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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0449**

In the Matter of the Welfare of the Children of:
S. B. and J. W. B., Parents.

**Filed October 14, 2008
Affirmed
Worke, Judge**

Hennepin County District Court
File Nos. 27-JV-07-304, 27-JV-06-6547

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Considered and decided by Worke Presiding Judge; Klaphake, Judge; and Peterson, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant-mother challenges the district court's termination of her parental rights, arguing that the evidence does not support the statutory bases upon which the court relied

and that the evidence is insufficient to support the court's conclusion that the termination is in the best interests of the children. We affirm.

FACTS

In 2006, a petition for children in need of protection or services was filed alleging that appellant-mother S.B. and father J.W.B. were chemically dependent and neglecting five-year-old B.B. and three-year-old L.B. Out-of-home placement was ordered for the children, and a case plan was ordered for appellant. The case plan required appellant to complete a chemical dependency assessment and follow the recommendations; not be in possession of, use, or sell illegal drugs from her residence or expose the children to the use or sale of illegal drugs; submit to urinalyses (UAs); undergo a psychological evaluation and follow the recommendations; maintain safe and suitable housing; and attend supervised visits.

In January 2007, a petition for termination of parental rights or transfer of permanent legal and physical custody was filed. Following a trial, the district court found that appellant is chemically dependent on both street drugs—cocaine and heroin—and narcotic prescription drugs—Xanax, Oxycotin, Percocet, and Vicodin; that she engages in drug-seeking behaviors for the prescription medications; that despite numerous rehabilitative services, she has not been able to maintain sobriety and continually relapses; and that she has not complied with her case-plan requirements. The district court concluded that there was clear and convincing evidence that appellant's parental rights be terminated because: (1) she has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent and child

relationship; (2) she is palpably unfit to be a party to the parent and child relationship; (3) following the children's out-of-home placement, reasonable efforts, under the direction of the court, failed to correct the conditions leading to the children's placement; (4) the children are neglected and in foster care; and (5) the termination of appellant's parental rights is in the best interests of the children. Appellant moved for a new trial, which the district court denied. This appeal follows.

D E C I S I O N

“[O]n appeal in a termination of parental rights case, while we carefully review the record, we will not overturn the [district] court's findings of fact unless those findings are clearly erroneous.” *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995). “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). We “closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing.” *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998). “We 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).

Failure to Comply with Parental Duties

Parental rights may be terminated if the parent has substantially, continuously, or repeatedly refused or neglected to comply with her parental duties. Minn. Stat.

§ 260C.301, subd. 1(b)(2) (2006). Parental duties include, but are not limited to, “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, if the parent is physically and financially able.” *Id.*, subd. 1(b)(4). A pattern of persistent conduct likely to continue forms the basis for this statutory ground. *Id.* A parent’s conduct during the course of the child’s out-of-home placement is directly relevant, and the social service agency must provide reasonable efforts, or show the futility of those efforts to correct the conditions forming the basis for the petition. *Id.*, subd. 1(b)(2), (5).

In terminating appellant’s parental rights, the district court first found that “[appellant] does not have the patience or parenting skills to provide consistent, . . . safe care for her special needs children.” Appellant argues that at the time of trial, she had taken substantial, continuous steps to comply with her parental duties. Appellant also argues that she received positive feedback for her efforts at her parenting program, and that her discharge report noted that she was given information and resources “necessary to meet her goals” of reunification, which is directly contrary to the district court’s finding that no time was spent on parenting education or instruction. Further, she argues that it was impossible to fully engage in parenting skills because her children were living with relatives in Kentucky. Appellant also argues that she made remarkable progress after she moved to Ohio, and that the only clear evidence of an impediment to her parenting skills was that she did not receive any assistance or services in arranging for more than one visit per month.

The record contains clear and convincing evidence to support the district court's conclusion that appellant failed to comply with her parental duties. After the children were reunified with appellant in July 2006, Wayside Incarnation House (a transitional housing environment for mothers and their children) staff noted several parenting concerns with appellant, including that she physically disciplined the children numerous times and was overheard being verbally abusive and threatening to the children. Appellant agreed to enter the Reuben Lindh Family Services Rebuilding Appropriate Parenting Program. However, appellant's parenting skills remained deficient. Reuben Lindh closed appellant's case after she indicated that she wanted to move to Ohio to be near the children who were now residing with relatives in Kentucky. In October, appellant requested that her case be reopened because she was staying in Minnesota; however, after failing to attend any scheduled appointments, her case was closed again in November. In April 2007, Reuben Lindh reopened appellant's case for a third time. Appellant attended five meetings before she moved to Ohio. Prior to moving to Ohio, case notes reflect that no time was actually spent on parent education or instruction. Appellant was informed that if she moved to Ohio, the county would be unable to assist her in fulfilling the requirements of her case plan. Appellant also failed to remain consistently sober—as evidenced by repeated relapses and positive UAs—and either failed to comply with other requirements of her case plan or failed to provide proof of compliance.

Based on the record, the district court did not err in determining that clear and convincing evidence existed to terminate appellant's parental rights under Minn. Stat.

§ 260C.301, subd. 1(b)(2). Because this court must only conclude that one statutory ground for the termination of appellant's parental rights was met, we need not address the other grounds. *See id.*, subd. 1(b) (stating only one statutory ground required to terminate parental rights).

Best Interests

Even if there is a statutory basis to terminate a person's parental rights and the county has made reasonable efforts to reunite the parent and child, the child's best interests are the paramount consideration. *Id.*, subd. 7 (2006). Therefore, the district court must also determine that the termination of parental rights is in the child's best interests. A best-interests analysis balances three factors: (1) the child's interest in preserving the parent-child relationship, (2) the parent's interest, and (3) any competing interest of the child. *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004). A child's need for stability, health considerations, and preferences may be competing interests. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). Courts presume that remaining with the natural parent is in a child's best interests. *In re Child of P.T.*, 657 N.W.2d 577, 583 (Minn. App. 2003), *review denied* (Minn. Apr. 15, 2003).

The district court found that it is in the best interests of the children that appellant's parental rights be terminated because (1) despite numerous rehabilitative services, appellant has not eliminated the conditions that led to the children's out-of-home placement, (2) additional rehabilitative services would be futile and would not result in reunification of the children with appellant in the foreseeable future, (3) the

children have not requested contact with appellant and have the expectation that they will remain in the current placement, (4) the children have expressed fear with respect to returning to appellant and ultimately foster care, (5) without permanency, there is a greater possibility of a disrupted placement that would be detrimental to the children, (6) the children have been in continuous foster care for over 17 months and are in need of permanency, and (7) the advantage to the children of terminating appellant's parental rights and being placed for adoption outweighs any detriment to appellant or the children from severing appellant's parental rights. The district court appropriately weighed the best-interests factors in its decision to terminate appellant's parental rights and the substantial evidence supports the district court's conclusion. Therefore, the district court's finding that termination of appellant's parental rights is in the best interests of the children is not clearly erroneous.

Affirmed.