

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1879**

In the Matter of the Welfare of the Children of: J. L. and D. A., Parents

**Filed April 17, 2017
Affirmed
Peterson, Judge**

Wilkin County District Court
File No. 84-JV-15-324

Carl A. Thunem, Wilkin County Attorney, Breckenridge, Minnesota (for respondent
Wilkin County)

Matthew P. Franzese, Wheaton, Minnesota (for appellant J.L. and D.A.)

Dawn Krump, Tintah, Minnesota (guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Cleary, Chief Judge; and
Peterson, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from an order that terminates their parental rights to two children,
appellants argue that there is not clear and convincing evidence to show that conditions
existing at the time of the hearing supported termination. We affirm.

FACTS

Appellants J.L. (mother) and D.A. (father) are the parents of two children, J.A., born in 2009, and R.L., born in 2015. The family came to the attention of the Otter Tail County Department of Human Services in July 2014 when the county was notified that mother was “pregnant and using methamphetamine, liquid heroine and pain medications”; J.A., then five years old, was “runn[ing] around town alone”; and appellants’ Rothsay home lacked water and flooring.

After law-enforcement officers and the county were unable to contact the family and the county received a second report that appellants’ home still lacked water, a county worker interviewed J.A. at school in September 2014. During the interview, J.A. stated that he had witnessed, and at times was in the middle of, domestic violence situations, and he spoke at length about such occurrences, including one during which his father brandished a knife and threatened to kill his mother.

Law-enforcement officers went to the home, found it unfit for living, and removed J.A. J.A. was returned to his mother’s care within two weeks “on the condition that [mother] reside with her mother, complete a Rule 25 chemical dependency evaluation and not allow [father] in the home.” J.A. was adjudicated a child in need of protection or services (CHIPS) on November 25, 2014, after mother admitted to the petition.

R.L. was born on January 6, 2015, and, at birth, tested positive for methamphetamine, THC, and amphetamines. Before discharging mother and R.L. from the hospital, a nurse noted that R.L. had slight tremors and difficulty feeding.

Wilkin County¹ social workers met with mother at her Breckenridge apartment in mid-January 2015 and observed “no safety concerns.” They told mother that no court action would be initiated unless she failed to follow family-service-agency recommendations, which “included attending WIC as needed, participat[ing] in the Family Footprints program out of St. Francis Healthcare, participating in Healthy Families of America out of Wilkin County Public Health, and completing a chemical dependency assessment.” The chemical-dependency assessment resulted in recommendations that mother abstain from all mood-altering drugs, begin outpatient treatment, and participate in weekly drug screenings, among others.

Mother did not contact, reply to, or complete the family-service programs offered to her, and she did not participate in urinalysis testing from February 18, 2015, through April 15, 2015, although she was asked to do so on numerous occasions. On April 16, two social workers discovered that, contrary to a court order, father was living in mother’s apartment and mother had left R.L. in father’s care while she drove J.A. to school. J.A. and R.L. were placed in foster care the next day. R.L. was adjudicated to be in need of protection on May 19, 2015.

The county continued to offer mother services, which she consistently avoided, including mandatory outpatient chemical-dependency treatment. Mother eventually began outpatient treatment but was discharged for “non-compliance with treatment expectations.”

¹ In February 2015, venue of the case was transferred to Wilkin County.

At a review hearing on May 19, 2015, mother refused to provide a sample for urinalysis testing, and father admitted that “he would test dirty for methamphetamines.”

Neither parent came to a May 27, 2015 comprehensive review of their case plan; at the meeting, the plan was updated to include, among other items, a requirement that each parent update their chemical-dependency assessments and attend outpatient treatment. Mother began inpatient treatment on June 30, 2015, and while out of the treatment facility on a doctor’s pass on August 5, mother was seen with father. She was discharged on August 10 for “noncompliance with the rules and regulations of the treatment facility.” Mother tested positive for methamphetamine on September 3, 2015. The county was unable to contact mother on four dates in September; she would not answer her door on the 14th, even though noises could be heard from inside her apartment. In summarizing mother’s conduct from June 2014 through December 2015, a district court dispositional review order states that mother “routinely minimized her drug use, avoided testing, failed drug tests, missed appointments and failed treatment.”

After father was arrested in July 2015 for driving after his license was revoked, he completed a chemical-dependency assessment on July 23, 2015. It was recommended that father immediately begin a “high intensity in-patient treatment program.” Father began “Project Turnabout” on August 11, 2015, but “[u]pon arrival, he tested positive for opiates and methamphetamine and had to be placed in detox.” He quit the program on August 27.

