STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0311

In re the Matter of the Welfare of the Children of:
A. M. S. and A. M. A., Parents

Filed September 3, 2019
Affirmed
Rodenberg, Judge

St. Louis County District Court
File Nos. 69DU-JV-18-101, 69DU-JV-18-283

Bill L. Thompson, Law Office of Bill L. Thompson, Duluth, Minnesota (for appellant-mother A.M.S.)

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Sonia Sturdevant, Assistant Public Defender, Duluth, Minnesota (for child S.S.)

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Considered and decided by Larkin, Presiding Judge; Rodenberg, Judge; and Smith, John, Judge.*

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

RODENBERG, Judge

Appellant A.M.S. (mother) appeals from the district court's termination of her parental rights to her two children, arguing that the record evidence supports neither the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

district court's finding that a statutory basis for termination exists nor its finding that termination is in the best interests of the children. We affirm.

FACTS

Mother is the biological parent of child 1 and child 2. Child 1, born January 15, 2007, has no known or adjudicated father. A.M.A. (father) is the adjudicated father of child 2, born April 17, 2018.[1] Mother is a descendent of the Red Lake Band of Chippewa Indians, but neither child is eligible for enrollment in an Indian tribe. The Indian Child Welfare Act (ICWA) does not apply to these proceedings.

On September 7, 2017, a petition was filed in St. Louis County (the county), alleging that child 1 was a child in need of protection or services (CHIPS). The CHIPS petition alleged a long history of the county's social workers' involvement with mother starting in 2013. The CHIPS petition also detailed repeated instances of educational neglect, domestic violence, and drug use. The immediate triggering event for the CHIPS petition was mother's treatment for a hand infection at a hospital on August 31, 2017. Hospital personnel determined that mother was pregnant, and laboratory tests detected amphetamines and marijuana components in her system. She was aggressive toward staff to the point of requiring four-point restraint, and she appeared to be experiencing drug-withdrawal symptoms.

[1] Before the consolidated termination of parental rights (TPR) trial, father signed and filed a recognition of parent form with the state, making him the adjudicated father of child 2. Father's rights to child 2 were later terminated, and he has not appealed the termination of his parental rights. Accordingly, this opinion addresses only mother's appeal of the termination of her parental rights.

On September 8, 2017, the district court found a prima facie case to believe that child 1 was a child in need of protection or services, and it placed child 1 in foster care. The initial admit/deny hearing was scheduled for September 13, 2017, but was continued because mother "appeared to be under the influence" and social workers requested that she submit to drug testing after the hearing was continued to a later date. A denial was subsequently entered on behalf of mother at a later admit/deny hearing.

In early October 2017, mother was evicted from her apartment and became homeless. During this time, mother's cooperation with urine testing for drugs was "inconsistent." She failed to show up for testing several times and tested positive for methamphetamine on at least one occasion. In November 2017, mother made a limited admission to the CHIPS petition, admitting that she "has chemical dependency challenges that make it difficult for her to provide care for her child." The district court accepted the admission and ordered a case plan which required mother to find housing, complete a psychological/parenting assessment, complete a rule 25 assessment, complete random drug testing (with any missed tests to be deemed positive), "maintain absolute sobriety," and cooperate fully with social services, among other requirements. By mid-November, mother completed a rule 25 assessment after having rescheduled it three times. Visits with child 1 were suspended, however, because mother did not take drug tests and, on one occasion, mother yelled, swore at, and attempted to assault Lutheran Social Services staff members.

Mother was scheduled to enter Marty Mann Halfway House for inpatient chemical-dependency treatment in mid-November, but admission was rescheduled until mid-

December. During this period of delay, mother refused to take mandated drug tests and, when she did cooperate, she tested positive for methamphetamine and marijuana. Mother was discharged from Marty Mann five days after admission for "leaving against staff recommendations," having been "inconsistently compliant with the program expectations," demonstrating "'minimal awareness of her addiction,' and was 'minimally cooperative.'"

