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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0422**

In the Matter of the Welfare of the Children of: D. J. C., M. S. H., II,
and S. V. I., Parents.

**Filed October 4, 2021
Affirmed
Connolly, Judge**

Dakota County District Court
File No. 19HA-JV-20-534

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Considered and decided by Florey, Presiding Judge; Connolly, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant DJC, the mother of five children, and appellant MSH, the father of three of her children, challenge the terminations of their parental rights, arguing that the district

court's findings are not supported by clear and convincing evidence and that the district court failed to consider the children's best interests. We affirm.

FACTS

Appellant DJC is the mother of M'ANRC, now 15 (Child 1); SC, now 14, (Child 2); MSH III, now 10 (Child 3); MJH, now 9 (Child 4); and M'DH, now 3 (Child 5).¹ Appellant MSH II (MSH) is the father of Child 3, Child 4, and Child 5. SVI is the father of Child 1, and the father of Child 2 is unknown.² Intervenor KW is the paternal grandmother of Child 3, Child 4, and Child 5.

The family has been involved with social services departments in four counties in recent years. In 2017, Stearns County conducted a family assessment (FA) after a report of educational neglect; Polk County offered parent support outreach services (PSOP) to the family; and Dakota County Social Services (DCSS) offered PSOP for housing, mental health services, and grief counseling. DJC did not respond to the offer of services from DCSS.

In 2018, Hennepin County conducted two FAs. One resulted from reports of educational neglect of Child 2, Child 3, and Child 4; there was also an assessment of an allegation of physical abuse. The other FA resulted from a report of failure to provide medical treatment for an ear infection of Child 5; the family was referred to PSOP for services.

¹ Because many of the children's initials are shared, we refer to them by birth order.

²The parental rights of SVI and of the unidentified father of SC were also terminated by the district court in the decision on appeal, but SVI took no part in that decision and takes no part in this appeal.

In February 2019, DCSS received a report of educational neglect of Child 3 and Child 4 based on their unexcused absences from school. In April 2019, DCSS received a report of physical abuse of the children with a belt and a cord. DJC would neither confirm nor deny that she had hit them with those objects. Later in April, after DCSS received a report of DJC choking Child 2, DJC was charged with malicious punishment of a child, of which she was later convicted. A permanency petition was filed to terminate DJC's rights to all five children, MSH's rights to Child 3, Child 4, and Child 5, SVI's rights to Child 1, and the rights of an unknown father to Child 2.

In May 2019, while MSH was incarcerated, the children were removed from DJC's home and placed in foster care, where they have been for over 28 months and wish to remain.³ DCSS filed a petition for them to be declared children in need of protection or services (CHIPS), and they were adjudicated CHIPS based on DJC's admissions that the conditions of her home made it unsafe or inappropriate for the children and that she was unable to provide them with appropriate shelter. A case plan was devised, and in June 2019, after MSH was released from jail, he was added to the case plan. In August 2019, MSH and DJC reunited; they testified that they have been "in a combined relationship/significant other partnership" and are a "parenting unit."

In April 2020, DCSS filed a petition for termination of their parental rights. Also in April, DJC was charged with theft after using another person's credit card for unauthorized withdrawals and purchases.

³ Child 2 was moved to foster care with another provider in January 2020, has remained there, and wishes to remain there.

In October 2020, Intervenor KW, the mother of MSH and the paternal grandmother of Child 3, Child 4, and Child 5, petitioned successfully to intervene as a matter of right, and DJC and MSH filed a petition to transfer permanent legal and physical custody of all five children to KW and her husband.⁴

A trial was held in October and December 2020. MSH, DJC, and Child 1 testified; Child 2, who had been subpoenaed by MSH's attorney but was not called to testify, was asked by the district court to provide information. The child-protection social worker (SW), the foster parent, and the guardian ad litem (GAL) testified that all the children wish to remain with and be adopted by their current foster parents, who are non-relatives.

In February 2021, the district court issued findings of fact, conclusions of law and an order terminating the parental rights of DJC to all five children and of MSH to Child 3, Child 4, and Child 5 on statutory grounds. DJC and MSH challenge the terminations, arguing that the district court's findings that DCSS made reasonable efforts to reunite the family and that a transfer of the children's custody to KW and her husband is not in the children's best interests are not supported by clear and convincing evidence. MSH also argues that clear and convincing evidence does not support the district court's findings that the children are neglected and in foster care and that MSH failed to correct the conditions leading to their out of home placement. Finally, he argues that the district court failed to address the children's best interests when terminating MSH's parental rights.⁵

⁴ They identified themselves as the paternal grandparents of all five children, although KW is not related to Child 1 or Child 2 and her husband is not related to any of the children.

