**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A16-2065**

In the Matter of the Welfare of the Children of: D. R. L., Parent.

**Filed June 12, 2017**
**Affirmed**
**Reyes, Judge**

Koochiching County District Court
File No. 36-JV-16-257

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Terry Iffert, International Falls, Minnesota (guardian ad litem)

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

**U N P U B L I S H E D  O P I N I O N**

**REYES**, Judge

On appeal from the termination of her parental rights, appellant-mother argues that the district court erred in failing to make findings of facts as they existed at the time of termination, clearly erred in finding that the agency made reasonable efforts, and abused its discretion because there was insufficient evidence to support termination. We affirm.

## FACTS

Appellant-mother D.L. and father A.J. are the biological parents of C.L., who was born in February 2013. Following an October 2016 court trial, the district court terminated mother's parental rights to C.L.[1] Mother appeals the district court's decision to terminate her parental rights.

On October 20, 2015, Child Protection Social Worker Scott Wherley from the Koochiching County Community Services (the agency) responded to a call from local law enforcement regarding out-of-home placement for C.L. Police were called to a hotel by hotel staff to investigate mother's suspected drug use and C.L. wandering around the hotel unsupervised. Police contacted Wherley after determining that mother was under the influence of methamphetamine and unable to care for C.L., who was approximately two-years-and-eight-months old at that time. When Wherley arrived at the hotel, he observed that C.L.'s clothes were dirty and that his shoes were on the wrong feet. Afterwards, Wherley removed C.L. from mother's custody and arranged for C.L. to be placed in the care of his maternal grandmother (grandmother).

The agency filed a Child in Need of Protective Services (CHIPS) petition shortly thereafter. Mother admitted that C.L. was in need of protection or services because her chemical dependency affected her ability to adequately care for C.L. C.L. was adjudicated in need of protection or services on December 21, 2015, and mother agreed to participate in a case plan. Her case plan required that mother (1) complete inpatient

[1] Prior to trial, A.J. voluntarily consented to the termination of his parental rights, and his parental rights are not at issue in this appeal.

chemical dependency treatment; (2) abstain from using controlled substances and remain clean on all random urinalysis; (3) undergo a combined parenting/psychological assessment and follow all recommendations of the assessment; (4) attend individual counseling; (5) work on home-management services with a family-based worker; and (6) cooperate with the agency, including maintaining regular contact and signing releases of information. The goal of the case plan was to provide mother with the necessary services to rehabilitate her and reunify her with C.L. within a six-month timeframe. The case plan also outlined concerns that mother could not care for herself or C.L. and that C.L. exhibited signs of being neglected for long periods of time.

Mother underwent a chemical-dependency assessment, which noted that mother displayed little awareness about her chemical addiction, did not take responsibility for her actions, and had no recovery support system. The assessment recommended that mother undergo long-term inpatient treatment with an aftercare program in a halfway house, see an individual therapist, comply with any recommendations from the agency and complete parenting class, abstain from all mood-altering chemicals, attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings, obtain a female sponsor, and resume her meetings with her mental-health therapist.

Over the next year, mother failed to follow her case plan. Mother was admitted into an inpatient chemical-dependency treatment program in December 2015 but left the program two weeks later. After leaving the program, mother failed to maintain regular

contact with the agency or Wherley.[2] Between January and March of 2016, she cancelled nine meetings with her counselor. Mother failed to address her mental-health issues, she failed to visit and work with the family-based worker, she was arrested for methamphetamine possession in March 2016, and she failed to check into another inpatient treatment facility in April 2016, citing medical issues.

On April 14, 2016, the agency filed its petition to terminate mother's parental rights (TPR). The district court ordered the agency to develop a plan for legal permanent placement for C.L. In May 2016, the agency filed an updated report, which outlined mother's lack of progress with her case plan despite the agency's numerous efforts and stated that they were seeking a family to adopt C.L. The agency filed similar updates in June and July.

