

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0436**

In the Matter of the Welfare of the Children of:
J. J. B., Parent, S. S., Joint Legal Custodian.

**Filed October 17, 2022
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-JV-21-201

Anne Morris Carlson, Anne M. Carlson Law Office, PLLC, St. Paul, Minnesota (for appellant S.S.)

Michael O. Freeman, Hennepin County Attorney, Adam Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services)

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges the termination of his parental rights to three children, arguing that the district court abused its discretion by determining that (1) respondent county's reasonable efforts failed to correct the conditions leading to the children's out-of-home placement, and (2) termination is in the children's best interests. Because we discern no abuse of discretion in either aspect of the district court's decision, we affirm.

FACTS

Appellant S.S. (father) and his wife J.J.B. (mother) are the parents of three children, born in 2012, 2014, and 2019. Shortly after the third child's birth, respondent Hennepin County Human Services (the county) learned that mother used methamphetamine and marijuana during her pregnancy. Through subsequent investigation, the county learned that father also had a history of chemical dependency, including self-reported daily methamphetamine use and a diagnosis of severe stimulant-use disorder within the past year. But when a county social worker questioned him, father denied ever using any controlled substances other than marijuana. The county determined that father would not be a safe placement option for the children and requested an emergency protective-care hearing. On October 16, 2019, the district court ordered that the children be placed in foster care because they were "in an unstable environment and at risk of harm" and "[c]hemical dependency issues of the parents place the children in danger."

The county developed case plans for both parents, which the district court approved. In relevant part, father's case plan called for him to demonstrate sobriety by submitting to random chemical testing and, if positive, to complete a chemical-dependency assessment and follow recommendations; and to maintain a home free of any non-prescription controlled substances. On August 11, 2020, the district court adjudicated the children in need of protection or services (CHIPS). The CHIPS order focused on mother's chemical dependency but ordered both mother and father to "fully compl[y] with and successfully complet[e]" their case plans, including demonstrating sobriety. Neither parent appealed the CHIPS order.

Father complied with some aspects of his case plan and had twice-weekly supervised visits with the children for up to two hours. But he never consistently complied with the requirements and programming designed to address his chemical dependency. In particular, he submitted to only eight of the requested chemical tests between January and November 2020 and tested positive for methamphetamine and amphetamine nearly every one of those times. He was unsuccessfully discharged from treatment in September 2020 and did not submit to any chemical testing after November 2020. His failure to demonstrate sobriety meant that he never progressed to unsupervised visits with the children.

On January 28, 2021, the county petitioned to terminate father's parental rights, alleging that father has substantially neglected his parental duties, that he is palpably unfit to parent, and that the county's reasonable efforts have not corrected the conditions leading to the children's out-of-home placement.¹ *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5) (2020). The county continued to work with father to help him establish sobriety, without success. Father continued to use methamphetamine, was again unsuccessfully discharged from treatment in July 2021, and has told the county since then that he is unwilling to participate in further treatment.

During a five-day trial that ended in February 2022, the district court heard testimony from father, four county social workers who investigated or worked with the family, and the guardian ad litem (GAL). The social workers and the GAL testified about father's conduct throughout the children's more than two years in placement, including

¹ The county also petitioned to terminate mother's parental rights. She voluntarily terminated her rights on the first day of trial.

that, as of the time of trial, father had not demonstrated even one month of sobriety. They all opined that terminating father's parental rights was in the children's best interests, emphasizing the children's need for stability. The district court determined that the county failed to demonstrate that father has substantially neglected his parental duties or is palpably unfit to parent. But it found clear and convincing evidence that the county's reasonable efforts have not corrected the conditions leading to the children's out-of-home placement and that termination is in the children's best interests. Father appeals.

DECISION

A district court may terminate parental rights if (1) clear and convincing evidence supports at least one statutory ground for termination, (2) the county made reasonable efforts to reunite the family, and (3) termination is in the children's best interests. *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 600 (Minn. App. 2021), *rev. denied* (Minn. Dec. 6, 2021). On appeal, we consider whether the district court's findings address the statutory termination criteria and are supported by substantial evidence. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012).

I. The district court did not abuse its discretion by determining that reasonable efforts failed to correct the conditions leading to out-of-home placement.

A court may involuntarily terminate parental rights if reasonable court-directed efforts have "failed to correct the conditions leading to the child[ren]'s placement" out of the home. Minn. Stat. § 260C.301, subd. 1(b)(5). We review for an abuse of discretion a determination that a particular statutory basis for terminating parental rights is present. *In*

re Welfare of K.L.W., 924 N.W.2d 649, 653 (Minn. App. 2019), *rev. denied* (Minn. Mar. 8, 2019).

Two sets of circumstances give rise to a presumption that reasonable efforts have failed. Minn. Stat. § 260C.301, subd. 1(b)(5). The first is when (1) the child has been in out-of-home placement for at least 12 out of the prior 22 months; (2) the court approved the out-of-home placement plan; (3) the conditions leading to the out-of-home placement have not been corrected, 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 reunify the family. *Id.*, subd. 1(b)(5)(i)-(iv). The second is when (1) the parent has been diagnosed as chemically dependent by a certified professional; (2) the parent's case plan required them to participate in a chemical-dependency treatment program; (3) the treatment programs offered to the parent were culturally, linguistically, and clinically appropriate; (4) the parent has either failed two or more times to complete treatment successfully or has refused two or more times to meet with a caseworker to participate in treatment; and (5) the parent continues to abuse chemicals. *Id.*, subd. 1(b)(5)(A)-(E).

