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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0615**

In the Matter of the Welfare of the Child of:
S. R. O. and J. D. B., Parents.

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

Anoka County District Court
File No. 02-JV-17-1117

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Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant-mother challenges the district court's decision to terminate her parental rights on the grounds that the district court's findings are not supported by the record, termination is not in the best interests of the child, and the county failed to prove a statutory basis for termination. We affirm.

FACTS

Appellant S.R.O. (mother) and respondent J.D.B. (father) are the parents of T.J.B., who was born on May 19, 2015. Father and mother have an abusive relationship, which resulted in the police being called on several occasions. On November 18, 2016, father stabbed mother. Mother initially did not seek medical treatment, but later asked a friend to take her to the emergency room. Hospital staff reported the injuries to police. On November 21, police conducted a welfare check. They were concerned about the alleged domestic assault and reports of drug use in the home. When police arrived, mother was not home and the child was being cared for by his 15-year-old brother. The home was dirty and did not have electricity or hot water. Police referred the matter to Anoka County Social Services. The county removed the child from the home and placed him in foster care. He has remained in foster care since.

On December 15, 2016, the district court adjudicated T.J.B. as a child in need of protection or services (CHIPS). The district court ordered mother to comply with the case plan submitted by the county. The case plan required mother to complete domestic-abuse programming, complete a chemical-dependency evaluation, and follow all recommendations.

By way of history, in 2008, mother suffered a herniated disc and was prescribed oxycodone to treat the injury. When mother ran out of medication, she started using heroin to stave off withdrawal symptoms. Mother admitted that at the time of the CHIPS petition that she had been using heroin daily for a year and a half.

The chemical-dependency evaluator recommended that mother complete mental-illness and chemical-dependency treatment and abstain from all chemicals. Mother started treatment at Living Free Recovery Services, an outpatient facility. Sean Miller, her chemical-dependency counselor, believed that mother needed a more intensive treatment program. He recommended that she attend inpatient chemical-dependency treatment. Mother disagreed and indicated she would not attend inpatient treatment because she did not have a chemical-use problem. Mother was discharged from Living Free. On February 24, 2017, the district court ordered mother to enter inpatient treatment. She completed a 21-day program and was discharged to Valhalla, a methadone program. Two days prior to her discharge from Valhalla, mother submitted a urinalysis (UA) that tested positive for the presence of methamphetamine. As a result, she was ordered to complete an updated chemical-dependency evaluation.

Mother obtained an updated evaluation from Nystrom and Associates. Marzak McAllister, a licensed alcohol and drug counselor, reviewed the assessment and referred mother for intensive outpatient treatment. In October 2017, mother started treatment at Nystrom. As part of the treatment program, she was required to submit UAs. The test results were initially negative, but staff had concerns that mother was still using chemicals. They elected to switch to testing with oral cheek swabs so that staff could observe the sample being taken. At least four of the cheek swabs tested positive for chemicals, including methamphetamine, fentanyl, and heroin. Mother ultimately admitted that she had cheated on the UAs by using urine she had stored from a prior period of sobriety. In

January 2018, mother was discharged from Nystrom because she was noncompliant. McAllister rated her prognosis as “poor” at the time of discharge.

On February 6, 2018, mother entered inpatient treatment at Recovering Hope. Marie Bergloff, a licensed alcohol and drug counselor, performed an assessment. Mother denied using chemicals, but her UA tested positive for methamphetamine and opiates. When confronted with the positive UA, mother said that she had taken Adderall that must have been laced with the substances. She denied otherwise using chemicals. Mother did not have a prescription for Adderall. On February 27, mother was discharged from Recovering Hope due to behavioral reasons. Bergloff stated that mother was “not successful at all” in completing treatment. Mother did not seek further chemical-dependency treatment.

The county petitioned to terminate mother’s parental rights. The petition alleged that termination was warranted because mother neglected to comply with the duties imposed by the parent-child relationship, mother was palpably unfit to parent, reasonable efforts failed to correct the conditions that led to out-of-home placement, and T.J.B. was neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2016).

