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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1883,
A19-1884**

In re the Matter of the Welfare of the Children of:
K. B. M. and B. F. D., Parents.

**Filed June 1, 2020
Affirmed
Ross, Judge**

Becker County District Court
File No. 03-JV-19-1420

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Considered and decided by Ross, Presiding Judge; Reyes, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Human services removed K.B.M. and B.F.D.'s children from their care after investigating a report that the parents were using illegal drugs and discovering that the parents and children all tested positive for methamphetamine. Human services imposed court-adopted case plans that required the parents to end their drug use but, after months of the parents' noncompliance, petitioned to terminate parental rights because the parents

had not corrected the conditions leading to the out-of-home placement. The district court granted the termination petition, concluding that neither parent had substantially completed the assigned case plan because neither overcame their drug dependency and demonstrated long-term sobriety. We affirm because the evidence supports the district court's determinations that the parents failed to substantially complete their case-plan requirements and that termination is in the children's best interests.

FACTS

K.B.M. (mother) and B.F.D. (father) had one child in 2012 and a second in 2014. The parents separated in January 2018 and took turns caring for the children. Both children were in father's care in August 2018 when Becker County Human Services received a report that mother and father were using drugs and neglecting the children. Social worker Cristie Cahlin learned that father and the children were staying at a friend's home, and she unsuccessfully tried to visit them. A few days later, human services received a report that mother had overdosed on drugs and was hospitalized. Cahlin and a police officer found father and the children at the friend's home. Human services collected a urine sample from father, revealing methamphetamine, amphetamine, marijuana, and alcohol. Human services directed father to sign a safety plan arranging for the friend to serve as the children's primary caretaker until human services could determine that father could provide safe care.

Within a week Cahlin learned that father had violated the plan by taking the children and going to a different friend's home. Human services successfully petitioned to remove the children from father and place them in protective care. The district court ordered both

parents and the children to submit to hair-follicle testing. Mother and father tested positive for amphetamine, methamphetamine, hydrocodone, oxycodone, and ecstasy, and the children both tested positive for amphetamine and methamphetamine. Each parent blamed the other for the children's exposure to drugs.

Human services case manager Erica Jepson met with the parents at the emergency protective-custody hearing and believed that they seemed receptive to completing a case plan. Jepson finalized a case plan with mother in September 2018. She scheduled a meeting with father to develop a case plan for him, but father did not show up. In December 2018 caseworker Tessa Hunter met with both parents and created a case plan for father. The case plans were identical. They generally required each parent to take steps to stop using drugs, complete a parental-capacity evaluation, obtain stable housing, regularly meet with family-resource workers, maintain visits with the children, and remain law-abiding.

Eleven months after filing the protective-services petition, human services petitioned in July 2019 to terminate mother's and father's parental rights on various statutory grounds. Human services filed an amended petition in August 2019, narrowing its allegations to two statutory grounds for termination. One of them was that the parents failed to correct the conditions that led to the out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5) (2018). The district court conducted a bench trial in October 2019 and terminated parental rights after it concluded that clear and convincing evidence supported that statutory ground, that human services had made reasonable efforts to reunite the parents and children, and that termination was in the children's best interests. Both parents appealed and we consolidated the cases.

DECISION

Mother and father each challenge the order terminating their parental rights. A district court may terminate parental rights if it determines that a statutory ground for termination exists, that termination is in the children's best interests, and that reasonable efforts to reunite the parents and children either were made or were not required. Minn. Stat. § 260C.301, subs. 1(b), 7, 8 (2018). Both parents challenge the district court's determination that a statutory termination ground existed, and mother also challenges the district court's best-interests determination.

I

Mother and father argue that the district court erred by terminating parental rights based on the statutory ground that the conditions leading to the children's out-of-home placement went uncorrected. *See* Minn. Stat. § 260C.301, subd. 1(b)(5). We give considerable deference to the district court's decision to terminate parental rights. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We review the district court's factual findings to determine whether they are supported by substantial evidence and not clearly erroneous. *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001). We "closely inquire[] into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). The evidence must address conditions as they existed at the time of the termination hearing. *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980).

The district court determined that clear and convincing evidence existed to terminate parental rights under Minnesota Statutes section 260C.301, subdivision 1(b)(5), which

requires 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.” The statute creates the following presumption:

It is presumed that reasonable efforts under this clause have failed upon a showing that:

- (i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. . . . ;
- (ii) the court has approved the out-of-home placement plan . . . ;
- (iii) conditions leading to the out-of-home placement have not been corrected. 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; and
- (iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

Minn. Stat. § 260C.301, subd. 1(b)(5). The district court determined that the elements were met to satisfy the presumption. Neither parent disputes that the children resided outside the home for 12 months, that the court approved the placement plans, or that human services made reasonable efforts to rehabilitate the parents and reunite the family. Instead, their arguments focus on the district court’s determination that they did not substantially comply with their case plans.

