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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0904**

In re the Matter of the Welfare of the Child of: L. M. D. and J. D. C., Parents

**Filed October 14, 2019
Affirmed
Smith, John, Judge***

Becker County District Court
File No. 03-JV-19-136

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Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Smith,
John, Judge.

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

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We affirm the termination of appellant's parental rights because the record supports the district court's findings and determinations that she failed to satisfy the duties of the parent-child relationship and that respondent county's reasonable efforts failed to correct the conditions leading to the child's out-of-home placement.

FACTS

Appellant L.M.D. and respondent J.D.C. are, respectively, the mother and father of S.C., born in March 2015. In February 2018, respondent Becker County Human Services (BCHS) filed a petition to have S.C. adjudicated a child in need of protection or services (CHIPS) on the grounds that appellant had been using drugs and not adequately caring for S.C. since the summer of 2017. S.C. was removed from appellant's home and placed in foster care with her maternal grandmother, L.G.

S.C. was adjudicated CHIPS in March 2018, based on the admission of J.D.C. and the default of appellant, who did not appear at the CHIPS hearing. The CHIPS order required appellant to: (1) cooperate with BCHS providers; (2) complete a capacity-to-parent evaluation; (3) complete a mental-health diagnostic assessment; (4) complete a chemical-use assessment; (5) comply with random drug testing; (6) obtain stable housing and employment; (7) attend supervised visitation with S.C.; and (8) remain law abiding.

Appellant tested positive for methamphetamine twice in May 2018; she also pleaded guilty to unlawful possession of a short-barreled shotgun, to owning and operating a motor vehicle without insurance, and to possession of drug paraphernalia. Her adjudication of

guilty was stayed and she was placed on probation for five years. In August 2018, a warrant was issued for her arrest because she had violated her probation conditions by not having contact with her probation agent. She admitted the violation and was reinstated on probation. In December 2018, she tested positive for methamphetamine.

Appellant did not see S.C. between May 2018 and January 2019. In January 2019, BCHS filed a petition for termination of appellant's parental rights to S.C. and a request for the transfer of sole legal and sole physical custody of S.C. to her father, J.D.C., who had successfully completed his case plan.

After a chemical-use assessment, appellant went to ShareHouse, a treatment facility. She was discharged unsuccessfully in February 2019, and, later that month, she again tested positive for methamphetamine. A warrant was issued for her arrest for violating probation. She rejected probation and demanded execution of her sentence.

Following a trial regarding appellant's progress on her case plan, the district court determined that she had not complied with the case plan in any respect, terminated her parental rights to S.C., and transferred sole legal and sole physical custody of S.C. to J.D.C.

Appellant challenges the district court's conclusions that she substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent-child relationship and that BCHS's reasonable efforts had failed to correct the conditions leading to S.C.'s out-of-home placement.

DECISION

Standard of Review

An appellate court will “affirm the district court’s termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family.” *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted).

1. Noncompliance with duties imposed by the parent-child relationship

The district court concluded that appellant substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent-child relationship within the meaning of Minn. Stat. § 260C.301, subd. 1(b)(2) (2018). Clear and convincing evidence supports that conclusion.

The district court based its conclusion in part on reports from BCHS that: (1) in the summer of 2017, appellant was using drugs and was providing inadequate supervision of S.C.; (2) appellant refused to meet with the BCHS investigator assigned to the case; (3) in January 2018, (a) appellant was using drugs including methamphetamine and heroin; (b) she left S.C. in the care of “random people”; (c) someone had to rescue S.C. from drowning when appellant was not paying attention to her; (d) a criminal complaint was filed alleging that appellant possessed a short-barreled shotgun, drove a motor vehicle without insurance, and possessed drug paraphernalia; (4) the investigator made repeated efforts to check on S.C., but appellant did not return phone calls and neither the Head Start program, appellant’s family, nor appellant’s landlord could provide contact information;

(5) when the investigator saw lights go on in appellant's residence and summoned law enforcement to help her check on S.C.'s welfare, appellant refused to let them in, to comply with a drug test, and to let them see S.C.; (6) appellant texted the investigator that she was too busy to meet and wanted to consult her lawyer and that someone with a grudge against appellant had made false reports of neglect and drug use; (7) appellant was evicted from her apartment for nonpayment of rent at the end of January 2018; (8) in February 2018, L.G. had been caring for S.C. for three weeks with no contact from appellant, about whose mental health L.G. was concerned; (9) L.G. reported that, in December 2017, S.C. was playing with a loaded gun while appellant was "passed out" on the couch; (10) L.G. was concerned about appellant's parenting ability and about her own lack of legal authority to prevent appellant from taking S.C.; (11) in March 2018, an ex parte order placed S.C. in L.G.'s residence and appellant was prohibited from going there; and (12) appellant failed to comply with any of the eight requirements of the case plan devised to enable her to be reunited with S.C. Thus, the district court's conclusion that appellant substantially neglected S.C. is supported by evidence provided by the BCHS reports.

Appellant argues that, because there was no finding that S.C. was abused, addicted to drugs, neglected, or malnourished, it is "incredible" that appellant's parental rights to her could be terminated. But appellant cites no statutory or caselaw authority for the view that such findings are a prerequisite for termination.

The district court's conclusion that appellant had neglected to comply with the duties imposed on her by her parent-child relationship with S.C. is supported by findings of fact that are not clearly erroneous.

