

*This opinion will be unpublished and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**

A17-0801

A17-0802

In the Matter of the Welfare of the Child of:

T. R., Parent

A17-0801,

In the Matter of the Welfare of the Child of:

T. R., and D. J., Parents

A17-0802.

Filed September 11, 2017

Affirmed

Peterson, Judge

Mower County District Court

File Nos. 50-JV-17-333, 50-JV-17-334

Daniel T. Donnelly, Austin, Minnesota (for appellant-mother T.R.)

Paul R. Spyhalski, Austin, Minnesota (for appellant-father D.J.)

Kristen Nelsen, Mower County Attorney, Aaron Jones, Assistant County Attorney, Austin, Minnesota (for respondent Mower County Health and Human Services)

Todd Schoonover, Hollandale, Minnesota (guardian ad litem)

Considered and decided by Halbrooks, Presiding Judge; Peterson, Judge; and Smith,

Tracy M., Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In these consolidated appeals, appellant parents challenge the termination of their parental rights. Both appellants argue that the district court should have applied a less-restrictive alternative to termination of their parental rights, and father argues that termination of his parental rights is not in the children's best interests. We affirm.

FACTS

Appellant-mother T.R. has three children, O.J., born in 2010, N.R., born in 2014, and L.R., born in 2016. Appellant-father D.J. is the father of O.J. and N.R. The father of L.R. is not a party to this appeal.

In an earlier CHIPS proceeding, O.J. and N.R. were removed from mother's custody from April 7, 2016, to October 19, 2016, due to mother's "substantial cocaine usage."¹ Mother and father admitted to using cocaine at that time. Mother participated in a case plan that recommended chemical-dependency treatment and aftercare, and, in May 2016, she was successfully discharged from inpatient treatment for chemical dependency. Following treatment, she resided in a halfway house where the children could potentially live with her, but she was discharged after testing positive for cocaine in August 2016 and later admitted to relapsing; she was pregnant with L.R. at that time. Mother then participated in out-patient chemical-dependency treatment from September 2016 through December 2016. The children were returned to mother's care in October 2016, and the

¹ A social worker testified that cocaine was the parents' drug of choice. Mother testified that cocaine and marijuana are her drugs of choice.

CHIPS file was closed in November 2016. The social worker testified that the CHIPS file was closed because mother was “following her services” and her urine tests “were clean for a couple months.” The children were placed out of home for a total of 195 days during the 2016 CHIPS matter.

Father chose not to participate in any services offered by the county during the 2016 CHIPS matter, including a chemical-dependency assessment, parenting services, and mental-health services, and he did not maintain contact with the county or his children’s guardian ad litem. Father has fifth-degree controlled-substance convictions from 2007, 2009, and 2014. On February 2, 2017, father was taken into custody for a probation violation on the 2014 offense after he admittedly used cocaine; he was incarcerated until March 27, 2017.

On February 3, 2017, Austin police were called to mother’s home on a report that a four-month-old child was having a seizure. When no one answered the door, police entered the home and found mother holding L.R.; she told police that L.R. was “fine,” although the child appeared to have a slight foam around the mouth. N.R., then three years old, was “running around naked.” Mother told the police that an adult male, J.D., “was the one having the seizure[,] but he fled on foot when the police were called.”

Police discovered J.D., a registered sex offender who appeared to be under the influence, hiding upstairs. They also discovered “baggy corners on the bed next to the baby’s bottle,” drug residue that tested positive for cocaine on a dresser, drug paraphernalia, another baggy that appeared to contain methamphetamine, and two pills that were controlled substances. There were “active warrants” for J.D. and mother, and both

were arrested.² All three children were taken to a hospital, and each of them tested positive for cocaine.

Police initially placed the children on a 72-hour hold, and on February 7, 2017, respondent Mower County Health and Human Services filed a petition to terminate appellants' parental rights. Appellants entered denials to the petition, and the case proceeded to trial on April 6, 2017.

Mother testified that she relapsed into daily cocaine and marijuana use about two weeks before the February 3 incident, and, on February 3, she had used J.D. as a babysitter for two days while she was consuming cocaine "on a bender" at a friend's house. She testified that she told J.D. that she would be right back when she left and that J.D. had been living with her for two weeks. She knew that J.D. had been a drug user, but she did not believe he was currently using drugs, and she claimed that she was not aware of J.D.'s status as a sex offender. She admitted that, by leaving the children with J.D., she put them in serious danger, but she also testified that she had known J.D. for years and knew that he would not hurt her children. Mother was in custody on pending criminal charges at the time of the trial.³

Following trial, the district court terminated mother's parental rights to O.J. and N.R. The termination decision was based on (1) mother's refusal or neglect to comply with

² The responding officer who testified at the permanency trial testified that J.D. had a warrant "for absconding from his reported address as a predatory offender."

³ According to the social worker, mother was incarcerated and had executed her sentence even though she could have gotten a furlough to begin recommended chemical-dependency treatment.

her parental duties under Minn. Stat. § 260C.301, subd. 1(b)(2) (2016), and (2) failure of the county's reasonable efforts to correct the conditions leading to the children's out-of-home placement under Minn. Stat. § 260C.301, subd. 1(b)(5) (2016). The district court also terminated mother's parental rights to L.R., and the termination decision was based on mother's refusal or neglect to comply with her parental duties under Minn. Stat. § 260C.301, subd. 1(b)(2).

