STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0633
A23-0636

In the Matter of the Welfare of the Children of:
R. G. B. and B. J. B., Parents.

Filed October 23, 2023
Affirmed
Worke, Judge

Olmsted County District Court
File No. 55-JV-22-496

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Considered and decided by Worke, Presiding Judge; Ross, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In these consolidated appeals from the district court's termination of parental rights (TPR), appellants argue that the record does not support the district court's determinations that (1) they failed to satisfy the duties of the parent-child relationship, (2) they are palpably unfit parents, (3) they failed to satisfy their case plans, and (4) TPR is in the children's best interests. Mother also argues that her posttrial counsel was ineffective. We affirm.

FACTS

Appellant-mother R.G.B. and appellant-father B.J.B. (parents) are married and have two children, H.B.B. and I.K.B. Mother has two other children from a previous relationship.[1]

In May 2018, respondent Olmsted County Health, Housing, and Human Services (the department) began receiving reports of father using physical discipline on mother's older children. In February 2019, law enforcement became involved with the family because of domestic violence on the part of both parents. Both parents had been abusing alcohol during most, if not all, of the domestic-violence incidents. After law enforcement became involved because of parents' criminal conduct, parents began attending Alcoholics Anonymous (AA) meetings. Parents maintained two months' sobriety, and in November 2019, the department determined that services were no longer needed.

[1] Mother's older children are living with their father. A separate permanency petition was filed related to them.

In the summer of 2020, the department and law enforcement again became involved with the family. Parents were drinking alcohol and assaulting each other in the presence of the children. After one incident, mother left father and took the children with her. But months later, father showed up at the residence where mother and the children were staying and got into a physical altercation with a man living there. Father told mother to leave with him, and she and the children left with father.

In late April 2021, the department received reports from community members concerned about parents being "high on something, acting out of control, . . . leaving the children home alone, driving while intoxicated with the children in the car, [and] . . . acting violently." Family members removed the children from the environment, but parents showed up in the middle of the night demanding the children. Social workers went to the family home to see that the children were safe and to administer drug screens to parents. Parents and the youngest child appeared to be inside the home but parents refused to answer the door. After law enforcement arrived, mother agreed to a safety plan for the children.

The children were transported to a family member's home. But the department received reports that father planned to take the children. Father threatened social workers, saying, "You will pay, this isn't over. I'll do what I want with my children, I'll take my children if I want to."

On April 26, 2021, the children were taken into police protective custody and placed in relative foster care. The next day, the department filed a child-in-need-of-protection-or-services (CHIPS) petition due to concerns that the children were exposed to drug use and domestic violence and left without proper parental care. On April 29, the

district court ordered the children's out-of-home placement, where they have been since April 26, 2021.

Parents were provided case-management services, including family-involvement strategies, case-planning conference referrals, domestic-violence resources, child-safety planning, drug screening, chemical-dependency treatment, and mental-health services. However, after the children's out-of-home placement, parents continued having domestic disputes involving assaultive behavior, damage to property, criminal conduct, and threats of self-harm. On July 12, 2021, the children were adjudicated CHIPS when parents were found in default for failing to appear.

On December 10, 2021, parents were in a traffic accident. Father was driving. He hit several vehicles and then fled the scene. Mother smelled of alcohol and was combative with law enforcement. On December 13, 2021, father completed a urinalysis (UA) with probation; it was positive for methamphetamine and alcohol. On January 14, 2022, father completed another UA; it was positive for amphetamines.

On January 25, 2022, the department filed a TPR petition. At the time, the children were six and eight years old. The department alleged that TPR was in the children's best interests because parents refused or neglected to comply with their parental duties, parents are palpably unfit, and reasonable efforts to reunify the family failed. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5) (2022).

In the petition, the department shared that the children have adjusted well to their foster home. Their environment is supportive, stable, and predictable. They receive

therapeutic services. And they no longer have to worry about adults fighting and hurting one another.

The department worked with parents to develop case plans. Parents agreed to some services but refused to sign the plans. Parents had supervised parenting time. Mother was present for most of her parenting time. In January 2022, mother agreed to begin intensive outpatient treatment.

