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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0188**

In the Matter of the Welfare of the Child of:
B.E.M. and J.M.M., Parents

**Filed June 29, 2020
Affirmed
Schellhas, Judge***

Mille Lacs County District Court
File No. 48-JV-19-610

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Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Schellhas,
Judge.

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

B.E.M. (mother) appeals the termination of her parental rights to child, arguing that the record does not support the district court's determination that statutory grounds for termination existed and that termination was in child's best interests. We affirm.

FACTS

Mother gave birth to child who is the subject of this proceeding in 2013. J.M.M. (father) is the adjudicated father of child.¹ Child was born prematurely at 24 weeks and has significant medical needs. Child is diagnosed with, among other things, spastic quadriplegic cerebral palsy, periventricular leukomalacia,² chronic lung disease, developmental delay, and gastroesophageal reflux disease. Child depends on a gastronomy tube. After birth, child spent seven months in the neonatal intensive care unit and three months at the University of Minnesota. Child's special medical needs necessitated mother and father's completion of an educational program to learn the skills needed to care for child before child's release into their care.

Child has lived in several homes since birth. Initially, child lived in St. Cloud with his parents but moved to his maternal grandmother's home in 2016. In December 2016, the house in which child resided was destroyed by fire. In March 2017, child and his parents moved into the home of one of father's co-workers. While living there, mother and father's

¹ The district court terminated father's parental rights in April 2019, and father is not part of this appeal.

² Periventricular leukomalacia is a brain injury that can affect children born prematurely.

relationship deteriorated, leading to domestic disturbances. During that time, child had poor attendance at medical appointments.

In 2018, Mille Lacs County Community and Veteran Services (MLCCVS) received reports of neglect. MLCCVS “received reports of parents fighting, verbally and physically, in front of the [c]hild on various occasions.” In September 2018, MLCCVS petitioned for adjudication of child as a child in need of protection or services (CHIPS), and the district court ordered child’s out-of-home placement. Child has remained in out-of-home placement since September 7. The court adjudicated child as CHIPS on September 21. On October 8, the district court adopted an out-of-home case plan for mother, father, and child. The case plan required mother to attend all of child’s appointments, complete a psychological evaluation and follow its recommendations, engage in medication management, attend supervised parenting time, ensure that child’s feeding tube was operating as prescribed, cooperate with developmental disability waiver services, and obtain safe, stable, chemical-free, and violence-free housing.

In March 2019, MLCCVS petitioned the district court to terminate mother and father’s parental rights (TPR petition). The TPR petition alleged five statutory grounds: neglect of parental duties under Minn. Stat. § 260C.301, subd. 1(b)(2) (2018); palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4) (2018); failure of reasonable efforts to correct the conditions leading to out-of-home placement under Minn. Stat. § 260C.301, subd. 1(b)(5) (2018); egregious harm under Minn. Stat. § 260C.301, subd. 1(b)(6) (2018); and child is neglected and in foster care under Minn. Stat. § 260C.301, subd. 1(b)(8) (2018).

Mother and father failed to appear for a hearing on April 26, 2019, and the district court therefore terminated their parental rights to child by default. The parents appealed the district court's default order.³ On August 1, 2019, this court reversed the default order and remanded the case for further proceedings. *See In re Welfare of Child of B.E.M.*, No. A19-0811, 2019 WL 5304527 (Minn. App. Oct. 21, 2019). On remand, mother denied the TPR petition at a new admit/deny hearing, and the district court set the matter for trial in December 2019.

At the TPR trial, the district court heard testimony from a child-protection investigator, child's clinical dietitian, child's foster parent, two of child's medical doctors, child's paraprofessional, a MLCCVS case manager, a MLCCVS adult mental-health case manager, mother's therapist, mother, and the guardian ad litem. Following the trial, the district court ordered the involuntary termination of mother's parental rights.

This appeal follows.

D E C I S I O N

I. Statutory Grounds for Termination of Parental Rights

In a detailed and thorough order, the district court found that MLCCVS proved five statutory grounds for termination, that MLCCVS made reasonable efforts to reunite the family, and that termination of mother's parental rights served child's best interests.

"A district court has broad discretion when determining whether to terminate parental rights." *In re Welfare of M.A.H.*, 839 N.W.2d 730, 739 (Minn. App. 2013).

³ Father dismissed his appeal.

Appellate courts “review the district court’s findings to determine whether they address the statutory criteria for termination of parental rights and are not clearly erroneous.” *In re Children of T.R.*, 750 N.W.2d 656, 660 (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 the Children of S.R.K.*, 911 N.W.2d 821, 830 (Minn. 2018) (quotation omitted).

“[Appellate courts] affirm the district court’s termination of parental rights 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) (citations omitted).

A district court may terminate the rights of a parent if the court finds that a parent “has substantially, continually, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship.” Minn. Stat. § 260C.301, subd. 1(b)(2). Parental duties include “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.” *Id.* Under this subdivision, a district court must consider “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.” *Id.* “Failure to satisfy requirements of a court-ordered case plan provides evidence of a parent’s

noncompliance with the duties and responsibilities under section 260C.301, subdivision 1(b)(2).” *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 666 (Minn. App. 2012).

Mother argues that the district court erred by concluding that clear and convincing evidence supported termination of her parental rights under the five statutory grounds alleged in the TPR petition. The court found that mother failed to comply with parental duties under Minn. Stat. § 260C.301, subd. 1(b)(2), and concluded that the evidence of mother’s failure was clear and convincing. The court found that mother failed to provide adequate medical care for child, failed to provide the necessary educational services to child, and failed to protect child by failing to address her own mental health needs. The court also found that mother made “minimal progress” on her case plan. Mother argues that the court erred because “the record demonstrates that [mother] has made progress in her case plan albeit shortly before trial.” We disagree.

