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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1718, A09-1719**

In the Matter of the Welfare of the Children of:
K. M. C., T. R. S. and D. C., Parents.

**Filed March 2, 2010
Affirmed
Shumaker, Judge**

Crow Wing County District Court
File Nos. 18-JV-08-7305, 18-JV-07-3848

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

UNPUBLISHED OPINION

SHUMAKER, Judge

In this consolidated appeal, appellants individually contend that there was not sufficient evidence to support the district court's termination of their respective parental rights. Because we conclude that the district court's findings address the statutory criteria, are supported by substantial evidence, and are not clearly erroneous, we affirm.

FACTS

This is a consolidated appeal challenging the district court's termination of the parental rights of appellant-father T.R.S. and appellant-mother K.M.C. to their three children, and transfer of legal custody of the child of K.M.C. and D.C. to a relative. T.R.S. is the father of C.J.S., born May 28, 1998, S.S.S., born February 16, 2001, and K.K.S., born May 24, 2007. K.M.C. is the mother of J.S.C., born November 8, 1992, C.J.S., S.S.S., and K.K.S. D.C. is the father of J.S.C., but does not have any custodial rights and failed to participate in these proceedings.

Respondent Crow Wing County received reports alleging that K.M.C. and T.R.S. maintained filthy and unsafe conditions in their home in 1998 and in 2003. After the 2003 report, law enforcement placed the children in a 72-hour protective hold. In 2007, K.M.C. petitioned the district court for an order for protection (OFP) against T.R.S., on behalf of herself and the children. The district court granted a temporary OFP on the same date.

On July 27, 2007, the district court granted an OFP. Despite the order, T.R.S. had numerous unsupervised contacts with the children. On July 30, 2007, the county received

a mandated report concerning a head injury sustained by K.K.S., who was then approximately two months old. Based on concerns about the well-being of the children, the county designed a voluntary case plan, which K.M.C. refused to sign.

The county filed a child-in-need-of-protective-services (CHIPS) petition on October 15, 2007, alleging that the four children were without proper parental care because of K.M.C.'s mental instability and T.R.S.'s severe alcoholism, resulting in a condition or environment injurious or dangerous to the children. The matter came before the district court on November 7, 2007, without an appearance by T.R.S. K.M.C. denied the allegations of the petition. The district court granted to social services protective supervision of the children and ordered K.M.C. and T.R.S. to comply with several requirements, which are noted in the analysis below. The county social worker was unable to contact T.R.S. after the hearing on November 7, 2007, and T.R.S. did not contact the county until spring of 2008.

On February 11, 2008, the county requested that the children be placed in foster care based on T.R.S. entering the family residence on February 8, 2008; the county's concerns regarding T.R.S.'s chemical abuse and domestic violence; and the county's inability to verify the safety of the children. The district court also issued an order for the county to have immediate custody of the children on February 11, 2007. The matter came before the district court on February 15, 2008, for an emergency protective-care hearing. At the hearing, K.M.C. admitted the allegations in the CHIPS petition that she had previously denied. J.S.C. was allowed to reside with K.M.C., subject to the county's

protective supervision. The district court ordered placement of C.J.S., S.S.S., and K.K.S. in foster care.

On April 23, 2008, the district court issued an order adjudicating the children as CHIPS, and adopting the out-of-home placement plans and child-protective-services plans filed with the court. The district court ordered C.J.S., S.S.S., and K.K.S. to remain in foster care, but it allowed J.S.C. to remain with K.M.C. under the county's protective supervision.

On June 10, 2008, the county reported to the district court at a review hearing that K.M.C.'s home was filthy, that T.R.S. was living at the residence, and that K.M.C. planned to marry T.R.S. At the review hearing, the district court placed J.S.C. in foster care with relatives, with whom all four children were eventually placed.

On August 14, 2008, the district court held a permanency review hearing, at which the county argued that neither K.M.C. nor T.R.S. had complied with their case plans. The county moved to cease reasonable efforts at reunification with respect to T.R.S. because of "his complete lack of effort to reunify with his children and any efforts to work with [social services] to obtain that goal." The district court released the county from any further efforts to reunify T.R.S. with the children.