Mother completed a second rule 25 assessment at the end of January 2018, but did not cooperate with the county for drug testing or progress beyond completing another chemical-dependency program's intake. Mother continued to have no visits with child 1 during this time. On February 14, 2018, the county filed a petition to terminate both mother's and the unknown father's parental rights to child 1. The TPR petition largely reiterated the allegations of the earlier CHIPS petition and mother's inaction on the CHIPS case plan.

In March, while still pregnant with child 2, mother entered Douglas Place, an inpatient chemical-dependency treatment center. Mother "wanted to leave the program" and was on the verge of being discharged due to lack of attendance and leaving the treatment center for long periods of time, but the staff was "concerned about discharging her due to her chemical dependency issues during pregnancy." Less than three weeks later, mother transferred back to Marty Mann, where she did not participate in programming and would often leave the facility for long periods of time. On April 17, 2018, mother gave birth to child 2, who was immediately "placed on a police hold due to the mother's ongoing child protection concerns, chemical use, mental health issue[s], homelessness, and instability." Three days later, the county filed a TPR petition concerning child 2, and an

emergency protective care hearing was held that same day. "[G]iven the mother's lack of progress towards addressing the child protection concerns," child 2 was also placed in foster care and mother was afforded two supervised visits per week.

After giving birth to child 2, mother returned to Marty Mann. While in treatment, she consistently submitted to drug testing and was sober and drug-free. However, she had "a great amount of difficulty" adapting to the treatment program and would not participate in groups. She would "leave the program for long periods of time" without informing staff of her whereabouts, and was placed on a behavior plan because of these problems. Mother's counselor "questioned whether or not she was even capable of working the program." Despite these strong concerns, mother graduated from the program on May 25, 2018. Staff noted, however, that mother displayed "poor recognition and understanding of relapse and appeared at a moderately high level of risk for relapse for further substance use or mental health problems" and that she "would likely benefit from continued attention to mental health, relapse prevention, and accountability." While at Marty Mann, mother was able to find an apartment that she shared with father, but, within a week of leaving the program, the landlord asked her and father to leave because father was selling drugs from the apartment.

Within two weeks following her discharge from Marty Mann, mother again began using methamphetamine, and she continued to test positive for methamphetamine up to and throughout the TPR trial. Mother also remained homeless, but would stay at her mother's home occasionally. Mother was referred to a psychological evaluation in May and underwent an evaluation by Dr. Megan Paris in July. But she scheduled the follow-up

appointments for the end of August despite the psychologist's recommendation that appointments begin sooner. During this time, mother attended out-patient treatment, but continued to have attendance issues. Mother's attendance was sufficiently inconsistent that, in November, mother's counselor stated that "if [mother] attended treatment regularly she would have completed treatment in August." The counselor concluded that mother "needs inpatient treatment."

Dr. Paris filed her psychological/parental capacity evaluation with the district court on September 14. Her report noted that mother minimized her "limited compliance" with drug testing, attendance, and participation in chemical-dependency programming. Mother had "minimal comprehension or appreciation" of the programming. The report concluded that mother had post-traumatic stress disorder, a "mild neurocognitive disorder" resulting from an earlier traumatic brain injury (secondary to a car crash in 2001), and stimulant (methamphetamine) and marijuana addiction. Dr. Paris noted that mother's "degree of disorganization, distractibility, and disjointed presentation [are] the result of the overlapping conditions of her trauma symptoms, [traumatic brain injury] concerns, and methamphetamine use." Dr. Paris also concluded that, even if mother were to follow all treatment recommendations, her parenting ability would be, at best, "guarded."

