No. _____

In The
Supreme Court of the United States

D. B.,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,
In the Interest of Minor Child: L. B.,
and Concerning B. B.,

Respondent.

On Petition for Writ of Certiorari to the
Colorado Supreme Court

APPENDIX

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Colorado Supreme Court
2 East 14th Avenue
Denver, CO 80203

Supreme Court Case No: 2022SC630

DATE FILED: September 26, 2022
CASE NUMBER: 2022SC630

Certiorari to the Court of Appeals, 2021CA163
District Court, Teller County, 2018JV8

Petitioner: D. B.,

v.

Respondent: The People of the State of Colorado,
In the Interest of Minor Child: L. B., and Concerning B. B.

ORDER OF COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, SEPTEMBER 26, 2022.

21CA0163 Peo in Interest of LB 06-30-2022

COLORADO COURT OF APPEALS

DATE FILED: June 30, 2022
CASE NUMBER: 2021CA163

Court of Appeals No. 21CA0163
Teller County District Court No. 18JV8
Honorable Scott A. Sells, Judge

The People of the State of Colorado,
Appellee,
In the Interest of L.B., a Child,
and Concerning D.B. and B.B.,
Appellants.

APPEAL DISMISSED IN PART AND
JUDGMENT AFFIRMED

Division II
Opinion by JUDGE FURMAN
Pawar and Kuhn, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced June 30, 2022

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¶ 1 D.B. (maternal grandmother) and B.B. (mother) appeal the judgment terminating the parent-child legal relationship between mother and L.B. (the child). Mother challenges various findings made by the juvenile court. We dismiss maternal grandmother's appeal and affirm the judgment as to mother.

I. The Child's Genetic Disorder

¶ 2 The Teller County Department of Human Services (Department) filed a petition in dependency and neglect regarding the then-one-year-old child and her sibling. The Department alleged that the child had a rare genetic disorder and had a seizure and stroke resulting in hospitalization, that there were concerns about mother's ability to meet the child's needs, and that mother "present[ed] as both emotionally and intellectually limited" and the home was in "hazardous" condition.

¶ 3 The juvenile court initially deferred adjudication, but later adjudicated the child dependent and neglected. The court adopted a treatment plan for mother.

¶ 4 Maternal grandmother moved to intervene, which the juvenile court granted.

¶ 5 The Department later moved to terminate mother's parental rights. Almost three years after the petition was filed and following a hearing, the juvenile court granted the motion and, in a detailed and reasoned order, entered judgment terminating mother's rights.

II. Standing

¶ 6 We conclude that maternal grandmother lacks standing to raise the issues on appeal pertaining to the termination of mother's parental rights. *See People in Interest of C.N.*, 2018 COA 165, ¶¶ 7-11; *see also Arapahoe Cnty. Dep't of Human Servs. v. People in Interest of D.Z.B.*, 2019 CO 4, ¶¶ 10-11 (even though the foster parents had a statutorily granted right to participate in the termination hearing as intervenors, they lacked standing to appeal the termination judgment); *C.W.B., Jr. v. A.S.*, 2018 CO 8, ¶¶ 19, 26. The maternal grandmother has not suffered an injury in fact to a legally protected interest because of the termination judgment. *See id.* at ¶¶ 18, 26. Therefore, we dismiss her portion of the appeal.

III. Termination of Parental Rights

A. General Law

¶ 7 The juvenile court may terminate parental rights if it finds, by clear and convincing evidence, that (1) the child has been adjudicated dependent

and neglected; (2) the parent has not complied with an appropriate, court-approved treatment plan or the plan has not been successful; (3) the parent is unfit; and (4) the parent's conduct or condition is unlikely to change within a reasonable time. § 19-3-604(1)(c), C.R.S. 2021; *People in Interest of C.H.*, 166 P.3d 288, 289 (Colo. App. 2007).

¶ 8 Whether a juvenile court properly terminated parental rights presents a mixed question of fact and law because it involves application of the termination statute to evidentiary facts. *People in Interest of A.M. v. T.M.*, 2021 CO 14, ¶ 15. "We review the juvenile court's findings of evidentiary fact — the raw, historical data underlying the controversy — for clear error and accept them if they have record support." *People in Interest of S.R.N.J-S.*, 2020 COA 12, ¶ 10. But we review de novo the juvenile court's legal conclusions based on those facts — including its conclusion that the Department made reasonable efforts to rehabilitate the parent and reunify the family under section 19-3-604(2)(h). *See S.R.N.J-S.*, ¶ 10.

B. Appropriate Treatment Plan

¶ 9 Mother challenges the appropriateness of her treatment plan because, she contends, the plan did not consider her disabilities and the child's medical needs. She also contends the plan should have been amended to reasonably accommodate her intellectual disability. We discern no basis for reversal.