⁵MSH's additional argument that the district court erred in terminating his parental rights because he was not entitled to notice of adoption is based on a misreading of the district

DECISION

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) (citation omitted).

1. Reasonable Efforts

The district court found that DCSS offered services that were timely, available, relevant, and culturally appropriate for the children to prevent their placement in foster care and to reunite the family. Specifically, it found that DCSS: (1) offered services to address the mental health concerns of DJC and the chemical dependency concerns of MSH; (2) set up supervised visitation for them with their children, including via computer when necessary and via phone calls; and (3) provided general and specialized medical care, mental health care, and dental care for the children, all of whom struggle with anxiety, depression, and anger, as well as with schooling. The testimony of MSH, DJC, and the social worker (SW) provides clear and convincing evidence for these findings.

court’s Conclusion of Law 3, which refers not to MSH but to the unidentified father of Child 2 and is therefore irrelevant to this appeal. MSH also challenges the district court’s determination that he is palpably unfit to be a party to the parent-child relationship, but, while this determination appears in the unsigned copy of the district court’s decision MSH submitted as an addendum to his brief, it does not appear in the signed copy of the decision DJC submitted, in which the district court made no reference to the relevant statute, Minn. Stat. § 260C.301, subd. 1(b)(4)(2020).

MSH argues that the county's efforts with him were limited to having a social worker explain the case plan and provide him with two referrals to complete a chemical dependency assessment. But SW testified that: (1) she could not make psychological and parenting referrals for MSH because such referrals cannot be made until the person referred has achieved 30 days of sobriety, which MSH never did; (2) MSH began treatment in October 2020 but was discharged due to excessive unexcused absences; (3) while in treatment, MSH twice tested positive for chemicals; (4) when MSH had the opportunity to telephone his children, he made no effort to call or otherwise contact them; (5) MSH did not maintain contact with SW; and (6) MSH told SW that he had the right to not follow his case plan.

MSH's own testimony corroborates this. He testified that: (1) he has a chemical dependency problem about which he is doing nothing because he prefers marijuana to the medication prescribed for him; (2) he had not yet completed a treatment program; (3) he committed and served time for aggravated robbery, but has developed and matured since then;⁶ (4) he was innocent of a DWI charge in December 2020 because he had not yet been proven guilty and pleaded the Fifth Amendment in regard to that incident; (5) he had told SW that it was his right not to comply with his case plan; and (6) he could not talk about his children's needs because he had not spoken to DJC or SW about the children or been told what their needs were.

⁶ DJC testified that MSH was incarcerated for 72 months. He was released in June 2019.

DJC testified that: (1) she was in an apartment with a 24-month lease because she had changed the term on the lease from 7 months to 24 months, but the landlord had not signed the altered lease; (2) she would not be surprised if the landlord said the lease was fraudulent; (3) during visitations with the children, she was sometimes riding in a car and was once in a salon having her eyelashes done; (4) she was supposed to have random drug and alcohol tests and her most recent test was positive for opiates and tetrahydrocannabinol (THC) had been two or three weeks prior to trial; (5) she did not know whether MSH was complying with his drug-testing requirements and was not concerned that he had been discharged from treatment; (6) she had been late for or missed phone calls with her children; (7) until the county took charge of the children, she was not aware that they all needed medical, dental, and mental-health services; (8) she had been in “survivor mode” and so neglected the children’s needs; (9) she was not working, but would be able to stay in her apartment until she chose to leave it; and (10) her malicious-punishment conviction was based on statements Child 2 had made up. DJC pleaded the Fifth Amendment in regard to the maltreatment and educational neglect of her children.

The testimony of both MSH and DJC provides clear and convincing evidence that DCSS provided reasonable services, but that MSH and DJC did not comply with those services.

2. Placement of the Children with KW

The district court explained that “[KW] offered to serve as a placement option for the children. However, given the children’s ongoing resistan[ce] to being placed with [her], this Court has not placed the children with her.” Again, the record supports the

district court's decision. The GAL filed a report stating that Child 2 wishes to maintain a relationship with KW, but does not want to be placed with her, and that the other children "have indicated they do not want to be placed in her care."

Testimony also provides clear and convincing evidence to support the district court's findings that the children do not wish to be placed with KW. DJC's attorney questioned Child 1:

Q. You know that [KW] has petitioned the Court to have custody of you. Are you aware of that?

A. Yes, sir.

Q. And how do you feel about that?

A. That is – that's not something I want to do.

Child 2 was questioned by the district court:

Q. . . . [T]ell me what you want me to hear about this, okay?

. . . .