Each parent’s case plan generally imposed the same six requirements: (1) to cooperate with human-services providers to ensure that they were receiving necessary services; (2) to complete a parental-capacity evaluation; (3) to address concerns about substance abuse; (4) to obtain stable housing and employment; (5) to regularly attend

supervised visitation with the children; and (6) to remain law-abiding. The district court concluded that mother complied only with the requirement to cooperate with human services and failed to comply with any of the others, and that father failed to comply with any of the requirements. The parents acknowledge that they did not actually complete their case plans but contend that they “substantially” completed them. We examine each parent’s circumstances in turn and conclude that their contentions fail.

Mother’s Case Plan

The district court determined that mother did not complete most of her case-plan requirements, highlighting mostly her failure to address her drug use and show long-term sobriety. Mother argues that she adequately addressed her drug use. The record offers some support for her contention. It shows that she remained sober for just over six weeks leading up to the termination trial. Caseworker Tessa Hunter testified that mother entered a residential treatment program in August 2019 and completed the program one month later. Mother then moved into a residential treatment facility about one week before the termination trial. On the trial date in October 2019, mother had been sober for 45 days—which was the longest she claimed to have remained sober in at least four years.

But Hunter also testified that she did not believe that mother had satisfactorily completed the drug-use part of her case plan because she did not demonstrate long-term sobriety or any sobriety outside of a structured facility. The district court found Hunter’s opinion credible and adopted her conclusion, which the record supports. Mother’s 45-day sobriety period followed eight months of failed treatment programs and her failure to remain sober after leaving treatment facilities. Mother abandoned or was discharged from

five different treatment programs between January and July 2019, mostly because she was still using drugs. In one of the programs, mother was caught using suboxone and methamphetamine. She took Xanax to another program and offered it to other drug-dependent clients. In another attempt, staff found a loaded syringe among her possessions. The program was willing to allow mother to stay and urged her to do so, but she left anyway.

We recognize, as did the district court, that mother showed considerable improvement by the time of the termination trial. But the district court found that she failed to show she could achieve *long-term* sobriety. The finding rests reasonably on mother's actions in the immediately preceding treatment programs, which demonstrate only a temporary commitment to sobriety. The district court also recognized that mother's only demonstrated sobriety occurred within the "highly structured environment of a residential treatment facility." Although the district court was required to consider the circumstances at the time of trial, *see Chosa*, 290 N.W.2d at 769, those circumstances included only temporary sobriety in a manner that left the district court unconvinced of mother's capacity for long-term sobriety. Mother's drug use was the primary reason the children were removed from her care, and, despite her progress immediately before the trial, the evidence supports the district court's finding that mother had not yet shown that she could remain drug-free so as to provide a safe environment for her children.

Mother relatedly argues that there was insufficient evidence that the conditions leading to the children's placement were likely to continue. *See In re Welfare of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007) ("The court must make its decision based on

evidence concerning the conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period.” (quotation omitted)). But the district court inferred reasonably from the circumstances that mother will likely continue to struggle with using drugs in the long term.

The district court also found that mother failed to complete several other case-plan requirements. It found that she did not regularly visit the children. The record shows that there were spans of several months during which mother missed almost all scheduled visits. Along with her delayed attempt to succeed in a drug-treatment program, the lengthy gaps in her visits breached the case plan’s directive for regular visits and suggest a lack of parental commitment to the children’s needs. The district court also determined that mother did not complete the portions of her case plan requiring her to undergo a parental-capacity evaluation and to obtain stable housing and employment. Mother does not dispute the accuracy of the district court’s findings but insists that she could not reasonably complete these requirements until she had fully addressed her substance-abuse problems. Her argument overlooks the significance of her having a year to complete her case plan. This lengthy period accommodated the reasonable concern that some case-plan requirements will take months to complete or depend on first completing others. The record supports the district court’s conclusion that mother failed to substantially complete most of her case-plan requirements.

Father's Case Plan

The district court determined that father had not substantially completed his case plan either, observing in particular that he did not show sobriety or even show an interest in fulfilling his case plan. Father argues against these observations, but the record belies his arguments.

The district court concluded that father did not address his drug use because he did not produce evidence that he had completed any chemical-dependency services and had not demonstrated long-term sobriety. The record shows that father did make some effort to address his drug use. He completed a chemical-use assessment in February 2019, which recommended that he undergo inpatient treatment. He reported to an inpatient treatment program in March 2019, but he was unsuccessfully discharged after one month for repeatedly fraternizing with a female client.

