STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1570

In the Matter of the Welfare of the Children of: S. L. K.-S., Parent.

Filed April 16, 2018
Affirmed
Schellhas, Judge

Big Stone County District Court
File No. 06-JV-17-39

Krystal M. Lynne, Stermer & Sellner, Chtd., Montevideo, Minnesota (for appellant S.L.K.-S.)

Joseph P. Glasrud, Big Stone County Attorney, Ortonville, Minnesota; and

Elisabeth Kirchner, Special Assistant Big Stone County Attorney, Morris, Minnesota (for respondent Big Stone County Family Services)

Susan Marsolek, Ortonville, Minnesota (guardian ad litem)

Considered and decided by Jesson, Presiding Judge; Schellhas, Judge; and Reyes, Judge.

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

SCHELLHAS, Judge

Appellant-mother challenges a district court's denial of her motion for a new trial, arguing that her consent to the termination of her parental rights was coerced and procedurally defective. We affirm.

FACTS

Appellant S.L.K.-S. (mother) gave birth to A.M.S.C. (child) in April 2016.[1] On July 1, respondent Big Stone County Family Services petitioned for adjudication of the child as a child in need of protection or services (CHIPS). On September 23, the district court adjudicated the child as a CHIPS and transferred her custody to the county.

On March 6, 2017, the county petitioned for mother's termination of parental rights (TPR), and the district court appointed a guardian ad litem (GAL) for the child.[2] At a pretrial hearing on the TPR petition on April 24, all parties agreed to continue the scheduled trial from May 4 to June 1.

On June 1, 2017, mother appeared for trial with her court-appointed attorney and submitted an affidavit to the district court in which she consented to terminate and waive her parental rights. In a July 28, 2017 order, the district court found that the child's best interests were served by a termination of mother's parental rights and found the existence of clear and convincing evidence of good cause to terminate mother's parental rights. The court accepted mother's voluntary consent, terminated her parental rights to the child, and discharged her court-appointed attorney.

On July 31, 2017, mother applied for a court-appointed attorney and the district court granted her request shortly thereafter. On August 17, mother filed a motion for a new trial and relief from the TPR order under Minn. R. Juv. Prot. P. 45 and 46, along with a

[1] This appeal involves only this child, but the record indicates that mother voluntarily transferred legal custody of an older child to that child's father in a separate proceeding.
[2] The identity of the child's father was unknown.

supporting affidavit. The county filed responsive affidavits from a social-services supervisor, mother's social worker, the child's GAL, and an assistant county attorney. The court conducted a hearing on mother's motions and denied them in a September 15, 2017 order. The court concluded that mother's rule 45 motion was untimely and that her rule 46 motion and supporting affidavit failed to present sufficient evidence to warrant withdrawal of her consent to terminate her parental rights.

This appeal follows.

D E C I S I O N

A natural parent is presumptively a "fit and suitable person to be entrusted with the care of his or her child," and "[o]rdinarily, it is in the best interest of a child to be in the custody of his or her natural parents." *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). As a result, parental rights may be terminated "only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). "In any proceeding under this section, the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2016).

While "judicial caution in severing the family bonds is imperative," *In re Welfare of Child of J.J.B.*, 390 N.W.2d 274, 280 (Minn. 1986), the Minnesota Supreme Court has observed that "[juvenile protection] proceedings are expedited because a quick resolution is essential for the best interests of children," *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 134 (Minn. 2014). "The juvenile court may upon petition, terminate all rights of a parent to a child: (a) with a written consent of a parent who for good cause desires to terminate parental rights." Minn. Stat. § 260C.301, subd. 1(a) (2016).

Generally, "appellate courts review a district court's decision on a motion to vacate an order or judgment for an abuse of discretion." *In re Welfare of Children of M.L.A.*, 730 N.W.2d 54, 60 (Minn. App. 2007). "Where a court's findings of fact are supported by substantial evidence and are not clearly erroneous, they will not be reversed." *In re Welfare of K.T.*, 327 N.W.2d 13, 17 (Minn. 1982).

Mother's rule 45 motion

Mother argues that the district court erred by deeming her rule 45 motion untimely. Because the district court fully considered the merits of mother's post-termination request for relief, any error by the court did not prejudice mother and was harmless, and we therefore do not reach this argument. *See In re Welfare of Children of D.F.*, 752 N.W.2d 88, 98 (Minn. App. 2008) (denying reversal of termination of parental rights where alleged error was harmless).

