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**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-1333**

In the Matter of the Welfare of the Children of:
J. L. L., J. D. U., and M. E. S., Parents

**Filed December 15, 2014
Affirmed
Worke, Judge**

St. Louis County District Court
File Nos. 69DU-JV-13-419, 69-FO-02-650142,
69DU-JV-13-1188, 69DU-JV-14-79

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Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant-mother challenges the termination of her parental rights (TPR). We affirm.

FACTS

On April 23, 2013, respondent St. Louis County filed a Child in Need of Protection or Services (CHIPS) petition involving four children—S.M.L. then 16 years

old, M.L.L. then 11 years old, J.B.L. then six years old, and P.J.L. then four years old—who were moved to out-of-home placement. Appellant J.L.L. is the children’s mother.¹

The petition provided that the children were victims of physical abuse; were without necessary food, clothing, shelter, education, or required care for their health; were without proper parental care because of the emotional, mental, or physical disability of J.L.L.; and were living in an injurious or dangerous environment. These allegations were based on (1) S.M.L. having many absences from school, poor grades, and truancy issues; (2) a report that J.L.L. was using synthetic drugs and was seen punching J.B.L. in the side of the head; (3) J.L.L. reporting that she was facing eviction; (4) J.L.L. smoking synthetics “24/7” and leaving S.M.L. to care for the younger children; (5) S.M.L. reporting that J.L.L. was “going nuts” and crying and yelling all the time; (6) the children being placed in foster care; and (7) J.L.L. behaving erratically and irrationally at a supervised visit.

J.L.L. denied the allegations in the petition and a pretrial hearing was scheduled. A social-services report created for the pretrial indicated that J.L.L. was late to or missed scheduled visitation. Her visits and phone contact were canceled until J.L.L. agreed to work on her reunification plan, which included: (1) work cooperatively with social services, (2) complete a rule-25 assessment, (3) demonstrate sobriety by submitting to random urinalysis tests (UAs), (4) complete a psychological evaluation and follow recommendations, (5) attend visits on time and demonstrate appropriate parenting,

¹ S.M.L. and M.L.L. share a father, and J.B.L. and P.J.L. share a father. The fathers have had their parental rights terminated; neither is challenging the TPR in this appeal.

(6) discuss only age-appropriate matters during visits, and (7) comply with rules and conditions of her probation. J.L.L. declined to follow the plan. The report noted that J.L.L. “may not be interested in reunifying with her children . . . and may want them to be placed with relatives permanently with the hope she would be able to reunify at a later date.”

On July 25, 2013, J.L.L. entered a “limited admission.” J.L.L. admitted that the children are CHIPS because she was the victim of domestic abuse at the hands of S.M.L. and that she was unable to care for S.M.L. because of S.M.L.’s mental-health issues. J.L.L. agreed to work on her plan except she did not agree to complete a rule-25 assessment or submit to random UAs. The district court adjudicated the children CHIPS and ordered J.L.L. to complete every component of the plan.

Social worker Katie Bates created a report for a hearing on August 21. Bates noted that J.L.L. visited her three youngest children² and cooperated with social services, but failed to work on any other aspect of her plan. Following the hearing, the district court found that J.L.L. continued her synthetic drug use and failed to submit to random UAs or complete a rule-25 assessment. The district court continued the children’s out-of-home placement and scheduled a hearing for November 13, 2013.

Bates created a report for the November 13 hearing indicating no progress since her last report. Visit summaries noted that on August 21 J.L.L. stayed on the couch for most of the visit, she failed to arrive for a visit on August 28, she showed up a half-hour late for a visit on September 11, and she canceled a visit on November 1. Between

² S.M.L. was not interested in visiting with J.L.L.

August 24 and November 6, 2013, J.L.L. was scheduled for 22 UAs but was a no-show for each test.