Father was inconsistent with parenting time. A domestic-violence professional stated that father must attend to his mental health before he can meaningfully address his domestic-violence issues. In December 2021, father completed a mental-health evaluation. Father also completed a domestic-violence inventory but participated in only three classes. Around the same time, father completed a chemical-dependency assessment. It was recommended that father engage in a "high intensity, residential chemical dependency treatment program." Father attended some AA meetings and occasionally met with his sponsor.

Beginning on May 2, 2022, the district court held a three-day trial. Mother appeared pro se and expressed her intent to represent herself. Father appeared pro se and requested a continuance to obtain counsel. The district court denied his request, noting that father had been represented by three different attorneys. During the trial, the department presented evidence addressing the incidents and allegations in the TPR petition.

On August 3, 2022, the district court filed a TPR order. The district court incorporated the petition in its findings. The district court included in its findings the incidents described by witnesses that were outlined in the TPR petition. Specifically, the

district court credited the testimony of a social worker who started working with the family in 2019. He testified about the physical abuse in the family and how these acts occurred when parents were using alcohol. The guardian ad litem (GAL) testified that she believed that parents were simply "checking the boxes" and were not fully engaged in making progress with their case plans. The GAL believed that TPR was in the children's best interests because they need predictability and consistency, and to know that they are safe.

Mother testified that she was consistently submitting UAs and none were positive. She had signed releases of information for the department to monitor her case-plan compliance. She claimed that there has been no domestic violence in the home recently because it was all due to alcoholism and she and father had several months' sobriety. Mother testified that she is in therapy and understanding how she could have handled her role as a domestic-violence victim differently.

Father testified that he realized he was acting "childish" in refusing to make progress on his case plan because he was critical of the department and social workers. He stated that he had been sober since January 21, 2022, and he last used methamphetamine shortly before that. Father testified that he is almost finished with his chemical-dependency treatment.

The district court made findings about parents' progress with their case plans. Mother had completed a chemical-dependency assessment and a mental-health assessment. At the time of trial, mother had nearly five months' sobriety. But evidence led the district court to become concerned that mother "is at the front end of sobriety and needs to demonstrate compliance over time."

The district court found that it was difficult to get father to attend scheduled UAs. When father finally completed a chemical-dependency assessment, inpatient treatment was recommended. Father left treatment after one day. Since leaving inpatient treatment, however, father had no positive UAs. And in April 2022, father began a seven-week outpatient program. Testimony, however, indicated that father did not seem to understand the need for continued treatment after he attained a few months of sobriety. The record showed that, historically, parents had a domestic episode every six months. Given that mother had five months of sobriety and father had four months, they needed to demonstrate their sobriety over time to show that the violent episodes would not continue to occur on that six-month cycle.

Additionally, father had not completed a domestic-violence program. The district court noted that programming was necessary in order to end the violence. The district court found that domestic violence occurred in front of the children and parents did not understand the impact on the children. The district court found that it was unclear if mother could adequately address safety concerns while living with father.

The district court found that neither parent had successfully completed the court-ordered out-of-home placement plans. The district court found that all parenting time was supervised, which raised concerns whether the children would be safe if returned to parents. The district court also found that the department made reasonable efforts to reunify the family.

The district court concluded that the TPR petition and all of the evidence and testimony supported a finding for TPR by clear and convincing evidence pursuant to Minn.

Stat. § 260C.301, subd. 1(b)(2), (4), and (5). The district court concluded that TPR was in the children's best interests. The district court stated:

> There is no dispute that over the past 4-5 months, [parents] have lived peacefully, maintained sobriety, been medication compliant, and completed treatment programs. This has not always been the case. For at least the four years prior, domestic violence has been a backdrop to the home, meaning that one-third of [the oldest child]'s life and one-half of [the youngest child]'s life have involved sight or sound of domestic violence or neglect. [Parents] have not fully grasped the impact of domestic violence on the four children. [Mother] seems to lack clear insight to the measure of danger she has placed herself and her children in. [Father] seems to believe what he is saying, but the [c]ourt is not convinced he has sufficiently dug deep enough to make fundamental changes to how he treats his wife, family, and children. Blame has been placed on an overzealous caseworker and the family. The [c]ourt is concerned that [parents] have not made a consistent move to unsupervised parenting time for the past year. Timelines cannot justifiably be extended in this case. Even within 6 months the [c]ourt does not believe that things would change appreciably to the extent the [c]ourt would feel comfortable returning the children home.