The county filed a petition for termination of parental rights on September 25, 2015. Appellants entered denials, and the district court set an adjudicatory hearing for December 18, 2015. On that date, appellants entered into a stipulation voluntarily consenting to a

permanency placement order for the children being issued by the court, but the order would be stayed for 90 days. If a qualified relative could be identified and approved, the stayed order would be for a permanent relative placement. But, if a relative placement was not available, the order would be for the termination of parental rights. The stipulation also provided that the stay was contingent upon each parent abstaining from all alcohol and non-prescribed mood-altering substances and following the case plan; a failed drug test would be sufficient cause for the court to vacate the stay, and any refusal to test would be considered a positive test and result in vacating the stay. The district court accepted the parents' stipulation and ordered that "[a]t the end of 90 days, the Court [would] issue an order consistent with the stipulation . . . as to permanency or continued efforts relating to reunification."

By late March 2016, both parents successfully completed inpatient chemical-dependency treatment programs. A guardian ad litem recommended that the parents slowly reintegrate with J.A. because J.A. suffered from post-traumatic stress while living with his parents and could not be in his father's presence without becoming upset. A May 31, 2016 guardian ad litem report indicated normal development for R.L. but stated that J.A. had outbursts in school, participated in an individualized education plan, and his school had applied to place him in a day treatment program, but the application was denied. Father moved in with mother on August 1, and the children began trial home visits in August 2016. In September, the guardian ad litem reported that the children "transitioned successfully back into their mother and father's home," "[t]he parents have tried very hard to comply with all the tasks in their case plan," and the parents "remained sober and have

had no negative [drug test results].” The guardian ad litem recommended that the CHIPS petition be dismissed in 90 days. A court report filed on September 12, 2016, for a review hearing on September 13, 2016, stated that Wilkin County Family Services Agency anticipated full family reunification within one year.

On September 29, 2016, appellants encountered their former drug dealer at a truck stop and obtained methamphetamine, which they immediately consumed. They then drove to father’s parents’ home in Rothsay to pick up their children, drove to Breckenridge where they attended a court-ordered parenting class. After the class, they drove home and consumed more methamphetamine that night and the next morning.

On September 30, a former foster parent reported to a social worker that she found a pill that was later identified as Oxycodone in her driveway, and mother was the only visitor she had that day. Two social workers went to mother’s apartment to have her submit to urinalysis testing. They found mother’s car in the parking lot, and when they knocked on the apartment door, they heard shuffling inside. They called mother’s phone, and they could hear ringing coming from inside the apartment. They knocked for five minutes before going back outside. They called the appellants’ employer, and the person who answered the phone told them that father had called in sick that day and mother was not scheduled to work. They waited outside the building, and after about five minutes, father and R.L. walked out the side door. One of the social workers walked up to father and saw “that his eyes were glossy and his pupils were dilated.” Father admitted that he had been using and that he was high. At that point, mother called father’s cell phone, and when father handed the phone to the social worker, mother hung up.

The social worker stepped away to call the police, and, when he turned back, he saw the other social worker holding R.L., and father was walking away. He called out father's name and asked him to stop, but father took off running. Father was apprehended about ten minutes later, and he told the social worker that he "messed up" and did not "know why he got high." Police obtained a search warrant and discovered methamphetamine, marijuana, and drug paraphernalia in the apartment. Mother admitted that both she and father had been using methamphetamine for fourteen years.

The district court held a permanency hearing on October 28, 2016. A social worker, the children's guardian ad litem, and appellants appeared at the hearing, and "the matter was submitted to the court on stipulated facts through [the] stipulation signed and approved by all parties on October 28, 2016." That stipulation states, in part:

On December 18, 2015, [appellants] entered into a stipulation whereby their voluntary consent to a permanency placement order for [J.A. and R.L.] was stayed for a period of ninety (90) days on the condition that they abstain from the use of controlled substances. Between December 18th and September 19th, 2016, [appellants] established stable housing at Park Manor, obtained employment at Jiffy Lube in Wahpeton and maintained sobriety. [Appellants] successfully completed in-patient chemical dependency treatment and followed their recommendations for care and after-care. They also completed the Nurtured Heart parenting class and couples' counseling. [Father] completed anger management classes. [Appellants] interacted appropriately with [J.A. and R.L.] during supervised visitation and were actively engaged in planning for reunification during the spring and summer of 2016. As of September 29th, they were participating in Narcotics Anonymous, received in-home family therapy and were attending Love and Logic classes. [J.A.] was receiving Zones of Regulation Training through Wilkin County Family Services and was enrolled in the Breckenridge Elementary School.

....

In addition to the facts set forth above, the parties further stipulate that the Complaint of [Police] Chief Kris Karlgaard in Court File #84-CR-16-349 and the Court Report of [the social worker] filed on October 6, 2016 in Court File #84-JV-16-86 are admissible and may be treated by the court as an accurate summary of what Chief Karlgaard's and [the social worker's] testimony would be concerning the events of September 29th and 30th.

Following the hearing, the district court terminated appellants' parental rights to J.A. and R.L. The court found that there was clear and convincing evidence of three statutory grounds for termination under Minn. Stat. § 260C.301, subd. 1(b) (2016): clause (2) (refusal or neglect to comply with the duties of the parent-and-child relationship); clause (4) (palpable unfitness to be a party to the parent-and-child relationship); and clause (5) (following child's placement out of the home, reasonable efforts under the direction of the court failed to correct the conditions leading to the child's placement). The district court also found that termination is in the children's best interests.² This appeal follows.

