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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1781**

In re the Matter of the Welfare of the Child of: T. T. and T. Z., Sr., Parents.

**Filed March 30, 2020
Affirmed
Florey, Judge**

Blue Earth County District Court
File No. 07-JV-19-2534

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Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Florey, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

T.Z. (father) and T.T. (mother) challenge the involuntary termination of their parental rights (TPR). Father argues that the TPR was inappropriate because mother had sole legal and physical custody of the child during the relevant time period. Father also argues that the district court's findings do not support the statutory bases for TPR, nor do

they support the conclusion that TPR is in the child's best interests. Mother argues that res judicata should bar the district court from including findings based on information contained in a prior, dismissed CHIPS petition. Mother also argues that the county did not make reasonable efforts to reunite child with her and that the district court's determinations on the statutory grounds for termination were not supported by clear and convincing evidence. We affirm.

FACTS

T.Z. Jr. (child) was born on July 1, 2018. Blue Earth County Human Services (BECHS) received a child-protection report via a "birth match" because mother had previously voluntarily terminated her parental rights to another child. The hospital expressed concerns that mother and father were unprepared to bring child home because they lacked a car seat or other baby supplies. Hospital staff also reported concerns about father's aggressive behavior, stating that he "got in the doctor's face" when prepping mother for a C-section. BECHS also received a report that a urine analysis for mother tested positive for methamphetamine, though this test was later determined to be a false positive.

Mother and child were released from the hospital on July 4. BECHS made attempts to speak with mother to arrange for voluntary services, but she did not return their calls. Additionally, with one exception, mother did not attend follow-up doctor visits for the child as recommended.

On July 11, father was arrested for a probation violation for using methamphetamine. It was reported to BECHS that father had drove with mother and child in the car after using methamphetamine.

At a hearing on July 19, child was ordered into out-of-home placement. A trial was held on August 21, 2018. Mother denied the Child-in-Need-of-Protective-Services (CHIPS) petition, and the district court issued an order terminating jurisdiction over the case and ordering the return of child to mother. On September 18, BECHS filed a new CHIPS petition with updated information, alleging that mother had engaged in criminal activity, had tested positive for chemicals, and that father had assaulted mother. The district court granted temporary custody of child to BECHS.

On November 19, mother entered an admission to the CHIPS petition on the ground that she had chemical-dependency issues that interfered with her ability to parent, and child was adjudicated CHIPS. Case plans were created for both mother and father, which were adopted by the court at a November 28 hearing. Mother requested an extension of the permanency timeline, which the court granted, extending the timeline by 90 days.

In June 2019, BECHS filed a TPR petition recommending that mother's and father's rights be terminated pursuant to what is now Minn. Stat. § 260C.301, subd. 1(b)(2), (4), and (5) (2018). A three-day court trial was held on August 12, September 12, and September 24, 2019. Both mother and father invoked their fifth-amendment right not to testify. But the court heard testimony from the BECHS social worker, the parenting-capacity evaluator, the Love-and-Logic class facilitator, the guardian ad litem (GAL), the

parenting-time supervisor, a Walmart Loss Prevention officer, a member of the Le Sueur County drug-court team, and mother's brother and mom.

On October 15, 2019, the district court issued its order terminating both mother's and father's parental rights for all of the statutory grounds alleged in the TPR petition. Parents appeal.

D E C I S I O N

Appellate courts “affirm the district court’s [TPR] when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that 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) (citation omitted).

On appeal, “[c]onsiderable deference is due to the district court’s decision because a district court is in a superior position to assess the credibility of witnesses.” *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). Appellate courts review a district court’s TPR order to determine whether the findings “(1) address the statutory criteria and (2) are supported by substantial evidence. [Appellate courts] must closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing. Ultimately, however, [appellate courts] review the factual findings for clear error and the statutory basis for abuse of discretion.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (citations and quotation omitted). “A finding is clearly erroneous if it is manifestly contrary to the weight of the evidence or not reasonably supported by the

evidence as a whole. An abuse of discretion occurs if the district court improperly applied the law.” *Id.* (citation and quotation omitted).

I. Did the district court abuse its discretion by terminating father’s parental rights?

Father argues that because he is not married to mother, and the record is unclear about whether a recognition of parentage is on file, he “did not have legal standing to provide the actual care and support of [child].” Father did not raise this argument, nor did he challenge that he is child’s father, at any time during the proceedings below. Because this argument is not properly raised on appeal, it is not properly before this court. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Next, father asserts that the district court’s findings do not support TPR on the statutory bases that he did not comply with the duties imposed on him as a parent and that he is palpably unfit to parent. Minn. Stat. §260C.301, subd. 1(b)(2), (4). The district court found that father failed to “provide a stable, consistent, safe and sober living environment for [c]hild” despite being “physically and financially able to do so.” The district court also found that father was “unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of . . . child.”

Father used methamphetamine shortly after the birth of child and drove under the influence with child in the car, in violation of his probation which led to his incarceration. After release, he was engaged in a domestic incident with mother for which he was arrested. During his incarceration, the county social worker testified that father did not complete any aspects of his case plan, though he did participate in a family-group-decision-making

meeting by phone. Father did complete his parenting evaluation, but the parenting evaluator opined that father was downplaying his criminal actions. Father's domestic-violence-inventory score was 90 out of 100, which the district court noted was "concerning, especially considering the history of domestic abuse by father against mother, as recently as September of 2018." Father was able to obtain employment in prison, but his employment was subsequently "impeded" due to disciplinary infractions. The record reflects that the county social worker contacted father's case manager and learned that there was anger-management and domestic-violence programming available in prison, but father did not complete these aspects of his plan. The case plan recommended that father remain law-abiding, but he had several disciplinary infractions while in prison. Father did not complete individual therapy, obtain a parenting mentor, or complete parenting-education classes. Father has "expressed his intentions differently to different people," regarding his plan to obtain independent housing, at times indicating that he may reside with mother upon release, or possibly move to Iowa.