The two TPR petitions were consolidated for trial. At the outset of trial, the parties agreed that the proceedings only concerned the termination of mother's parental rights because father had only recently filed a recognition of parentage form. The parties stipulated to the admission of eight exhibits, which included mother's psychological evaluation, her drug test results, her discharge summaries and treatment plans, and police

body-camera videos of mother. The county's only witness on the first day of trial was mother, who testified that, while she agreed with the history of the cases as recited in the petition(s), she would like to regain custody of both children. She testified that she would need to again complete chemical-dependency treatment and would need to obtain housing. Mother also testified that she was going to take care of a warrant for her arrest issued in January 2017. On October 5, the county filed an amended TPR petition naming A.M.A. as the father of child 2 and seeking termination of his parental rights.

Due to the district court's schedule, the next day of trial was not held until about two months after the first day of trial. Between the two trial dates, mother tested positive for methamphetamine on at least six occasions. Mother again testified, and admitted that she had not taken care of the January 2017 warrant, continued to remain homeless, and continued to use methamphetamine. She had not completed the Genesis treatment program. Mother testified that it was her intention after the trial to start an inpatient treatment program, because she felt that she "didn't really learn anything from [Marty Mann] and didn't really get anything out of it."

The county social worker also testified at trial. She met with mother on multiple occasions over the course of the CHIPS and TPR cases to discuss mother's case plan. She asked mother to submit to drug testing, to complete the rule 25 assessment, to participate in chemical dependency treatment, and generally to do what was necessary under the court-approved case plan for mother to reunite with her children. The social worker also testified that:

> I did identify mental health as an issue, but I knew that unless we got some of the sobriety under control, it wouldn't even

> make sense for [mother] to do a psychological evaluation, because then they wouldn't be able to tell if the results are because she is high or are the results because she has mental health issues.

The social worker testified that, once mother obtained a period of sobriety at Marty Mann, she was referred for a psychological evaluation, which mother attempted to delay and cancel. The social worker noted that the county had "tried and tried and tried to get [mother] what she needs with regards to the treatment so that she can be a sober person" but mother's intransigence significantly delayed the county's attempts at getting mother into treatment. The social worker concluded that it was in the best interests of the children to terminate mother's parental rights and "it would be very difficult" for mother to reach the point of being capable of parenting the children in the reasonable future.

Mother called a worker from the "Superior Babies Program," who testified that her interactions with mother were positive. But the worker agreed that there remained concerns about mother's sobriety.

Following trial, the parties submitted written closing arguments. The county argued that it had proved all of the statutory bases for termination of mother's parental rights alleged in the petitions and that termination is in the best interests of the children. The county noted that "[i]n short, when this matter first came before the [district] court in September 2017, [mother] was homeless, actively using methamphetamines and in need of treatment, and had multiple unaddressed mental health issues. By her own testimony, 14 months later, none of those things had changed." In mother's closing argument, mother argued that "[a]ll she is asking for is more time. She is just asking the [district] court with good cause to extend the [permanency] timelines, and grant her the time to go through

treatment and ensure she follows through with any aftercare recommendations, and is able to maintain her sobriety."

On January 3, 2019, the district court ordered that mother's parental rights to both children be terminated. The district court found that the county "established by clear and convincing evidence that [mother] continues to be a danger to her children due to her drug use, her inability to seek assistance for her mental health issues, and her complete inability, over 17 months, to secure affordable and safe housing for her children." The district court also noted mother's repeated drug-treatment failures. It also noted that both the social worker and the guardian ad litem (GAL) opined that termination was in the best interests of the children. The district court did not specifically indicate the statutory ground(s) on which it was granting termination. Following this order, the case was reassigned to a different district court judge because the initial district court judge was retiring.

Mother timely moved for a new trial or, alternatively, for amended findings of fact. Mother argued that the district court erred in terminating her parental rights because "she does not agree that for the foreseeable future she would be unable to parent her children," she "recently completed treatment," and intended to deal with the outstanding January 2017 warrant. The county opposed mother's motion. It moved the district court to amend its findings and order to identify the statutory bases for termination and to make statutorily required findings.

