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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A17-1453

A17-1456

In the Matter of the Welfare of the Children of: R. M. S. and N. K., Parents.

Filed April 16, 2018

Affirmed

Florey, Judge

Redwood County District Court

File No. 64-JV-17-55

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Considered and decided by Florey, Presiding Judge; Larkin, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

In this consolidated juvenile-protection appeal, appellants challenge the district court's termination of their parental rights and the findings supporting that termination. They challenge the district court's determinations that termination is in the children's best

interests and that the county put forth reasonable efforts to reunify the family. Both parents also raise additional, individual arguments. We affirm.

FACTS

Appellant-mother R. M. S. and appellant-father N. K. are the parents of B.A.K., born in 2012, and O.M.K., born in 2015. B.A.K. suffers from attention deficit hyperactivity disorder (ADHD) and posttraumatic stress disorder (PTSD).¹ Mother has another child, M.L., who is not a party to these proceedings. The parents have a history of involvement with child-in-need-of-protection-or-services (CHIPS) cases; three CHIPS cases preceded the present termination case.

The first CHIPS case occurred in 2014 and 2015. In May 2014, B.A.K. was found, at the age of two, wandering two blocks from home. He was reportedly outside the home for at least 45 minutes without either parent coming to look for him. A citizen returned him to the home where a young girl answered the door and went to get father, who appeared approximately 15 minutes later. The citizen contacted law enforcement. Arrangements were made for B.A.K. to stay with mother's parents, a safety plan was developed, and B.A.K. was allowed to return home. In July 2014, mother reported M.L., then eight years old, missing; the child was located several hours later across town. The next month, B.A.K. was again found wandering several blocks from home. A CHIPS petition was filed, and B.A.K. was placed outside the home for approximately eight-and-a-half months, from August 3, 2014, until April 23, 2015. Father was incarcerated on felony theft charges

¹ According to the termination of parental rights petition, mother used methamphetamine while pregnant with B.A.K.

during this period. Mother tested positive for methamphetamine in September 2014. She successfully completed treatment, and B.A.K. was returned to her custody in April 2015. Two months later, the case was closed.

In early 2016, the county became concerned that mother was again using drugs. Mother allegedly assaulted M.L.'s father and was criminally charged, but she was ultimately acquitted. During the criminal proceedings, the county observed that mother was having cognitive difficulties and suspected drug use as the cause. On February 12, 2016, the county filed the second CHIPS petition, which was based on allegations set forth in mother's criminal case.

Following the filing of the second CHIPS petition, issues with parental supervision and drug use continued to arise. In March 2016, the county received a report that B.A.K. was again wandering from home. In May, a report was received that mother was using drugs. She was asked to submit to testing, but she did not respond. In June, B.A.K. was again reportedly outside the home and unsupervised. The parents reported that they needed therapy to facilitate better parenting and decrease conflict. The county referred the parents to an intensive in-home family therapy program. Because of mother's acquittal and the new allegations concerning drug use and supervision issues, the second CHIPS petition was dismissed and a third CHIPS petition was filed on June 15, 2016.

On July 7, 2016, the children were placed on an emergency hold after B.A.K. was seen by a neighbor crying alone outside. When law enforcement arrived, B.A.K. said that he did not know the whereabouts of his parents. An officer announced his presence at the residence. There was no response. The officer went into the residence's basement and

found O.M.K. in her crib without a diaper. Mother arrived at the residence, stating that she had gone to borrow a vehicle and that father was left in charge. Father was sleeping upstairs. On July 11, 2016, the children were placed out of the home. A little over a week later, mother was arrested for motor-vehicle theft. In August 2016, the children were adjudicated CHIPS.

On August 25, 2016,² a termination of parental rights (TPR) petition was filed, but it was withdrawn in November because the county had failed to obtain court approval for the parents' case plans. New case plans were developed and signed by the parents on February 23, 2017. The case plans identified family needs to include parenting skills, counseling, mental health, and chemical health. Mother was expected to participate in in-home family therapy and parenting classes, attend meetings as required by her chemical-use assessment, remain sober, submit to testing, financially support the children, and demonstrate the ability to supervise the children. Father was expected to participate in in-home family therapy, complete a diagnostic assessment and follow any recommendations, continue to participate in parenting classes, remain sober, submit to testing, financially support the children, and demonstrate the ability to supervise the children. Father was later ordered to undergo a chemical-use assessment.