On August 14, 2022, father requested a new trial, claiming that he was deprived of a fair trial when he was not allowed to present evidence. In the alternative, he requested that the record be reopened to take additional testimony. The district court granted father's request to reopen the record and take additional testimony because he had been denied the opportunity to call witnesses. The district court ordered that the August 3, 2022 TPR order was vacated as to father "only pending the reopening of the proceedings and receipt of additional evidence."

On November 1, 2022, mother moved to vacate the TPR order. Following a hearing, the district court denied mother's motion, concluding: "Without a supporting affidavit, or

some other form of documentation that would allow the [c]ourt to decide as to its merits, [m]other's motion is deficient on its face."

In March 2023, the district court held a hearing on the record reopened for father's evidence. Several witnesses testified on father's behalf, but at the end of the hearing, the department argued that father presented no new evidence of lasting changes in his circumstances. On April 11, 2023, the district court filed a TPR order, concluding that the department proved by clear and convincing evidence that father "substantially and repeatedly neglected to comply with the duties imposed upon a parent," "[f]ather is [a] palpably unfit . . . parent," and that reasonable efforts failed to correct the conditions leading to the children's out-of-home placement. The district court concluded that TPR was in the children's best interests. These consolidated appeals followed.

DECISION

"[P]arental rights may be terminated only for grave and weighty reasons." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). Generally, a district court may order an involuntary TPR when clear and convincing evidence shows that (1) there is a statutory basis for TPR, (2) the department has made reasonable efforts to reunify the family, and (3) TPR is in the children's best interests. *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

The district court concluded that the department established with clear and convincing evidence that several bases for TPR existed, reasonable reunification efforts failed, and TPR is in the children's best interests. We review these determinations for an abuse of discretion, and the district court's underlying findings of fact for clear error. *In*

re Welfare of Child of J.H., 968 N.W.2d 593, 600 (Minn. App. 2021), *rev. denied* (Minn. Dec. 6, 2021). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

Statutory bases for TPR

We may affirm a TPR decision based on only one statutory ground. *S.E.P.*, 744 N.W.2d at 385. Here, the district court ordered the TPR after concluding that the department established three statutory bases: (1) parents failed to satisfy the duties of the parent-child relationship, (2) parents are palpably unfit, and (3) parents failed to satisfy their case plans. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5).

Parental duties

A district court may terminate parental rights if it finds that a parent has "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship." *Id.*, subd. 1(b)(2). Parental duties include providing "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." *Id.* The district court must determine that parents are not *presently* able and willing to assume their duties and that the condition will continue for the reasonably foreseeable future. *In re Welfare of J.K.*, 374 N.W.2d 463, 466-67 (Minn. App. 1985), *rev. denied* (Minn. Nov. 25, 1985).

Mother argues that the district court erred when it determined that there was clear and convincing evidence to support any of the grounds for TPR because the district court focused on her past rather than the circumstances leading up to and at the time of trial. For example, mother asserts that her last alcohol use was approximately five months before the conclusion of trial, she completed chemical-dependency treatment, she started therapy, and the last instance of domestic violence between parents occurred over a year before the end of the trial.

But the district court determined that mother's progress was not significant considering the needs of the children. Parents admittedly failed to immediately engage in their case plans, which set them back. Parents' decision to be critical of the department and to avoid working their reunification case plans shows that parents failed to put their children's needs first, which is a failure of parental duties.