The district court terminated father's parental rights to O.J. and N.R. based on its determination that (1) father refused or neglected to comply with the duties imposed upon him as a parent within the meaning of Minn. Stat. § 260C.301, subd. 1(b)(2), (2) reasonable efforts of the county failed to correct the conditions leading to the children's out-of-home placement within the meaning of Minn. Stat. § 260C.301, subd. 1(b)(5), and (3) the children remained neglected and in foster care within the meaning of Minn. Stat. § 260C.301, subd. 1(b)(8) (2016). Mother and father appealed separately, and this court consolidated their appeals.

D E C I S I O N

A parent's rights to a child may be terminated "only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). But a district court may terminate parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and the court determines that termination is in the child's best interests. This court reviews the district court's findings for clear error, *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008), and its decision to terminate parental rights for abuse of discretion. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87

(Minn. App. 2012). “A finding is clearly erroneous if it is manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012) (quotation omitted).

Less-restrictive alternative

Mother does not specifically challenge the district court’s conclusion regarding any of the statutory grounds upon which the district court terminated her parental rights. Instead, she argues that “it would not be detrimental for her children to return to her care once she is released from jail and is maintaining sobriety,” “[s]he has a support network in place to care for the children during her period of incarceration and treatment,” and “[a] less restrictive alternative to termination is available in a temporary transfer of custody to a family member.” Father also argues that there were “less[] restrictive options to termination” of his parental rights, including temporary placement of the children with mother’s family until mother regains sobriety.

Appellants have not cited any authority that required the district court to determine whether there was a less-restrictive alternative to termination of their parental rights. Under the permanency statute, “[t]ermination of parental rights and adoption, or guardianship to the commissioner of human services through a consent to adopt, are preferred permanency options for a child who cannot return home.” Minn. Stat. § 260C.513(a) (2016). The permanency statute does not require the district court to consider any option other than termination, if statutory grounds for termination exist.

Also, the argument of both parents that custody of the children should be temporarily transferred to mother’s family members rests on the premise that mother will

be able to parent in the foreseeable future. But terminating a parent's rights under section 260C.301, subd. 1(b)(2), for refusing or neglecting to comply with parental duties, requires the district court to find that the parent is not "presently able and willing to assume [the parent's] responsibilities" and that the parent's neglect of those duties "will continue for a prolonged, indeterminate period." *In re Welfare of J.K.*, 374 N.W.2d 463, 466-67 (Minn. App. 1985) (quotation omitted), *review denied* (Minn. Nov. 25, 1985); *see In re Welfare of H.K.*, 455 N.W.2d 529, 533 (Minn. App. 1990) (upholding termination of parental rights under section 260C.301, subd. 1(b)(2), when "the present conditions of neglect will continue for a prolonged and indeterminate time"), *review denied* (Minn. July 6, 1990).

Evidence presented at trial showed that mother has had a prolonged dependency on controlled substances and was subject to criminal charges that arose from the February 3, 2017 incident. She had recently taken a chemical-dependency assessment that recommended inpatient treatment for 60 to 90 days. During the previous year, mother had several known relapses following treatment, one of which occurred while she was about eight months pregnant with L.R. and being monitored in a halfway house after treatment, and one of which occurred when she told J.D. that she would be "right back" and then went on a two-day "bender" of cocaine use. Mother concedes that she is currently unable to parent her children, and the record supports the district court's determination that she will not be able to parent them in the foreseeable future. The district court's determination refutes appellants' premise that mother will be able to parent in the foreseeable future.

Best interests

Father also does not specifically challenge the district court's conclusions regarding any of the statutory grounds upon which the district court terminated his parental rights, but he argues that termination is not in his children's best interests. Even when a statutory ground for termination exists, the district court must find that termination is in the child's best interests, which are paramount. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005); Minn. Stat. § 260C.301, subd. 7 (2016). In determining the child's best interests, the district court must analyze: "(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 interests of the child." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. Jan. 6, 2012).

Father concedes that the primary reason for terminating his parental rights was his admitted cocaine use. He argues, however, that he "did not have the benefit of chemical dependency treatment" and the children were not in his care when they were exposed to J.D.

But the children were exposed to J.D., in part, because father was not available to parent due to his incarceration for a controlled-substance offense. Also, the district court found that father was diagnosed as chemically dependent and was required to participate in treatment, but he declined to do so. The district court found that father's trial testimony that he would complete chemical-dependency treatment to avoid losing his children was not credible because father continued using controlled substances while on probation and chose to serve out his 2014 sentence in prison "rather than complete treatment." Father

also testified that he did not believe that chemical-dependency treatment would “be the answer” to help him maintain sobriety, and the district court found that further efforts by the county to assist father would be “futile” because father “failed to take any steps to address his chemical dependency issues.” On this record, the district court did not abuse its discretion in determining that terminating father’s parental rights is in the children’s best interests. *See In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004) (rejecting parent’s best-interests argument when parent had a 30-year history of chemical dependency and relapses, and guardian ad litem testified that parent should be sober at least two years before the family could be reunited); *see also In re Welfare of Children of D.F.*, 752 N.W.2d 88, 96 (Minn. App. 2008) (upholding vacation of conditional stay of voluntary termination of parental rights, based on parent’s failure to take steps to address issue of illegal drug use).

Affirmed.