On November 24, 2008, the county filed a petition which requested that the parental rights of K.M.C. and T.R.S. be terminated as to C.J.S., S.S.S., and K.K.S.; and that physical and legal custody of J.S.C. be transferred permanently to the relatives who were acting as care providers. The petition alleged that T.R.S. had not provided enough information that would suggest he made progress in addressing areas of concern under

the case plan. The petition also alleged that K.M.C. had not made substantial progress in her case plan, despite her participation in offered services.

In July and August of 2009, the district court held a trial on the TPR petition. The district court made extensive findings based on its previous orders, documentation filed with the petition, and evidence adduced at the trial. The district court ordered the termination of the parental rights of both T.R.S. and K.M.C. on four separate grounds: (i) failure to comply with the duties of the parent-child relationship under section 260C.301, subdivision 1(b)(2) (2008); (ii) palpable unfitness under subdivision 1(b)(4) (2008); (iii) failure of reasonable efforts to correct the conditions leading to the out-of-home placement under subdivision 1(b)(5) (2008); and (iv) the children being neglected and in foster care under subdivision 1(b)(8) (2008). The district court also ordered that permanent physical and legal custody of J.S.C. be transferred to relatives. The district court concluded, however, that given J.S.C.'s desire to remain with K.M.C. and his age, termination of K.M.C.'s parental rights as to J.S.C. would not serve his best interests. The matter proceeded by default as to D.C., who did not appear for the trial. T.R.S. and K.M.C. appeal, challenging the district court's conclusions.

D E C I S I O N

This court reviews termination of parental rights to determine “whether the trial court’s findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether those findings are clearly erroneous.” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). The sufficiency of the evidence must be closely examined to determine whether it was clear and convincing. *In re Children of*

T.A.A., 702 N.W.2d 703, 708 (Minn. 2005). “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). The paramount consideration is the best interests of the child, and these interests are balanced against parental rights. *M.D.O.*, 462 N.W.2d at 378. We affirm the district court’s decision if “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 Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted).

The district court held that the county has met four of the statutory grounds for termination. Because there only needs to be clear and convincing evidence supporting one of the grounds to affirm the termination of T.R.S.’s and K.M.C.’s parental rights, we discuss only one ground for each parent.

I.

T.R.S. argues that there was insufficient evidence to terminate his parental rights based on palpable unfitness to be a party to the parent and child relationship. The applicable law provides that the district court can terminate parental rights if it finds

that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of 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.

Minn. Stat. § 260C.301, subd. 1(b)(4).

In the order terminating T.R.S.'s parental rights, the district court concluded that T.R.S. is

palpably unfit because he has unresolved problems with alcoholism and domestic violence that have directly harmed the children; the children have been witness to violence perpetrated by [T.R.S.] against [K.M.C.]; the children have been victims of [T.R.S.'s] violence; and the children have experienced long-term neglect resulting in lack of food, frequent moves, poor school attendance, and filthy living conditions, caused by [T.R.S.'s] alcohol abuse.

T.R.S. argues that “the county failed to establish that T.R.S.’s conduct at the time of the hearing was abusive or that his condition would last for a prolonged period of time.”

The record shows a consistent pattern of T.R.S.’s unfit parenting. In 1998, social services received a report of allegations of filthy living conditions in the home of T.R.S. and K.M.C. Social services later worked with T.R.S. and K.M.C. in 2002 and 2003, as they were nearing the end of their eligibility to receive MFIP benefits. On April 3, 2003, social services again received a report regarding filthy and unsafe living conditions at the home of T.R.S. and K.M.C. The children were placed on a 72-hour protective hold by law enforcement based on T.R.S. and K.M.C. being placed in custody, as well as the conditions of the home. The home, based upon an inspection, was deemed unfit and unsafe for habitation.

On July 20, 2007, K.M.C. petitioned the court for an OFP against T.R.S. on behalf of herself and her children. She alleged that T.R.S.’s alcohol consumption had escalated and that he had almost fallen on his two-month-old child when he was drunk.

