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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A19-0946

A19-0947

A19-0965

In re the Matter of the Welfare of
the Children of: A.M.P. and S.N.S., Parents (A19-0946, A19-0965)
and In re the Matter of the Welfare of the Children of:
A.M.P. and J.A.P., Parents (A19-0947).

Filed December 30, 2019

Affirmed

Reyes, Judge

Stearns County District Court
File Nos. 73-JV-18-7621; 73-JV-17-7741;
73-JV-18-792; 73-JV-18-7622

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Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Klaphake,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

REYES, Judge

In these consolidated appeals, appellant-mother A.M.P. and appellant-father S.N.S. (parents) separately appeal from the district court's order terminating their parental rights to A.L.S. and M.I.S., arguing that clear and convincing evidence does not support the findings that (1) they each failed to comply with their duties as a parent; (2) they neglected their children who were in foster care; (3) Stearns County Human Services (the county) made reasonable efforts to reunite the family; and (4) that the termination of parental rights (TPR) served the children's best interests. Mother also argues that the district court abused its discretion by involuntarily transferring custody of her two other children, A.P. and A.C.P., to their paternal grandparents. We affirm.

FACTS

Mother has four children: A.P., A.C.P., A.L.S., and M.I.S. Father lives with mother and is the biological father of A.L.S. and M.I.S. Mother is legally married to J.A.P., the biological father of A.P. and A.C.P., though they are currently pursuing dissolution.

In 2016, the county received reports of parents using drugs and neglecting the educational needs of their children, mother's DUI arrest and later conviction, with three children in the car, and unsuitable living conditions in their home. Mother tested positive for Tetrahydrocannabinol (THC) and methamphetamine at a prenatal appointment while pregnant with M.I.S., and both mother and M.I.S. tested positive for methamphetamine when M.I.S. was born.

On August 29, 2017, the county removed A.L.S. and M.I.S. from parents' home and filed a Child in Need of Protection or Services petition because of parents' drug use and chronic homelessness. At the time, A.P. and A.C.P. resided with their paternal grandparents. The district court approved case plans for each parent, requiring them to become sober and demonstrate sobriety through negative urinalysis assessments (UAs), undergo chemical dependency (CD) evaluations and follow all recommendations, comply with visitation requirements for both children, and obtain safe, stable, chemical-free, and affordable housing.

After parents made some progress, the county returned A.L.S. and M.I.S. to their care for a trial home visit in November 2017. Parents violated their safety plan on March 30, 2018, prompting the county to remove the children again. Over the next year, each parent participated in 35 UA tests. Mother failed 32 of the tests, and father failed 21.

The county provided parents with referrals to the Effective Living Center (ELC), a treatment center for CD recovery. Due to the parents' attendance issues, ELC discharged mother from treatment after five months and father after one month.

The county petitioned for, and the district court ordered, mother's and father's TPR to A.L.S. and M.L.S., and the involuntary transfer of legal custody and physical custody of A.P. and A.C.P. to their paternal grandparents. J.A.P. agreed to a voluntary transfer of legal custody and physical custody of A.P. and A.C.P. to his parents. The district court found that (1) parents failed to comply with their parenting duties; (2) the children were neglected and in foster care; and (3) following the children's out-of-home placement (OOHP), reasonable efforts failed to correct the conditions leading to the OOHP, and the

TPR served the children's best interests. See Minn. Stat. § 260C.301, subds. 1 (b)(2), (5), (8) (2018). The district court also found that transferring legal and physical custody of A.P. and A.C.P. to their paternal grandparents served the children's best interests. Each parent appeals.

DECISION

- I. The district court did not abuse its discretion because clear and convincing evidence establishes that the county made reasonable efforts to reunite mother and father with A.L.S. and M.I.S. under Minn. Stat. § 260C.301, subd. (1)(b)(5).**

Parents argue that (1) the district court failed to analyze whether the county made reasonable efforts or provided sufficient services, preventing meaningful appellate review; (2) the county provided insufficient services; and (3) the TPR is against the children's best interests.¹ We disagree.

Appellate courts will generally affirm the district court's TPR decision when (1) clear and convincing evidence supports at least one statutory ground for termination; (2) the county made reasonable efforts to reunite the family and rehabilitate parents; and (3) termination serves the best interests of the child. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We review the district court's factual findings for clear error. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), review denied (Minn. Jan. 6, 2012). A finding is clearly erroneous if it is manifestly contrary to the weight of the evidence. *In re Welfare of Children of T.R.*, 750 N.W.2d 656,

¹ Because mother's and father's arguments are nearly identical and because the majority of the factual findings pertain to both, we will concurrently analyze them and highlight any differences.

660-61 (Minn. 2008). We review a district court's decisions on whether a statutory basis is met, the county made reasonable efforts to reunite the family, termination serves the children's best interests, as well as the district court's ultimate TPR determination, for an abuse of discretion. *See In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 322-23 (Minn. App. 2015), *review denied* (Minn. July 21, 2015); *J.R.B.*, 805 N.W.2d at 905. The district court abuses its discretion if it improperly applies the law. *D.L.D.*, 865 N.W.2d at 322 (quotation omitted).

