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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0871**

In re the Matter of the Welfare of the Child of:
K. M. D. and J. M. M., Parents.

**Filed November 4, 2019
Affirmed
Smith, Tracy M., Judge**

Morrison County District Court
File No. 49-JV-19-297

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Considered and decided by Hooten, Presiding Judge; Reilly, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant-mother challenges the termination of her parental rights to her child, arguing that the evidence was insufficient to support the district’s court’s findings that (1) reasonable efforts failed to correct the conditions leading to the child’s out-of-home placement; (2) appellant substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed by the parent-and-child relationship; and (3) appellant is

palpably unfit to be a party to the parent-and-child relationship. Appellant also argues that the district court abused its discretion by determining that termination of her parental rights was in the child's best interests. Because clear and convincing evidence supports the finding that reasonable efforts failed to correct the conditions leading to out-of-home placement, and because the district court did not abuse its discretion by determining that termination was in the child's best interests, we affirm.

FACTS

Appellant K.M.D. (mother) is the biological parent of S.M.D. The child was born in 2013 and was five years old when mother's parental rights were terminated. The child's biological father, J.M.M., had his parental rights terminated by default on the day of mother's contested termination trial and is not participating in this appeal.

2016-2017 CHIPS Case

On January 19, 2016, law enforcement placed the child on a 72-hour peace officer's hold after mother admitted to using methamphetamine and officers found drugs, drug paraphernalia, and people using drugs in mother and child's home. The child was two years old at the time.¹

On January 25, 2016, Morrison County Social Services (MCSS) filed a child-in-need-of-protection-or-services (CHIPS) petition, pursuant to Minn. Stat. § 260C.007, subd. 6(9) (2014), and the district court ordered out-of-home placement for the child that

¹ As a result of this event, mother was ultimately convicted of gross-misdemeanor child endangerment (presence of controlled substances).

day.² MCSS filed and the court approved an out-of-home placement plan in March 2016, and substantially similar case plans were filed and approved approximately every six months thereafter. The case plans focused on providing services to ensure that the child lived in a drug-free home and had safe and sober caregivers. Mother was required to cooperate with random drug testing, follow the recommendations of a rule-25 chemical-dependency assessment, develop a sober support system, maintain a safe living environment free from substance use, cooperate with in-home skills work, attend child's appointments, and cooperate with MCSS.

In December 2016, the district court found mother to be in substantial compliance with her case plan and approved her for a trial home visit. The child returned to her care shortly thereafter. The district court held a review hearing on March 15, 2017, and noted that the trial home visit was going well. On March 29, though, the trial home visit was terminated because mother tested positive for methamphetamine use and admitted that she had used on or about March 18—just three days after the review hearing. Mother had not sought out any support group meetings, contacted her sponsor, or disclosed the relapse to MCSS.

On May 3, MCSS filed a termination-of-parental-rights (TPR) petition. Mother then made progress in her case plan, and, on July 13, the district court approved a second trial home visit at MCSS's request. MCSS held a family group decision-making conference on

² The child was adjudicated as in need of protection and services on June 1, 2016, at which point mother entered an admission that she had parented the child while under the influence of methamphetamine.

July 17 with mother, both of the child's grandmothers, the child's maternal aunt and uncle, mother's friend, two MCSS social workers, a guardian ad litem, and an in-home skills counselor. The group developed a plan to ensure the child's safety should mother relapse. The plan detailed ways that mother could prevent relapse and steps that she would take if a relapse occurred. The district court reviewed the matter two days later and admonished mother that this was her last chance to reunify with her child. Mother acknowledged that she believed she could complete the steps in the plan and that she was not requesting additional services to achieve reunification. On August 28, MCSS withdrew the TPR petition, as mother had engaged with services to remain sober. Mother regained custody of the child on August 31, and the CHIPS case was closed on November 21, 2017.

2018 January - May Wellness Assessment

In January 2018, mother tested positive for methamphetamine use and admitted to an MCSS social worker that she was parenting the child while under the influence. Mother then signed a family safety plan with the social worker, which required that she have no unsupervised time with the child until after she had provided three consecutive clean tests, complete a rule-25 chemical-dependency assessment and follow all recommendations, attend Alcoholics Anonymous/Narcotics Anonymous meetings, meet weekly with a sponsor, attend therapy, and participate with Adult Rehabilitative Mental Health Services. Mother complied with the plan, and MCSS closed the assessment in May 2018.