Mother's rule 46 motion

The termination order following a parent's voluntary consent is "a final adjudication of parental rights." *In re Welfare of J.M.S.*, 268 N.W.2d 424, 428 (Minn. 1978) (affirming denial of mother's motion to vacate termination based on her voluntary consent where district court found it was in the best interest of the child not to vacate). Upon a timely motion under the rules of juvenile protection procedure, a court may relieve a party from a final order and grant such relief as may be justified for fraud, misrepresentation, or newly discovered evidence. Minn. R. Juv. Prot. P. 46.02.

A TPR order following a parent's voluntary consent "may be vacated only upon a showing of fraud, duress, or undue influence." *In re Welfare of J.L.L.*, 801 N.W.2d 405,

410 (Minn. App. 2011), *review denied* (Minn. July 28, 2011). Misrepresentation "sufficient to vacate a judgment occurs when a party intentionally misleads or deceives the court as to material circumstances." *In re Welfare of Children of R.A.J.*, 769 N.W.2d 297, 303 & n.1 (Minn. App. 2009) (quotation omitted) (applying standard of fraud from Minn. R. Civ. P. 60.02 to Minn. R. Juv. Prot. P. 46.02 because the rules are "nearly identical"). A voluntary consent cannot be abrogated except for "grave and weighty reasons." *K.T.*, 327 N.W.2d at 18. "A parent who has consented to a termination order cannot have that order set aside simply because she has changed her mind." *Id.* at 18−19 (affirming denial of mother's motion to vacate termination where evidence showed that she understood the nature of her consent).

Citing *M.L.A.*, mother argues that the district court abused its discretion by denying her motion to set aside the TPR because the record and her affidavit contain sufficient facts to warrant an evidentiary hearing on the issues of coercion and misrepresentation. In *M.L.A.*, this court analyzed whether a district court abused its discretion by denying a mother an evidentiary hearing on her claim that her consent to a voluntary TPR was coerced. 730 N.W.2d 60−61. Specifically, the mother's post-termination affidavit included allegations of coercion that detailed statements from her attorney who had already been discharged by the court. *Id.* at 57–58. This court concluded that it was necessary to remand to the district court to hold an evidentiary hearing "to determine whether, in fact, the representations mother's affidavit alleges were made, and if so, by whom they were made." *Id.* at 61. And this court said that "if a party establishes that the judgment is based on a

coerced admission, that, in and of itself, is grounds to provide relief from judgment." *Id.* at 61–62.

But *M.L.A.* is distinguishable from this case because mother's affidavit here lacks any specific, factual allegations to support her motion.[3] Mother's affidavit states only that she "felt forced and threatened to proceed with a voluntary termination of parental rights." She does not state who threatened her, with what statements or actions, or why she felt threatened. And in the county's responsive affidavits, each of the affiants specifically denies making any promises to induce or coerce mother's TPR consent.[4]

The record from the June 1, 2017 hearing, at which mother submitted her consent to TPR, reflects that the district court questioned mother under oath about her decision to waive her trial rights and voluntarily terminate her parental rights. In response to the court's questioning, mother confirmed, among other things, that she had had enough time to talk to her attorney, that she believed that she had received competent advice from her attorney, that no one had threatened her or tried to coerce her to "come[] to [an] agreement," and that she was not under the influence of any substances that would hinder her judgment. The court asked mother, "You understand, don't you, that this would be a final deal and for all

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[3] *M.L.A.* relied on, and mother cites to, the supreme court's decision in *State v. Kaiser*, 469 N.W.2d 316 (Minn. 1991) regarding coercion in the context of a guilty plea. *See* 730 N.W.2d at 61. But in *Kaiser*, the appellant-defendant's affidavit included specific allegations of coercion and detailed statements from his then-current counsel. *Kaiser*, 469 N.W.2d at 318–19.

[4] The social service's supervisor stated in her affidavit "I did not make any threats, nor did I instruct any other worker to make any threats to induce [mother] to terminate her parental rights." The social worker stated that she never promised anything "in exchange for [mother] giving up her parental rights." The GAL stated in her affidavit that she did not make any "promises" or "threats" to mother "to induce her to terminate her parental rights."

intents and purposes you won't be [the child's] mom anymore after this. I mean biologically you will be but you won't have any more rights?" Mother said yes.

We conclude that the district court did not err in its assessment of mother's motion—that she "presented no explanation for her claim of coercion or threat such as to justify an evidentiary hearing." *See In re Welfare of D.D.G.*, 558 N.W.2d 481, 484–85 (Minn. 1997) (affirming TPR based on father's voluntary consent when he claimed that county coerced him with promises that district court deemed illusory). We also conclude that the court did not err in concluding that mother failed to present sufficient evidence of misrepresentation. *See R.A.J.*, 769 N.W.2d at 303–04 (concluding that district court did not abuse its discretion in vacating order transferring child-welfare proceeding where court was subjected to "intentional and wrongful misrepresentations"). The district court therefore did not abuse its discretion in denying mother's motion.