The parents generally showed a lack of commitment in engaging services and maintaining contact with the children until late December 2016. For example, after the children were removed from the home, father "scheduled his orientation appointment with

² The district court's order says August 2017, but this is incorrect.

the coordinator of the visitation center for July 25, 2016, but was a no show,” and the parents “did not contact [the visitation center] for more than a month after the children were removed from their care to arrange visits.” Mother was unsuccessfully discharged from chemical-use treatment on December 17, 2016, and the parents missed visits with the children on December 6 and December 22. However, based upon the parents’ progress in late December, including engaging in parenting classes and working with a parenting mentor, visits with the children progressed from supervised to unsupervised in February 2017. Unsupervised visits continued until March, when the parents’ progress unraveled.

On March 2, 2017, the parents admitted to missing a parenting class and not attending sobriety meetings, and father admitted that he had not scheduled his diagnostic assessment. The parents also stopped communicating with their parent mentor and stopped setting appointments with their parenting instructor. The county requested that the parents submit to drug testing. Father’s test was clean, but mother was unable to produce a sample and left the testing facility despite being told not to leave. Mother later returned with a suspicious sample, and she was deemed to have provided a positive result. Following the test, unsupervised visitation was cancelled. A March 3 test of mother’s hair indicated negative results for drug use. Mother was asked to submit to testing on March 15, but did not show. On March 24, mother was asked to provide a sample, but she did not, and the county deemed her failure a positive result. An April 12 hair-follicle test for both parents showed positive results for amphetamine and methamphetamine.

On April 28, 2017, the county filed a second TPR petition. The county sought termination on four grounds, alleging that the parents (1) neglected their parental duties;

(2) were palpably unfit; (3) failed to correct the conditions that led to the out-of-home placement; and (4) neglected the children while they were in foster care.

On July 26, 2017, a trial was held. Testimony was received from an early childhood therapist; a parent mentor; a parenting instructor; a social worker; a chemical-dependency worker; a child-protection investigator; the guardian ad litem; mother; and father. By most accounts, the parents had complied substantially with their case plans in January and February of 2017. Things deteriorated in March and April. Following the positive drug test in April, the parents' compliance with the case plans was sporadic.

On August 24, 2017, the district court filed an order terminating the parents' rights to B.A.K. and O.M.K. The court concluded that the county proved three statutory grounds for termination: (1) the parents neglected their parental duties; (2) the parents failed to correct the conditions that led to the out-of-home placement; and (3) the parents neglected the children while they were in foster care. The court concluded that it was in the best interests of the children that the parents' rights be terminated. Each parent appealed separately, and this court consolidated those appeals.

D E C I S I O N

Both parents argue that the record does not support a termination of parental rights, that termination is not in the children's best interests, and that the county failed to make reasonable efforts. We first address these shared issues before turning to the parents' individual arguments.

I. Clear and convincing evidence supports the district court’s termination of parental rights.

A district court may terminate parental rights if there is clear and convincing evidence establishing at least one statutory ground for termination 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). We review the district court’s findings of fact for clear error. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). “A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted). The ultimate determination that the findings fit the statutory criteria is reviewed for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012).

The district court concluded that there was sufficient evidence to support a termination of parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2) (2016), which permits a district court to terminate a parent’s parental rights if it finds

that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but 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, if the parent is physically and financially able, and 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.

To terminate parental rights under this statutory basis, the district court must find that “at the time of termination, the parent is not presently able and willing to assume [his or her] responsibilities and that the parent’s neglect of these duties will continue for a prolonged, indeterminate period.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 90 (Minn. App. 2012) (quotations omitted).