Additionally, she alleged that T.R.S. drank to the point of blackouts, was intoxicated on a daily basis, was abusive to her in the presence of the children, used limited family finances to purchase liquor, and made threats against and used fear tactics toward their six-year-old child. Even though a temporary OFP was granted on July 20, 2007, T.R.S. was present at the residence on July 23, 2007, when a social worker went there. T.R.S. was arrested for violating the temporary OFP, and he was drunk at this time.

On July 27, 2007, following a hearing where both parents were present, an OFP was granted. The order required T.R.S. to visit with the minor children at a safety center, complete an anger-management program, complete parenting classes, complete a rule 25 chemical-use assessment, and complete chemical-dependency treatment. T.R.S. violated the OFP by frequently staying overnight at the residence and by failing to complete the programs specified in the order.

At the November 7, 2007 hearing, the district court granted to social services protective supervision of the minor children and ordered K.M.C. and T.R.S. to comply with specific provisions. T.R.S. was ordered to complete a parenting/psychological assessment, complete a rule 25 chemical-use assessment, abstain from using alcohol and controlled substances, and comply with random drug-screen testing. Despite several attempts, social services was unable to locate T.R.S following the hearing.

On April 23, 2008, when the district court issued an order adjudicating the children as CHIPS, the court adopted the out-of-home placement plans and child-protective-services plans that had been filed. T.R.S. finally contacted social services in the spring of 2008 and signed a case plan on July 24, 2008, which required that T.R.S.

(1) abstain from the use of alcohol or mood-altering substances and submit to random drug testing; (2) complete a parenting/psychological assessment; (3) complete a chemical-use assessment; (4) obtain and maintain employment; (5) obtain and maintain independent housing that is free from violence, drug and alcohol use, and is safe for a child to reside; and (6) refrain from having visitation with the minor children until his progress is evaluated.

The district court acknowledged that T.R.S. voluntarily entered an in-patient chemical-dependency treatment program and successfully completed the in-patient portion. However, T.R.S. failed to follow the after-care plan in any manner, and his prognosis was fair to poor at the time of his in-patient discharge. T.R.S. was discharged from the out-patient portion of the treatment program 17 days after his completion of the in-patient treatment because he failed to follow the program outlined. T.R.S. was charged with driving while intoxicated on November 30, 2008, when he was found passed out in a vehicle. He continued to use alcohol and frequently refused to complete UA testing. Because T.R.S. failed to abstain from the use of alcohol, he was unable to complete a parenting/psychological assessment, as he needed to be free from mood-altering substances.

In addition to his continued consumption of alcohol, T.R.S. did not maintain steady employment, but rather had been working on an as-needed basis, and had no steady income. T.R.S. failed to obtain independent housing, and was homeless for a substantial amount of time. At various times, T.R.S. was incarcerated or resided with friends, family, or K.M.C.

T.R.S. had no contact with the children after their placement in foster care in February 2008. Because of the concerns associated with reintegrating T.R.S. into the children's lives, social services suggested that T.R.S. begin by writing letters and cards to the children. T.R.S. made no attempt to write to the children and begin the process of re-establishing contact.

The record provides clear and convincing evidence to support the finding that T.R.S.'s destructive lifestyle has been ongoing for several years, despite the county's extensive efforts to help him. Therefore, the district court did not err in terminating T.R.S.'s parental rights on the basis that he refuses to make any honest efforts to change his lifestyle, one of the precludes to fit parenting of minor children. Moreover, based on the evidence in the record, the district court did not err in finding that T.R.S.'s lifestyle will likely continue for the foreseeable future, making T.R.S. an unfit parent under section 260C.301, subdivision 1(b)(4).

In addition to the clear showing that T.R.S. meets the criteria for termination under subdivision 1(b)(4), the record demonstrates that terminating T.R.S.'s parental rights is in the best interests of the children. Because T.R.S. was a violent alcoholic who failed to maintain steady employment or a safe, clean home, the district court did not err in concluding that it is in the children's best interests that T.R.S.'s parental rights be terminated so that the children are no longer exposed to his destructive and potentially dangerous behavior.

II.