The district court noted that mother had been sober for 120 days, but parents had a pattern of a six-month cycle of domestic violence. Mother and father also live together. They exposed their children to violence, as the district court stated, for at least half of the youngest child's life. Parents admitted that the violent episodes are fueled by alcohol. Although parents have shown several months of sobriety, they had not shown an extended period of sobriety. A parent is required to provide safety and protection, and exposure to domestic violence does not meet that requirement.

Father argues that the department failed to prove that he refused or neglected his parental duties because he "continued to work hard and exert effort." For example, he participated in programming and "gained insight on how his substance use impacted his

family." He claims that he has met chemical-dependency-treatment goals, completed all required fatherhood-plan goals, completed domestic-violence therapy, and provided financially for the children.

The district court found that since the children's out-of-home placement in April 2021, father was able to demonstrate improvement. The district court found that father had addressed his chemical use, attended therapy, and completed a domestic-violence course. But the district court concluded that father was unable to demonstrate permanent sobriety, and when he relapsed, he has acted violently. The district court described a specific incident in November 2022 when father relapsed, allegedly drove while intoxicated and allegedly threatened a police officer. Indeed, father claimed that he had been sober for five years at one point before consuming alcohol again that led to violence in the home. Father has been unable to demonstrate consistent control over his substance use and abusive behavior, which is in opposition to his duty as a parent to provide his children a safe and stable environment.

The district court did not abuse its discretion by determining that the department proved by clear and convincing evidence that parents have neglected their parental duties.

Palpably unfit

A district court may terminate parental rights when a parent is

> palpably unfit to be a party to the parent and child relationship because of a consistent pattern . . . of specific conditions directly relating to the parent and child relationship . . . 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.

See Minn. Stat. § 260C.301, subd. 1(b)(4). There must be "a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that appear[s] will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child." *In re Welfare of Child. of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). The specific condition must directly affect the individual's ability to parent. *Id.* at 662.

Mother again argues that the district court erred by focusing on her past rather than her progress and present circumstances. Father concedes that he was charged with an alcohol-related offense in November 2022, and that he consumed alcohol in January 2023, but claims that such incidents "cannot render him palpably unfit, as there is no causal connection between that substance use and [his] inability to care for the children." He also notes that he completed domestic-abuse programming and there are no new allegations of domestic abuse.

The alcohol abuse in this family led to domestic violence. Witnesses testified that all alcohol use by parents had to end in order for the violent conduct to end. The district court outlined the several instances of violence that were documented. It noted that each in isolation was concerning, but taken together over years, showed a consistent pattern of violence. Although father had chemical-dependency treatment and domestic-violence programming and mother had discussed in therapy her role as a domestic-abuse victim, as the district court concluded, not enough time with consistent progress had passed to show that this behavior will not continue. This alcohol-use-leading-to-domestic-violence pattern is a specific condition continuing for a significant period of time, which has prevented

parents from appropriately caring for the needs of the children. *See* Minn. Stat. § 260C.301, subd. 1(b)(4).

The district court did not abuse its discretion by determining that the department proved by clear and convincing evidence that parents are palpably unfit parents.

Reasonable efforts

A statutory basis for TPR exists if "reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child[ren]'s [out-of-home] placement." *Id.*, subd. 1(b)(5). "It is presumed that reasonable efforts . . . have failed upon a showing that:" (1) the children have resided in an out-of-home placement "for a cumulative period of 12 months within the preceding 22 months"; (2) the district court approved the filed case plan; (3) "conditions leading to the out-of-home placement have not been corrected"; and (4) reasonable rehabilitative efforts have been made by the county. *Id.* "[F]ailure to complete the case plan amounts to a failure to correct the conditions leading to out-of-home placement." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012).

Mother "concedes that the children have been in out of home placement for 12 months within the 22 months preceding trial. . . . [and] that the district court approved the out-of-home placement plan." But she argues that she corrected the conditions leading to the children's out-of-home placement. Father argues that even if the children have been in out-of-home placement since April 2021, the department failed to show that the district court approved a case plan after the first TPR order was vacated on September 6, 2022.

