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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2000
A11-2001**

In the Matter of the Welfare of the Child of:
B. S. W. and L. L. W., Parents.

**Filed March 26, 2012
Affirmed
Bjorkman, Judge**

Rice County District Court
File No. 66-JV-11-1450

Matthew D. Rich, Grundhoefer & Ludescher, P.A., Northfield, Minnesota (for appellant B.S.W.)

James R. Martin, Martin Law Office, Faribault, Minnesota (for appellant L.L.W.)

G. Paul Beaumaster, Rice County Attorney, Catherine M. Miller, Assistant County Attorney, Faribault, Minnesota (for respondent Rice County)

Heather Feikema, Hastings, Minnesota (guardian ad litem)

Considered and decided by Schellhas, Presiding Judge; Bjorkman, Judge; and Huspeni, Judge.*

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellants challenge the district court's termination of their parental rights, arguing that the evidence does not support the district court's determinations that the

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

county made reasonable efforts to reunify them with their son and that the county proved four statutory grounds for termination. They also challenge the determination that termination of their parental rights is in their son's best interests. We affirm.

FACTS

Appellants B.S.W. (mother) and L.L.W. (father) are the parents of L.A.W., born July 18, 2010. On October 30, 2010, there was a domestic disturbance between appellants at the family home, leading to mother's arrest. Rice County Social Services (the county) filed a child-in-need-of-protection-or-services (CHIPS) petition alleging that L.A.W. lacked proper parental care and his environment posed a risk of injury to him or others. The petition details the events of October 30 and other incidents of domestic violence between the parents. The petition also notes mother's report that the home "was not a safe place for [L.A.W.] to live" because of the fighting between her and father and that she had voluntarily placed L.A.W. with his maternal grandmother several days before the October 30 incident because of that concern. At the emergency protective-care hearing, both parents agreed that L.A.W. should remain in relative foster-care placement.

The county social worker met separately with each parent in early November and prepared a case plan. The plan notes that L.A.W. has sickle cell disease, which requires special medical attention and a controlled environment. The plan details the risks to L.A.W. occasioned by appellants' drug use and mental-health problems and requires appellants to take the following steps to address those risks: submit to random chemical testing; successfully complete dual mental-illness and chemical-dependency treatment; refrain from using nonprescription mood-altering chemicals, including alcohol; complete

mental-health evaluations and take medications necessary for managing mental health; complete an anger-management course; participate in a parenting assessment and parenting education; and maintain safe and stable housing. Both parents exhibited significant anger and refused to sign the plan. The district court subsequently ordered the parents to comply with the case plan.

After a CHIPS trial in December, the district court adjudicated L.A.W. in need of protection or services and continued his custody with the county. In the following months, mother was hospitalized multiple times for suicidal ideation or attempt; both parents quit the dual recovery program and other programming aimed at chemical dependency; both parents failed to complete anger-management training; mother failed to take medications prescribed for her mental health; father failed to enter individual therapy; father failed to maintain chemical abstinence; mother refused to cooperate with chemical testing; and both parents continued to engage in domestic violence.

In early May 2011, the county prepared a new case plan largely incorporating the requirements of the earlier plan, noting that the parents had made “some progress” but that “there continue to be a number of services that have not been complied with.” The district court ordered the parents to comply with the new case plan.

On May 24, the county filed a termination-of-parental-rights (TPR) petition, alleging four statutory grounds: failure to comply with parental duties, palpable unfitness to parent, failure of reasonable efforts to remedy the conditions that caused the out-of-home placement, and the fact that L.A.W. is neglected and in foster care. Trial was scheduled for August but continued until September after father was arrested. After a

three-day trial, the district court found all four statutory grounds established with respect to both parents and that termination of their parental rights is in L.A.W.'s best interests. The district court ordered termination of mother's and father's parental rights, and these consolidated appeals follow.