The district court may presume reasonable efforts failed upon a showing that (1) a child under age eight at the TPR's filing has resided out of the parental home under court order for a cumulative period of six or more months unless the parent maintained regular contact with the child and complied with the OOHP plan; (2) the district court approved the OOHP plan; (3) the parent failed to correct the conditions leading to the OOHP, which is presumed if the parent has not substantially complied with the court's orders and a reasonable case plan; and (4) the county made reasonable efforts to rehabilitate the parent and reunite the family. Minn. Stat. § 260C.301, subd. 1 (b)(5)(i)-(iv). Because the children have been out of their home since March 2018, more than 12 months before the April 2019 trial, the district court approved their OOHP plan, and the statute repeats OOHP plan compliance in the second and third factors, our analysis focuses on the third and fourth factors.

A. The findings of fact are sufficiently particularized.

Particularized findings of fact are necessary to enable appellate review, to ensure that the district court properly applied the law, and to assure the parties that the district

court fairly considered and decided the issues. *See Reyes v. Schmidt*, 403 N.W.2d 291, 293 (Minn. App. 1987). The district court implicitly based its conclusion that the county made reasonable efforts to reunite parents with their children on the county's services, which it lists in its factual findings. Because the district court referred approvingly to the county's services after listing them, we have sufficient evidence to review their adequacy.

B. The district court did not abuse its discretion by determining that reasonable efforts failed.

1. Parents have not corrected the conditions leading to the OOHP.

It must appear that the conditions giving rise to the TPR will continue for a "prolonged, indeterminate period." *In re Welfare of Child of T.D.*, 731 N. W.2d 548, 554 (Minn. App. 2007). However, this court has ruled that minimal progress towards a case plan or improvements made immediately before TPR proceedings can support the district court's conclusion that the present condition will continue and that termination is proper. *See In re Welfare of J.K.*, 374 N.W.2d 463, 466 (Minn. App. 1985), *review denied* (Minn. Nov. 25, 1985).

The record shows parents' continued drug use, as evidenced by failed UAs and failure to complete CD treatment, chronic homelessness, and the guardian ad litem's (GAL) testimony that parents' drug use caused or exacerbated the children's developmental delays and substantial therapeutic needs. Mother argues that her medical-marijuana prescription justifies her failed UA tests. But she failed 12 tests for reasons other than THC use, including three for alcohol and at least nine no-shows, which are presumed failures. Father relapsed by drinking alcohol on St. Patrick's Day in March 2019, in the

middle of CD treatment. Moreover, father failed 21 out of 35 UA tests, testing positive for THC or methamphetamine 11 times and failing to provide a valid sample ten times. Finally, although parents obtained housing on the first day of trial, this late development did not allow the social worker to assess the housing's suitability for the children.

Both social workers testified that parents showed no significant progress with their sobriety. The parents followed what little progress they made with regression. All caseworkers (both social workers and the GAL) testified that parents did not substantially comply with their case plan.

Parents cite last-minute improvements such as obtaining housing on the first day of trial, recently entering into CD treatment programs, and maintaining sobriety. But the limited duration of these efforts does not provide sufficient indicia of parents' ability to maintain sobriety or housing long term. *See J.K.*, 374 N.W.2d at 466. Therefore, clear and convincing evidence supports the district court's conclusion that parents failed to correct the conditions underlying the OOHP, meeting the third statutory factor. *See Minn. Stat. § 260C.301, subd. 1 (b)(5)(iii); S.E.P.*, 744 N.W.2d at 385.

2. The county made reasonable efforts to rehabilitate parents and reunite their family.

District courts consider the following factors to determine if the county made reasonable efforts: whether services were (1) relevant to the child's safety; (2) adequate for the needs of the child and the family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances. Minn. Stat.

§ 260.012(h)(1)-(6) (2018); *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 149-50 (Minn. App. 2007), *review denied* (Minn. Mar. 28, 2007).

The record supports the district court's conclusion that the county made reasonable efforts. These services included referrals for CD evaluations and diagnostic assessments, assistance finding suitable housing, enrollment for CD treatment, transportation through Tri-CAP and bus passes, supervised visitation, foster care, medical assistance, random urinalysis testing, and consultation with a GAL. These services were relevant to the children's safety, adequate, accessible, consistent, timely, and realistic.² The county remained reasonably flexible with parents throughout the process, placing the children back in their care, giving parents second chances despite failed drug tests, extending the permanency deadline based on their treatment progress, providing mother with customized one-on-one therapy to work with her THC use, and connecting father with a new CD program after he rejected the first one.

