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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1012
A18-1024**

In the Matter of the Welfare of the Child of:
D. H. and W. H., Sr., Parents (A18-1012)
and
In re the Matter of the Welfare of the Children of:
D. H., Mother (A18-1024)

**Filed December 17, 2018
Affirmed
Cleary, Chief Judge**

Ramsey County District Court
File Nos. 62-JV-17-2588 and 62-JV-17-2520

Patrick D. McGee, Forest Lake, Minnesota (for appellant D.H.)

John J. Choi, Ramsey County Attorney, Kayla M. Rodriguez, Alexandra Holznecht,
Assistant Ramsey County Attorneys, St. Paul, Minnesota (for respondent Ramsey County
Social Services Department)

Lu Nhia Yang, St. Paul, Minnesota (for respondent father D.F.)

Ariana Guerra, St. Paul, Minnesota (guardian ad litem)

Considered and decided by Reilly, Presiding Judge; Cleary, Chief Judge; and
Bratvold, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

In these consolidated appeals, appellant-mother challenges the termination of her
parental rights to Child Three and the transfer of legal and physical custody of Child One

and Child Two from mother to their father. On appeal, she argues that: (1) respondent Ramsey County Social Services Department failed to make reasonable reunification efforts; (2) termination is not in the best interests of Child Three; and (3) transfer of legal and physical custody is not in the best interests of Child One and Child Two. We affirm.

FACTS

Appellant-mother D.H. has five children, three of whom are the subjects of this consolidated action: Child One, born in 2011; Child Two, born in 2013; and Child Three, born in 2016. Mother's husband, W.H. Sr., is the presumed father of Child Three, and D.F. is the adjudicated father of Child One and Child Two.

Respondent Ramsey County Social Services Department (RCSSD) became involved with the family in September 2016, after Child Three's meconium tested positive for cocaine and buprenorphine at birth. Less than one month later, RCSSD filed a child-in-need-of-protection-or-services (CHIPS) petition for Child One, Child Two, Child Three, and mother's older son.¹ In February 2017, mother admitted to an amended CHIPS petition, and the children were adjudicated in need of protection or services.

RCSSD implemented an out-of-home placement plan that identified tasks mother needed to complete in order for the children to return to her care. The district court found that mother agreed to "follow recommendations of Rule 25 examinations and demonstrate sobriety, submit random UAs, address individual mental health needs, attend regular

¹ At the time of trial, the permanency plan for mother's older son was for him to remain in foster care and enter extended foster care upon his eighteenth birthday. He is not subject to this appeal.

visitations with the children, find safe and stable housing free of domestic violence and police involvement, attend chemical-dependency support groups and provide documentation of attendance.” RCSSD social workers testified that the most important aspects of mother’s case plan were chemical-dependency treatment and housing.

Before Child Three was born, mother completed a Rule 25 chemical-health assessment with Mothers First, a Ramsey County program that helps mothers with chemical dependency issues. Mothers First diagnosed mother with opioid use disorder and recommended that she complete high-intensity outpatient treatment. In September 2016, January 2017, and October 2017, mother completed updated Rule 25 assessments and received recommendations for similar outpatient treatment programs and medication-assisted therapy (MAT) to assist with opioid cravings. Mother participated in an MAT program and attended six weeks of outpatient treatment in 2016, but never completed a recommended outpatient treatment program.

At the start of the CHIPS case, mother was living with W.H. Sr. in St. Paul. In December 2016, police were called to mother’s home on a report that mother stabbed W.H. Sr. By March 2017, mother and W.H. Sr. were asked to leave their house in St. Paul because of police contacts and domestic violence. Mother and W.H. Sr. subsequently moved to Glencoe, and RCSSD provided them with their first month of rent and security deposit. Mother and W.H. Sr. lived in Glencoe until July 2017 when their landlord asked them to leave due to repeated police contacts and domestic violence.