Prior to the November 13 hearing, J.L.L. completed her psychological evaluation. The psychological assessment indicated that J.L.L. was currently living in a condemned home. The assessment also indicated that J.L.L. was using illegal synthetics daily until March 2013, and reported using marijuana two to three times a week until the summer of 2013. J.L.L. blamed S.M.L. for her involvement with child protective services. The report concluded that J.L.L. made very little progress on her plan. J.L.L.'s behavior was described as "erratic and her mood as extremely labile." J.L.L. was described as having a "long history of substance dependence," which she refused to address. J.L.L. was noted as having a "lengthy history of using lying and denial to attempt to escape problems" and that she "showed absolutely no insight into how her current behaviors in visitation are upsetting to and damaging for her children." The report summarized J.L.L. as having "very little stability in her own life; she has no safe residence, no source of income, and no realistic plan to remedy either situation."

Bates created a report for a January 8, 2014 hearing. Bates noted that J.L.L. stopped visits two months ago and failed to submit to any random UAs.³ Bates concluded that J.L.L. was not working any piece of her plan and that there was no reason to extend a permanent outcome. J.L.L. failed to appear at the January 8 hearing. On January 29, 2014, the county filed a TPR petition.

³ Between November 10 and December 26, 2013, J.L.L. was a no-show to 15 UAs.

Bates created a report for a hearing on February 5. Bates noted that J.L.L. had not seen the children in three months. Between December 12, 2013, and January 21, 2014, J.L.L. was again a no-show to UAs. However, she tested negative twice at the end of January and the beginning of February. At the hearing, J.L.L. entered a denial to the permanency petitions. The court found that J.L.L. completed the rule-25 assessment, which recommended 75 hours of outpatient treatment. The district court continued the children's out-of-home placement and scheduled a pretrial hearing for March 5, 2014.

Bates created a report for the March 5 pretrial. Bates noted that J.L.L. began progress on her plan, but was inconsistent. Between February 6 and 24, 2014, J.L.L. had seven UAs: four were negative, one was positive, one required further testing, and one date she was a no-show. J.L.L. did not appear for the pretrial because her vehicle broke down. The county moved to proceed by default, but the district court continued the pretrial to April 2, 2014.

Bates created a report for the April 2 pretrial. Bates noted that supervised visits were suspended because J.L.L. had a bench warrant. Bates stated that J.L.L. was still struggling with her plan. Between March 6 and 21, 2014, J.L.L. had six scheduled UAs: three were positive, one required further testing, and she was a no-show on two dates.⁴ J.L.L. failed to appear at the pretrial. She had been in the courthouse but left after learning of an outstanding warrant. The county moved to proceed by default, but the district court continued the pretrial to April 28, 2014, at 9:00 a.m.

⁴ Between April 2 and 20, 2014, J.L.L. had six scheduled UAs: two were positive, one required further testing, and she was a no-show on three dates.

On April 28, 2014, J.L.L. failed to appear. Her attorney stated that she knew about the hearing and that he had expected her to appear. The two youngest children's father appeared at this hearing. The county moved to proceed by default. The district court set a trial date for the children's father and proceeded by default, stating: "I've given [J.L.L.] every chance that I possibly can here to appear and defend on these [matters]." Bates testified that the TPR petition was true and accurate, that J.L.L. worked very little of her plan, and that it was in the children's best interests to terminate parental rights. The district court granted the TPR petition.

On April 30, 2014, the district court held a hearing regarding the father of the two youngest children.⁵ J.L.L. appeared with her attorney. The court stated that on April 28, the matter went on the record at approximately 9:20 a.m. and concluded at approximately 9:40 a.m. Around 10:00 a.m., the court was informed that J.L.L. requested a hearing, but everyone had departed. The district court instructed J.L.L. to contact her attorney.

J.L.L.'s attorney stated that J.L.L. had been in the building at the time of the hearing, but "might have ducked away to use one of the computers." J.L.L. requested that the district court rescind the default order. The county objected and the children's guardian ad litem (GAL) agreed that the children needed permanency. The district court stated that after "continuing pretrials over and over and over again [] at this point . . . [it] is up to the Court of Appeals."