At trial, Miller, McAllister, and Bergloff all testified that mother failed to make progress in addressing her chemical health and was in denial about her addiction. Heather Wilmes, a mental-health provider at Valhalla, testified regarding mother’s experience with domestic abuse. She testified that mother had limited insight into her susceptibility to abusive relationships and how those relationships affected her mental health and the lives of her children. Wilmes testified that her last session with mother occurred on July 28,

2017. Wilmes opined that when she last saw mother she had regressed in her treatment and remained susceptible to entering into an abusive relationship.

The district court terminated mother's parental rights on the grounds that the county had proven each alleged statutory basis for termination and termination is in the best interests of the child. The district court further determined that the county had made reasonable efforts to reunite the family. This appeal follows.

D E C I S I O N

I.

Parental 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). Termination requires clear and convincing evidence that (1) the county has made reasonable efforts to reunite the family, (2) there is a statutory ground for termination, and (3) termination is in the child's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). 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.” *In re Welfare of J.K.*, 374 N.W.2d 463, 466-67 (Minn. App. 1985) (quotation omitted), *review denied* (Minn. Nov. 25, 1985). The determination should not rely primarily on past history, but rather “upon the projected permanency of the parent's inability to care for his or her child.” *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) (quotation omitted).

Mother argues that the district court erred in determining that she was unable to care for the child. She asserts that at the time of trial she had eliminated the possibility of

domestic abuse because father had been incarcerated, she had addressed her chemical use, and she had obtained suitable housing. She argues that in determining she was unable to care for the child, the district court impermissibly focused on her past history, rather than the conditions that existed at the time of trial.

The district court made detailed findings addressing mother's ability to care for T.J.B. The district court found that father had "been eliminated in the short term as a safety risk" due to his incarceration. But the district court noted that mother had "a history and pattern of domestic abuse and violent relationships" and "intentionally avoided any recommended domestic abuse counseling." Mother does not dispute that she failed to complete the domestic-abuse programming required by the case plan. And at trial, Wilmes testified that mother had little insight into her susceptibility to domestic violence and remained at risk to regress into an abusive relationship.

The district court's findings similarly address mother's chemical use. Three licensed alcohol and drug counselors testified that mother had little insight into her chemical dependency and failed to make any meaningful progress while in treatment. The district court credited this testimony and found that mother continued to use chemicals. This finding is supported by mother's unsuccessful attempts at completing treatment and history of failed UAs. In the two months leading up to trial, mother was discharged from two treatment programs and submitted multiple UAs that tested positive for the presence of chemicals, including a UA that tested positive for alcohol and amphetamines the day before trial started.

Finally, mother argues that she obtained suitable housing. At trial, mother testified that she was living in a sober-living community and asserted that it was a safe and supportive environment to care for the child. But as the district court noted, mother had only been living at the residence for two weeks. In the 15 months between the filing of the CHIPs petition and the termination trial, mother did not remain at any residence for longer than three months. She was asked to leave a shelter, a treatment program, and her mother's home for behavioral reasons. In determining that mother had displayed an inability to obtain suitable housing, the district court did not inappropriately focus on her past, but rather on how it demonstrated a continued pattern of behavior. *See In re Welfare of Clausen*, 289 N.W.2d 153, 156 (Minn. 1980) (stating that in determining whether to terminate parental rights, "the relevant time period includes all times up to the time of the termination hearing"). The record supports the district court's factual findings.

II.

We will affirm a district court's decision to terminate parental rights if at least one statutory ground for termination is proved by clear and convincing evidence and if termination is in the child's best interests. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). "We give considerable deference to the district court's decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *S.E.P.*, 744 N.W.2d at 385 (citation omitted). The district court may terminate parental rights upon a showing "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).