¶ 10 The purpose of a treatment plan is to preserve the parent-child legal relationship by

assisting the parent in overcoming the problems that required intervention into the family. *People in Interest of L.M.*, 2018 COA 57M, ¶ 25. Therefore, an appropriate treatment plan is one that is approved by the court, relates to the child's needs, and provides treatment objectives that are reasonably calculated to render the parent fit to provide adequate parenting to the child within a reasonable time. § 19-1-103(10), C.R.S. 2021; *People in Interest of K.B.*, 2016 COA 21, ¶ 13.

¶ 11 We measure the appropriateness of a treatment plan by its likelihood of success in reuniting the family, which we assess in light of the facts existing when the juvenile court approved the plan. *People in Interest of B.C.*, 122 P.3d 1067, 1071 (Colo. App. 2005). That a treatment plan is not ultimately successful does not mean that it was inappropriate when the court approved it. *People in Interest of M.M.*, 726 P.2d 1108, 1121 (Colo. 1986).

¶ 12 Under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101, a juvenile court must consider whether reasonable accommodations were made for the parent's disability in determining whether a treatment plan was appropriate. *People in Interest of S.K.*, 2019 COA 36, ¶¶ 2, 34.

¶ 13 The juvenile court adopted a treatment plan that required mother to

- address her mental health issues by completing a neuropsychological evaluation and following recommendations, including individual

and group therapy, a medical review, therapeutic visitation, life skills, and safe parenting techniques;
- cooperate and communicate with the Department;
- maintain stable finances and a clean home;
- meet the child's basic needs for a safe, stable, and nurturing environment; and
- develop parental skills to provide a safe and appropriate environment by completing a protective capacity assessment, engaging in in-home family preservation services, and following recommendations.

¶ 14 At the termination hearing, the juvenile court acknowledged that "in hindsight, the treatment plan was vague" and "could have been more specific on the g-tube and visitation," but found that the plan was appropriate. In doing so, the court found that there had been "25 hearing[s] on this case since the adoption of the treatment plan and everyone understood the treatment plan."

¶ 15 We recognize that the Department did not amend the treatment plan or list specific accommodations. But several of the plan's objectives required mother to follow recommendations arising from various evaluations. Even though the Department did not include the recommendations from the neuropsychological evaluation, not including something that was unknown at the time of the plan's adoption does not render it inappropriate. See *People in Interest of A.E.*, 749

P.2d 450, 452 (Colo. App. 1987). And the juvenile court found that the reasonable efforts provided by the Department "satisfied the reasonable accommodation to Mother under the [ADA]." This finding is supported by the record, which shows that the Department provided services with mother's disabilities and the child's medical needs in mind.

¶ 16 Mother asserts that the plan did not expressly list coping strategies that she could use if she emotionally could not participate in meetings. But the Department "allow[ed] opportunities for [mother] to take a break if she needed to . . . and just [tried] to keep a calm tone to the meetings in order for them to be productive and to lessen the possibility of her becoming frustrated."

¶ 17 Mother also asserts that specific guidelines or accommodations should have been listed to assist her "when a higher level of functioning was required to meet her daughter's medical needs." We disagree. The record shows that the Department coordinated with a nurse to provide hands-on training to help mother with the child's medical and feeding needs; provided identical medical equipment to mother to avoid confusion if the child was returned; offered in-home services through two programs; and developed a calendar for the child's appointments.

¶ 18 We also disagree with mother's assertion that the treatment plan did not provide specific information for her to address "the safety concerns the parties had at the beginning." There were several objectives related to mother's ability to parent the child and various action steps that

required her to address parenting, overall functioning, and cognitive issues; obtain financial and housing stability; meet the child's needs; and develop skills to provide a safe and appropriate environment.

¶ 19 Based on this evidence, the treatment plan's components were designed to render mother a fit parent and were realistic, given the facts existing when it was adopted.

C. Reasonable Accommodations

¶ 20 Mother contends that the juvenile court erred by finding that the Department had made reasonable efforts and accommodations to reunify the family. She also contends that the accommodations were not reasonable under the ADA. We discern no basis for reversal.

¶ 21 In determining whether a parent is unfit, the juvenile court must consider whether the Department made reasonable efforts to reunify the family. § 19-3-604(2)(h), (k)(III); *see also* §§ 19-3-100.5, 19-3-208, C.R.S. 2021 (requiring the state to make reasonable efforts to reunite the family when appropriate).

¶ 22 Among the efforts required under section 19-3-208 are screening, assessments, and individual case plans for the provision of services; home-based family and crisis counseling; information and referral services to available public and private assistance resources; visitation services for parents with children in out-of-home placement; and

placement services including foster care and emergency shelter. § 19-3-208(2)(b).