⁵ The father failed to appear and the court proceeded in default.

On July 11, 2014, the district court issued orders terminating J.L.L.'s parental rights.⁶ The district court found that based on the testimony, documents, and evidence presented the county proved by clear and convincing evidence that J.L.L.'s parental rights should be terminated. The court concluded that (1) J.L.L. substantially, continuously, or repeatedly refused or neglected to comply with parental duties; (2) J.L.L. is palpably unfit to be a party to the parent and child relationship; (3) reasonable efforts failed to correct the conditions that led to the children's out-of-home placement; and (4) the children are neglected and in foster care. J.L.L. appealed from the district court's TPR order.

DECISION

On direct appeal from a default judgment,⁷ this court's "review is limited . . . to whether the evidence on record supports the findings of fact and whether the findings

⁶ The district court transferred permanent legal and physical custody of S.M.L. to a relative, but J.L.L. does not challenge that order.

⁷ J.L.L. frames the issue as whether the district court should have vacated the default judgment. But J.L.L. did not move to vacate the default judgment and her oral request was inadequate. *See* Minn. R. Juv. Prot. P. 15.01, subds. 2, 3 (stating that a motion must be in writing unless the district court permits an oral motion). J.L.L. filed her appeal from the district court's TPR order. We note, however, that had J.L.L. properly challenged the default judgment, she failed to show that it should be vacated. J.L.L. offers no defense on the merits despite the children's prolonged out-of-home placement and knowledge of her reunification plan, had no reasonable excuse for being an hour late for the pretrial, and fails to show that the children will not be prejudiced. *See In re Welfare of Children of Coats*, 633 N.W.2d 505, 510 (Minn. 2001) (stating that a party seeking to vacate a default judgment must show a reasonable defense on the merits, a reasonable excuse for failing to appear, due-diligence in requesting reopening the judgment, and no prejudice to the opposing party with the reopening of the judgment); *see Black v. Rimmer*, 700 N.W.2d 521, 527 (Minn. App. 2005) (stating that neglect is inexcusable), *review dismissed* (Minn. Sept. 28, 2005); *Elk River Enters., Inc. v. Adams*, 357 N.W.2d 139, 140 (Minn. App. 1984) (stating that intentional nonappearance is

support the conclusions of law set forth by the [district] court.” *Nazar v. Nazar*, 505 N.W.2d 628, 633 (Minn. App. 1993), *review denied* (Minn. Oct. 28, 1993), *superseded by statute on other grounds*, Minn. Stat. § 518.551, subd. 5b(d). “[O]n appeal from a default judgment, a party in default may not deny facts alleged in the complaint when such facts were not put into issue below.” *Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990), *review denied* (Minn. Apr. 13, 1990); *see Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 493 (Minn. App. 1995) (“There are only a limited number of issues that may be raised in a direct appeal from a default judgment. These include arguing that the . . . complaint did not state a cause of action or that the relief granted was not justified by the complaint.”).

The petitioner bears the burden of proving the conditions supporting TPR by clear and convincing evidence. Minn. Stat. § 260C.317, subd. 1 (2012); Minn. R. Juv. Prot. P. 39.04, subd. 2(a). The petitioner must prove “specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child.” *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). Only one statutory ground is necessary to support TPR, and TPR must be in the children’s best interests. *Id.*

The district court found that J.L.L. failed to complete nearly every aspect of her reunification plan. This finding is supported by Bates’s reports. The district court found

inexcusable); *see also* Minn. R. Juv. Prot. P. 21.01, subd. 1(a) (stating that the GAL is a party); *In re Welfare of J.J.B.*, 390 N.W.2d 274, 279 (Minn. 1986) (stating that permanency is fundamental to a child’s development and a child’s best interests is a compelling factor in TPR proceedings).

that J.L.L. was living in a condemned home, has a long history of substance dependence, a lengthy history of lying and using denial to attempt to escape problems, shows no insight, has little stability in her own life, has no source of income, and no plan to remedy her current situation. These findings are supported by the psychological assessment. The district court found that J.L.L. stopped visiting the children for three months, failed to submit to UAs, and submitted UAs that tested positive. These findings of noncompliance are supported by Bates's reports and reports of J.L.L.'s UA testing history. The evidence on record supports the district court's findings of fact. *See Nazar*, 505 N.W.2d at 633.