K.M.C. argues that the district court's findings are not supported by clear and convincing evidence, and, therefore, the involuntary termination of her parental rights and the involuntary transfer of custody were improper. The district court can terminate parental rights in the event 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). It is presumed that reasonable efforts have failed upon a showing that (i) "a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months"; (ii) "the court has approved the out-of-home placement plan"; (iii) "conditions leading to the out-of-home placement have not been corrected," which is presumed "upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan"; and (iv) "reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family." *Id.*

K.M.C. contends that the county failed to prove by clear and convincing evidence that reasonable efforts have failed to correct the conditions leading to the children's out-of-home placement. K.M.C. contends that the termination of T.R.S.'s parental rights and the fact that he is no longer residing with her substantially correct many of the conditions that led to the out-of-home placement of the children. However, there is abundant evidence in the record to establish that K.M.C. has failed to correct the conditions that led to the children's placement, despite extensive efforts on her behalf by the county.

On November 7, 2007, the district court ordered K.M.C. to complete parenting/psychological evaluations and follow the recommendations; to maintain a clean, safe, and stable home and comply with random house checks; to receive in-home counseling services; and to sign all necessary authorizations for release of information. K.M.C. cancelled two appointments that were set up for her to get a parenting/psychological assessment. Social services unsuccessfully attempted to contact K.M.C. several times by telephone and in person following the November 7, 2007 hearing to determine K.M.C.'s progress. On January 15, 2008, K.M.C. allowed social services into her home. She admitted that she allowed T.R.S. to come into her home when the older children were at school, in violation of the court's order.

On April 23, 2008, when the district court issued an order adjudicating the children as CHIPS, the court ordered K.M.C. to comply with several provisions, including participation in in-home counseling; attendance at every scheduled appointment unless excused by social services; maintenance of a clean and safe home; allowance of scheduled and unannounced visits with the social worker and service providers; assurance that she is available by phone at all times; cooperation with a family-based service provider to learn nutrition, budgeting, and homemaking skills; attendance at the Domestic Violence Support Group; obtain and maintain employment; attendance at weekly Al-Anon meetings; successful completion of the ParentWorks program; participation in individual therapy; completion of a psychiatric evaluation to determine if medication is appropriate to address anxiety symptoms; and adherence to the guidelines outlined in the visitation contract.

A review hearing was held on June 10, 2008, at which social services reported that it had observed filthy living conditions in K.M.C.'s home and that T.R.S. was living at the home. The court placed J.S.C. in relative foster care and again ordered K.M.C. to comply with the provisions that were stated in the April 23, 2008 order.

K.M.C. argues that she substantially complied with these orders and, as a result, has corrected the conditions that led to the children's placement in foster care. However, there is sufficient evidence in the record to support the district court's decision that K.M.C. did not substantially comply with the orders or change the conditions that led to the children's placement in foster care. The conditions that led to the children's placement in foster care and K.M.C.'s progress are discussed below.

First, K.M.C. contends that she participated in in-home counseling as ordered. Although this is true, K.M.C. was only cooperative after her children were placed in out-of-home care. Also, it was reported by an in-home skills provider that K.M.C. repeatedly denied having contact with T.R.S., and K.M.C. was resistant to many of the provider's efforts to assist her.

Second, K.M.C. alleges that she has substantially complied with the terms of maintaining a safe, stable, and clean home as ordered. However, the record indicates otherwise. Despite the district court's order that K.M.C. have no contact with T.R.S., K.M.C. allowed T.R.S. to reside in the family residence after the April 18, 2008 disposition hearing. On June 17, 2008, K.M.C. was evicted from her home. When the landlord inspected the home after K.M.C. was evicted, she found that animal feces were in the children's clothing, the cats had defecated in the kitchen and bathroom cupboards,

and there were numerous holes in the walls. K.M.C. admitted in June 2008 that T.R.S. was living with her and J.S.C. prior to J.S.C. being removed from the home. K.M.C. was homeless from July 2008, when she left a shelter, until August 27, 2008. In August 2008, K.M.C. reported to social services that she obtained housing independent of T.R.S. However, in actuality, T.R.S. signed the lease with K.M.C., and they held themselves out to the landlord as husband and wife. K.M.C. was evicted from that residence on May 21, 2009. Immediately after the eviction, K.M.C. requested that the OFP in place against T.R.S. be dismissed. K.M.C. testified that she contacts T.R.S. only out of necessity for things such as help with moving, needing to talk about the children, or simply needing to talk to someone she felt was not judgmental. K.M.C. was homeless again from May 21, 2009, until July 1, 2009. Based on the record, it is clear that K.M.C. has failed to maintain a safe, clean home for her children.