¶ 23 The reasonable efforts standard is deemed met if services are provided in accordance with section 19-3-208. § 19-1-103(114), C.R.S. 2021; *People in Interest of J.A.S.*, 160 P.3d 257, 262 (Colo. App. 2007).

¶ 24 The parent is responsible for using those services to obtain the assistance needed to comply with her treatment plan's requirements. *People in Interest of J.C.R.*, 259 P.3d 1279, 1285 (Colo. App. 2011).

¶ 25 The juvenile court found that the Department had made reasonable accommodations under the ADA and its reasonable efforts had been unable to rehabilitate mother. The court found that the Department made these reasonable efforts:

- providing a neuropsychological evaluation;
- recreating and replicating the feeding system for the child to train mother and the maternal grandmother;
- creating and providing a calendar for mother;
- "[a]llowing mother to blow up and lose control at FEMs";
- providing in-home services by multiple providers tailored
- to meet mother's special needs;
- offering the option of a host home for mother and the child; and
- coordinating visitation.

The court found that despite these efforts, mother was unfit because her intellectual or developmental disability was of such a duration or nature that it rendered her unlikely to care for the child's ongoing physical, mental, and emotional needs within a reasonable time.

¶ 26 The Department also provided life skills services, parenting education, and assistance with parenting skills; referred mother for adult protective services; and coordinated placement services forthe child.

¶ 27 The Department also made accommodations for mother's intellectual disability. The child protection therapist testified that she provided home-based intervention services with a focus on building life skills and increasing protective capacity. She testified that because she was aware of mother's intellectual disability, she edited the parenting education materials "so that they were less wordy," discussed information in "very short steps," read to mother, and "went over everything" to "try to make it a little bit easier to understand." The nurse walked mother "step-by-step on the feeding pump, the tubing, and the bag" and provided education about the child's medical needs to mother. The Department allowed mother to take breaks during meetings if she was getting frustrated. The caseworker testified that she asked mother "frequently throughout the case if there was anything that [she] could help with" and was "always told no." The Department also offered a host family for mother and the child, which would have

permitted mother to live with the child under supervision.

¶ 28 Despite these interventions, concerns about mother's ability to safely parent the child remained. The child protection therapist testified that mother struggled to retain medical information and to demonstrate "low-emotional parenting and [to] not become[] overly stressed or overwhelmed." The caseworker expressed concern about mother's ability to care for the child's medical and developmental needs.

¶ 29 Given this evidence, we conclude the Department made reasonable efforts and ADA accommodations. Because the record supports the juvenile court's findings, we will not disturb them on appeal.

IV. Less Drastic Alternatives

¶ 30 Mother contends that the juvenile court erred by finding that there were no less drastic alternatives to termination. In her view, the court could have granted an allocation of parental rights to the maternal grandmother. We again discern no basis for reversal.

¶ 31 The juvenile court must also consider and eliminate less drastic alternatives before it terminates the parent-child legal relationship. *People in Interest of D.P.*, 181 P.3d 403, 408 (Colo. App. 2008). In considering less drastic alternatives, the court bases its decision on the best interests of the child, primarily considering their physical,

mental, and emotional conditions and needs. § 19-3-604(3).

¶ 32 The juvenile court found that there were no less drastic alternatives to termination. In doing so, the court considered placement with the maternal grandmother and noted that she was qualified as a CNA but found that it was not in the child's best interest to be placed with grandmother. The court noted concerns about grandmother's "ability to provide for [the child's] needs versus [the child's] needs for permanency." The court also found that the child was three years old and had been in foster care for thirty-one consecutive months.

¶ 33 The record supports the juvenile court's findings. The case had been going on for almost three years and the child needed permanency. And when, as here, the child is less than six years old when a petition in dependency and neglect is filed, the expedited permanency planning provisions apply. § 19-1-123(1)(a), C.R.S. 2021. The guidelines required the juvenile court to place the child in a permanent home "as expeditiously as possible." § 19-3-702(5)(c), C.R.S. 2021. At the time of the termination hearing, the child had been in foster care for 953 days.

¶ 34 Because the record supports the juvenile court's factual findings, we will not disturb those findings or the court's legal conclusions on appeal.

V. Conclusion

¶ 35 The judgment is affirmed.

¶ 36 The appeal by maternal grandmother is dismissed.

JUDGE PAWAR and JUDGE KUHN concur.

ORDER OF THE DISTRICT COURT OF TELLER COUNTY, STATE OF COLORADO

Case Number: 18 JV 08
Filed January 12, 2021

THIS ORDER IS SEALED AND IS THEREFORE NOT PRINTED IN THIS APPENDIX. IT HAS BEEN FILED SEPARATELY AND UNDER SEAL WITH THE CLERK'S OFFICE OF THE SUPREME COURT OF THE UNITED STATES.