Mother and W.H. Sr. moved back to the Twin Cities and entered People Serving People, an emergency shelter in Minneapolis. They lived at the shelter for approximately

one month. While there, mother and W.H. Sr. violated the shelter's drug policy. After leaving the shelter, mother was homeless and using drugs. Mother entered a sober living facility in October 2017, but only lived at the facility for a few weeks before continuing to be homeless and using drugs "off and on."

On October 30, 2017, RCSSD filed a petition to transfer permanent sole legal and physical custody of Child One and Child Two from mother to D.F. pursuant to Minn. Stat. § 260C.515, subd. 4 (2018). On November 9, 2017, RCSSD also filed a petition to terminate mother's parental rights to Child Three. RCSSD alleged three statutory grounds for termination under Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5) (2018). The district court consolidated both of mother's cases for trial.

RCSSD did not know mother's whereabouts until December 2017 when mother and W.H. Sr. moved into Catholic Charities Higher Ground Shelter (Higher Ground) in St. Paul. The next month, mother was charged with first-degree aggravated robbery and was incarcerated for approximately one month. After she was released and returned to Higher Ground, police responded to the shelter on a report of domestic assault and arrested W.H. Sr. for assaulting mother. Mother and W.H. Sr. were asked to leave Higher Ground, and mother stayed with friends or family members. In March 2018, mother was again incarcerated for a conditional-release violation. Upon her release nearly one month later, she was admitted to an outpatient treatment program. When mother entered the program, she tested positive for cocaine.

Following a two-day court trial in May 2018, the district court terminated mother's parental rights to Child Three and transferred permanent sole legal and physical custody of

Child One and Child Two to D.F. The district court considered the testimony and recommendations of RCSSD, the guardian ad litem, mother's service providers, and mother. The district court found that RCSSD proved by clear and convincing evidence each of the statutory bases for termination and that termination is in Child Three's best interests. Additionally, the district court determined that it is in the best interests of Child One and Child Two to transfer permanent custody from mother to D.F. The district court further found that RCSSD made reasonable efforts to reunite the family, but that these efforts were "ultimately unsuccessful."

D E C I S I O N

On appeal, mother does not challenge the statutory grounds for termination of her parental rights to Child Three. Instead, mother argues that RCSSD failed to make reasonable efforts to reunify the family. Mother further asserts that termination of her parental rights is not in the best interests of Child Three and transfer of custody is not in the best interests of Child One and Child Two.

I. The record supports the district court's determination that the county made reasonable reunification efforts.

The district court is vested with broad discretion in deciding child protection cases. *In re Booth*, 91 N.W.2d 921, 924 (Minn. 1958). A district court may terminate parental rights if clear and convincing evidence establishes that: (1) at least one statutory basis supports termination; (2) the county made reasonable efforts to reunite the family, unless reasonable efforts were not required; 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); Minn. Stat. § 260.012

(2018) (providing exceptions to the requirement that a county make reasonable reunification efforts in a termination proceeding). We review a district court’s factual findings for clear error and will not disturb a finding that the county made reasonable efforts if it is supported by substantial evidence. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901, 904 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012).

Once a child alleged to be CHIPS is under court jurisdiction, generally, the county must make reasonable efforts to reunify the parent and child. Minn. Stat. § 260.012(a). In a termination proceeding, if reunification efforts are required, the district court “shall make findings and conclusions as to the provision of reasonable efforts.” Minn. Stat. § 260.012(h). Specifically, the district court must consider whether a county’s reunification efforts were “(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances.” Minn. Stat. § 260.012(h)(1)-(6). Additionally, the district court must make specific findings “that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made including 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) (2018). Finally, the district court must consider “the length of the time the county was involved and the quality of effort given.” *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990).

Here, the district court found that RCSSD provided services and made reasonable efforts to reunify the family, but the services and reunification efforts were “ultimately unsuccessful.” The district court outlined the services offered to mother, including Rule 25 chemical-dependency assessments, outpatient chemical-dependency treatment programming, random UAs, housing programming with the Wilder Amherst Foundation, Mothers First programming, marriage counseling, Narcotics Anonymous and Alcoholics Anonymous meetings, and Project Harmony programming while in Glencoe. The district court also found that RCSSD provided the family with financial assistance in the form of bus cards, gas cards, housing rent, and damage deposits. Additionally, the district court noted that mother “is resourceful and has engaged in services of her own initiative.” The district court found that the services were “reasonable, appropriate, and relevant to the safety and protection of the children, adequate to meet the needs of the children and family, and realistic under the circumstances.”