Mother also argues that the district court failed to appropriately determine if she understood her actions, and that the court's "failure" amounts to a manifest injustice. "Manifest injustice is defined as a direct, obvious and observable error in a [district] court." *In re Welfare of M.K.*, 805 N.W.2d 856, 862 (Minn. App. 2011) (quotation omitted). Mother's assessment of the district court's conduct at the TPR hearing is unsupported by the record, which reflects that the court thoroughly questioned mother about whether she understood her actions and whether she was thinking clearly. Mother confirmed that she felt her child's best interests were served if she terminated her parental rights, and the court thanked her for her "so[u]l searching and [her] hard work in the best interests of [the child]." At no time did mother or her attorney answer the judge's questions in the negative,

object, ask questions, indicate confusion, or reveal second thoughts. Based on this record, we conclude that the district court did not fail to determine whether mother understood her actions. *See J.M.S.*, 268 N.W.2d at 427 (affirming voluntary TPR even though district court made "no inquiry . . . into mother's specific reasons for terminating her parental rights to establish good cause," and concluding that failure to follow procedure of verifying that statements in petition evidence "good cause" was not ground for reversal).

Discharge of mother's first court-appointed counsel

Mother argues that the district court abused its discretion by dismissing her first court-appointed counsel without cause. Mother argues that the discharge prejudiced her, creating a manifest injustice that requires reversal of the district court's order denying her motion and a remand for an evidentiary hearing.

We agree that the district court abused its discretion by prematurely discharging mother's first court-appointed counsel before the filing and resolution of all post-trial motions. Under Minnesota law, "[a]n attorney representing a party in a juvenile protection matter . . . shall continue representation until such time as: (a) all district court proceedings in the matter have been completed, including filing and resolution of all post-trial motions under Rules 45 and 46." Minn. R. Juv. Prot. P. 25.06(a). A district court abuses its discretion if it discharges a party's court-appointed counsel "without cause, before the conclusion of the action in district court." *M.L.A.*, 730 N.W.2d at 62.

But mother has not shown that she was prejudiced or disadvantaged by the district court's premature discharge of her first court-appointed counsel. Although mother was without counsel for a brief period of time, the district court granted her application for a

new attorney and thereafter considered the merits of her post-termination motion. Because mother has not shown prejudice resulting from the court's discharge of her attorney, we conclude that mother is not entitled to reversal based on the premature discharge of counsel. *See D.F.*, 752 N.W.2d at 98 (denying reversal of termination of parental rights where alleged error was harmless).

Timeliness of filing of TPR order

"Within fifteen (15) days of the conclusion of the testimony . . . the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved." Minn. R. Juv. Prot. P. 39.05, subd. 1; *see also* Minn. R. Juv. Prot. P. 10.01 ("[A]ll orders shall be filed with the court administrator within fifteen (15) days of the conclusion of the testimony."). The court may issue an order an additional 15 days later if it is "required in the interests of justice and the best interests of the child." *Id*.

Here, following the TPR hearing on June 1, 2017, the district court filed the TPR order on July 28, beyond the time parameters contained in rule 39.05. Mother argues that this court therefore should reverse the order and remand for a trial.

"Our caselaw has previously distinguished between mandatory and directory [statutory] provisions." *Johnson v. Cook County*, 786 N.W.2d 291, 295 (Minn. 2010). A "statute may contain a requirement but provide no consequence for noncompliance, in which case we regard the statute as directory, not mandatory." *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 541 (Minn. 2007). Noncompliance with a mandatory provision triggers an automatic penalty, whereas noncompliance with a directory provision

does not. *See Johnson*, 786 N.W.2d at 295–96 (finding zoning-application law directory because it "does not provide a consequence" for failure to abide by its requirements).

Here, rules 10.01 and 39.05 do not provide a consequence, and mother provides no authority to support reversal as a consequence of the district court's lack of compliance with the rules. And caselaw does not support reversal. "Absent legislative authority, or the supreme court's guidance on implementation of seemingly compulsory, unconditional time rules, no basis [exists] for adopting appellant's proposition of law that an order issued after noncompliance with such a rule must be automatically and finally reversed." *In re Welfare of J.J.H.*, 446 N.W.2d 680, 682 (Minn. App. 1989), *review denied* (Minn. Dec. 8, 1989). We decline to reverse the TPR order as a consequence for the district court's late filing of the order under Minn. R. Juv. Prot. P. 10.01 and 39.05, subd. 1.

Affirmed.