D E C I S I O N

“[P]arental 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 of parental rights requires clear and convincing evidence that (1) the county has made reasonable efforts to reunite the family, (2) there is at least one 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). On appeal from a termination of parental rights, we determine whether the district court's findings address the statutory criteria and whether they are supported by substantial evidence. *Id.* We review the district court's underlying factual findings for clear error. *Id.* But we review the court's determination that the statutory requirements for termination have been established by clear and convincing evidence for an abuse of discretion. *See In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900-01, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

Appellants challenge the district court's determination that all three requirements for termination are met. We address each requirement in turn.

I. Reasonable efforts

In all child-protection proceedings, the responsible social-services agency must make reasonable efforts to eliminate the need for the child's removal from the family

home and to reunite the child with the family. Minn. Stat. § 260.012(f)(2) (2010). In determining whether the agency's efforts were reasonable, the district court must consider whether the services offered to the family 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) (2010). Whether the services constitute "reasonable efforts" depends on the nature of the problem presented, the duration of the county's involvement, and the quality of the county's effort. *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). Services outlined in a court-ordered case plan are "presumptively reasonable." *S.E.P.*, 744 N.W.2d at 388.

The district court found that the county complied with this statutory requirement by providing a myriad of services aimed at addressing both parents' chemical dependency, mental-health concerns, anger issues, and other challenges. The district court found that these services and the tasks required of both parents were "reasonable under the circumstances and properly directed at the problems that first made out-of-home placement necessary," and that the county made "appropriate and reasonable efforts to assist both parents with completing their tasks and accessing services" by consistently offering transportation and funding for the required services.

Mother argues that the county's efforts were unreasonable because the services she was expected to engage in were too numerous for her to complete and many of them were "self improvement" tasks "unrelated" to the domestic violence between mother and

father that led to L.A.W.'s removal. We disagree. The record contains ample evidence of the county's consistent, focused efforts to identify and engage both parents in appropriate services.¹ As evidenced by its thorough written decision, the district court considered not only the appropriateness of the identified services for addressing the problems that led to L.A.W.'s removal from the home—the parents' pattern of domestic violence and their related mental-health and chemical-dependency problems—but also the great number of tasks assigned to each parent and the county's extensive efforts to support both parents' completion of those tasks.

Father's challenge to the district court's reasonable-efforts determination is more narrow. He argues that the services directed toward him were not appropriate because L.A.W. was removed from the home as a result of mother's domestic violence on October 30, 2010, an incident in which he was "basically a victim." We are not persuaded. "Reasonable efforts" must address the underlying conditions that led the social services agency to seek protective care of the child and a transfer of custody away from the parents. *See* Minn. Stat. § 260.012(f)(2) (describing "reasonable efforts" requirement as intended to "eliminate the need for removal of the child from the child's home"); *cf.* Minn. Stat. § 260C.201, subd. 1 (2010) (permitting but not requiring district court to transfer custody of a child to the county upon a determination that the child is in need of protection or services). Here, the October 30 incident was not the sole basis for the child-protection proceedings but one example of the ongoing *mutual* violence

¹ Mother also challenges the reasonableness of the county's efforts on the ground that the county encouraged the parents to divorce. We discern nothing in the plan requirements that could be so construed.

between the parents. Indeed, L.A.W. was not present at the time of that incident only because the parents' pattern of domestic violence was so persistent that they had voluntarily placed him outside of their home. Because the underlying conditions identified in the CHIPS petition, the TPR petition, and both case plans include the parents' mutual domestic violence and their underlying anger-management, mental-health, and chemical-dependency problems, the county's efforts toward reunification reasonably included services and expectations for father in those areas.

On this record, we conclude that clear and convincing evidence supports the district court's factual findings and the court did not abuse its discretion by determining that the county's efforts to rehabilitate the parents and reunify the family were reasonable.