The record indicates an ongoing and repeated pattern of neglectful conduct by the parents. B.A.K., at the age of two, was found wandering blocks from home. He was reportedly away from the home for at least 45 minutes without anyone coming to look for him. Despite efforts by the county, the same pattern of events continued to unfold again and again. The lack of supervision was not limited to B.A.K. Eight-year-old M.L. also went missing, only to be found hours later across town.

Testimony was received indicating that the parents’ lack of care and supervision was a problem that would persist for the foreseeable future. The parent mentor testified that mother is not in a position to parent because she lacks communication with father, and father is not in a position to parent because of mental-health issues. The guardian ad litem testified that she did not believe that the parents could provide the necessary structure and supervision for the children.

The parents effectively delayed and derailed reunification efforts and efforts to instill in them the skills to provide that structure and supervision. The parents were slow in establishing visitation and obtaining services. When they did eventually engage in services, and a trial home visit was near, they thwarted their own progress by breaking communication with service providers, missing appointments, and using

methamphetamine. This hindered the county's ability to provide services, such as in-home family therapy. It also hindered the county's ability to observe family dynamics for an appreciable time.

The record indicates continuing chemical-use issues, which may have precipitated the lack of supervision. Both parents tested positive for amphetamine and methamphetamine in April 2017. The parents failed to properly address these issues. Mother was unsuccessfully discharged from outpatient treatment in December 2016. It was recommended that father undergo chemical-use treatment, but he had not started treatment at the time of trial.

“Failure to satisfy requirements of a court-ordered case plan provides evidence of a parent's noncompliance with the duties and responsibilities under section 260C.301, subdivision 1(b)(2).” *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 666 (Minn. App. 2012). The district court found that the parents' “lack of effort and progress on even the most basic components of the case plan” indicates that they have not acquired “the tools necessary to fully address their methamphetamine abuse [and] parenting deficiencies.” Given the evidence that both parents failed to correct their chemical-use issues and their persistent, ongoing parenting deficiencies, the district court did not abuse its discretion in terminating parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2).

II. The record supports the district court's determination that termination is in the children's best interests.

Both parents challenge the district court's conclusion that it is in the children's best interests that parental rights be terminated. In a termination-of-parental-rights case, the

best interests of the children is “the paramount consideration.” Minn. Stat. § 260C.301, subd. 7 (2016). A district court must make “findings regarding how the order is in the best interests of the child.” Minn. R. Juv. Prot. P. 42.08, subd. 1(b).

In analyzing the best interests of the children, the district court must balance three factors: “(1) the [children’s] interest in preserving the parent-child relationship; (2) the parent’s interest in preserving the parent-child relationship; and (3) any competing interest[s] of the [children].” *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). We apply an abuse-of-discretion standard of review to a district court’s conclusion that termination of parental rights is in a child’s best interests. *J.R.B.*, 805 N.W.2d at 905.

We have held that a district court’s findings may provide adequate support for termination even when those findings are not greatly detailed. *See In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004). The district court noted that the children need capable and predictable parenting for growth and development and that B.A.K. has additional developmental needs resulting from his PTSD and ADHD. The district court acknowledged that the parents love the children, but found that “[n]either parent has demonstrated a consistent ability to hold the children’s needs above their own needs.” The district court sufficiently considered the relevant factors and did not abuse its discretion in concluding that termination of parental rights is in the children’s best interests.

III. The record supports the conclusion that the county made reasonable efforts to reunify the family.

Both parents argue that the county did not undertake reasonable efforts to reunify the family. When a child is removed from the family home, the responsible social-services

agency must make “reasonable efforts” to reunify the parent and child. Minn. Stat. § 260.012(a) (2016). A district court must make findings as to whether the county provided reasonable efforts to rehabilitate the parent and reunify the child and parent. *Id.*, (h) (2016). What constitutes “reasonable efforts” depends on the problems presented. *T.R.*, 750 N.W.2d at 664.

The district court found that the county had put forth reasonable efforts directed at rectifying the parents’ chemical-use issues and supervision shortcomings. The district court’s conclusion is supported by the record. The guardian ad litem provided testimony, which the district court deemed credible, regarding the numerous services provided to the parents including transportation, mental-health referrals, a couples-therapy referral, in-home therapy, chemical-use assessments, treatment referrals, a parent mentor, parenting classes, and parenting-time services. The district court’s finding that the county put forth reasonable efforts is supported by the record and is not clearly erroneous.