Mother argues that RCSSD was required to offer additional services, other than drug testing and transportation costs, to address her chemical-dependency issues. Mother cites *In re Welfare of Children of T.R.*, 750 N.W.2d 656 (Minn. 2008) in support of her argument. In *T.R.*, the Minnesota Supreme Court reviewed the termination of a noncustodial parent’s rights. *Id.* at 658. On appeal, the noncustodial parent argued that “merely testing a parent for chemical use” is not a reasonable effort. *Id.* at 664-65. In response, the county asserted that because the noncustodial parent never demonstrated sobriety, he could not progress with the remainder of his case plan. *Id.* at 665. In determining that the county failed to make reasonable efforts to reunite the child and the

noncustodial parent, the court considered the disparity in services offered to the noncustodial parent in comparison to the services offered to the custodial parent. *Id.* at 666. The court concluded that “[e]ven in the absence of the comparison to the services provided to [the custodial parent], the services provided to the [noncustodial parent] were not reasonable because no services were offered to address [his] lack of verbal skills and acknowledged difficulty in understanding the proceedings.” *Id.*

In this case, RCSSD targeted their reunification efforts towards mother’s chemical-dependency issues given her long history of drug addiction. Unlike the county in *T.R.*, RCSSD provided more than simply drug tests and transportation costs to assist mother in meeting her chemical-dependency goals. Mother’s Rule 25 assessments resulted in recommendations and referrals for MAT and outpatient treatment programs. Despite these recommendations, mother never completed an outpatient treatment program. RCSSD supported mother’s continued work with Mothers First, a Ramsey County organization, throughout her involvement with child protection. RCSSD also continued to arrange chemical-dependency services through Project Harmony following mother’s move to Glencoe, but mother failed to maintain her sobriety. RCSSD believed that mother first needed to address her chemical-dependency issues before she would have been able to progress on other aspects of her case plan. The district court found that this “approach to prioritizing services was reasonable.”

Mother also argues that RCSSD offered no services to address her mental-health, domestic-violence, or housing issues. In regard to mental health, mother’s November 2017 case plan required her to complete a mental-health assessment and to continue to work with

her psychiatrist and take her prescribed medications. Mother had been seeing a psychiatrist before her involvement with child protection and testified that she continued to see a therapist and take her medication “off and on” throughout the case. To address domestic violence issues, RCSSD required that mother attend marriage counseling with a minister, and although mother began counseling, she did not complete it. RCSSD also assisted mother with housing by providing rent and damage deposits and working alongside mother and the Amherst Wilder Foundation to locate housing. But the periods of time when mother was able to secure housing were interrupted by incidents arising from drug use, domestic violence, and police contacts that resulted in an overall pattern of homelessness. The district court’s findings are supported by the record, and the district court did not err in determining that the county made reasonable reunification efforts.

II. The district court did not abuse its discretion in determining that termination of parental rights is in the best interests of Child Three.

“The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child.” Minn. Stat. § 260C.001, subd. 2(a) (2018). “In analyzing the best interests of the child, the 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.” *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); *see also* Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). The district court “must consider a child’s best interests and explain its rationale in its findings and conclusions.” *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). “[C]onflicts between the rights of the child and rights of the parents are resolved in favor

of the child.” *J.R.B.*, 805 N.W.2d at 902; *see also* Minn. Stat. § 260C.301, subd. 7 (2018). The “determination of a child’s best interests ‘is generally not susceptible to an appellate court’s global review of a record,’ and . . . ‘an appellate court’s combing through the record to determine best interests is inappropriate because it involves credibility determinations.’” *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quoting *In re Tanghe*, 672 N.W.2d at 625). This court applies an abuse-of-discretion standard to a district court’s determination that termination of parental rights is in a child’s best interests. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008).