We must now determine whether the district court's findings support its conclusions of law. The district court concluded that four statutory grounds for TPR existed: (1) J.L.L. substantially, continuously, or repeatedly refused or neglected to comply with parental duties; (2) J.L.L. is palpably unfit to be a party to the parent and child relationship; (3) reasonable efforts failed to correct the conditions that led to the children's out-of-home placement; and (4) the children are neglected and in foster care. *See Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2012).*

The district court's findings support its conclusions. The children were in out-of-home placement since April 23, 2013. The record shows that between that time and the hearing on April 28, 2014, J.L.L. failed to complete nearly every aspect of her reunification plan. J.L.L.'s plan was straightforward: she was required to work with social services, complete a rule-25 assessment, complete a psychological evaluation, attend visits with the children, and demonstrate sobriety. More than a year passed and J.L.L. completed a rule-25 assessment, but failed to follow through with its

recommendations; she completed a psychological evaluation, but the record does not show whether she was required to do any follow-up; she stopped visiting the children; and she failed to demonstrate her sobriety.

The record shows that J.L.L. has a substance dependence that she either refuses or neglects to address. J.L.L. indicated willingness to work her reunification plan, but requested that she not be required to complete a rule-25 assessment or submit random UAs. J.L.L. then chronically failed to show up for UAs. The record also shows that J.L.L. misdirected blame to S.M.L.; she admitted that the children were CHIPS because *she* was the victim of domestic abuse at the hands of S.M.L. and that she was unable to adequately care for S.M.L. because of S.M.L.'s mental-health issues.

The record and the district court's findings support the conclusion that J.L.L. "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed . . . by the parent and child relationship, including but not limited to providing the child[ren] with necessary food, clothing, shelter, education, and other care and control necessary for the child[ren]'s physical, mental, or emotional health and development." *Id.*, subd. 1(b)(2). It also shows that J.L.L. is palpably unfit "because of a consistent pattern of specific conduct . . . directly relating to the parent and child relationship . . . which are . . . 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[ren]." *Id.*, subd. 1(b)(4).

Finally, the record shows that reasonable efforts failed to correct the conditions leading to the children's out-of-home placement. *Id.*, subd. 1(b)(5). This is presumed

when the children have “resided out of the parental home under court order for a cumulative period of 12 months,” or when a child under age eight at the time the CHIPS petition is filed has resided out of the home for six months unless the parent has maintained regular contact and is complying with the reunification plan. *Id.*, subd. 1(b)(5)(i). J.B.L. and P.J.L. were under age eight when the petition was filed. They were in out-of-home placement for over a year and J.L.L.’s contact was inconsistent and she failed to comply with her reunification plan. *See also id.*, subd. 1(b)(8) (stating that the court may terminate parental rights if it finds that the children are neglected and in foster care).

Reasonable efforts have also been presumed to have failed when a parent is diagnosed as chemically dependent, has been required to participate in a chemical-dependency-treatment program, has either failed or refused to successfully complete a treatment program, and continues to abuse chemicals. *Id.*, subd. 1(b)(5)(A)-(E). J.L.L. completed the rule-25 assessment, which recommended 75 hours of outpatient treatment. There is no indication in the record that J.L.L. completed treatment and positive test results after the assessment show J.L.L. continued to use. The record supports the district court’s findings of fact, which support its conclusions of law terminating J.L.L.’s parental rights.

Affirmed.