IV. Mother’s additional arguments are unavailing.

Mother argues that “the most critical factual findings by the [district] court lack support in the record.”³ She asserts that the district court relied on three “failings” by

³ The county asserts that mother is procedurally barred from arguing that the district court’s findings are clearly erroneous because she did not raise that issue in a posttrial motion. The county is incorrect. “[A]n order terminating parental rights is an appealable order.” *In re Welfare of L.M.M.*, 372 N.W.2d 431, 433 (Minn. App. 1985), *review denied* (Minn. Oct. 18, 1985). Absent a posttrial motion, this court’s scope of review includes “the sufficiency of the evidence and the adequacy of the findings to support the conclusions of law.” *In re Welfare of S.G.*, 390 N.W.2d 336, 341 (Minn. App. 1986). We are directed to review the findings to determine if they 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).

mother in terminating her parental rights: (1) her methamphetamine use; (2) her failure to adequately supervise the children; and (3) her lack of parenting skills resulting from mental-health issues. She asserts that none of the three claimed deficiencies is supported by the record.

A. Methamphetamine use

Mother concedes that she has had methamphetamine-addiction issues, but she asserts that the record, as it relates to this case, indicates “at most, a temporary relapse in the spring of 2017.” She argues that the record does not indicate that her chemical-dependency issues affected her parenting.

The district court’s findings indicate mother’s ongoing struggles with methamphetamine and failure to consistently submit to testing. The court found that mother ignored an order to submit to testing on July 12, 2016, following the emergency-protective-care hearing, and failed to submit to testing again the following day. Mother refused to provide a hair sample on July 14, but did submit a urine sample that tested positive for methamphetamine. Mother completed a chemical-use assessment on October 4, 2016, which recommended outpatient treatment. She started outpatient treatment on November 28, 2016. She refused to submit to testing on December 9, 2016,⁴ and was unsuccessfully discharged from outpatient treatment in December 2016. After making progress in late December 2016 and January 2017, mother again began refusing to submit to testing, and she submitted a positive test in April 2017. Following the positive test and

⁴ The district court’s order says December 2017, but this is incorrect.

an updated chemical-use assessment in May, mother was initially directed to undergo inpatient treatment, but she disputed this recommendation and requested outpatient treatment. Ultimately, she was instructed to attend outpatient treatment, but she overslept and missed her initial intake and did not start the program until July 10, 2017, two weeks before trial.

Contrary to mother's assertion that she only experienced a short relapse in early 2017, the record indicates an ongoing pattern of methamphetamine use and failure to fully comply with testing and treatment recommendations. The record supports the district court's findings on mother's ongoing chemical-use issues.

B. Inadequate supervision

Mother acknowledges that B.A.K. has "wandered on some occasions," but she asserts that the child's wandering spells are a result of his ADHD and PTSD, and she argues that no harm has befallen the child. The record indicates an ongoing and troubling pattern of insufficient parental supervision. Although no physical harm actually befell the children, such injury is not a requirement under Minn. Stat. § 260C.301, subd. 1(b)(2). Mother argues that there were no incidents near the time of the termination proceedings. But, the children were out of the parental home, except for some unsupervised visitation in February and early March 2017. Mother asserts that there were no failings related to O.M.K., but testimony was received indicating that mother could not provide necessary structure and supervision for O.M.K. The record supports the district court's findings and conclusions concerning inadequate supervision.

C. Mental health

Mother argues that the district court expressed significant concerns over her mental health. She asserts that she addressed her mental health by completing a mental-health assessment and entering into therapy.

The district court did not express significant concern over mother's mental health, and no specific diagnoses were discussed. Rather, the primary concern, beyond substance abuse, was mother's "parenting deficiencies," and specifically the lack of supervision. To this end, and in regard to mother's case-plan compliance, the court did discuss mother's diagnostic assessment that occurred "in the fall of 2016." The court stated that the assessment was "invalid due to obfuscation and guardedness." The court found that mother never returned to complete a "less-guarded" assessment.

