harmless error.

The final argument mother raises is that it was an error for the district court to incorporate the petition to terminate her parental rights into its order under its conclusions of law. A party must petition with the court to begin parental-right-termination proceedings. Minn. R. Juv. Prot. P. 53.01. That petition must include “a statement of facts that, if proven, would support the relief requested in the petition.” Minn. R. Juv. Prot. P. 54.02, subd. 1(a). The petitioner then presents evidence in support of the petition at trial. Minn. R. Juv. Prot. P. 58.02, subd. 2.

Mother argues that incorporating the petition into the order is a “factual error” because it inappropriately treats the entire petition as evidence. Mother is correct that it would be an error for the district court to treat the petition as evidence, because the petition only alleges facts to be proven later. *See* Minn. R. Juv. Prot. P. 54.02, subd. 1(a). However, mother does not identify, nor can we find, any part of the district court's order that relies or even appears to rely on the petition as trial evidence. The district court's factual findings relied on exhibits admitted at trial, witness testimony taken at trial, or factual findings from earlier proceedings. While it is not clear why the district court decided to incorporate the petition into its order, its inclusion appears to be superfluous and did not prejudice mother. We thus conclude that the district court's conclusion of law incorporating the petition into its order was harmless error.

Affirmed.