DECISION

An appellate court "gives deference to a trial court's decision to terminate parental rights but closely inquires into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). "Termination of parental rights will be affirmed as long as at least one statutory ground for

² Appellants do not challenge the district court's finding that termination is in the children's best interests.

termination is supported by clear and convincing evidence and termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

The district court's findings of fact will not be overturned unless they are clearly erroneous. *In re Welfare of Child of T.C.M.*, 758 N.W.2d 340, 342 (Minn. App. 2008). To successfully challenge the district court's findings of fact, "the party challenging the findings must show that despite viewing [the] evidence in the light most favorable to the trial court's findings . . . the record still requires the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

Evidence to support termination of a parent's rights "must address conditions that exist at the time of the hearing." *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980); see *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001) (stating that evidence to support termination "must relate to conditions that exist at the time of termination"). Appellants argue that the district court's order was not based on evidence of conditions that existed at the time of the termination hearing and, instead, focused on the past.

The district court based its termination decision on three statutory grounds under Minn. Stat. § 260C.301, subd. 1(b). Under one of those statutory grounds, parental rights may be terminated if the court finds:

that following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement. It is

presumed that reasonable efforts under this clause have failed³] upon a showing that:

(i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;

(ii) the court has approved the out-of-home placement plan required under section 260C.212 and filed with the court under section 260C.178;

(iii) conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan; and

(iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

Minn. Stat. § 260C.301, subd. 1(b)(5).

The district court determined that the presumption that reasonable efforts have failed to correct the conditions leading to the child's placement arose because both children are under age eight; "JA has resided out of the parental home for 16½ of the past 18½ months";

³ Appellants argue that, to find that reasonable efforts have failed to correct the conditions leading to the children's placement, "[t]he district court could use as evidence a parent's failure to complete a chemical dependency treatment program on two or more occasions and the parent's continued abuse of chemicals. But that did not occur here." Minn. Stat. § 260C.301, subd. 1(b)(5), describes two sets of circumstances under which it is presumed that reasonable efforts have failed. The district court relied on the first set of circumstances, which are described in Minn. Stat. § 260C.301, subd. 1(b)(5)(i)-(iv); appellants' argument is based on the second set of circumstances, which are described in Minn. Stat. § 260C.301, subd. 1(b)(5)(A)-(E).

“RL has resided outside the home for 17 of the past 18½ months”; and, although mother and father have maintained contact with the children during the last year, “both parents have failed to comply with the out-of-home placement plan by failing to attend or missing parenting classes, in-home counseling and AA/NA meetings; failing to set up daycare options; and failing to abstain from the use of controlled substances.” The district court also found that an out-of-home placement plan was filed under section 260C.178, the conditions leading to the out-of-home placement had not been corrected, and reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

Appellants contend that the record shows that from September 3, 2015, through September 30, 2016, neither of them used any drugs or engaged in any acts of domestic violence, and they both fully complied with their case plan. They also note that they had their children living with them on a trial home visit for a month and a half before their “slip-up” and argue that “[i]t is obvious that the District Court and Wilkin County focused solely on [their] past, not the present.”

In the memorandum attached to its termination order, the district court specifically acknowledged that the evidence supporting termination “must relate to conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period.” *P.R.L.*, 622 N.W.2d at 543. The district court then stated, “[mother] and [father] have argued to this court that their recent relapse was a “one-time” mistake. But in light of the long history of drug abuse

and the relatively short time that [mother] and [father] were clean, it is reasonable to assume that their abuse will continue.” The court also noted that appellants

made some positive progress in the summer of 2016. However, just days after appearing in court and being commended for the improvement, they both made the decision to use methamphetamine. They had only had the full-time responsibility for caring for their children for six weeks when they relapsed. More troubling is the fact that they endangered their children by driving (or permitting driving) while high on drugs with the children in the vehicle. They then attend[ed] a parenting class while high, returned home and continued to use drugs the following day. They endangered the children by storing drugs in the home, potentially for over a year.

Appellants’ argument that the district court focused solely on the past ignores the fact that appellants’ use of methamphetamine on September 29 and 30, 2016, occurred less than one month before the hearing; it was not something from the distant past. And the district court rejected appellants’ characterization of the events on September 29 and 30 as a “one-time” mistake. The district court, instead, considered these events in the context of appellants’ conduct over a period of years and found that they were a continuation of a pattern of past behavior.

Although there is evidence that appellants made progress in their effort to stop the drug abuse that led to the placement of their children out of the home, their relapse in September was clear and convincing evidence that this condition had not been corrected. Appellants’ progress is admirable, but, viewing the evidence in the light most favorable to the district court’s findings, the record does not require a definite and firm conviction that the district court made a mistake. Because the record supports termination of appellants’

parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5), we will not address the other statutory grounds that the district court found were proved.

Affirmed.