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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2031**

In re the Matter of the Welfare of the Children of: H.W.-S. and D.T.W., Parents.

**Filed June 24, 2019
Affirmed
Hooten, Judge**

Kandiyohi County District Court
File No. 34-JV-18-146

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Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

In an appeal of the termination of her parental rights, appellant-mother challenges the district court's credibility determinations, its authority to preclude contact with her children, and its finding that the county made reasonable efforts to address her mental-health issues. We affirm.

FACTS

Appellant-mother and father are the biological parents of two children: N.W.-S., born in 2010, and A.W.-S., born in 2011. In September 2017, Kandiyohi County Health and Human Services (KCHHS) filed a children in need of protection or services (CHIPS) petition. KCHHS became involved with the family beginning in November 2016, after receiving reports that father had beaten and choked mother in front of their children. Mother filed for an Order for Protection (OFP) against father. The district court granted the OFP, which allowed father to have supervised contact with the children and also ordered that mother was to complete a chemical-use assessment. The OFP remained in effect until December 12, 2017. Mother completed a chemical-use assessment and no additional case plans were developed regarding this incident.

On March 9, 2017, KCHHS received a report alleging neglect and inadequate supervision of the children by mother because the children were not being dropped off or picked up from school on time. About a month later, KCHHS received a report regarding neglect and chronic use of controlled substances after the parents had attended a hearing for their ongoing divorce case and both had tested positive for cocaine. On April 10, mother was charged with third-degree driving while intoxicated after she was found driving her children with cocaine and PCP in her system. After KCHHS filed the CHIPS petition, an emergency protective order was granted because mother allowed father to see the children unsupervised in violation of the OFP.

While the children were placed out of the home, mother met with various mental-health professionals. Her therapist testified that mother completed a diagnostic assessment

that indicated she had post-traumatic stress and cocaine dependence. Mother was scheduled for nine therapy sessions, but cancelled twice. Mother also met with the clinical director of Shoreview Mental Health Center. She attended two sessions, but missed several appointments and did not complete the assessment process. In June 2018, mother entered a treatment program at RS Eden that had programming for her mental health and chemical dependency.

The county filed a petition to terminate the parental rights of mother and father on July 26, 2018. The statutory grounds for termination that were discussed at trial were palpable unfitness and failure to correct the conditions that led to the out-of-home placement. At the time of the termination hearing, the children had been out of the home for 344 days.

At the termination hearing, mother testified that she had lied about her previous allegations of abuse against father. The allegations she recanted were that he beat her with baseball bats, hit her while she was holding her daughter, and threatened her life.

The guardian ad litem (GAL) testified that the children disclosed that they would often see their mother smoke out of a “bowl type item.” The GAL also stated that while mother did an “excellent job” when visiting her children, her drug use “scares the children. The children have been put in situations that no child should be put in. When their mom is using, they can’t wake her up.” At the time of the hearing, mother was homeless and had not finished treatment for her chemical dependency. The GAL testified that it took mother “about six months before she went to any treatment and she went to an outpatient treatment instead of the recommended inpatient treatment.” Mother tested positive for

cocaine at treatment on July 20 and September 6, 2018. The GAL ultimately testified that it was in the children's best interests for father's and mother's rights to be terminated.

Following the hearing, the district court terminated mother's parental rights, finding clear and convincing evidence that following the children's placement out of the home, reasonable efforts have failed to correct the conditions leading to the placement, but did not terminate father's parental rights. Mother appeals.

D E C I S I O N

The ultimate decision of whether to terminate a parent's parental rights is discretionary with the district court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136–37 (Minn. 2014). This court reviews a 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). “We will affirm the district court's termination of parental rights when a statutory ground for termination is supported by clear and convincing evidence, termination is in the best interests of the child, and the county has made reasonable efforts to reunite the family.” *In re Welfare of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018).

Here, the district court terminated mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5) (2018), finding clear and convincing evidence that following the

children's placement out of the home, reasonable efforts have failed to correct the conditions leading to the placement. The district court also determined that it was in the best interests of the children that mother's rights be terminated. Notably, mother does not dispute that the children had been in out-of-home placement for the requisite period of time required under the statute, that there was a court-approved out-of-home placement plan, or that the conditions leading to the out-of-home placement had not been corrected. Mother instead challenges the termination by arguing that (1) the district court erred in its credibility determinations, which led to the wrong result, (2) the county did not make reasonable efforts to reunite the family, and (3) the district court's termination order went beyond the scope of its jurisdiction.

I. Credibility of Appellant's Testimony

Mother argues that the district court erred by finding her testimony credible and failing to consider that her statements may have been coerced. She contends that had the district court considered that she was coerced, there would not be sufficient evidence to terminate her parental rights. Mother argues for the first time on appeal that the district court should have known that her recantation of the domestic abuse allegations was out of fear. Mother did not argue at the termination hearing that she was being coerced, bring a posttrial motion alleging coercion, or provide the district court or this court with a supporting affidavit regarding her allegations. "A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). Because mother raises this issue for the first time on appeal, and because of the lack of factual record

showing that mother was coerced to provide false testimony at the TPR trial, we are precluded from reviewing mother's coercion claims on review. *Id.* at 582; *see also State v. Kaiser*, 469 N.W.2d 316, 319 (Minn. 1991) (stating "whether or not defendant was coerced cannot be decided without the [district] court first making factual findings relating to the alleged coercion").

Even when considering the merits of mother's argument on this point, her argument fails. The purpose of appellate courts is to correct errors, not to retry the case. *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 68 n.2 (Minn. 1979). This court does not reweigh evidence or determine the credibility of witnesses. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). The district court is in a better position to assess witness credibility, and this court gives such determinations considerable deference. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

Here, the district court found that mother, in her sworn testimony, credibly declared that her prior abuse allegations against father were false. The district court, after hearing the testimony of mother, is in a better position to assess which version of mother's inconsistent abuse allegations is most credible, and we defer to the district court's assessment that mother testified truthfully about her prior false abuse allegations against father. Because we do not disturb the credibility determination of the district court, mother's argument regarding the sufficiency of the evidence supporting termination has no merit.

