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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0518**

In the Matter of the Welfare of the Children of:
A. R., Mother.

**Filed October 8, 2018
Affirmed
Worke, Judge**

Ramsey County District Court
File Nos. 62-F6-01-050928, 62-FA-15-931, 62-JV-15-2704

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John Choi, Ramsey County Attorney, Robert Hamilton, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County Social Services Department)

Michael Fahey, St. Paul, Minnesota (guardian ad litem)

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Considered and decided by Worke, Presiding Judge; Reilly, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant-mother challenges the termination of her parental rights, arguing that the record does not support the district court's determinations that (1) respondent-county made reasonable reunification efforts, (2) she failed to comply with the duties of the parent-child

relationship, (3) reasonable efforts failed to correct the conditions that formed the basis of the petition or would be futile and unreasonable, and (4) termination of parental rights (TPR) is in the children's best interests. We affirm.

FACTS

Appellant-mother A.R. has three children. At the time of the TPR trial, Child One was sixteen years old, Child Two was six years old, and Child Three was three years old. The two younger children have special and educational needs and are the subject of this appeal.¹ On September 5, 2015, police officers saw A.R. slumped over a stroller holding the children at a bus stop. The police suspected that A.R. was under the influence of alcohol or drugs. On September 24, 2015, A.R. was again found slumped over a stroller holding the children at a bus stop. This time the stroller was edging toward the street. A.R. admitted to police that she was under the influence of alcohol. On October 6, 2015, police were called to A.R.'s home where A.R. was in a heated argument with her oldest child, who is not involved in this appeal. Police observed A.R. to be intoxicated. A.R. refused to allow the child to stay at the home. All three children were placed on a 72-hour hold as a result of this incident.

¹ The district court found that, due to the oldest child's age, credible preference, and reliance on A.R. for both behavioral and emotional support, it was in the best interests of this child to maintain a parent-child relationship with A.R. This court commends the district court for its thorough and thoughtful analysis of this issue.

A child-in-need-of-protection-or-services (CHIPS) petition was filed, and on October 22, 2015, all three children were adjudicated CHIPS. Case plans were developed for all three children that addressed A.R.'s mental-health, including a diagnostic assessment, following the assessment's recommendations, and attending therapy. A.R. attended therapy on and off for approximately two months before she stopped attending.

Over the next two years, A.R. did not complete a mental-health assessment or attend therapy. In March 2017, A.R. discussed the importance of therapy with her case worker. In September 2017, A.R. began seeing Dr. Philip Klees, a psychologist. A.R. completed a diagnostic assessment, but attended only three of eight scheduled sessions with Dr. Klees. At trial, Dr. Klees testified that A.R.'s chemical-dependency and mental-health issues remained unresolved.

The case plans addressed A.R.'s chemical-dependency, including a chemical-health assessment and following its recommendations. The record shows that A.R. completed four chemical-health assessments. All four found that A.R. met the criteria for Alcohol Use Disorder – Moderate. A.R. never completed a chemical-dependency-treatment program.

The case plans also instructed A.R. to address her children's basic needs. A.R.'s case manager referred her for in-home parenting classes through Neighborhood House, however A.R. was either not home or not available during scheduled appointments. A.R.'s case manager made another reference for parenting classes, but A.R. did not follow through. One child was referred for an assessment through Help Me Grow. A.R. did not

respond to assessors, and the file was closed. The child was unable to be enrolled in a school that could meet his needs because A.R. did not remain in contact with the school. Arrangements for the child's special education were also delayed due to A.R.'s lack of contact.

On September 1, 2017, a petition was filed alleging four statutory grounds to terminate A.R.'s parental rights: (1) A.R. substantially, continuously, or repeatedly refused or neglected her parental duties; (2) A.R. is palpably unfit; (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.

Following a court trial, the district court filed an order terminating A.R.'s parental rights on March 12, 2018. The district court analyzed three of the four grounds for TPR, made relevant findings on each, and found that three grounds had been satisfied by clear and convincing evidence. This appeal followed.

D E C I S I O N

A district court may terminate parental rights when at least one statutory ground for TPR is supported by clear and convincing evidence and the court determines that it is in the children's best interests. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014). This court reviews the district court's findings for clear error. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008). A finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* at 660-61 (quotation omitted). This court reviews the district

court's TPR decision for an abuse of discretion. *In re Welfare of the Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). "An abuse of discretion occurs if the district court improperly applied the law." *Id.*

Dismissal

As an initial matter, the county correctly points out that A.R. does not contest, brief, or even mention the neglected-and-in-foster-care basis upon which the district court based its TPR decision. Therefore, this issue is deemed forfeited on appeal. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (Stating that issues not briefed are deemed waived).

Because A.R. made no motion for a new trial, we could affirm the district court's TPR order without reaching the remaining issues. However, given the subject matter and the importance of a meaningful review of a TPR order, this court will, in the interests of justice, address one of the statutory grounds properly appealed and briefed in addition to analyzing the district court's reasonable-efforts and best-interests findings. *See* Minn. R. Civ. App. P. 103.04.

Reasonable reunification efforts

A.R. argues that the county failed to make reasonable efforts to reunify her with the children because she was never provided with or referred for grief counseling upon the death of her husband. This argument is not supported by the record.