2019 TPR Case

On February 27, 2019, MCSS received a report that mother had again been using methamphetamine. The social worker previously assigned to the case called mother and

requested that she submit to a urine test, but mother denied use and would not submit to a test. The child was placed on a 72-hour peace officer's hold. Mother did not comply with repeated requests for a urine test until March 1, but MCSS informed her that too much time had passed since the initial report of methamphetamine use and requested a hair-follicle test instead. Mother eventually complied with hair-follicle testing on March 4.

On March 5, MCSS filed the TPR petition that led to the termination on review in this case. The district court held an emergency protective-care hearing that same day, where mother denied any drug use. The results of the March 4 hair-follicle test were still pending. The district court granted MCSS's request for out-of-home placement and noted that it could revisit the issue after the test results returned. Mother's March 4 test later came back positive for methamphetamines, and a March 18 hair-follicle test was positive for both methamphetamines and THC metabolite. Random urine tests on March 22, March 25, March 31, April 9, April 18, and April 22 were positive for synthetic cannabinoids. Mother produced two clean tests before the May 9, 2019 TPR trial. At the time of the trial, she was in an outpatient chemical-dependency treatment program.

The TPR Trial

At trial, the district court heard testimony from two MCSS social workers; the child's paternal grandmother, previous and current guardians ad litem, therapist, and maternal grandmother; mother; and mother's friend. The child's paternal grandmother was her foster caregiver at the time. Mother testified that the child does well and is generally happy with her paternal grandmother.

The child's paternal grandmother testified that she would be concerned for the child's safety if the child returned to mother's care. She believes mother's chemical dependency exposes the child to unsafe people. The paternal grandmother gave an example from winter 2018 where she came to pick the child up around 10:00 a.m. on a Sunday and found the door unlocked, the child unsupervised in the living room, and a man asleep on the floor. Mother was at work, and the child's maternal grandmother was asleep in another room.

The child's therapist testified that the child has a diagnosis of generalized anxiety disorder and attends therapy three times per week. The therapist testified that parental chemical abuse impacts a child's mental health due to lack of caregiver stability, out-of-home placement, and parental inability to respond to the child's needs due to chemical use. The child struggles with tantrums, which the therapist indicated were especially concerning at age five and are connected with the child's anxiety disorder. The therapist noted that the child needs stability and a caregiver who understands her behaviors, can set clear limits, and can provide structure.

Mother was 25 years old at the time of the trial and testified that she began using methamphetamine at age 16. She testified that she has been to five treatment programs, including her current one, but that she relapsed after the first four. She conceded that her chemical use has a negative impact on her child, specifically in regards to the child's mental health. She also admitted that she knowingly lied at the March 5 emergency protective-care hearing when she represented that her hair-follicle test would come back clean. She

conceded that she needs more time before she can be a full-time, sober parent for her child and that she still has “a long ways to go” towards maintaining sobriety.

Mother’s current case manager testified that mother’s pattern of dishonesty regarding her drug use is concerning and that mother will not be able to meet the child’s basic needs in the reasonably foreseeable future. The child’s former guardian ad litem and current guardian ad litem each testified that they believe it is in the child’s best interests that mother’s parental rights be terminated. They expressed concern about the child’s behavioral issues and mental health and their belief that the child needs consistency and stability that mother cannot provide. Though they believe mother and the child have a strong and loving bond, they believe termination of rights is nevertheless in the child’s best interests.

On June 3, 2019, the district court issued an order terminating mother’s parental rights pursuant to Minn. Stat. § 260C.301 subd. 1(b)(2), (4), and (5) (2018).

This appeal follows.

D E C I S I O N

Parental rights should not be terminated “except for grave and weighty reasons.” *In re Welfare of HGB*, 306 N.W.2d 821, 825 (Minn. 1981). “[T]ermination of parental rights is always discretionary with the juvenile court.” *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). Appellate courts affirm a district court’s termination of parental rights when (1) at least one statutory ground for termination is supported by clear and convincing evidence, (2) termination is in the best interests of the child, and (3) unless not required, the county has made reasonable efforts to reunite the family. *In re Welfare of*

Children of S.E.P., 744 N.W.2d 381, 385 (Minn. 2008). Appellate courts apply a clear-error standard of review to the district court’s factual findings and review the statutory basis for termination of 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 review a district court’s decision that termination is in a child’s best interests under an abuse-of-discretion standard. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008).