It is true that the facility reported that father remained sober throughout the treatment program before his discharge. But after the discharge, father did very little to further address his drug use. The discharge summary deemed father to be “at high risk of relapse without continued supportive services as evident by his past usage history and non-commitment to following through with [treatment] assistance.” The report recommended that he participate in an additional treatment program. Father never did so. He told Hunter that he did not believe additional residential treatment was necessary. Father gave neither Hunter nor the district court any evidentiary basis to support his claim that he needed no additional treatment, in part because he failed to participate in random drug testing that Hunter arranged for him. Hunter testified that she had limited contact with father after his

discharge and that she never received evidence that he completed any other chemical-dependency program or an updated chemical-use assessment.

Father argues that he adequately addressed his drug-dependency problems. He testified at trial that he was clean and believed that the residential treatment program sufficiently resolved his chemical-dependency issues, even though he did not complete the program. He insists that he was discharged for a reason unrelated to continued use and therefore still achieved the underlying goal of the program. This argument overlooks the fact that the treatment facility concluded that he had a high risk of relapsing at the time of discharge and the fact that he rejected the encouragement to obtain additional inpatient treatment.

Father's insistence that he never tested positive for drugs in the months immediately before the termination trial carried little weight with the district court. The district court recognized that the only corroboration for father's claim of post-discharge sobriety was a single oral drug test and that father did not participate in random drug testing. The district court had an ample basis on the record to find that father failed to address the drug-use concerns emphasized in his case plan.

The district court also had an evidentiary basis to find that father failed to complete his case-plan requirement to cooperate with human-service providers. Father missed his case-plan development meeting with human services in October 2018 and did not meet with human services to set up a case plan until December, four months after the children's removal. Hunter testified that, after father left the treatment program in April 2019, he contacted her only to receive a phone card and gasoline vouchers and had little contact with

human services. Father does not succeed in challenging the district court's no-cooperation finding.

Substantial evidence supports the district court's finding that father also failed to complete other parts of his case plan. He failed to consistently visit the children, missing numerous consecutive sessions and eventually causing human services to suspend his visitation. He did not complete a parental-capacity evaluation, as he did not schedule one until one year after the children had been removed, and he had completed just one session of the evaluation before trial. Father also remained homeless on the trial date, failing to meet the case-plan requirement to obtain stable housing. He testified that he was "really close" to getting approved for housing, explaining his intent to move in with his girlfriend while acknowledging that her parental rights to her own child had been terminated. Father speculates that housing is "not an insurmountable problem and is curable within a reasonable timeframe," but his speculation is not supported by the record. The district court did not err by determining that father failed to substantially complete his case-plan requirements.

Conclusion

We observe that this is not a case of mere technical failures to complete case-plan requirements. Both mother and father failed to complete not just the majority of their case-plan requirements, but the most significant ones. The children were removed from mother's and father's care chiefly because of drug use. Their drug use not only defeated their ability to care for the children, it exposed the children to the drugs directly and left them with dangerous substances in their own developing bodies. It left the parents

homeless and unemployable, with no place to care for the children safely and no economic means to provide for their support. Their drug use directly impaired their ability to parent the children and is central to our decision. Recognizing both the harm they had already caused by their drug use and the continued danger, the case plan implicitly gave each parent a choice: abandon the drugs or lose the children. Although both parents showed some effort, neither exhibited the degree of commitment sufficient to compel the finding that they would abstain from drugs in the long term. We are satisfied that the district court had a sufficient basis to conclude that neither parent corrected the conditions leading to the out-of-home placement.

II

Mother also challenges the district court's conclusion that termination of parental rights was in the children's best interests. In addition to determining the existence of a statutory ground, the district court cannot terminate parental rights unless it also finds that the best interests of the children favor termination. Minn. Stat. § 260C.301, subd. 7; *T.A.A.*, 702 N.W.2d at 708. A district court must consider: "(1) the child's interests in preserving the parent-child relationship; (2) the parent's interests in preserving the parent-child relationship; and (3) any competing interests of the child." Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). When the parent's interests and the child's interests conflict, the child's interests prevail. Minn. Stat. § 260C.301, subd. 7. We review a district court's best-interests determination 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).

The district court determined “that the children’s need for safety and stability outweighs any interest in maintaining the parent-child bond.” The record supports this determination. Although mother’s positive interaction with the children during her visits strengthens her interest in preserving the parent-child relationship, this interest is lessened by the infrequency of her attendance at the scheduled visits. And her failure to adequately end her drug problem weighs heavily against her. Mother had more than one year to address the problems in her case plan and managed it in a way that left the district court reasonably doubtful that she could attain long-term sobriety, secure stable housing, or maintain sufficient employment. The children’s interests include being cared for by a sober parent in a safe and stable environment, and the district court did not abuse its discretion by concluding that termination of parental rights serves the children’s best interests.

Affirmed.