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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A08-0868

A08-0869

A08-0870

In the Matter of the Welfare of the Children of:
A. C. B., f/k/a A. C. M. and Unknown Father, Parents (A08-0868)

In the Matter of the Welfare of the Child of:
A. C. B., f/k/a A. C. M. and F. K., Parents (A08-0869)

In the Matter of the Welfare of the Children of:
A. C. B., f/k/a A. C. M. and L. B., Parents (A08-0870)

Filed November 4, 2008

Affirmed

Bjorkman, Judge

Olmsted County District Court
File No. 55-JV-07-10156

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Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

On appeal from the district court's order terminating her parental rights to four children, appellant argues that the district court's findings with respect to the statutory grounds for termination are not supported by the evidence and are clearly erroneous. Because the record demonstrates that clear and convincing evidence supports the district court's findings, we affirm.

FACTS

Appellant A.C.B. is the mother of five children, four of whom are the subjects of the current action: J.L.M., born July 2, 1999; J.M., born December 16, 2002; A.M., born August 6, 2004; and D.M., born August 10, 2005.

Olmsted County Community Services (OCCS) became involved with this family in 2003 when A.C.B. contacted child protection services after her husband, L.B., assaulted her in front of the children. Between 2003 and October 2006, several other instances of domestic abuse occurred and A.C.B. and L.B. were twice arrested for selling crack cocaine. OCCS filed child-in-need-of-protection-or-services (CHIPS) petitions for the four children on December 11, 2006. The children were adjudicated CHIPS on February 12, 2007.

On October 22, 2007, OCCS filed petitions to terminate A.C.B.'s parental rights as to all four children. The petitions alleged, among other things, that termination of parental rights was warranted because, despite years of case-management services, A.C.B. was unable to demonstrate an ability to meet the children's basic needs, continued

to expose the children to domestic violence and criminal activity, and began serving a 39-month prison sentence in April 2007.

A termination-of-parental-rights trial was held on February 6 and 7, 2008. The district court heard testimony from several witnesses, including: Kelli Kjarland and other OCCS social workers; a psychologist; A.C.B.; former foster care providers; and the guardian ad litem (GAL). The district court ordered termination of A.C.B.'s parental rights based on two statutory grounds: Minn. Stat. § 260C.301, subds. 1(b)(2) (neglected to comply with duties of parent and child relationship), and 1(b)(5) (failure of reasonable efforts to correct the conditions leading to out-of-home placement) (2006).¹ The district court determined that termination was in the children's best interests. This appeal followed.

DECISION

“There is perhaps no more grave matter that comes before the court than the termination of a parent's relationship with a child.” *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). Nonetheless, courts may order involuntary termination of parental rights on the basis of one or more of the nine criteria listed in Minn. Stat.

¹ The district court also terminated A.C.B.'s parental rights to A.M. and D.M. based on Minn. Stat. § 260C.301, subd. 1(b)(8) (children are neglected and in foster care). A.C.B. does not challenge the district court's findings with respect to this ground for termination, and we note that it could therefore serve as a stand-alone basis for affirming termination as to A.M. and D.M. *See In re Welfare of P.R.L.*, 622 N.W.2d 538, 545 (Minn. 2001) (stating that to terminate parental rights, the district court need find the existence of only one statutory basis to terminate parental rights; the reviewing court may affirm the existence of only one statutory basis and decline to address other alleged bases to terminate parental rights).

§ 260C.301, subd. 1(b) (2006). Because a child’s best interests are the paramount consideration in termination-of-parental-rights proceedings, the district court cannot terminate parental rights unless it is in the child’s best interests. *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 149 (Minn. App. 2007), *review denied* (Minn. Mar. 28, 2007).

We review decisions to terminate parental rights to determine whether the district court’s findings address the statutory criteria, whether its findings are supported by substantial evidence, and whether its conclusions are clearly erroneous. *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 the evidence is clear and convincing.” *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). But “[c]onsiderable deference is due to the district court’s decision because a district court is in a superior position to assess the credibility of witnesses.” *L.A.F.*, 554 N.W.2d at 396. We will affirm the district court’s decision to terminate so long as at least one statutory ground is supported by clear and convincing evidence and termination is in the child’s best interests. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

A.C.B. challenges the district court’s findings regarding her compliance with parental duties and the failure of reasonable efforts to correct conditions leading to out-of-home placement. We address each argument in turn.

I. Failure to comply with parental duties

Parental rights may be terminated if 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 . . . and reasonable efforts . . . have failed to correct the conditions [leading to] the petition.” Minn. Stat. § 260C.301, subd. 1(b)(2). Here, the district court found that

[A.C.B.’s] choice to engage in the criminal activity of illegal sales of controlled substances has resulted in her being unavailable to parent and care for her children. Just as importantly, by continuing to engage in the criminal activity of illegal sales of controlled substances when the children were in her care, [A.C.B.] continually placed her children in a dangerous environment by exposing them to the myriad dangers associated with illegal drug trafficking. . . . Protecting children is a fundamental duty of a parent and inherent in caring for children.

. . . The decision to engage in illegal drug sales has also directly impacted her ability to provide shelter for the children as it negatively impacts her ability to obtain employment, provide stable housing, and maintain a meaningful relationship with [her] children.

A.C.B. first challenges this finding because both she and Kjarland testified that no drug sales took place in the family’s home. A.C.B. further contends that her decision to sell drugs was due to her abusive relationship with L.B. She asserts that because she recently initiated divorce proceedings and has no desire to engage in future criminal activity, there is no risk that she will return to selling drugs.