Mother argues that the district court erred by finding that clear and convincing evidence supports at least one statutory ground for termination and that the district court abused its discretion in deciding that termination is in the best interests of the child.

I. The record supports the district court’s finding of a statutory basis for termination under Minn. Stat. § 260C.301, subd. 1(b)(5).

When appellate courts review a district court’s decision to terminate parental rights pursuant to the statutory grounds in Minn. Stat. § 260C.301, subd. 1(b), they “determine whether the district court’s findings address the statutory criteria and whether the . . . findings are supported by substantial evidence and are not clearly erroneous.” *S.E.P.*, 744 N.W.2d at 385. Appellate courts “give considerable deference to the district court’s decision to terminate parental rights” but “closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing.” *Id.* Findings are clearly erroneous if they are not reasonably supported by the evidence as a whole or if they are “manifestly contrary to the weight of the evidence.” *In re Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008). Here, the district court terminated mother’s rights on three statutory grounds, any one of which is independently sufficient to show the existence of a

statutory basis to terminate parental rights. See Minn. Stat. § 260C.301 subd. 1(b). We begin our review with Minn. Stat. § 260C.301, subd. 1(b)(5).

Section 260C.301, subdivision 1(b)(5), provides that a district court may terminate a parent's rights if reasonable efforts, under the direction of the court, have failed to correct the conditions leading to out-of-home placement. Reasonable efforts are presumed to have failed upon a showing that: (1) a child has resided out of the home for a cumulative period of 12 months within the preceding 22 months or, if the child is under the age of eight, has resided out of the home for 6 or more months unless the parent maintained regular contact with the child and complied with the out-of-home placement plan; (2) the district court approved the out-of-home placement plan; (3) the conditions have not been corrected; and (4) the county made reasonable efforts toward reunification. *Id.*, subd. 1(b)(5)(i)-(iv).

Regarding factor (3), “[i]t 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.” *Id.*, subd. 1(b)(5)(iii). However, “[r]easonable efforts encompass more than just a case plan,” and “[t]he county’s efforts must be aimed at alleviating the conditions that gave rise to out-of-home placement.” *J.K.T.*, 814 N.W.2d at 88. “The critical issue is not whether the parent formally complied with the case plan, but whether the parent is presently able to assume the responsibilities of caring for the child.” *Id.* at 89.

Mother does not appear to dispute that factor (1) is satisfied, conceding that, at the time of the TPR trial, the child had been in out-of-home placement “for 21 months.”³ The record supports the concession that factor (1) is satisfied, but for a different reason. The child had not been out of the home for 12 of the 22 months preceding trial. But, based on the district court’s findings, which are supported by the record, the child was under eight years old and had resided out of the home for more than 6 months in total. In addition, as found by the district court and as supported by the record, mother’s substance use constituted noncompliance with an out-of-home placement plan. Thus, factor (1) is satisfied.

Mother also concedes factor (2)—that the district court approved the out-of-home placement plan. This concession, too, is supported by the record.

Mother does contest that factors (3) and (4) were satisfied, arguing that she “complied with the services offered and conditions provided for in the case plan” and that it is “questionable whether or not conditions leading to the out-of-home placement were adequately addressed by reasonable efforts of the agency.” We evaluate these arguments in the reverse order, beginning with factor (4)—whether the county made reasonable efforts to reunite mother and her child.

A. The county made reasonable efforts toward reunification.

The district court determined that MCSS made reasonable efforts to reunite mother and her child, referencing the “multitude of services” detailed in its factual findings.

³ It appears, from the record, that this number may be closer to 20 months.

MCSS's efforts included ongoing case-management services, supervised and unsupervised visits, random drug testing, rule-25 chemical-dependency evaluations, inpatient and outpatient treatment, a diagnostic assessment, individual therapy, in-home parenting skills, safety planning, a family group decision-making conference, and assistance with transportation. Nothing in the record or briefing suggests that there was any particular form of assistance that MCSS should or could have provided but did not provide. To the contrary, mother's case manager testified, after summarizing all of the services MCSS had offered mother, that there were no other services that could have been offered to help mother obtain sobriety. Further, the evidence in the record supports the district court's finding that MCSS's efforts were reasonable because, when mother engaged with these services, she made progress and was even able to regain custody of the child. The difficulties arose when she was out of treatment, relapsed, did not follow her relapse plan, and did not tell anyone until her drug use was discovered. The evidence is sufficient to support the district court's finding that MCSS made reasonable efforts to reunite the child with mother.