Third, K.M.C. contends that she attended the specified domestic-abuse support group. However, K.M.C. was ultimately asked to leave the group because of her attitude and lack of progress. She displayed negative behaviors and demonstrated no insight into domestically violent relationships and the impact her relationship with T.R.S. was having on the children. K.M.C. refused an offer of one-on-one services to address the same issues that were addressed in the group sessions. K.M.C. then requested that she substitute a different program to address issues of domestic violence in her home. Social services agreed to amend her case plan. K.M.C. testified that she had successfully detached herself from T.R.S.; therefore she felt it was acceptable for her to have contact with him. K.M.C. fails to acknowledge that she will be unable to maintain a healthy

relationship with T.R.S. until he gets help with his alcoholism and she with her mental health issues; and she continued to see T.R.S. on her own terms, ignoring court orders.

Fourth, it is not disputed that K.M.C. has obtained and maintained steady employment as ordered.

Fifth, because of the anonymous nature of Al-Anon, it is not possible to independently verify K.M.C.'s claim that she attended. However, the record indicates that, even if she was going to Al-Anon, she did not benefit from such attendance.

Sixth, K.M.C. attended ParentWorks as required by her case plan. The intent of the ParentWorks program is to assist parents in taking responsibility for a child's placement in foster care to prevent repeated patterns of behavior. Although the record indicates that K.M.C. attended ParentWorks, it also indicates that K.M.C. was unable to successfully complete the program after 17 months, even though parents typically complete the program in 7 or 8 months. K.M.C. failed to follow the directives of the group or to meet her specified requirements, and consequently was discharged in July 2009.

After a conflict with a ParentWorks participant was discovered, K.M.C. was offered individual therapy. She was ultimately terminated from individual therapy because of missed appointments. She then began individual therapy with a licensed psychologist. However, she reported untruthfully to the psychologist that she no longer had contact with T.R.S. and, therefore, her domestic-violence problems were resolved. The psychologist testified that he might have implemented a different treatment plan for

K.M.C. if she had been honest and that therapy is only effective and worthwhile if a patient is truthful with their therapist.

Seventh, although K.M.C. completed a parenting/psychological assessment, the assessment concluded that K.M.C.'s personality disorder causes her to become overly preoccupied with approval from others and, as a result, she puts herself and her children in harmful situations. This is a critical aspect of K.M.C.'s parenting as it influences how she views and handles problematic situations. K.M.C failed to take medication for her mental health issues unless it "would look good," and she refused to complete the IQ portion of the assessment, despite the social worker indicating that it would be helpful.

Lastly, although K.M.C. made regular visits with the children while they were in foster care, she had to be closely monitored by a family-based services worker because she repeatedly made inappropriate statements to the children regarding the ongoing case.

In sum, there is sufficient evidence in the record to support the district court's decision that, although K.M.C. participated in various programs and followed some court orders, she failed to put forth the effort to correct the conditions that led to the children's placement out of the home. The record establishes that K.M.C. has failed to acknowledge that T.R.S.'s behavior is destructive and dangerous for her children, and she has failed to maintain a safe, clean home. Therefore, the district court did not err in concluding that K.M.C. has failed to correct the conditions that led to the children's out-of-home placement, a statutory ground for termination of parental rights. *See* Minn. Stat. § 260C.301, subd. 1(b)(5) (iii).

In addition to the clear showing that K.M.C. has failed to correct the conditions that led to the children's placement out of the home, the record further demonstrates that the termination of K.M.C.'s parental rights is in the best interests of the children. K.M.C. has failed to take responsibility for her actions or to benefit from the services offered by the county, and she continues to put her own needs ahead of those of her children. Moreover, K.M.C. has failed to recognize the negative impact that her relationship with T.R.S. has had on the children, and she has failed to obtain and maintain a safe, clean home in which the children could live. As a result, the district court did not err in finding that it would not be in the best interests of the children to return them to an environment that is unsafe and unstable.

Affirmed.