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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1441**

In the Matter of the Welfare of the Child of:
J. J. P. and T. D. K., Parents.

**Filed January 14, 2019
Affirmed
Slieter, Judge**

Morrison County District Court
File No. 49-JV-18-394

Cathleen Gabriel, Annandale, Minnesota (for appellant mother J.J.P.)

Gregory A. Peters, Long Prairie, Minnesota (for father T.D.K.)

Brian Middendorf, Morrison County Attorney, Kari O’Leary, Assistant County Attorney,
Little Falls, Minnesota (for respondent Morrison County Social Services)

Courtney Rannow, Little Falls, Minnesota (guardian ad litem)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and
Slieter, Judge.

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

SLIETER, Judge

Appellant mother challenges the involuntary termination of her parental rights,
arguing that the evidence in the record is insufficient to support the district court’s

conclusions that appellant neglected her parental duties¹ and that termination of her parental rights is in the child's best interests. We affirm.

FACTS

Appellant J.J.P. is the biological mother and former sole legal and sole physical custodian of R.D.K., born in March 2008. In November 2016, appellant voluntarily agreed to place the child in foster care while she completed chemical-dependency treatment. In February 2017, a petition was filed alleging that the child was in need of protection or services (CHIPS). In April 2017, appellant entered an admission to the CHIPS petition under Minn. Stat. § 260C.007, subd. 6(4), (8) (2016), and the child was adjudicated CHIPS.

Specifically, appellant admitted that her use of alcohol was interfering with her life. Appellant's alcohol use became a problem after her sister died in 2013; thereafter, she participated in four separate chemical-dependency in-patient treatment programs in a five-year period. Appellant testified at the April 2017 admission hearing that she had recently completed treatment but needed additional time to stabilize and that she believed it was in the child's best interests to remain in out-of-home placement, particularly in light of the child's significant mental-health needs.

¹ We note that appellant also argued that the district court erred in terminating her parental rights under three other statutory bases. Although the district court's order briefly references terminating appellant's parental rights pursuant to four different statutory bases, the district court analyzed only whether appellant neglected her parental duties. Reading the order in its entirety makes it clear that the district court terminated appellant's parental rights solely on the basis that she neglected her parental duties. Accordingly, we consider only this basis for termination.

In June 2017, the district court approved an out-of-home placement plan for the child. Appellant signed the out-of-home placement plan. The plan required appellant, among other things, to maintain a safe living environment, free from any substance use, to follow all recommendations from her chemical-dependency treatment program, and to maintain a sober support system.

Appellant relapsed on alcohol in June 2017, but Morrison County Social Services (MCSS) determined that appellant had handled the relapse appropriately and that she was in substantial compliance with her case plan. MCSS sought, and the district court granted, an extension to the child's permanency deadline based on appellant's overall progress. In August 2017, appellant admitted to using methamphetamine, and MCSS moved her from unsupervised to supervised visitation.

Psychologist George Tetreault completed parenting capacity assessments of appellant in December 2017 and May 2018. In both assessments, Dr. Tetreault diagnosed appellant with post-traumatic stress disorder (PTSD) and borderline personality disorder. In both assessments, he also noted that the child had significant needs that appellant could not meet and that it was not likely that she would be able to meet the child's needs in the foreseeable future. During trial, Dr. Tetreault testified that appellant has difficulty regulating her emotions and has a long pattern of irritability and anger that he considered to be a severe impairment.

The child has been diagnosed with disruptive-mood dysregulation disorder and PTSD. The child reported being angry, verbally and physically aggressive, and threatening self-harm. The child's therapist testified that, up to approximately April 2018, both the

child and appellant made significant progress in therapy. However, as they began discussing unsupervised visits as a step toward reunification, the child's mental health declined. The child had mixed feelings about visits with appellant because he was worried about the possibility of returning home and whether it would be safe. The child indicated to his therapist that he wished to be adopted by his foster family. In May 2018, the child indicated that he was no longer willing to participate in therapy with appellant. The child's therapist testified that termination of appellant's parental rights was in the child's best interests.

Appellant again relapsed on alcohol starting at the end of June 2018, continuing into early August. Appellant testified that she relapsed upon learning that her son wanted to be adopted by his foster parents and reported drinking a half-gallon of vodka per day. Appellant was treated in the emergency room several times for alcohol intoxication and nearly died from alcohol poisoning. On August 3, 2018, appellant called law enforcement to request a ride to a detoxification center.

On August 15, 2018, the district court held a permanency trial. At that time, appellant was staying at Safe Harbor in Brainerd in a mental-health crisis unit. During the trial, the MCSS social worker and the guardian ad litem assigned to this case each testified that termination of appellant's parental rights was in the child's best interests. On August 27, 2018, the district court ordered appellant's parental rights terminated. This appeal follows.