B. The conditions that led to out-of-home placement have not been corrected.

The district court also found that the conditions that led to out-of-home placement have not been corrected. Without question, the primary condition that led to the child's out-of-home placement is mother's chemical dependency. At the time of the trial, mother was in outpatient treatment for her chemical dependency and had produced two clean tests. Her last positive urine drug test, though, was from April 22, so the district court found that

she had “abstained from chemicals for no more than the last two to three weeks before trial.” It also found that mother had consistently denied and minimized her chemical use and that she had a “long-standing pattern” of failing to maintain her sobriety, “even after receiving intensive services starting in January 2016.” Moreover, mother acknowledged in her testimony that she needs more time before she can be a full-time, sober parent for her child and that she still has “a long ways to go” towards maintaining sobriety.

On this record, the district court did not err by determining that the conditions leading to out-of-home placement have not been corrected. And, regardless of whether the statutory presumption that reasonable efforts have failed is satisfied, “the critical issue is . . . whether the parent is presently able to assume the responsibilities of caring for the child.” *J.K.T.*, 814 N.W.2d at 89. Though mother is working to achieve sobriety, she admittedly is not presently able to be a full-time, sober caregiver for the child. The district court did not err by finding that the evidence supports termination under Minn. Stat. § 260C.301, subd. 1(b)(5). We therefore need not address any other statutory basis.

II. The district court did not abuse its discretion by deciding that termination of appellant’s parental rights is in the child’s best interests.

Even if a statutory basis for terminating parental rights exists, a district court must also find that termination of the parent’s rights is in the best interests of the child. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). The court balances three factors in analyzing the child’s best interests: “(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). “Competing interests” include things like “a stable environment, health considerations and the child’s preferences.” *Id.* The district court “must consider a child’s best interests and explain its rationale in its findings and conclusions.” *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003).

Mother argues that the district court failed to adequately examine her child’s best interests and that “the only evidence presented in this matter suggests it is detrimental to [the child] to be separated from [mother] and that they are bonded with a very loving relationship.”

The county points to the district court’s examination of the child’s best interests in its findings and order and argues that, although the evidence is clear that mother and the child love each other, “the child’s need for permanency with a sober parent who can provide[] consistency outweighs any interests the parent or the child has in maintaining the relationship.”

The district court found that termination is in the child’s best interests because it “will facilitate a more permanent placement for the child and provide her with the stability, safety and support that she needs.” This finding is based on the fact that, for about three and a half years, mother has been unable to maintain her sobriety, even after receiving “intensive services.”

The district court also made detailed factual findings regarding the testimony of the child’s guardians ad litem and found them both credible. Both of the child’s guardians ad litem testified that they believe termination is in the child’s best interests. The child’s first guardian ad litem testified that she believes mother’s overall attitude towards relapses is

nonchalant and that mother appears not to take them seriously. She believes mother “didn’t ever think that she was going to run out of chances because she had so many.” She testified that the child needs permanency and that, even though mother and the child have a strong bond, termination of mother’s parental rights is in the child’s best interests. The child’s second guardian ad litem testified that the child has behavioral issues when moving from place to place, but, once she becomes established, the issues seem to stabilize. She believes that, although mother loves the child, she continuously puts her chemical use first, which necessitates the child’s removal from the home and causes trauma for the child. The second guardian ad litem also expressed concern about mother’s pattern of relapse and lack of truthfulness about her use.

Contrary to mother’s argument here, the district court thoroughly examined the child’s best interests and made detailed findings on this issue, which were supported by the record. In some cases, a child’s “immediate need for permanency as well as stable, nurturing, drug-free caretakers outweighs any competing interests.” *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004). In light of mother’s history of substance abuse and the child’s need for stability and structure, the district court did not abuse its discretion by determining that termination of mother’s parental rights was in the child’s best interests.

Affirmed.