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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1197**

In re the Matter of the Welfare of the Child of:
L. M. B. and J. S. L.

**Filed December 23, 2019
Affirmed
Cleary, Chief Judge**

Anoka County District Court
File No. 02-JV-19-241

Jason Steck, Edina, Minnesota (for appellant L.M.B.)

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Judi Albrecht, Ramsey, Minnesota (guardian ad litem)

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

UNPUBLISHED OPINION

CLEARY, Chief Judge

On appeal from the termination of her parental rights, appellant-mother challenges the district court's finding that her substance-abuse issues persisted at the time of termination, and she argues that the district court erroneously shifted the burden onto her to prove her sobriety. We affirm.

FACTS

This appeal concerns V.D.L., a child born in 2010 to appellant-mother L.M.B. and father J.S.L. In the past, both parents struggled with methamphetamine use and domestic violence, and they exposed the child to that behavior. Mother is currently 41 years old. Her substance-abuse issues have persisted since her teenage years. She has participated in over a dozen treatment programs.

V.D.L. is mother's fourth and youngest child, and her only child with father. Mother's involvement with child protection predates V.D.L. Since 2002, she has been involved with social services to address substance abuse, criminal behavior, and domestic-violence issues. A 2002 case was opened after one of her two eldest children tested positive for methamphetamine at birth. In 2006, after cycles of relapse, recovery, and reunification, she voluntarily terminated her rights to her two eldest children. In 2008, during her pregnancy with her third child, she tested positive for methamphetamine, and this led to her civil commitment for chemical dependency. In 2012, she consented to the adoption of that child.

In September 2011, one-year old V.D.L. was placed outside the home because of the parents' domestic-violence issues and methamphetamine use. The county petitioned to terminate the parents' rights to V.D.L., but father sought treatment and was deemed a viable parent. The child was placed with him in August 2012. The termination case was converted into a child-in-need-of-protection-or-services case. In 2013, mother voluntarily transferred physical custody of V.D.L. to father. Following the transfer, the parents did not have contact with social services until June 2016.

Father relapsed in December 2015. In June 2016, mother went to the emergency room. She tested positive for methamphetamine. She reported that father was abusive and that she was afraid for V.D.L.'s safety. Two months later, following additional reports of domestic violence and drug use by the parents, V.D.L. was placed outside the home for a second time. The county again petitioned to terminate parental rights. Mother failed to comply with her case plan, continued to use methamphetamine, and was sentenced to a prison term for a methamphetamine offense. But father accessed services and complied with his case plan, and the termination petition was ultimately denied. Father regained custody, and the case was closed in early 2018. Soon after, father again relapsed. In February 2019, the county took V.D.L. out of the home for a third time.

Mother was imprisoned between November 2016 and November 2018 for methamphetamine possession. After her release in November 2018, she was placed on intensive supervised release until November 2019, and she will be on parole until 2022. After her release, mother completed inpatient treatment at RiverPlace. Her discharge report from RiverPlace indicated that she remained "at high risk to return to use . . . as evidenced by her limited sober support network, lack of structure and accountability." She transitioned from RiverPlace to outpatient treatment at NuWay, and while attending outpatient treatment, she resided at Day by Day sober housing. She successfully completed outpatient treatment, and her addiction counselor deemed her "a low risk for return to use" based upon her sober support network, attendance at support meetings, and developed coping skills. While staying at Day by Day, mother had weekly supervised visits with V.D.L.

In February 2019, the county again petitioned to terminate the parents' rights. The county asserted two statutory grounds for termination: parental neglect, under Minn. Stat. § 260C.301, subd. 1(b)(2) (2018), and palpable unfitness, under Minn. Stat. § 260C.301, subd. 1(b)(4) (2018).

In April 2019, the county filed mother's out-of-home placement plan. The county expected mother to, among other things, demonstrate her sobriety "in a less structured community setting." She was expected to follow her intensive supervised release requirements and "demonstrate relapse prevention skills" and the "ability to sustain sobriety."

In June 2019, the district court held a trial on the termination petition. Multiple social workers testified about mother's extensive child-protection history, including her methamphetamine use and multiple failed treatment attempts. Lauren Cains, a social worker, testified that she set up a case plan with mother with the goal that mother demonstrate sobriety in an unstructured setting and demonstrate the ability to assess and meet the child's needs. Cains did not believe that mother had met the goals, though she acknowledged that mother had worked on them, complied with her case plan, and was doing well in sober living. Cains did not feel that reunification with mother was proper because she had not demonstrated the ability to sustain success outside of a controlled environment.

Dr. James Gilbertson testified regarding his psychological assessments of father. In discussing father's addiction, Dr. Gilbertson testified, on the topic of sustained sobriety, that time in "restricted environments," such as prison, is not considered "recovery time,"

and a person must be in “open society” facing everyday stressors and difficulties for the period of sobriety to count as recovery time.

A mental-health practitioner testified that the child has post-traumatic stress disorder (PTSD), and another mental-health practitioner similarly testified that the child has a trauma related disorder, a result of experiencing domestic violence, the parents’ drug use, and having multiple caretakers.

The guardian ad litem (GAL) testified that it was in the child’s best interests for the parents’ rights to be terminated. The GAL testified that mother was “doing really well,” she was sober, employed, and seeking housing. She believed mother had been sober for 32 months. The GAL had no concerns while mother was sober, but was unsure if mother would maintain her sobriety outside of a structured setting. The GAL believed that mother would need one to three years of sobriety in the community, without structure, before a determination could be made on the stability of her sobriety.

A corrections agent assigned to supervise mother testified that mother’s probability of relapse was high, and if she violated her release conditions, she would go back to prison.