Mother argued at the motion hearing that "[t]he evidence does not support the decision that was reached" because mother had by then dealt with the outstanding warrant and had recently completed inpatient treatment. The county noted that mother's argument

"largely relies on information outside of the record." The district court concluded that "simply disagreeing with the [district] court's decision and articulating actions taken subsequent to the trial are insufficient." It denied mother's motions. It issued amended findings on the county's motion and identified the statutory bases for termination. The district court clarified that mother's rights to the children were being terminated under Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (7), and (8).

Mother appealed. Her notice of appeal stated that she was appealing the initial order "dated February 4" and the amended order filed "February 15." On March 1, we issued an order construing mother's appeal "as taken from the orders filed on January 3, 2019, and February 7, 2019."

D E C I S I O N

We note at the outset the significance of the district court's amended order of February 7, which identified the statutory bases for termination of mother's parental rights. The January 3 order of the district court failed to do so. The January 3 order found that termination of mother's parental rights is in the children's best interests, but did not expressly find "at least one condition" for involuntary termination, as required by *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 54 (Minn. 2004). The statute authorizing termination of parental rights requires that the district court must "find[] that one or more" specific conditions exist. Minn. Stat. § 260C.301, subd.1 (2018). And the best-interests finding, in the absence of a statutory basis for termination, is insufficient to support termination. *R.W.*, 678 N.W.2d at 54. On this record, the absence of a finding by a district court of a statutory basis for termination in the January 3 order would require reversal or

remand. But the amended order, after the posttrial motions, identifies five statutory bases for termination and, as noted above, we have construed the appeal as being from both orders.

Parental rights should not be terminated "except for grave and weighty reasons." *In re Welfare of HGB*, 306 N.W.2d 821, 825 (Minn. 1981). We may affirm a termination of parental rights if "at least one statutory ground" has been proved and if termination is in the best interests of the involved children. *R.W.*, 678 N.W.2d at 55.

I. The record supports the district court's finding that reasonable efforts failed to correct the conditions that led to the children's placement out of the home.

Mother contends that the district court erred in finding that reasonable efforts failed to correct the conditions that led to the out-of-home placement. Mother argues that the county did not provide reasonable efforts because "[t]he level of chemical dependency treatment [afforded her] was not adequate, nor were any services for her mental health provided."

A district court may terminate a parent's rights if reasonable efforts have failed to correct the conditions leading to out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5). Reasonable efforts are presumed to have failed upon showing that: (1) a child has resided out of the home for a cumulative period of 12 months within the preceding 22 months or, if the child is under the age of eight, has resided out of the home for 6 or more months unless the parent maintained regular contact with the child and complied with the out-of-home placement plan; (2) the district court approved the out-of-home placement plan; (3) the conditions have not been corrected; and (4) the county made reasonable efforts toward reunification. *Id.* "It is presumed that conditions leading to a child's out-of-home

placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan." *Id.* However, "[r]easonable efforts encompass more than just a case plan" and the required services "must be aimed at alleviating the conditions that gave rise to out-of-home placement." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 88 (Minn. App. 2012).

In the January 3 order, the district court found that

> over the 17 months these matters have been pending, [mother] has been unable to maintain sobriety, unable to deal with her mental health issues, unable to secure and maintain safe housing for herself and her children, and has been generally unsuccessful in beating her addiction to marijuana and methamphetamine despite multiple chemical dependency treatment opportunities.

The district court also noted that mother continued to test positive for illicit substances on multiple occasions throughout the CHIPS and TPR proceedings. In its amended order, the district court found that:

> The St. Louis County Public Health and Human Services Department made reasonable efforts to reunify the children with their mother . . . . These extensive efforts were unsuccessful in addressing the issues which led to the need for out of home placement and the provision of further services would be futile and therefore unreasonable. Moreover, [child 1] has resided in out of home placement for approximately 14 consecutive months and [child 2], who has not yet reached one year of age, has been in placement for more th[a]n seven consecutive months (as of the last day of trial) with a court ordered reunification plan in place; the conditions leading to the children's placement away from their mother have not been corrected in that [mother] continues to use methamphetamines, remains homeless, and her mental health issues remain undressed; and efforts provided by the agency and others were reasonable under the circumstances. By operation of Minn. Stat. § 260C.301, subd. 1(b)(5)(i-iv) it is

> presumed that reasonable reunification efforts have failed. No evidence has been presented to rebut that presumption.