A. When we were living with [KW] . . . it was winter, and there was a snow storm. We [she, her siblings, and DJC] had to pack, and then we got kicked out in the middle of the snow storm. We had to go to a hotel.

. . . . [A]nd then when my daddy came back from prison, we moved back to [KW's] house. . . .

. . . .

But when we were at [KW's] house – we always . . . got in trouble. And then my cousin got in trouble this one time. So he had to get a whupping for it. And then we got a whupping by them too.

KW denied this statement, saying that "[t]here has been no form of corporal abuse, punishment, in my home."

SW testified that she and DJC had discussed placing the children with KW in June 2019. When asked how the conversation proceeded, she answered:

[DJC] went on to tell me that, “That woman [KW] kicked me and my babies out on the street, not once but twice, in the dead of winter.” And then [DJC] stopped and said, “You know what, don’t ask me. Ask my kids. They’ll tell you all about it.”

. . . .

I said, “What are the kids going to tell me?” And [DJC] said, “[KW] used to whup my kids. She’s put her hands on my kids.” She said all of them are scared [of KW]. . . . And she said, and I quote, “I hate to say this, but those kids are better off with strangers than with [KW].”

But during the trial, DJC contradicted this. She testified that “I would rather for my children to go to [KW] if they don’t come back home right away” and replied, “Yes,” when asked if she felt that KW’s home “would be a healthy environment for them.” DJC also testified that she did not believe what her children said about suffering physical abuse from KW, saying “[t]hey made it up.” The district court’s decision reflects that SW’s testimony about DJC’s view of KW as a placement option was more credible than DJC’s trial testimony. “Considerable 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).

Clear and convincing evidence supports both the district court’s finding that the children do not want to be placed with KW and its decision not to place them with her for that reason.

3. Neglected and in Foster Care

A district court may terminate parental rights if it finds “that the child[ren are] neglected and in foster care.” Minn. Stat. § 260C.301, subd. 1(b)(8) (2020). The district court found that the children were placed in foster care on May 1, 2019, and “have been in foster care for over 21 months and are presumed to be neglected and in foster care.” They have now been in foster care for over 28 months.⁷

“Neglected and in foster care” means children

- (1) who ha[ve] been placed in foster care by court order; and
- (2) whose parents’ circumstances, condition, or conduct are such that the child[ren] cannot be returned to them; and
- (3) whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child[ren] or providing financial support for the child[ren].

Minn. Stat. § 260C.007, subd. 24 (2020). MSH argues that the district court failed to specify what conditions or conduct would prevent the children being returned to him and that “the record does not demonstrate that the agency made rehabilitative services” available to him. But the district court found that MSH

continues to struggle with his chemical dependency and fails to recognize the negative impact that his usage has on the children. Furthermore, [his] criminal history has left him absent for a great portion of the children’s lives. He has been unable to foster a parent/child relationship with the children in the past and continues to struggle with that now.

⁷ It is presumed that a county’s reasonable efforts to correct the conditions leading to a child’s out-of-home placement have failed if the child has resided outside the home for 12 of the preceding 22 months or, if the child is under 8, for six months. Minn. Stat. § 260C.301, subd, 1 (b)(5)(i)(2020).

MSH's testimony supports this finding. Thus, the district court's finding that the children are neglected and in foster care is supported by clear and convincing evidence.

4. MSH's failure to correct the conditions leading to out-of-home placement

A district court may terminate parental rights if it finds that "following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5) (2020). A presumption that reasonable efforts have failed exists when (1) the children have been outside the home for 12 of the preceding 22 months, or, for a child younger than eight, for six months; (2) the court has approved an out-of-home placement plan; (3) the conditions leading to the out-of-home placement have not been corrected, (which is presumed on a showing that a parent has not substantially complied with the district court's orders and the case plan); and (4) reasonable efforts have been made by the social services agency to reunite the family. Minn. Stat. § 260C.301, subd. 1(b)(5)(i-iv) (2020). It is also presumed that reasonable efforts have failed if a parent who has been diagnosed as chemically dependent and been required by a case plan to participate in a culturally, linguistically, and clinically appropriate chemical dependency program has failed two or more times to complete the program and continues to abuse chemicals. Minn. Stat. 260C.301, subd. 1(b)(5)(A)-(E) (2020). The record supports the district court's determination that these criteria have been met here. The record shows that MSH enrolled in one program in September 2020 and was discharged after a month; reenrolled the week

that the trial opened in October 2020; was discharged by December 2020; and entered another treatment program, but continued to test positive.