Although mother argues that specific additional services would have helped her stay engaged in treatment and find housing, she did not show that there were faster housing lists or better CD treatment options. Moreover, her social worker testified that the case timeline limited the available service options and no additional resources would have changed the outcome of this case. Father's argument that the county prematurely stopped trying to reunite him with his children ignores the fact that the social worker attempted to reunite them for months without making substantial progress before concluding that the children

² The cultural appropriateness of these services is not at issue in this case.

should be placed elsewhere. Clear and convincing evidence establishes the fourth factor and supports the presumption that the county's reasonable efforts failed. See Minn. Stat. § 260C.301, subd. 1 (b)(5)(iv).

C. The district court did not abuse its discretion by concluding that the TPR serves the best interests of A.L.S. and M.I.S.

The district court must balance three factors when considering the children's best interests: (1) the children's interest in preserving the parent-child relationship; (2) the parents' interest in preserving the parent-child relationship; and (3) any competing interests of the children. Minn. R. Juv. Prot. P. 58.04(c)(2)(ii); *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). Competing interests include a stable environment, health considerations, and the children's preferences. *Id.* When the district court concludes that a statutory basis for TPR exists, if the interests of parent and child conflict, the interests of the child are paramount. Minn. Stat. § 260C.301, subd. 7 (2018).

The district court found that, even though parents had an interest in maintaining a relationship with their children, the children's need for stability and a living environment suitable to address their needs supported the TPR. The record supports the district court's finding. Neither A.L.S. nor M.I.S. are old enough to express a placement preference. The parents love their children and genuinely wish to facilitate their relationship with them. But the caseworkers testified that the children need stable and consistent housing and care, and that parents failed to complete CD treatment and demonstrate that they could maintain stable or sober housing. Further, the GAL testified that parents could not take care of themselves and had to learn how to do so effectively before they could properly take care

of their children. By contrast, the GAL testified that the children's foster parents were successfully meeting their needs.

All three caseworkers testified that the TPR served the children's best interests. The fact that father maintained sobriety for less than a month, mother for less than four months, and neither obtained housing until the first day of trial, supports the consistency concerns expressed by all caseworkers. The caseworkers' testimony on the importance of a stable environment and consistent care, and parents' failure to demonstrate an ability to consistently perform their parenting responsibilities, supports the district court's conclusion that termination meets the children's best interests.

Because clear and convincing evidence supports at least one statutory basis for the TPR, the county's efforts as reasonable, and the district court's best-interests analysis, the district court properly terminated mother and father's parental rights. Although the district court provided three bases for terminating appellants' parental rights, the statute requires only one, so we need not address the other two bases.

II. The district court did not abuse its discretion by permanently transferring mother's legal custody and physical custody of A.P. and A.C.P. to their paternal grandparents.

Mother's arguments on transfer are identical to her termination arguments. Mother's arguments are not persuasive.

Appellate courts apply a two-part standard of review to assess a permanent placement order transferring legal custody. *See D.L.D.*, 865 N.W.2d at 321-22. First, we review factual findings to determine whether they address the statutory criteria and whether substantial evidence supports them or whether they are clearly erroneous. *In Re Welfare*

of M.D.O., 462 N.W.2d 370, 375 (Minn. 1990). Second, we review the ultimate decision that there is a statutory basis for a permanency disposition for an abuse of discretion. *D.L.D.*, 865 N.W.2d at 321-22.

The district court “may order permanent legal and physical custody to a fit and willing relative in the best interests of the child.” Minn. Stat. § 260C.515, subd. 4 (2018). An order permanently transferring legal custody and physical custody must establish, by clear and convincing evidence (1) how the order serves the children’s best interests; (2) the nature and extent of the county’s efforts to reunify the children with the parents; (3) the parents’ efforts and ability to use services to correct the conditions leading to OOHP; and (4) that the parents failed to correct the conditions leading to the OOHP. Minn. Stat. § 260C.517(a) (2018). When making a permanency disposition, “the court must . . . include[e] a review of the relationship between the child[ren] and relatives and the child[ren] and other important persons with whom the child[ren] ha[ve] resided or had significant contact.” Minn. Stat. § 260C.511(b) (2018).

Here, the district court noted that the children had a good relationship with their paternal grandparents because they were willing to take custody of the children, had been involved with them since birth, and the children expressed a desire to stay with their grandparents. The district court also noted that when the children still resided with mother, they had school-attendance issues and were often dirty and hungry. But since being placed with their grandparents, their school attendance has become regular, and their basic needs have been met.

Clear and convincing evidence supports all four elements: (1) Transferring custody of the children to their paternal grandparents served the children's best interests because these foster parents were willing to, and capable of, caring for them, had a strong relationship with them since birth, and the children expressed a preference to stay with the grandparents; (2) the county provided mother with flexible and reasonable services in its efforts to reunify her with her children; (3) mother's efforts to address the conditions leading to the OOHP were too little and too late; and (4) mother consistently neglected her parenting duties by failing to adequately or consistently address her drug use, treatment, and housing issues. As such, the district court did not abuse its discretion by permanently transferring custody of A.P. and A.C.P. to their paternal grandparents.

Affirmed.