The district court also found that mother's "circumstances and conduct are such that the children cannot be returned to her and [mother] has, despite the availability of needed rehabilitative services, failed to make reasonable efforts to adjust her circumstances, conditions, and conduct." The district court terminated mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5), "because following the children's placement out of the home, reasonable efforts, under the direction of social services, have failed to correct the conditions leading to the children's placements."

The record supports the findings of the district court that, over the course of the CHIPS and TPR proceedings, the county provided mother services such as "family assessments, [access to the parental support outreach program], transportation assistance, assistance with obtaining benefits, and foster care." The county also provided supervised visits for mother, even after her behavior resulted in a suspension of her visiting rights for a time. The county also provided mother with referrals to parenting classes and several rule 25 assessments and the treatment indicated by those assessments. All of these services were aimed at helping mother comply with the case plan and obtain sobriety. These efforts are consistent with what we have previously considered to be reasonable efforts. *Cf. In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 903 (Minn. App. 2011) (noting that the county's reasonable efforts included providing a psychological evaluation and that "counseling, aftercare, urinalysis, a rule 25 chemical dependency assessment, parenting classes and other services were available to mother"), *review denied* (Minn. Jan. 17, 2012).

Mother argues first that "the treatment program at Marty Mann did not meet [her] needs." Mother's argument misstates the record. At Marty Mann, mother "would just be gone, she'd take off" for hours without informing anyone of where she was going. She often refused to attend the morning or afternoon groups. When she was present, she did not meaningfully participate. As a result of mother's refusal to participate in her treatment, Marty Mann moved her to "a less intensive program" that was inpatient but mother "only had to attend the groups in the morning." The social worker testified that Marty Mann was "trying to accommodate and get [mother] to buy in as much as they could and realizing that maybe she couldn't do all of it, but if she could at least get some of it that it might, you know, any piece of it could help." The social worker noted that "[t]he way they described it to me was the harm reduction model. They were just trying to get her in, trying to get her to do some of the groups and learn and do some of the education."

It is true that Marty Mann graduated mother despite serious concerns regarding her progress. However, the social worker testified that Marty Mann graduated mother because of their "harm reduction model," where, despite mother's failure to engage in treatment, "some [treatment] is better than none" and because mother "had set herself up with the inpatient program at Genesis." Fairly read, the record supports that the issue was not with Marty Mann or the county's reasonable efforts to get mother into treatment; the issue was mother's refusal to meaningfully engage with the chemical-dependency programming, as the district court found.

Mother also relatedly argues that the county failed to address her mental-health issues until "almost a year after the child protection matter began." Mother's argument fails here as well.

Mother was referred for a psychological evaluation in May 2018, but she delayed the appointments so that the evaluation was not completed until September. Mother's argument also ignores the social worker's explanation, which the district court implicitly accepted, that mental health treatment would be useless until mother first became sober. The social worker explained that "they wouldn't be able to tell if the results are because she is high or . . . because she has mental health issues." Once mother appeared to regain sobriety, she was referred for a psychological evaluation but began using drugs again by the time the evaluation was to take place. This is supported by Dr. Paris's conclusion that mother's "disorganization, distractibility, and disjointed presentation is *the result of the overlapping conditions* of her trauma symptoms, [traumatic brain injury] concerns, and methamphetamine use."