MSH does not dispute the district court's findings that: (1) he went to prison for armed robbery and returned for multiple violations, including noncompliance with treatment; (2) he had a DWI charge from 2019; (3) he will not address his chemical dependency issues because he thinks the chemical use helps him deal with his mental-health condition; (4) he says he has the right not to follow a case plan if he does not want to follow it; (5) throughout the case, he tested positive for chemicals; (6) he testified that his chemical abuse does not affect his ability to parent effectively; (7) although he said he wanted to complete treatment so the children could return to him, he failed to complete any of his treatment programs, and (8) he remains largely unaware of his children's needs.⁸

SW testified to the conditions of the home that led to the out-of-home placement: no bedding for the children, frozen food they could not prepare for themselves, no clean clothes, trash on the floor, Child 5 in a soiled diaper and pajamas with no clean diapers or clothes in the house, and no supervision of the children. DJC did not think the cleanliness

⁸All five children have significant needs. The foster parent testified that, when the children arrived in May 2019: Child 1, who had not been enrolled in school that year but was at home caring for the younger children, needed to see both a doctor and a dentist, and is now enrolled in individual therapy; Child 2 had a broken tooth, needed glasses, and had to see an orthopedic specialist who said she needed to lose weight because of problems with her feet and knees; Child 3 was taken to an optometrist and an orthopedic specialist, is receiving speech therapy and occupational therapy, has problems with bed wetting and a low IQ, is developmentally delayed, is seeing a therapist twice a week, and is in crisis intervention; Child 4 had an abscess in her mouth and several teeth that needed to be pulled or filled, needed glasses, and needed vaccinating; and Child 5 needed vaccinations and physical therapy to correct his standing posture, and receives daily mental-health treatment.

of the house was a problem and did not want the services the children needed, such as dental work, speech therapy, and assessments.

MSH argues that, since he was in prison when the children were removed from the home, he was not responsible for the conditions that led to their removal and is not responsible for correcting the conditions. But while MSH's chemical dependency was not a reason his children were removed from the home, since he was incarcerated and not in the home when they were removed, his unwillingness or inability to deal with his chemical abuse would again produce a home from which children would need to be removed. MSH provided no basis to assume he would be able or inclined to attend to the children's needs or to prevent the conditions that resulted in their out-of-home placement.

5. Failure to consider children's best interests

In any termination proceeding in which the district court finds the existence of a statutory basis for terminating parental rights, "the best interests of the child[ren] must be the paramount consideration. . . . Where the interests of parent and child[ren] conflict the interests of the child[ren] are paramount." Minn. Stat. § 260C.301, subd.7 (2020). MSH argues that the district court "erred by failing to adequately address the children's best interests" and that it "fails to explain WHY a termination serves the children's interests."

But the district court wrote:

1.0 It is in the best interests of the children, . . . that parental rights be terminated for the following reasons:

1.1 The parent[s] will not be able to care for the children for the reasonably foreseeable future.

1.2 Both parents have failed to address the issues and concerns that lead to placement in the first place. Both

parents also lack the understanding of the basic needs that the children have.

1.2.1 The children each require special attention as they are facing issues with mobility, with cognitive understanding, and with mental and emotional health.

1.2.2 Both parents have expressed little or no knowledge of the children's needs and are thus unable to meet their needs at this time.

. . . .

4.0 The children are deserving of a safe, stable, and permanent home as they have been in foster care for over 640 days.^[9]

4.1 The children require a caregiver that is capable of meeting their medical and mental health needs. Neither the parents nor the grandparents [i.e., KW and her husband] have shown that they have the capacity to understand these needs and are thus unable to meet the children's needs at this time.

. . . .

4.3 In weighing the desire of the parents as well as the children's wishes, it is this Court's belief that the children's best interest[s] are served by terminating the parental rights of the parents and freeing [the children] for adoption and is consistent with Minn. Stat. § 260C.513 that termination of parental rights is preferred over transfer of legal custody.

Thus, the district court's order does address the children's best interests and gives its reasons for finding that termination is in their best interests.

MSH also objects that the district court does not mention his interest in maintaining the parent-child relationship, but it is the children's, not the parent's, best interest that is

⁹ The children have now been in foster care for over 860 days.

paramount in a termination proceeding. *See* Minn. Stat. § 260C.301, subd. 7 (“Where the interests of parent and child[ren] conflict, the interests of the child[ren] are paramount.”)

The district court did not fail to address the children’s best interests in its opinion.

Affirmed.