From the time of removal up until June 2016, C.L. lived with his grandmother. C.L. completed an assessment that determined that he was lacking in fine motor skills. At the TPR trial on October 13-14, 2016, grandmother testified that during the time she cared for C.L., he rarely asked for mother, spent a substantial amount of time crying, and seemed afraid. On one occasion, C.L. heard footsteps on the stairs outside the house and began crying and screaming, "[T]he police are coming, the police are coming." Grandmother noted that mother only visited C.L. in the early stages of this matter and

[2] In February 2016, D.L. called Wherley and expressed frustrations with him. She accused him of preventing her from seeing C.L. and asserted that she did everything she could to comply with the case plan. Wherley noted that D.L. seemed very irate, spoke rapidly, and slurred her words. Wherley believed she was using methamphetamine again.

that after each visit C.L.'s demeanor would change, he would not sleep well, and he would become "very needy."

In June 2016, C.L. was placed with relative J.J.O. and her family as C.L.'s adoptive family. C.L. quickly started calling J.J.O. "mommy" without anyone's prompting or encouragement. C.L. displayed separation anxiety and J.J.O. constantly had to reassure him that she was not leaving him. C.L. displayed many developmental delays and was receiving special-education services and occupational therapy at his preschool. C.L. assimilated and demonstrated attachment to the family. J.J.O. noted that she would like to adopt him and that she would continue C.L.'s relationship with J.J.O. as well as mother, so long as she is sober.

On June 6, 2016, mother entered a second inpatient chemical-dependency program. Mother successfully completed the program and was discharged in July 2016 with the following recommendations: abstain from the use and possession of mood-altering chemicals; attend outpatient treatment program; attend AA/NA meetings at least twice per week; find a sponsor; attend mental-health treatment; and follow all the recommendations from the out-of-home placement plan. Mother subsequently enrolled in outpatient chemical-dependency treatment.

Mother has not visited C.L. since December 2015. Mother asked to visit C.L. after leaving the inpatient chemical-dependency program in December 2015, in February 2016, and again after graduating from her inpatient treatment program in July 2016. Wherley testified that, while C.L. has shown some improvements, the agency did not

allow her to have visits with C.L. because she was not complying with her case-plan requirements.

Prior to trial, Wherley received a report from a counselor at the outpatient program, which stated that mother had been making progress, displayed no signs of intoxication or withdrawal, and that mother reported that she had not used drugs in over five months. However, the report also indicated that mother still "ha[d] difficulty with impulse control and lack[ed] coping skills," was not seeing an individual therapist, and was passively involved in treatment. The report further indicated that mother had a poor understanding of her chemical-dependency issues "and display[ed] moderately high vulnerability for further substance use or mental health problems."[3] The report also noted that mother had yet to set up an AA/NA meeting and did not have an adequate support system.

A couple of weeks later, and two days before trial, the same counselor submitted a letter that was much more positive about mother's progress. This letter indicated that mother "is committed to her recovery, . . . [g]etting visitation with her son is [her] number one [priority]," and that her attendance and participation in the program has been "very good."

At trial, Wherley testified that, although mother had recently obtained employment and had been sober for several months, he still recommended the termination of her

[3] The report also indicated that D.L. had returned to using, but the record suggests that this entry was in error. D.L.'s drug tests all came back clean. Wherley testified at trial that he was confused about this statement and that it was probably not accurate, and the district court did not rely on this fact to reach its conclusions.

parental rights. He based his recommendation on mother's failure to timely comply or make adequate progress with her case plan, her lack of an adequate support network, and her decision to continue dating a known drug user while displaying a high vulnerability to relapse. Grandmother, mother's father, and the guardian ad litem (GAL) also testified in support of terminating mother's parental rights.

Following trial, the district court ordered the termination of mother's parental rights under Minn. Stat. § 260C.301, subds. 1(b)(2),[4] (4), (5) (2016). The district court determined that the agency made reasonable efforts toward reunification and that termination is in the child's best interest based on the following findings: (1) although mother successfully completed her inpatient program, she had not successfully completed individual therapy, attended AA/NA meetings, or obtained a sponsor pursuant to the out-of-home placement plan; (2) mother failed to maintain a sufficient period of sobriety, "especially considering her long history of chemical dependency;" (3) mother's boyfriend was a negative influence; (4) C.L. had not seen mother since December 1, 2015 and C.L. had formed a strong parent-child relationship with his adoptive parents and had started calling them "mom" and "dad"; (5) C.L. had demonstrated substantial developmental progress since being removed from mother's care; and (6) the GAL testified that it is in C.L.'s best interest to remain with the adoptive family.