While we note that the district court's findings regarding the statutory grounds for termination are not particularly well-developed, we conclude that they are supported by clear and convincing evidence in the record. Additionally, the district court was entitled to, and did, draw a negative inference from father's refusal to testify. The district court did not abuse its discretion by concluding that termination pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2), is supported by clear and convincing evidence.

Finally, father argues that the district court's determination that TPR is in the child's best interests is not supported by the record. "[D]etermination of a child's best interests 'is

generally not susceptible to an appellate court’s global review of a record,’ and . . . ‘an appellate court’s combing through the record to determine best interests is inappropriate because it involves credibility determinations.’” *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quoting *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003)).

Here, the district court concluded that permanency was in child’s best interests and that father was unable to provide the “stability, safety, and attention” child needs in the reasonably foreseeable future. The district court noted that father failed to take advantage of the services offered, which are necessary to ensure the safety and well-being of child. Father contends that he has been involved in child’s life both before and during his incarceration. But the record reflects that to the extent that father was involved with child, it was for a very short period of time around his birth, during which father engaged in risky and criminal behaviors. The BECHS social worker testified that father did not complete any of the aspects of his case plan, and the GAL testified that TPR is in the child’s best interests. Child has spent all but two weeks of his life in foster care and has a strong need for a stable home. The district court did not abuse its discretion by concluding that the best interests of the child support termination of father’s parental rights.

Because at least one statutory ground for termination is supported by clear and convincing evidence, and because the best interests of child weigh in favor of termination, we conclude that the district court did not abuse its discretion by involuntarily terminating father’s parental rights.

II. Did the district court abuse its discretion by terminating mother's parental rights?

First, mother asserts that res judicata bars the district court from including findings in the TPR order based upon information that was contained in a prior, dismissed CHIPS action. “Whether res judicata is available in a particular case is a question reviewed de novo.” *Sanvik v. Sanvik*, 850 N.W.2d 732, 737 (Minn. App. 2014). For res judicata to apply, the following four elements must be met: “(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; [and] (4) the estopped party had a full and fair opportunity to litigate the matter.” *Id.* (quotation omitted). However, even if all four elements are met, the decision to apply res judicata “is left to the trial court’s discretion.” *Dixon v. Depositors Ins. Co.*, 619 N.W.2d 752, 755 (Minn. App. 2000).

While mother claims that all four elements are met, without the dismissed CHIPS petition and transcript as part of the record, it is difficult to ascertain whether the dismissal amounts to a final judgment on the merits. Additionally, the TPR proceeding, while involving some of the same factual circumstances, relied on new information alleged by the county in its second CHIPS petition. Furthermore, applying res judicata to a matter such as this would undercut the ability of the district court to protect the “paramount nature of a child’s best interests” because it would remove all of the facts and circumstances alleged prior to the TPR from consideration of mother’s parenting as a whole. *See D.L.D.*, 771 N.W.2d at 547. We conclude that even if all of the elements of res judicata were satisfied, the application of the doctrine was not appropriate in this case.

Second, mother contends that clear and convincing evidence does not support termination of her rights. Mother raises concerns about the findings related to the previously dismissed CHIPS action and contests the credibility of the case manager. But this court defers to the district court on issues of credibility. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007). We conclude that the arguments regarding the dismissed CHIPS petition are not properly before us on appeal.

The district court terminated mother's rights based on four statutory grounds.¹ The district court concluded that mother substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed on her in the parent-child relationship by failing to provide a stable, consistent, safe, and sober living environment pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2). The district court also concluded that, pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4), mother is palpably unfit, and pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5), reasonable efforts failed to correct the conditions that led to child's removal.

The record is replete with evidence to support termination on at least one, if not all of these statutory grounds. Mother attempted to work on her case plan, and did make some progress. However, mother did not obtain the psychological examination or therapy required under the case plan; she did not obtain an ARMS worker or a parenting mentor; and she did not obtain a driver's license.

¹ The district court determined that child was neglected and in foster care. However, this statutory ground was not alleged in the termination petition and is therefore not an appropriate basis for termination.

While mother did find employment, it was temporary, and she was not employed at the time of the trial. Mother did not recognize the safety concerns presented by father, even after the incidents of domestic violence in their relationship. Mother was unable or unwilling to acknowledge that domestic violence had occurred. Mother also missed ten scheduled visits with child, as well as “several doctor visits” and had “sporadic and minimal contact” with child’s foster parents even though she was “encouraged to communicate with them.” The district court also concluded that termination of mother’s parental rights is in child’s best interests, which mother does not contest.

Based on the record, we conclude that the district court’s decision to terminate mother’s parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2), is supported by clear and convincing evidence. The district court did not abuse its discretion by involuntarily terminating mother’s parental rights.²

Affirmed.

² Mother challenged the district court’s calculation of the timelines in its order terminating her parental rights. However, at oral argument, her counsel conceded that the permanency timelines were exceeded. Accordingly, we decline to address those arguments.