A presumption that reasonable efforts have failed is created in two situations. First, the district court may presume reasonable efforts have failed when: (1) a child has resided outside the home for a cumulative period of 12 months within the preceding 22 months, (2) the district court approved an out-of-home placement plan, (3) the conditions leading to the out-of-home placement have not been corrected, and (4) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family. *Id.*, subd. 1(b)(5)(i)-(iv). Second, the district court may presume reasonable efforts have failed when: (1) the parent has been diagnosed as chemically dependent by a certified professional, (2) the parent has been required by case plan to complete chemical-dependency treatment, (3) the parent has failed to complete appropriate programming two or more times, (4) and the parent continues to use chemicals. *Id.*, subd. 1(b)(5)(A)-(E).

The district court determined that both presumptions apply. We agree. T.J.B. was in foster care for the 15 months preceding the termination trial. The district court approved a case plan that required mother to address her chemical use and complete domestic-abuse programming. The county made reasonable efforts to assist mother in completing appropriate programming and complying with the case plan, but mother failed to do so. At the time of trial, mother had not addressed her chemical use or susceptibility to domestic violence. Accordingly, the first presumption applies. And the record supports the district court's determination that the second presumption also applies. Mother was diagnosed as chemically dependent by three licensed alcohol and drug counselors and required by the

case plan to complete treatment. She was discharged as unsuccessful from appropriate programs at Living Free, Nystrom, and Recovering Hope. And she continued to use chemicals at the time of trial. The only evidence mother presented to rebut these presumptions was her own testimony, which the district court did not find credible.

On this record, the district court did not abuse its discretion in determining that reasonable efforts have failed to correct the conditions leading to the child's out-of-home placement.¹

III.

Mother challenges the district court's determination that termination of her parental rights is in the best interests of T.J.B. Even if a statutory ground for termination exists, "a child's best interests may preclude terminating parental rights." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009) (quotation omitted). Analyzing the best interests of a child requires a balancing of the child's interest in preserving a parent-child relationship, the parent's interest in preserving that relationship, and any competing interest of the child. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *Id.* We review the district court's determination that termination is in the best interests of the child for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

¹ The district court also determined that termination is appropriate under Minn. Stat. § 260C.301, subd. 1(b)(2), (4), and (8). Because we may affirm if at least one statutory ground is established, *T.R.*, 750 N.W.2d at 661, and Minn. Stat. § 260C.301, subd. 1(b)(5), is most applicable to this case, we do not address the other statutory grounds.

Mother argues that the district court abused its discretion in determining that it is in T.J.B.'s best interests to terminate her parental rights. In making its best-interests determination, the district court first noted that the limited emotional connection that T.J.B. may have with mother is "waning." The district court also found his need for a stable environment outweighs any emotional connection. When T.J.B. was removed from mother's home, he was not thriving and was emotionally dysregulated and developmentally delayed. He suffered night terrors, would meltdown in public, and put himself at risk of injury when having tantrums. He was also diagnosed with post-traumatic stress disorder (PTSD). Since being placed in foster care, T.J.B. has received treatment for his PTSD, developed a strong bond with his foster family, and displayed more stable and appropriate behavior. But his behavior regresses following visitation with mother or when he hears his biological parents' names. The district court determined that these circumstances weigh in favor of termination of mother's parental rights.

The district court next considered mother's interest in preserving the parent-child relationship. The district court observed that while mother had expressed an interest in continuing a relationship with T.J.B., she had not displayed the ability to place his needs above her own. Mother did not complete chemical-dependency treatment, continued to use chemicals, and did not complete domestic-abuse programming, despite being aware that the case plan required her to do so to regain custody of T.J.B. Finally, the district court credited the guardian ad litem's testimony that termination of mother's parental rights is in the child's best interests because she did not believe that mother is capable of providing for the child's needs for the foreseeable future. On this record, the district court did not

abuse its discretion in determining that termination is in the best interests of the child. The district court appropriately balanced the child's interests with mother's, and determined that the child's need for a stable environment outweighs mother's interest in preserving the parent-child relationship.

Mother also asserts that she received ineffective assistance of counsel. But because she does not cite to any legal authority to support her argument, the issue is waived. *See In re Welfare of Children of L.L.P.*, 836 N.W.2d 563, 570 n.2 (Minn. App. 2013) (stating we decline to address arguments unsupported by legal analysis or citation).

Affirmed.