The district court’s detailed and thorough findings of fact, conclusions of law, and order reflect the court’s careful attention to the voluminous record in this case and are supported by that record. Before child’s placement in foster care, he was diagnosed with failure to thrive because he was not meeting milestones for physical, social, or motor-skills development. Child’s former doctor testified that, in her medical opinion, child’s “failure to thrive was primarily due to insufficient calories, so he wasn’t fed enough.” A second doctor agreed that after child entered foster care, he eventually overcame his failure-to-thrive diagnosis because “he was being fed properly as his medical providers directed once he entered foster care.” When child first entered foster care, he was in the 0.01 percentile for weight and the 0.02 percentile for length. After one month in foster care, child was in

the 3.44 percentile for weight and the 0.8 percentile for length. After one year in foster care, child gained just over 11 pounds, which “exceeds expectations for his age.”

When child arrived in foster care, his foster parent should have received from mother just under 10 cases of child’s formula, based on the formula provided to mother. Mother instead gave child’s foster parent 14 full cases. Child’s dietitian testified that having “[e]xcess formula to that volume left over would be [because] the intended volume [of formula] was not given consistently.” Child’s doctor testified that instead of giving child his full feedings of formula, mother told her that she would feed child half formula and half an “electrolyte containing basically water.”

When child entered foster care in 2018, he was approaching his fifth birthday but had the cognitive, physical, and social development skills of a three-month old. Child was unable to sit up unassisted and “had a flat affect, a child who was unable to interact with those around him on a social, emotional level.” Just over a year later, child was nearly six years old and functioned at the age of a three year old. Child developed a “[h]uge personality,” bonded with people, and could walk in a gait trainer.

During his first few months in foster care, child “averaged at least five appointments per week.” For example, he needed to have four teeth pulled because of excessive decay. At the time of trial, child attended physical therapy, occupational therapy, and speech therapy. Child commonly has “two to three different . . . appointments per month.” Child is prescribed 15 medications and receives medication eight times per day.

The district court heard testimony from multiple witnesses concerning mother’s failure to regularly attend child’s medical and therapy appointments. During the CHIPS

phase of the child protection proceedings, mother attended 34 of child's 52 appointments. Mother arrived late to 10 of the 34 appointments that she attended. Those totals exclude appointments for which mother had a "considerable excuse like transportation didn't show up or a car didn't start."

Before entering foster care, child had inconsistent attendance at school. His paraprofessional testified that during the 2016-2017 school year, child's attendance was "sporadic." When he first started preschool, "he was like an infant," but by the end of the school year, he could sit unassisted and hold himself up in a crawl stance. When child returned to preschool for the 2017-2018 school year, "it was back to square one. He couldn't sit up. He was back to just laying." He attended only five days of school during the 2017-2018 school year. The paraprofessional testified that at the beginning of the 2018-2019 school year, child again could not sit, stand, or support weight. By the end of the school year, he could sit, stand, walk in a gait trainer, and "had a personality." Child's attendance was described by his paraprofessional as the "best [she] had seen."

A MLCCVS case manager testified concerning the out-of-home placement plan, which states that mother agreed to, among other things, "obtain safe, sober, stable housing," "gain employment," "complete a psychological evaluation and follow all recommendations," "engage in individual therapy," "engage in domestic violence classes," and "engage in medical appointments for [child]." The record reflects that, at the time of trial, mother did not fully engage in medical appointments for child, had only contingent housing plans, and did not have a job. Although mother has participated in mental-health services and is working with adult rehabilitative mental-health services, she does not

appear to have ever consistently complied with the recommendations of her service providers. Mother has continued to cancel or fail to attend appointments, which has resulted in providers refusing to provide mother services.

The record as a whole supports the district court's findings and its conclusion that the county proved by clear and convincing evidence that mother failed to comply with her parental duties. Because the district court did not err in terminating mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2), we do not need to consider the other bases for termination. *S.E.P.*, 744 N.W.2d at 385 (“[Appellate courts] affirm the district court’s termination of parental rights 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.”) (emphasis added).

II. Best Interests of Child

Even if the district court finds that a statutory ground for termination is met, “the district court must separately find that termination is in the child’s best interests.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012). When terminating a parent’s rights to a child, “the best interests of the child must be the paramount consideration.” Minn. Stat. § 260C.301, subd. 7 (2018). “Where the interests of the parent and child conflict, the interests of the child are paramount.” *Id.*

“In analyzing the best interests of the child, the court must balance three factors: (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 interests of the child.”

In re Welfare of R.T.B., 492 N.W.2d 1, 4 (Minn. App. 1992). “Competing interests include such things as a stable environment, health considerations, and the child’s preferences.” *Id.* The district court’s determination that termination of parental rights is in a child’s best interest is reviewed for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

The district court balanced each of the three factors and found termination to be in the child’s best interests. The district court found that

the competing interest of the Child to have a stable environment, and the need for consistent care necessary to meet the Child’s complex medical needs, both of which cannot be provided by Mother now or in the foreseeable future, outweigh the Child’s interest in maintaining the parent-child relationship and also outweighs Mother’s interest in maintaining the parent-child relationship.

Mother argues that she is bonded with child and that “[s]he will be able to meet all of [child]’s needs.” We disagree. The record amply reflects the court’s careful consideration and weighing of the best-interests factors and supports the district court’s best-interests determination.

Affirmed.