But we conclude the record supports the district court’s finding with respect to the dangerous and unstable environment that A.C.B. created for her children by selling drugs. A.C.B. acknowledged at trial that selling drugs placed her children in a dangerous environment whether or not the actual sales took place in the family’s home or in the children’s presence. She conceded that selling drugs was harmful to her children because

it took her away from them, created circumstances under which “[she] could have been hurt or killed,” and resulted in having the family’s home raided by police on numerous occasions.

Kjarland testified that after A.C.B. was arrested in April 2006, “[A.C.B.] seemed to have an understanding of why [selling drugs] would put the kids at risk,” but denied engaging in any subsequent criminal activity that would put her children in harm’s way. Despite her repeated denials, the record demonstrates A.C.B. continued to sell drugs. Moreover, Kjarland testified that after A.C.B. was arrested in October 2006, OCCS had “more concerns of violence within the home that may have been directed or connected to the criminal activity.” The district court’s finding is supported by clear and convincing evidence.

A.C.B. next challenges the district court’s finding that she struggled with parenting and was not attentive to her children’s emotional or developmental needs. The district court specifically found that “[A.C.B.’s] lack of understanding the emotional needs of her children was identified and expressed by nearly every person with whom she worked.” A.C.B. contends that there was also testimony that she was affectionate when approached by the children and that they had an emotional connection to her.

Although the record reflects that A.C.B. loves her children, and that the children have an emotional attachment to her, the district court’s finding is nonetheless supported by the record. The record contains clear and convincing evidence of A.C.B.’s inability to meet her children’s emotional and physical needs. The children have experienced significant instability and uncertainty throughout their young lives. The family has

moved frequently, A.C.B. has trouble maintaining employment, the children have been exposed to many different care takers and have exhibited special needs and symptoms of instability. The district court did not question A.C.B.'s love of her children, but rather noted that the "constant chaos in [the children's lives] created by [A.C.B.] has greatly and negatively affected the [children's] emotional and physical development."

II. Failure to correct conditions leading to out-of-home placement

The district court may terminate parental rights when: "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). Reasonable efforts are presumed to have failed upon a showing that

a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan.

Id., subd. 1(b)(5)(i). "It is [also] presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan." *Id.*, subd. 1(b)(5)(iii).

Here, the district court found the statutory presumptions apply because the children were under the age of eight when the CHIPS petition was filed and had lived

outside of A.C.B.'s home for more than six months. The district court also determined that A.C.B. had not complied with the out-of-home placement plan.

A.C.B. does not explicitly challenge the district court's application of the presumptions, but argues that her incarceration made compliance with the case plan difficult. A parent's incarceration alone is not enough to warrant termination of parental rights, although it may be considered in conjunction with other evidence supporting termination. *See In re Children of Wildey*, 669 N.W.2d 408, 413 (Minn. App. 2003) ("Case plans for inmates can and have been formed for a long time in Minnesota."), *aff'd, modified sub nom., In re Welfare of Children of R.W.*, 678 N.W.2d 49 (Minn. 2004). A.C.B. asserts that the district court's finding on this issue was clearly erroneous because it failed to take into account the difficulty and impracticality of completing her case plan while incarcerated.

But the district court did not base its finding regarding A.C.B.'s failure to comply with her case plan solely on her incarceration. The district court stated that "at the time [A.C.B.] was imprisoned, four months had passed since the children had been formally placed in foster care by order of this Court and [A.C.B.] had made no significant progress on the Court-ordered out-of-home-placement plans." The district court found that prior to her incarceration, A.C.B. "was provided with ample opportunity to make an effort to reunite." This finding is supported by testimony in the record that during the four-month period prior to A.C.B.'s incarceration, A.C.B. was offered "the opportunity to see the children five days a week if she could," but that on average she would miss one or more visits a week. As the date of her incarceration neared, "she sometimes missed two to

three visits a week.” She failed to visit despite the fact that OCCS offered gas and food vouchers so that A.C.B. could transport herself and feed the children during the visits.

When A.C.B. did visit her children, she struggled with consistency and being attentive to the children’s needs and schedules. She failed to comply with her parenting education requirement and did not attend J.L.M.’s educational meetings. She did not attend D.M.’s medical appointments. The record also reflects that A.C.B. was not able to maintain housing or employment during this period.

A.C.B.’s failure to make substantial progress on her case plan is not limited to the months leading up to her prison term. OCCS has provided services to A.C.B. since 2003. Services have included: child and family domestic violence case management services; alternative response case management services; foster care; emergency foster respite care; public health nursing for parenting; child protective financial assistance for rent, gas, car repair, clothing, car seats, and diapers; the “LINK” program; psychological and counseling services for A.C.B.; psychological evaluations for J.M. and J.L.M.; “Work Force Center” coordination for employment; “Steps to Success” parent education; MFIP financial assistance; food stamps and Channel One food bank; the Salvation Army; and visitation opportunities with the children. None of these services corrected the conditions that necessitated the out-of-home placement.

A.C.B. further argues that the circumstances that prevented her from complying with the court ordered case plan—namely her incarceration—have changed and that she has developed a support plan within the community upon her release from prison. She points to her divorce proceedings as evidence the children will no longer be exposed to

domestic violence. The district court acknowledged A.C.B.'s good intentions and the testimony of the children's former foster parents concerning the support they intend to provide to A.C.B. upon her release from prison. But the district court also noted A.C.B.'s post-release plans "are not necessarily different than the support and services she received prior to incarceration," which had not addressed the child protection issues. Clear and convincing evidence supports the district court's finding that OCCS's reasonable efforts have failed to correct the conditions leading to the children's out-of-home placement.

We do not question A.C.B.'s love for her children or the sincerity of her desire to properly care for them. Her recent efforts to address issues that have prevented her from being an effective parent and to establish a support network are commendable. But she has only begun this journey, and its outcome is uncertain. It is not a journey her young children may take; their needs for a permanent, stable home environment are too great.

Affirmed.