When a child is removed from the family home, the responsible social-services agency must make "reasonable efforts" to reunify the family. Minn. Stat. § 260.012(a)

(2016). A district court must make findings as to whether the county provided reasonable efforts to rehabilitate the parent and reunify the family. *Id.* (h) (2016). What constitutes “reasonable efforts” depends on the problems presented. *T.R.*, 750 N.W.2d at 664 (quotation omitted).

The district court found that the county made reasonable efforts “to rehabilitate [A.R.] and correct the conditions that led to the children’s adjudication as [CHIPS]”; however, these efforts “have not [been] successful.” This finding is supported by the record.

A case manager was appointed to A.R.’s case, and case plans were generated and signed by A.R. The case plans outlined issues of mental-health, chemical-dependency, and parenting skills. The case plans outlined steps to be taken to address these issues, and proper referrals were made to facilitate those services. Financial support was provided in the form of bus cards and gas cards in order to ensure A.R.’s access to those services. However, A.R. was habitually unavailable or unreachable by service providers. Social workers, teachers, and counselors all testified to difficulty in reaching A.R. and to her lack of attendance or participation. The district court found these testimonies credible. The district court also found that the services offered “were appropriate, timely, and realistic under the circumstances.” There is nothing in the record to dispute this finding.

A.R. was referred for mental-health treatment, but failed to attend consistently, and attended only three of eight sessions with her therapist. Regardless of whether these referrals were specifically for grief, the therapy services offered were properly equipped to

help A.R. with her grief. Given this record, the district court did not err in finding that the county made reasonable reunification efforts.

A.R. substantially, continuously, or repeatedly refused or neglected her duties as a parent

A.R. argues that she was “working diligently to complete her case plan, worked for the vast majority of the child protection matter toward reunification, diligently attended court hearings and was patient with the child protection process,” therefore “it simply cannot be said that [s]he ‘substantially, continuously or repeatedly refused or neglected to comply with the duties imposed upon [her] by the parent and child relationship.’” This argument presents an extremely stilted view of the facts and is not supported by the record.

Minn. Stat. § 260C.301, subd. 1(b)(2) (2016) permits a district court to terminate parental rights if it finds

that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but 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, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable[.]

To terminate parental rights under this statutory basis, the district court must find that “at the time of termination, the parent is not presently able and willing to assume [her] responsibilities and that the parent’s neglect of these duties will continue for a prolonged, indeterminate period.” *J.K.T.*, 814 N.W.2d at 90 (quotations omitted).

A.R. points out that she was finding “a suitable home for her family” and attempting to move a child to a different school for his benefit. While A.R. did find housing at some points during the case, there were also periods of homelessness and periods of instability at the home, including the February 23, 2017 incident in which A.R. was transported to the hospital with a 0.22 alcohol concentration while the children were in her care. Additionally, testimony the district court found credible was provided which indicated that A.R. was the only factor slowing down her child’s access to educational services.

The district court found that for most of the children’s lives A.R. “has failed to provide the parental care the children need.” Specifically, the district court concluded that A.R. has not provided them with a safe home or provided for their basic and special needs. The district court found, based on credible testimony regarding A.R.’s failure to follow her case plans and address her mental, chemical, and parenting issues, that the county had proved by clear and convincing evidence that A.R. substantially, continuously, and repeatedly neglected to comply with the duties imposed on her by the parent-child relationship within the statutory meaning. This conclusion is well supported by the record, and does not constitute an abuse of discretion.

Children’s best interests

A.R. challenges the district court’s finding that TPR is in the best interests of the children. In a TPR case, the best interests of the children is “the paramount consideration.” Minn. Stat. § 260C.301, subd. 7 (2016). A district court must make “findings regarding how the order is in the best interests of the child.” Minn. R. Juv. Prot. P. 42.08, subd. 1(b).

In analyzing the best interests of the children, the district court must balance three factors: “(1) the child[ren]’s interest in preserving the parent-child relationship; (2) the parent’s interest in preserving the parent-child relationship; and (3) any competing interest[s] of the child[ren].” *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). We apply an abuse-of-discretion standard of review to a district court’s conclusion that TPR is in a child’s best interests. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012).

The district court made findings on each of the relevant factors. Regarding the children’s interests in preserving the parent-child relationship, the district court found that the children have been in out-of-home care for over 798 days in the past five years, and have only ever had minimal parenting from A.R. The district court also found that A.R. will not be able to parent the children for the foreseeable future due to her unaddressed chemical, mental, and parenting issues. The district court specifically remarked on the credibility of the guardian ad litem who testified that he firmly believes that it is in the best interests of the children for A.R.’s rights to be terminated. The district court therefore concluded that the first best-interest factor clearly and convincingly weighed in favor of TPR. Regarding A.R.’s interests, the district court found that this factor weighed in favor of maintaining A.R.’s parental relationship with the children because she loves them very much.

The district court then addressed the third factor and found numerous competing interests. Specifically, the children “deserve permanency and a stable, supportive home,”

the children have special needs, which A.R. “has not shown an ability to comprehend or fulfill,” and finally A.R. has not been able to provide basic necessities for the children. The district court therefore concluded that these interests clearly and convincingly weighed in favor of TPR. Given the district court’s detailed findings, which are supported by the record, this conclusion does not constitute an abuse of discretion. The district court did not abuse its discretion by terminating A.R.’s parental rights.

Affirmed.