This appeals follows.

[4] In its determination under this subdivision, the district court mistakenly cited to subdivision 1(b)(4).

## D E C I S I O N

"[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).

We review a district court's basic factual findings for clear error, but we review its determination that a statutory basis for termination exists and its ultimate decision to terminate parental rights for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted). We give a district court's decision considerable deference because the "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). Nonetheless, we closely inquire into the evidence to determine whether there was clear and convincing evidence supporting termination. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

A district court must make findings of fact that are supported by clear and convincing evidence and make a determination that (1) reunification efforts were reasonable;[5] (2) there is a statutory ground for termination; and (3) termination is in the child's best interests. *Id*. The statutory-ground determination must be based on evidence

[5] Prior to terminating parental rights, the district court must make specific findings "that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made" or "that reasonable efforts [were] not required" as set out in Minn. Stat. § 260.012 (2016). *See* Minn. Stat. § 260C.301, subd. 8 (2016).

of conditions existing at the time of termination that may "continue for a prolonged, indefinite period." *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001).

## I. The district court did not abuse its discretion because it found that the agency made reasonable efforts and the district court's determination that a statutory ground for termination exists is supported by the record.

Mother challenges the district court's termination of her parental rights, arguing that the conditions that led to C.L.'s out-of-home placement no longer existed at the time of the termination. We are not persuaded.

A statutory basis for terminating parental rights exists under Minn. Stat. § 260C.301, subd. 1(b)(5), when "reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's out-of-home placement." The statute further provides that a failure of reasonable efforts is presumed when a child under the age of eight has been out of the parent's home for at least six months, the parent did not maintain regular contact with the child, and the parent was not complying with the out-of-home placement plan. *Id*., subd. 1(b)(5)(i). Because the reasonable-efforts analysis is so closely related to the analysis under subdivision 1(b)(5), we analyze that issue as part of the statutory analysis here.

### A. Reasonable efforts

"When determining whether reasonable efforts have been made," the district court must consider "whether services to the child and [parent] were: (1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and [parent]; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Minn. Stat. § 260.012(h). "Reasonable efforts at

rehabilitation are services that go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Mar. 28, 2007). "Whether the [agency] has met its duty of reasonable efforts requires consideration of the length of the time the [agency] was involved and the quality of the effort given." *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). Additionally, in determining that the agency made reasonable efforts, the district court must make "individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family." Minn. Stat. § 260C.301, subd. 8(1).

Here, the district court found that the agency made reasonable efforts to rehabilitate mother and reunite mother with C.L. following the child's out-of-home placement. The district court found that the agency offered child-protection and welfare services, assistance in getting mother chemical-dependency and mental-health assessments and treatment, individual therapy, supervised parenting time, and parenting educational services. The district court's findings are supported by the record. Since C.L.'s out-of-home placement, the agency attempted to provide services to mother to help her comply with the case plan. Wherley testified that he repeatedly encouraged mother to address her chemical dependency and mental health. After mother left the first inpatient treatment program, Wherley attempted to contact her on numerous occasions to support her compliance with the case plan.

Even after the agency filed its permanency petition it continued to work with mother. The agency helped mother get treatment at the second inpatient treatment program, followed mother's progress afterward in outpatient treatment, and monitored mother's chemical dependency by requesting random urinalysis up until trial.

Ultimately, the record demonstrates that the agency expended considerable time and resources in attempting to address mother's problems that led to removal of C.L. The district court's finding that the agency's extensive efforts were genuine and adequate to address mother's unique needs is not clearly erroneous. Therefore, the district court did not clearly err in finding that the agency made reasonable efforts to rehabilitate mother and to reunite her with C.L.

**B. Failure to correct the conditions**

The district court determined that the agency presented sufficient evidence to warrant the presumption that reasonable efforts have failed to correct the conditions that led to C.L.'s out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5)(i). It is uncontested that at the time of trial, C.L. was under the age of eight and had resided outside the parental home for more than six months. As such, the district court did not err in determining that the presumption applied.