II. Reasonable Efforts

Mother also argues that the district court erred by determining that KCHHS made reasonable efforts to address her mental-health issues.

The district court terminated mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5) because there was clear and convincing evidence that "following the child[ren]'s placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child[ren]'s placement." To terminate parental rights on this basis, the district court must find that the county made reasonable efforts to "rehabilitate the parent and reunite the family." Minn. Stat. § 260C.301, subd. 1(b)(5)(iv).

In determining whether the county made reasonable efforts, the district court must consider whether the services provided to the child and family were:

- (1) relevant to the safety and protection of the child;
- (2) adequate to meet the needs of the child and family;
- (3) culturally appropriate;
- (4) available and accessible;
- (5) consistent and timely; and
- (6) realistic under the circumstances.

Minn. Stat. § 260.012(h) (2018). The efforts must be aimed at correcting the conditions which led to out-of-home placement and "must conform to the problems presented." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 88 (Minn. App. 2012).

In her assertion that KCHHS did not make reasonable efforts to address her mental-health issues, mother does not claim that the services offered to her were irrelevant, culturally inappropriate, unavailable or inaccessible, inconsistent or untimely, or

unrealistic. Rather, she claims that the services offered were inadequate to correct or ameliorate her mental illness. But the district court found, and the evidence in the record supports, that KCHHS repeatedly attempted to address mother's mental-health issues, but she failed to follow through with her appointments and treatment.

Although mother obtained a court-ordered chemical-use assessment on December 26, 2017, and the assessment recommended in-patient chemical dependency treatment, she did not enroll into in-patient treatment at RS Eden until June 4, 2018. In addition to in-patient chemical-dependency treatment, mother was provided other services, including chemical-use testing, mental-health therapy, parenting classes, anger management, and transportation assistance to visit her children.

Mother failed to cooperate with the social workers at KCHHS and often would terminate the meetings, curse at the social workers, and refuse to sign the case plan and information releases. Mother had prior mental-health assessments at Crossroad, Woodland Centers, Shoreview Mental Health Center, and Minnesota Mental Health. A psychologist assigned to mother's case attempted to complete psychological testing, but was unable to do so due to mother's failure to attend scheduled sessions and her ultimate refusal to see the psychologist. Mother failed to follow up with her therapist regarding an updated diagnostic assessment and refused to allow her to review a prior diagnostic assessment. Mother's therapist further opined that because she had not made enough progress on her cognitive behavioral therapy, she was not able to start with her dialectical behavioral therapy.

In sum, we conclude that there is substantial support in the record supporting the district court's determination that reasonable efforts were made by KCHHS to address mother's mental-health issues. Accordingly, we find no error regarding the district court's credibility determinations, termination order, or findings on reasonable efforts. Because the statutory ground for termination is supported by clear and convincing evidence in the record, termination is in the best interests of the children, and the county made reasonable efforts to reunite the family, the district court did not abuse its discretion by granting the county's petition and terminating mother's parental rights to her children.

III. No-Contact Order

Finally, mother argues that the district court erred by issuing an order prohibiting her from having contact with her children because the district court had no jurisdiction to enter such an order in a Minn. Stat. § 260C.301 proceeding.

The district court terminated mother's rights and stated that mother "shall have no further right to visitation or contact with the children unless expressly authorized by Kandiyohi County Health and Human Services or ordered by the court." Minn. Stat. § 260C.317, subd. 1 (2018) provides:

If, after a hearing, the court finds by clear and convincing evidence that one or more of the conditions set out in section 260C.301 exist, it may terminate parental rights. Upon termination of parental rights all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated and the parent shall have no standing to appear at any further legal proceeding.

Based upon the clear and unambiguous language of the statute, the district court has the authority to terminate parental rights and a consequence of the termination is that the parent's right to visitation is severed. Mother's argument lacks merit.

Mother additionally relies on Minn. Stat. § 259.58 (2018) and argues that the district court "is required by due process to conduct an evidentiary hearing before terminating contact between a biological parent and adoptive parents." Minn. Stat. § 259.58 allows for a birth relative and adoptive parents to enter into an agreement regarding communication or contact with the minor child. *See also* Minn. Stat. § 260C.317, subd. 4(b) (2018) (stating that a "parent whose rights are terminated . . . shall retain the ability to enter into a contract or communication agreement under section 260C.619"). A parent may enter into an agreement regarding contact with the child. The district court did not limit this ability by restricting mother's current visitation rights. The district court ordered that mother shall have no further right to visitation or contact with the children, but also stated that visitation may be authorized by KCHHS or ordered by the court. This allows for possible communication agreements at a later date.

Further, mother's argument that it is "untenable" that the district court prohibited contact between her and the children, but did not prohibit contact between father and the children, is without merit. The district court did not terminate father's parental rights, finding that there was no statutory basis to terminate and KCHHS had not made reasonable efforts to reunite him and the children. As his parental rights were not terminated, he does not suffer the consequences under Minn. Stat. § 260C.317. The district court continues to have jurisdiction over father's case and could modify visitation rights at a later date. *See*

Minn. Stat. § 260C.101, subd. 1 (2018) (“The juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be in need of protection or services.”).

Because the district court has the authority to terminate mother’s parental rights under Minn. Stat. § 260C.317, subd. 1, and one consequence of the termination is the severance of mother’s visitation rights, the district court did not err by issuing an order prohibiting her from having contact with her children.

Affirmed.