The children have been in out-of-home placement since April 26, 2021. As the district court noted in the order terminating father's parental rights, "the children have been placed outside of the home for just shy of two years." Two years is a significant amount of time both for the children to be outside of the home and for parents to make progress on their court-ordered case plans. Father suggests that the district court should have ordered a new case plan when it vacated the first TPR order as it affected father. But father moved for a new trial or for the record to be reopened to present evidence. Father was aware for nearly two years what his case plan entailed and what was required of him to be successful. He did not request an updated case plan and the scope of the district court's order was merely a reopening of the record to take additional evidence; there was no additional burden placed on the department.

Although the district court credited parents' progress, it concluded that they were initially reluctant and avoidant and ultimately were unsuccessful in completing their case plans despite the department's reasonable efforts. The district court found that three bases for TPR existed. Parents' arguments focus on their progress, which the district court credited but found was not significant enough to overcome the risk that placing the children with parents would be unsafe. The record supports the district court's determinations. The district court did not abuse its discretion by determining that the department proved by clear and convincing evidence that reasonable efforts failed to correct the conditions leading to the children's out-of-home placement.

Best interests

Parents argue that the district court erroneously concluded that TPR is in the children's best interests. A district court "must consider the child's best interests and explain why termination is in the best interests of the child." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009); *see* Minn. Stat. § 260C.301, subd. 7 (2022) (requiring a district court to consider the child's best interests). The district court must consider the children's interests and parents' interests in preserving the relationship and "any competing interests of the child[ren]." *J.K.T.*, 814 N.W.2d at 92; *see* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) (requiring a district court's best-interests analysis to address these factors). "[T]he best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7. We review the district court's determination that TPR is in the children's best interests for an abuse of discretion. *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012).

Mother argues that "the district court engaged in a cursory analysis of each of the best interest factors . . . . [and that] several of the district court's findings are clearly erroneous." Mother challenges the district court finding that she has been unable to follow her case plan, claiming that she was in substantial compliance with her case plan. She also challenges the finding that she failed to demonstrate stability, safety, and sobriety because she and father lived peacefully for approximately five months before trial. Father argues that the district court erroneously relied on the GAL indicating that "the children would be happy if adopted." He claims that reunification is suitable because he has taken "ownership

of the past" and the children have recovered from experiencing "parents consuming alcohol and fighting."

The district court considered parents' interests in preserving their relationship with the children. The district court found that parents love their children and want to remain part of their children's lives. But the district court noted that without demonstrated stability, safety, and sobriety, the children cannot safely be returned to parents' care. Specifically as to father, the district court stated that father's love "has not been matched" by his inadequacy in addressing "concerning addictions and behaviors."

The district court found that the children are doing incredibly well in their current placement and want to be adopted by their foster family. The district court concluded that the children deserved to be cared for by parents who can provide for their safety and security.

The district court also considered that "domestic violence has been a backdrop to the [parents'] home, meaning that one-third of [the oldest child]'s life and one-half of [the youngest child]'s life have involved sight or sound of domestic violence or neglect. [Parents] have not fully grasped the impact of domestic violence on the four children." The district court considered that parents did not provide a safe home, which is a basic need of any child. The district court did not abuse its discretion by finding that the children need a safe home, free of domestic violence. With the finding that the children want to be adopted and their competing interest in a safe home, the district court did not abuse its discretion by concluding that the children's best interests are served by the TPR.

Assistance of counsel

Lastly, mother claims that she received ineffective assistance of posttrial counsel. Mother concedes that she is raising this issue for the first time on appeal. As such, we decline to consider it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

But even if we were to consider mother's claim, it would fail on the merits. Mother argues that her posttrial counsel was ineffective for failing to pursue her posttrial motion to vacate the TPR order and to file documents necessary for the district court to consider her motion. But as the district court noted, mother had counsel before trial, decided to proceed pro se at trial, and never complained after trial that she was not permitted to call witnesses or present evidence.

Mother also claims that she showed prejudice because if posttrial counsel had submitted the required documents, it is reasonably probable that she would have been afforded the same opportunity as father to submit evidence into the reopened record. But mother cannot show prejudice when comparing her situation to father because although the district court reopened the record to allow father to submit additional evidence, the result was the same.

Affirmed.