In her testimony, mother presented evidence that she continued to attend outpatient services, recently began attending individual therapy sessions, and would sometimes attend AA/NA meetings. Even though mother was on the path of complying with a majority of her case plan, that does not "necessarily equate[] with a correction of the conditions that led to the out-of-home placement." *In re Welfare of Children of*

*K.S.F.*, 823 N.W.2d 656, 667 (Minn. App. 2012). "The critical issue is not whether the parent . . . complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012).

The record demonstrates that mother did not complete her inpatient program or achieve a meaningful period of sobriety until seven months after the case plan was finalized. Furthermore, while mother was attending individual therapy sessions[6] for her mental health, she had failed to notify the agency about this and failed to complete them. Additionally, mother was not regularly attending AA/NA meetings and had not obtained a sponsor or a sober-support network even though she admitted to having a boyfriend with a noted history of drug issues. Clear and convincing evidence supports the district court's findings.

Considering mother's long history of struggling with chemical dependency, even after C.L. was removed from her custody, the district court's determination that mother had not rehabilitated herself and failed to correct the conditions that led to the out of home placement was not an abuse of discretion. *See In re Welfare of Maas*, 355 N.W.2d 480, 483 (Minn. App. 1984) (affirming that mother's substantial compliance with court-ordered parenting sessions, psychological treatment, and sobriety were insufficient to avoid termination given her negative parenting history and poor prognosis for long-term improvement). Accordingly, the district court did not abuse its discretion in determining

[6] The record establishes that D.L. attended five individual therapy sessions, roughly once a week beginning August 30, 2016.

that a statutory ground for termination exists. Minn. Stat. § 260C.301, subd. 1(b)(5). Because one statutory ground for termination is supported by clear and convincing evidence, we need not review the district court's conclusions regarding the other statutory grounds relied on by the district court. *See In re Welfare of P.J.K.*, 369 N.W.2d 286, 290 (Minn. 1985) (stating district court need find only one statutory termination condition to terminate parental rights).

**II. Best interests of the child**

In a proceeding regarding the termination of parental rights, the best interests of the child is the paramount consideration. *J.R.B.*, 805 N.W.2d at 902. "We review a district court's ultimate determination that termination is in a child's best interest[s] for an abuse of discretion." *Id.* at 905. "[T]he [district] court must balance three factors: (1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *W.L.P.*, 678 N.W.2d at 711. Competing interests of the child "include a stable environment, health considerations, and the child's preferences." *In re Welfare of M.A.H.*, 839 N.W.2d 730, 744 (Minn. App. 2013). In its termination order, the district court must explain its rationale for concluding why termination is in the child's best interests. *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003).

Here, as to the first factor, the district court found that C.L. had not seen mother since December 2015 and, in that time, had not asked for her. Furthermore, the district court found that C.L. is thriving and has developed a strong parent-child relationship with his adoptive parents.

With regard to the second factor, mother testified that she is opposed to the termination of her parental rights and feels that "no child should have to live without their real mother." As to the third factor, the district court found that removal is in C.L.'s best interests because (1) C.L. has benefitted from a stable home life and his behavioral issues have improved; (2) C.L. has demonstrated developmental improvements and is thriving in daycare; and (3) C.L.'s nutrition has substantially improved. The district court's findings are supported by clear and convincing evidence and are not clearly erroneous.

The testimony of the GAL provides further support for the district court's findings. The GAL testified that she supports mother's parental rights being terminated. Grandmother and D.L.'s father also supported termination of mother's parental rights. The GAL testified that C.L. has an interest in being in a stable environment especially considering his young age. The GAL testified that she sees no reason to extend the six-month permanency-plan timeline to give mother additional time to work on her case plan. Therefore, the district court adequately weighed mother's and C.L.'s interests and determined that the child's best interests supported termination of mother's parental rights. We commend mother for the progress she has made recently, including maintaining sobriety for at least four months. Nevertheless, we conclude that the district court did not abuse its discretion in determining that it was in C.L.'s best interests to terminate mother's parental rights.

**Affirmed.**