The district court found that both sets of circumstances exist so the presumption applies and, even if it did not apply, the conditions leading to the children's out-of-home placement have not been corrected because father continues to have issues with chemical dependency.

Father does not dispute the district court's findings that the statutory presumption applies, argue that he rebutted the presumption, or deny that he continues to struggle with

chemical dependency. Rather, he contends that this statutory basis for termination is not satisfied because it was mother's chemical abuse—not his—that led to the children's out-of-home placement and there was nothing he could have done to correct that condition. This argument is unavailing. As the district court observed, the county "originally became involved with the family" because testing of the youngest child's umbilical-cord blood revealed mother's recent use of methamphetamine. But investigators "soon learned" that father also has chemical-dependency struggles. Father's own chemical abuse is the reason the district court placed the children in foster care rather than with him. And father's court-ordered case plan focused on that condition. In short, we agree with the district court that "[i]t was made clear" to father when the children were placed out of the home that "he needed to correct his issues with chemical dependency before the children could be placed safely in his care." He undisputedly has not done so.

Father also argues that the district court abused its discretion by finding that his ongoing chemical abuse supports termination of his parental rights because there is no evidence that it impairs his ability to care for the children. He asserts that his consistently positive visits with the children indicate the contrary. We are not persuaded for two reasons. First, the district court made the assessment when initially placing the children out of the home, and again when adjudicating the children CHIPS, that father's chemical dependency impairs his ability to safely care for them. Father did not challenge that assessment. Second, the legislature has determined that when a parent's chemical dependency is the reason for out-of-home placement, the parent's failure to successfully engage with appropriate treatment and continued abuse of chemicals not only warrants but

creates a presumption that termination is appropriate. *See* Minn. Stat. § 260C.301, subd. 1(b)(5)(A)-(E). Father does not dispute that the presumption applies, and we discern no abuse of discretion by the district court in determining that father’s positive interactions with the children during brief supervised visits are insufficient to rebut it. On this record, we conclude that the district court did not abuse its discretion by determining that clear and convincing evidence supports this statutory termination ground.

II. The district court did not abuse its discretion by determining that termination of father’s parental rights is in the children’s best interests.

If clear and convincing evidence supports a statutory ground for termination, a court must consider the child’s best interests “in deciding whether to actually terminate parental rights.” *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011) (quotation omitted), *rev. denied* (Minn. Jan. 6, 2012). When analyzing best interests, the district court balances: “(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 interest of the child.” *In re Welfare of A.M.C.*, 920 N.W.2d 648, 657 (Minn. App. 2018) (quotation omitted); *see* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) (requiring consideration of the same factors) (quotation omitted); *see* Minn. Stat. § 250C.301, subd. 7 (2020) (making a similar statement). If these interests conflict, “the interests of the child are paramount.” *J.R.B.*, 805 N.W.2d at 905. We review for an abuse of discretion a determination that termination is in a child’s best interests. *K.L.W.*, 924 N.W.2d at 656.

The district court found that the two older children, like father, have an interest in maintaining the parent-child relationship. The court also recognized father’s love for his

children and desire to parent them. But the court noted countervailing considerations. By the time of trial, all three children had been in continuous out-of-home placement for more than two years. They need a safe and sober home and a stable living environment. Father made no progress in addressing the chemical dependency that undermines his ability to meet those needs. The social workers and the GAL all testified that the children’s need for stability, and father’s inability to provide it, makes termination in the children’s best interests. The district court carefully considered this evidence, weighing whether the children would be better served by terminating parental rights or granting father’s request for “additional time to work his case plan.” Ultimately, it determined that it is unreasonable to expect that father will change his behavior after two years of case-plan noncompliance and the children’s need for stability prevails.

Father contends the district court placed improper emphasis on the children’s need for stability. He appears to argue that stability is insufficient to support a finding that termination is in a child’s best interests. We disagree for two reasons. First, father relies exclusively on *In re Welfare of J.B.O.*, No. A19-1052, 2019 WL 7287100 (Minn. App. Dec. 30, 2019), a decision that is neither binding nor persuasive. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (addressing use of nonprecedential opinions). That case involved high-achieving teenaged children who articulated mature opposition to termination of their father’s rights and were receiving the necessary stability from their other parent—circumstances we described as “extraordinary” and which are wholly absent here. *J.B.O.*, 2019 WL 7287100, at *4. Second, extensive caselaw expressly recognizes that a child’s

need for stability may be a sufficient competing interest to counter a child's or parent's interest in continuing the parental relationship. *E.g., J.H.*, 968 N.W.2d at 604.

Finally, father asserts that the district court's findings are insufficient because they do not address each child individually. As support, he cites *In re Welfare of M.A.H.*, 839 N.W.2d 730, 748-49 (Minn. App. 2013), in which this court affirmed termination of parental rights as to one but not all children because the statutory grounds in question focused on each child's circumstances. We agree that a district court must consider each child's individual needs in weighing the best-interests factors. But father identifies no considerations specific to any of the children that the district court failed to consider. Rather, the record reflects that the three children share the same need for a safe, sober, and stable home; father's failure to address his chemical dependency renders him unable to meet that need for any of them.

In sum, the record shows these children have a great need for stability after years of foster care. And the record provides ample reason to doubt that father can meet that need in the foreseeable future. Accordingly, we conclude the district court did not abuse its discretion by determining that termination is in the children's best interests.

Affirmed.