Mother argues that the three best-interests factors do not weigh in favor of termination. Mother asserts that the first factor, Child Three’s interest in preserving the parent-child relationship, weighs in her favor because Child Three recognizes her when she visits, and RCSSD and the guardian ad litem encouraged an ongoing relationship with mother. Next, mother contends that the second factor, her interest in preserving the parent-child relationship, does not weigh in favor of termination. She states that she “has gone far beyond the typical child protection mother in terms of following a case plan,” but also admits that she “has a substance abuse problem that can get in the way of parenting children.” Finally, mother argues that the third factor, any competing interest of the child, weighs in her favor because she has consistently wanted the children returned to her care and custody.

The district court found that Child Three has been out of mother’s care for most of his life and has bonded to his relative foster parent. The district court also found that Child Three’s foster parent provides him with security and stability. While Child Three has been

developing normally, he is slow to speak. Because of this, the district court found that he needs a parent who will be able to ensure that he attends therapy. The district court considered the testimony of the guardian ad litem, who testified that mother has no insight into her child's needs, and is not able to put the child's needs before her own. The district court found that Child Three is "overdue for permanency" and it is contrary to his best interests "to give [mother] additional time to participate in services, work her case plan, or attempt to make the changes necessary to correct her parenting deficiencies." The district court's findings and conclusions are supported by clear and convincing evidence in the observations and recommendations contained in the record. The district court did not abuse its discretion in determining that termination is in Child Three's best interests.

III. The district court did not abuse its discretion in determining that transfer of legal and physical custody is in the best interests of Child One and Child Two.

On appeal from a permanent-placement order transferring legal custody, this court applies a two-part standard of review. *See In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321-22 (Minn. App. 2015), *review denied* (Minn. July 21, 2015). First, factual findings are reviewed to determine whether they address the statutory criteria and are supported by "substantial evidence," or whether they are clearly erroneous. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). A finding is clearly erroneous only if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred. *D.L.D.*, 865 N.W.2d at 322 (quotations omitted). Second, the ultimate decision that there is a statutory basis for a permanency disposition is reviewed for an abuse of discretion. *Id.* at 321. "A district court

abuses its discretion if it improperly applies the law.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 93 (Minn. App. 2012).

The district court “may order permanent legal and physical custody to a fit and willing relative in the best interests of the child.” Minn. Stat. § 260C.515, subd. 4 (2018). An order permanently transferring legal and physical custody of a child must address: (1) how the child’s best interests are served by the order; (2) the nature and extent of the responsible social services agency’s reasonable efforts to reunify the child with the parent; (3) the parent’s efforts and ability to use services to correct the conditions which led to the out-of-home placement; and (4) the conditions leading to the out-of-home placement have not been corrected to permit the child to safely return home. Minn. Stat. § 260C.517(a) (2018). Each of these four statutory findings must be proved by clear and convincing evidence. *See* Minn. R. Juv. Prot. P. 39.04, subd. 1.

Mother challenges the first of these four requirements—asserting that it is in the best interests of Child One and Child Two to remain in her care and custody. In the case of a permanency disposition, “the court must be governed by the best interests of the child, including a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact.” Minn. Stat. § 260C.511(b) (2018).

In this case, the district court reviewed the relationships between the children, mother, and D.F. The district court found that it is in the best interests of the children to have ongoing contact with mother, at the discretion of D.F., and that D.F. will continue to facilitate contact between the children and mother. Although one of mother’s service

providers testified that mother is a dedicated parent, the district court “gave her testimony little weight” due to her limited observations and knowledge regarding mother’s involvement with child protection. The district court found that transfer of custody of Child One and Child Two is in their best interests because D.F. “has demonstrated that he can meet [their] basic needs, he offers consistency and structure necessary for their development, and their behavior has improved in [D.F.]’s care.” In addition, the district court found that Child One and Child Two would maintain a familial bond with their half-sibling also living in D.F.’s home. The district court did not abuse its discretion in determining that the transfer of legal and physical custody is in the best interests of Child One and Child Two.

Affirmed.