The record supports the district court's finding that reasonable efforts to reunify were made by the county, but those efforts failed to correct the conditions leading to the children's placement out of the home.[2]

[2] Reasonable efforts to reunify are required in all cases, except where excused by statute. Minn. Stat. § 260C.301, subd. 8 (2018). Here, because the record supports the district court's finding that reasonable efforts under the court's direction failed to correct the conditions leading to the out-of- home placement, the reasonable-efforts finding inheres in the statutory basis found, and we therefore do not separately analyze whether reasonable efforts were required.

We may affirm a district court's termination of parental rights if "at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests." *R.W.*, 678 N.W.2d at 55. We decline to analyze the remaining grounds on which mother's parental rights were terminated, but note that the record appears to us to support those additional statutory grounds for termination found by the district court.

II. The record supports the district court's finding that termination of mother's parental rights is in the children's best interests.

Mother also appears to summarily argue that the district court erred by determining that termination of her parental rights is in the best interests of the children. Mother's only argument concerning the best interests of the children is a section of her brief titled: "Did the trial court err in determining it was in the child[ren's] best interests to transfer custody? Yes." However, that section does not address the best interests of the children. Instead, it discusses whether mother is palpably unfit under Minn. Stat. § 260C.301, subd. 1(b)(4). Nevertheless, we construe mother's appeal as arguing generally that the district court erred in determining that termination was in the children's best interests.

Even if a statutory basis for terminating a parent's rights is found, a district court must also find that termination of the parent's rights is in the best interests of the children. *R.W.*, 678 N.W.2d at 55. "[I]n terminating parental rights, the best interests of the child are the paramount consideration, and conflicts 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). "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). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *R.T.B.*, 492 N.W.2d at 4. 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). We review a district court's determination that termination of parental rights is in a child's best interests under an abuse-of-discretion standard. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008).

In its initial order, the district court found that "[b]oth the [s]ocial [w]orker handling this matter and the GAL opined that it is in the best interests of the children that [mother's] parental rights be terminated." In the amended order, the district court found that:

> The [district] [c]ourt has balanced the children's and mother's respective interests in preserving the parent and child relationships with the children's competing interests in severing that relationship and finds that the balance tips overwhelming toward termination of parental rights. With regard to [mother], her interest in preserving her relationship is undeniably very strong and very real. The evidence is clear that [mother] loves her children and wants what is best for them. As for the children, while they both have an obvious interest in preserving their relationships with their mother, both children's respective interests in this regard are minimized by the facts of this matter. [Child 1] has been in continuous out of home placement for more than 14 months following the filing of the CHIPS petition and her contact with her mother in that time has been limited to supervised visitations, a circumstance that is highly unlikely to change in the reasonably foreseeable future. [Child 2]'s interest in preserving his relationship with his mother is even less in that he has never resided with her. Since the filing of the CHIPS petition, [mother] has not made any significant progress in adjusting her

> circumstances and behavior in order to be able to successfully parent her children. The children are entitled to caregivers who will be able to put their needs first and there is simply no evidence they will get that from [mother]. By contrast, termination of parental rights will . . . open up new avenues for permanent placement options which will allow the children to grow up together in a safe, stable, permanent living environment. Under these circumstances, the children's respective interest in severing the parent-child relationship therefore significantly outweigh any interests in preserving it.

The record supports the district court's determination that termination of mother's parental rights is in the best interests of the children. The district court acknowledged that mother loves her children and that her interest in retaining her parental rights is very strong. However, the district court properly balanced that interest against the children's lesser interest in maintaining that relationship and their strong interest in having "a safe, stable, [and] permanent living environment."

The record abounds with evidence supporting the district court's best-interests finding. Mother has not maintained sobriety. She failed to complete or even meaningfully engage in multiple chemical-dependency treatment programs. She failed to adequately address her mental-health issues. The district court specifically identified this evidence as demonstrating that termination is in the best interests of the children. The district court did not abuse its discretion in determining that termination of mother's parental rights is in the best interests of the children.

Affirmed.