Contrary to the district court's finding, it appears that mother did return, she was less guarded, and she received a recommendation of "therapy as needed." Although mother claimed to have started therapy approximately two months before trial, she refused to sign releases so that the nature of the therapy could be verified. Given the malleable recommendation of therapy as needed, and the lack of any specific case-plan requirement that mother undergo an updated assessment or attend individual therapy, mother's failure to undergo regular individual therapy cannot be deemed a noncompliance with her case plan. However, sufficient evidence in the record still supports the termination of her parental rights given her persistent failure to adequately supervise her children, her ongoing substance-abuse issues, and her failure to substantially comply with her case-plan requirements.

D. O.M.K.

Lastly, mother argues that the record offers no factual basis to support a termination of her rights to O.M.K. There are fewer instances of inadequate care specific to O.M.K. However, the lapses in the care of B.A.K. and M.L. are evidence of systemic parenting deficiencies. Likewise, mother's ongoing pattern of substance abuse evidences a repeated failure "to comply with the duties imposed upon that parent by the parent and child relationship," and mother's failure to comply with her case plan provides further evidence of her noncompliance with those duties. *See* Minn. Stat. § 260C.301, subd. 1(b)(2); *K.S.F.*, 823 N.W.2d at 666. The record is sufficient to support a termination of mother's rights to O.M.K.

V. Father's additional arguments are unavailing.

Father argues that there was insufficient evidence to justify the termination of his parental rights and that mother was the more culpable party. He acknowledges that he "did not fully comply with the case plans," but he argues that he "has corrected the conditions that led to the children being placed out of the home."

In terminating father's parental rights, the district court relied on father's chemical-use issues and parenting deficiencies, particularly his failure to properly supervise the children, as well as his failure to comply with the requirements of his case plan. As previously discussed, the record supports the termination of his parental rights. While father asserts that mother is the more culpable party, the record indicates that father was also culpable. B.A.K. twice went wandering from the home while father was present. In May 2014, after a citizen returned B.A.K. to the home, it was father who ultimately came

to the door some 15 minutes later, took B.A.K. inside, and closed the door. Father later told police that he and mother had been sleeping. Then, in July 2016, a neighbor observed B.A.K. crying outside. Law enforcement responded, and father was found sleeping upstairs.

The record indicates that father more consistently submitted to testing than mother, but he did test positive for methamphetamine in April 2017 and failed to follow recommendations to address his chemical-use issues. It was recommended that he undergo chemical-use treatment, but he had not started treatment at the time of trial. He also failed to verify his attendance at alcoholics-anonymous meetings. Contrary to father's assertion that he corrected his parenting deficiencies, a parent mentor testified that he is not in a position to parent because of mental-health issues, and the guardian ad litem testified that she did not believe that father could provide the necessary structure and supervision for the children.

Father asserts that his "behavior between March 2 and April 25 was not significantly different and did not justify a termination of his parental rights." But, father himself testified that he tested positive for methamphetamine in April 2017 because he "took a pill," and "ended up taking more, got sick, kind of suicidal in a sense." This suggests ongoing chemical-use and mental-health issues, issues which father did not take substantial steps to address, despite the availability of services. The record indicates that father went to two individual therapy sessions, but did not show for two other sessions and was discharged "unsuccessfully." Father had not started treatment at the time of trial.

Like mother, father argues that the record is insufficient to support a termination of his rights to O.M.K. Father's substance abuse, mental-health issues, and failure to comply with his case plan provide sufficient evidence of his failure to comply with his parental duties as they relate to O.M.K. *See* Minn. Stat. § 260C.301, subd. 1(b)(2); *K.S.F.*, 823 N.W.2d at 666. Given the lack of case-plan compliance, and more importantly, the evidence showing that father continues to lack sufficient parenting skills to adequately supervise and care for his children, the district court did not abuse its discretion in terminating his parental rights.

Affirmed.