Mother testified that she had been sober for 32 months and was never told that she was failing to follow her case plan. At the time of trial, she was employed and residing at Day by Day. The child could not stay with her there, but she was seeking alternative housing. She acknowledged having significant mental-health diagnoses for attention-deficit disorder, anxiety, depression, obsessive-compulsive disorder, and PTSD. She had not had physical custodial rights to the child since the child was removed from her care at

the age of one. She acknowledged that she had not been present for V.D.L. in years past because she was under the influence of controlled substances.

In July 2019, the district court filed an order terminating the parents' rights to V.D.L. The court found that the county proved both of the alleged grounds for termination. The court also found that termination was in the child's best interests. Mother appeals.

D E C I S I O N

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). "[T]he petitioner bears the burden of overcoming the presumption that a natural parent is a fit and suitable person to be entrusted with the care of the child." *In re Welfare of A.J.C.*, 556 N.W.2d 616, 619-20 (Minn. App. 1996) (quotation omitted), *review denied* (Minn. Mar. 18, 1997). 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). Both the district court's determination that its findings show the existence of a statutory basis to terminate parental rights and its ultimate decision regarding whether to terminate parental rights are reviewed for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900-01 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

In terminating mother's parental rights, the district court relied on section 260C.301, subdivision 1(b)(2), which permits a district court to terminate 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.

The district court also relied on subdivision 1(b)(4), which permits a district court to terminate parental rights if it finds

that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Under both grounds for termination, a district court must find that the problematic condition affecting the parent-and-child relationship exists at the time of termination and will continue for a prolonged, indefinite period. *T.R.*, 750 N.W.2d at 661; *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 90 (Minn. App. 2012); *see also A.J.C.*, 556 N.W.2d at 622 (stating that evidence must relate to conditions in existence at the time of hearing).

In concluding that both statutory grounds for termination were proven, the district court relied upon mother's substance abuse and its effects on her mental health and ability

to parent. The court found that mother's substance abuse "led to a lack of impulse control and coping skills," abusive relationships, and incarceration. The court found that mother's substance abuse and mental-health issues affected her relationship with V.D.L. Mother "parented while high," exposed V.D.L. to domestic abuse, was not present for V.D.L. due to incarceration, and caused V.D.L. to experience trauma. The court also believed that the problematic conditions existed at the time of termination and would continue into the future. The court noted mother's recent success in recovery, but found that she had "only maintained sobriety while in a controlled environment" and had "a long history of relapse after successfully completing treatment programs." The district court's findings are supported by the record. Therefore, the district court did not abuse its discretion in ruling that statutory bases for terminating parental rights existed on the grounds of repeated neglect and palpable unfitness.

Mother challenges the district court's finding that she failed to establish sustained sobriety because her sobriety occurred in a "controlled environment." She argues that the district court "relied entirely on the testimony of Dr. Gilbertson" in making that finding, and erred in that regard because Dr. Gilbertson's testimony concerned father. We disagree with mother's contention that the district court relied exclusively on Dr. Gilbertson. Other witnesses, for example Cains and the GAL, testified about concerns over mother's failure to demonstrate sobriety in a less-structured setting. Further, although Dr. Gilbertson primarily testified about father, his testimony regarding sustained sobriety, that he did not "count the time in restricted environments," was broadly applicable, and could reasonably be applied to mother's situation.

Mother argues that, even if Dr. Gilbertson's testimony was properly applied to her, nothing in the record suggests that her time at Day by Day, under supervised-release conditions, qualifies as a "controlled environment." While the district court did not define a "controlled environment," its reasoning is sound and clearly discernable. Mother failed to demonstrate sobriety in a less structured setting, as required by her case plan. While she was sober for 32 months at the time of trial, she had only been out of prison seven months and out of outpatient treatment one month, and she continued to reside at a sober living facility, which could not accommodate overnight visits with the child.

Mother argues that "any parent subject to a case plan containing such conditions could never establish stable sobriety sufficiently to avoid termination of parental rights." This argument ignores the facts of this case. While we acknowledge the significance of mother's recent sobriety, and commend her for her efforts, we cannot ignore her striking history of treatment and relapse. The district court had good reason to question whether mother was able to assume her role as V.D.L.'s parent. The child had been in out-of-home placement for over 900 days at the time of trial, and the need for permanency was high, so mother had limited time to establish her sobriety outside of a treatment setting. At the time of trial, she had yet to obtain a residence that could accommodate overnight visitation with the child, and numerous witnesses questioned whether she could sustain her sobriety under more stressful circumstances. Evidence in the record, beyond the historical evidence, indicated that mother was at significant risk of relapse.

Mother argues that the district court impermissibly relied on her history of substance abuse to terminate her parental rights, and thereby shifted the burden onto her to prove her

sobriety. Mother is correct that evidence supporting termination must concern the conditions that exist at the time of trial. *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001). However, this does not deprive a district court of the ability to assess a parent's historical conduct. *See In re Welfare of S.Z.*, 547 N.W.2d 886, 893-94 (Minn. 1996) (reviewing parent's mental-health and chemical-abuse history); *see also* Minn. Stat. § 260C.301, subd. 1(b)(4) (allowing district court to consider "a pattern of specific conduct" in termination proceedings). We reject mother's argument that the district court shifted the burden of proof onto her. The county submitted a substantial amount of historical evidence indicating a likelihood of relapse. Though this may have obligated mother to respond if she wished to counter the evidence, it did not shift the burden of proof. The record supports both the district court's findings and its ultimate termination under both statutory grounds. While termination is a harsh result given mother's recent success, the district court found that it was in the child's best interests. On this record, we agree.

Affirmed.