DECISION

I. The record supports the district court's determination that appellant substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent-child relationship.

“We review the termination of parental rights to determine whether the district court’s findings address the statutory criteria and whether the district court’s findings are supported by substantial evidence and are not clearly erroneous.” *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). A factual 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), *as modified on denial of reh’g* (July 2, 2008). We review whether the factual findings support a statutory basis to terminate parental rights for an abuse of discretion. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). We will affirm the termination of parental rights if there is clear and convincing evidence to support at least one statutory ground for termination, termination is in the best interests of the child, and the county made reasonable efforts to reunite the family. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005).²

An individual’s parental rights may be terminated if she has “substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed . . . by the parent and child relationship.” Minn. Stat. § 260C.301, subd. 1(b)(2) (2018). Those

² In this case, appellant does not challenge the third prong, which requires that the district court find in any termination proceeding that the county made reasonable efforts at reunification or that such efforts are not required under Minn. Stat. § 260.012 (2018). *See id.*; Minn. Stat. § 260C.301, subd. 8(1) (2018).

duties include providing “food, clothing, shelter, education, and other care and control necessary for the child’s physical, mental, or emotional health and development.” *Id.* The district court must find that, at the time of termination, the parent is not presently able and willing to assume her responsibilities and that the parent’s neglect of these duties will likely continue in the future. *J.K.T.*, 814 N.W.2d at 90. A parent’s “[f]ailure 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).

Appellant argues that the district court improperly determined that she refused to comply with her parental duties based solely on her alcohol relapse and chemical dependency. To support this proposition, appellant relies on *T.R.* In that case, the Minnesota Supreme Court held that failing a drug test did not make a non-custodial parent palpably unfit “in the absence of a causal connection between that substance use and the parent’s inability to care for the child.” *T.R.*, 750 N.W.2d at 662. The supreme court noted that there was no finding that the parent’s use directly affected the relationship with the child or that it rendered the parent unable to care for the child. *Id.* at 663.

Unlike the facts in *T.R.*, appellant’s alcohol use was the direct cause of her inability to care for the child. Appellant admitted in April 2017 that alcohol was interfering with her life and that she believed it was in the child’s best interests to remain in out-of-home placement while she went through treatment and stabilized her life. In light of appellant’s admissions, the district court included several requirements regarding appellant’s sobriety in the child’s placement plan.

Despite appellant's awareness of the negative impact that alcohol has on both her and the child, and the case plan requiring appellant to maintain her sobriety, appellant spent the month leading up to trial drinking heavily. The district court's findings tie appellant's sobriety directly to her ability to care for the child. The district court found that appellant's sobriety "is needed for her to have the ability to care for her child who has high needs" and that her latest relapse occurred "during a time wherein the Child needed to have a parent and child trust created while in a therapeutic setting to achieve the appropriate foundation in which to build." Here, specific findings tie appellant's severe alcohol use to her neglect to comply with her parental duties.

The record supports the finding that at the time of trial appellant was unable to assume her parental responsibilities and that her neglect of those duties would likely continue in the future. On this record, the district court did not abuse its discretion in finding that appellant repeatedly refused or neglected to comply with the duties imposed upon her by the parent-child relationship.

II. The records supports the district court's determination that termination of appellant's parental rights is in the child's best interests.

The child's best interests is "the paramount consideration" when deciding whether to terminate parental rights. *In re Welfare of the children of J.R.B.*, 805 N.W.2d 895, 902 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012); *see also* Minn. Stat. § 260C.301, subd. 7 (2018). "In analyzing the best interests of the child, the court must balance three factors: (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 interest of the

child.” *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); *see also* Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). Competing interests may include “a stable environment [and] health considerations.” *R.T.B.*, 492 N.W.2d at 4. “We review a district court’s ultimate determination that termination is in a child’s best interest for an abuse of discretion.” *J.R.B.*, 805 N.W.2d at 905.

Here, the district court considered that appellant and the child love each other and both have an interest in maintaining the parent-child relationship. The district court then weighed that interest against the child’s interest in “permanency in a safe, stable, alcohol and drug-free home.”

The child has been out of home for well over a year and has significant mental-health issues that require an elevated need for a safe and stable home. Appellant’s latest month-long relapse demonstrates that she is not able to provide the child with a safe and stable home. The social worker, guardian ad litem, and the child’s therapist testified that termination of parental rights is in the child’s best interests. The record supports the district court’s assessment that the competing interests of the child in being in a safe, stable, and secure environment weigh strongly in favor of termination. On this record, the district court did not abuse its discretion in finding that termination of appellant’s parental rights is in the child’s best interests.

Because substantial evidence in the record supports the district court’s findings, and because the district court properly applied the law to those findings, the district court did not abuse its discretion when it terminated appellant’s parental rights to the child.

Affirmed.