2. Failure of reasonable efforts to correct conditions leading to out-of-home placement

The district court concluded in May 2019 that BCHS had made reasonable efforts to reunite the family and that those efforts had failed to correct the conditions leading to S.C.'s out of home placement based on Minn. Stat. § 260C.301, subd.1(b)(5)(i)-(iv) (2018), and on Minn. Stat. § 260C.301, subd.1(b)(5)(A)-(D) (2018), each of which provides four criteria for a presumption that reasonable efforts have been made and have failed.

A presumption of the failure of reasonable efforts occurs when: (1) the child has resided outside the home for six of the preceding 22 months; (2) the court has approved the out-of-home placement plan; (3) conditions leading to the out-of-home placement have not been corrected, which in turn is presumed upon a showing of a parent's failure to substantially comply with a reasonable case plan and any court orders; and (4) the county's reasonable efforts to rehabilitate the parent and reunite the family have failed. Minn. Stat. § 260C.301, subd.1(b)(5)(i)-(iv).

In regard to this provision, the district court found that:

[S.C.], a four-year-old, was placed out of [appellant's] home over a year ago by court order, and [appellant] did not maintain regular contact with [S.C.] during that time. This Court approved the out-of-home placement plan due to concerns for [S.C.'s] stability arising from [appellant's] lack of stable housing and employment. BCHS offered services to address all of these concerns in an attempt to reunite [appellant] and [S.C.], and supported those services with reasonable efforts to help [appellant] comply. Despite BCHS's reasonable efforts, [appellant] did not comply with her Case Plan. Since [S.C.] has been placed out of the home by court order for more than six months, the court approved her out-of-home placement plan, [appellant] failed to comply with her Case Plan, and

reasonable efforts have been made by BCHS, there is a presumption that BCHS's reasonable efforts have failed.

Appellant does not dispute the district court's findings and admits that she did not comply with her case plan.

A presumption that reasonable efforts have failed also occurs when: (1) the parent has been diagnosed as chemically dependent; (2) the parent has been required by a case plan to participate in a chemical-dependency-treatment program; (3) the treatment program was linguistically, culturally, and clinically appropriate; and (4) the parent either failed two or more times to complete the treatment program or refused at two or more separate meetings with a caseworker to participate in a treatment program. Minn. Stat. § 260C.301, subd.1(b)(5)(A)-(D).

In regard to this provision, the district court found that:

Appellant was diagnosed as "severely" chemically dependent by Minnesota Adult and Teen Challenge. [Appellant's] Case Plan required her to follow all recommendations of this assessment; thus, since the assessment recommended participation in a chemical treatment program, it became a requirement of her Case Plan. ShareHouse was an appropriate residential treatment facility for [appellant's] needs. [Appellant] not only failed this program, but also repeatedly refused to participate in treatment after meetings with [her case manager] in May, August, and November—not to mention her repeated failure to comply with her probation requirements. Finally, although [appellant] is presently sober while incarcerated, there is substantial evidence of [her] use of chemicals shortly after having been discharged from either treatment or jail. There is no evidence to support a conclusion that [she] will not continue to use chemicals without appropriate long-term treatment, followed by aftercare, once she is released from prison. Since [appellant] has been diagnosed as chemically dependent, was required to participate in treatment, the treatment program was appropriate, [she]

repeatedly refused treatment and ultimately failed treatment, and all evidence indicates that [she] will continue to abuse chemicals, there is a presumption that BCHS's reasonable efforts have failed.

Again, appellant does not refute the district court's findings in support of its conclusion that reasonable efforts were made and failed.

Appellant argues that BCHS did not make reasonable efforts while she was incarcerated or in treatment. Even assuming this to be true, appellant offers no explanation as to why, before she asked for her sentence to be executed and went to prison in February 2019, she had made no progress on her case plan and had done nothing to further her reunification with S.C.

Moreover, the district court addressed appellant's argument that she should have another chance when she is released from prison.

[Appellant] testified that incarceration has been good for her, that she now can admit that substance abuse is a problem for her, and that she deserves a second chance when she is released from jail. Although the Court commends her for her progress while in a controlled environment, this testimony—provided while facing a very clear, permanent consequence of her actions—is an insufficient basis to find that [appellant] is committed to addressing the concerns that led to [S.C.'s] placement in foster care

. . . While this Court recognizes [appellant's] proffered positive progress she has made while incarcerated, it cannot ignore [her] prior treatment history and lack of demonstrated long-term sobriety. Child protection matters have timelines. The timelines in this case have come and gone. Without long-term demonstrable strides in her chemical dependency recovery, this Court cannot find that [appellant] has gained the necessary skills to cope with her addiction so as to be a suitable parent. These cases are about the best interests of the child, which require self-evident, definitive showings of a parent's fitness and ability to appropriately parent, which are absent

here. The aspiration for [appellant's] long-term sobriety should not and will not be tested on [S.C.'s] childhood.

These findings reflect the statutory criteria that, in a termination proceeding, “the best interests of the child must be the paramount consideration” and “[w]here the interests of parent and child conflict, the interests of the child are paramount.” Minn. Stat. § 260C.301, subd. 7 (2018). The district court did not err in concluding that BCHS had made the requisite efforts to rehabilitate appellant and reunite her with S.C. and that those efforts had failed.

Affirmed.