II. Statutory termination grounds

The district court determined that all four statutory grounds for termination were established for both parents by clear and convincing evidence. We address each of the four grounds in turn, although only one is necessary to terminate parental rights. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

A. Failure to comply with parental duties

Parental rights may be terminated if a "parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship," but only if "reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable." Minn. Stat. § 260C.301,

subd. 1(b)(2) (2010). Noncompliance with parental duties includes, but is not limited to, failure to provide a child with necessary food, clothing, shelter, education, or other care and control necessary for the child's physical, mental, or emotional health and development. *Id.*; see also *In re Child of P.T.*, 657 N.W.2d 577, 583 (Minn. App. 2003) (recognizing parental duty "to protect and care for the child" (quotation omitted)), *review denied* (Minn. App. 15, 2003). A parent's failure to satisfy the requirements of a court-ordered case plan provides evidence of that parent's noncompliance with the duties and responsibilities under subdivision 1(b)(2). *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003).

The district court found that despite the county's reasonable efforts, father did "nothing" to address his areas of concern, and mother "made attempts" but "has not been successful on any of those attempts." Substantial evidence supports the district court's findings. At the time of trial, neither parent had successfully completed anger management or chemical-dependency treatment or consistently engaged in any form of mental-health treatment; they had abandoned couples counseling; they continued to exhibit signs of chemical abuse; their pattern of mutual domestic violence continued unremitted; and they both demonstrated a high risk of continuing violence. Based on this evidence, the district court concluded that both parents "are so wrapped up in their abusive, violent relationship with each other that they are unable to stabilize either their relationship or their living situation, much less provide the necessary shelter and care for a very young child, especially one with such serious medical care needs."

Neither parent denies their failure to comply with the case plans. But mother argues that this evidence is insufficient to establish that she failed to fulfill her parental duties because she demonstrated affection for L.A.W. and L.A.W. was never physically harmed. We are not persuaded. Compliance with parental duties does not turn on a parent's affection for a child or lack of physical harm to a child. To the contrary, the statute specifically recognizes the importance of a child's mental and emotional health and development, in addition to physical safety and care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2). And the record amply establishes that the domestic violence between mother and father poses a risk of mental, emotional, and physical harm to L.A.W. Mother has repeatedly acknowledged that the violence between her and father makes the home unsafe for L.A.W., and reports from the professionals who evaluated mother's and father's parenting ability indicate that "[c]hildren who are exposed to domestic violence in the home are at risk for emotional and mental health problems," and there is a risk that the violence could at some point include the child. These risks are heightened for L.A.W. because his sickle cell disease is aggravated by both physical and emotional stress, which increases his need for a stable living environment.

Because the record amply supports the finding that mother and father failed to comply with their parental duty to provide L.A.W. a safe and stable home free from domestic violence, the district court did not abuse its discretion by finding this statutory termination ground is met.

B. Palpable unfitness to parent

A district court may terminate the rights of a parent who is “palpably unfit to be a party to the parent and child relationship.” Minn. Stat. § 260C.301, subd. 1(b)(4) (2010). A parent is palpably unfit when the evidence shows either “a consistent pattern of specific conduct before the child” or “specific conditions directly relating to the parent and child relationship,” which the court determines are “of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.” *Id.* A parent’s inability to meet the child’s needs at the time of the trial or in the reasonably foreseeable future justifies termination. *P.T.*, 657 N.W.2d at 591.

Both parents challenge the district court’s determination that this ground was established by clear and convincing evidence, arguing that their untreated chemical dependency cannot be the sole basis for concluding that they are palpably unfit parents. *See In re Welfare of Children of T.R.*, 750 N.W.2d 656, 663 (Minn. 2008) (holding that substance abuse alone is insufficient to demonstrate palpable unfitness). We disagree. Review of the district court’s decision reveals that this was not the sole basis for the district court’s palpable-unfitness determination and, in fact, played a minor role. The district court concluded that both parents are unfit for the parent-child relationship because

[t]heir inability to understand the damaging effect that their abusive, violent relationship has on [L.A.W.] makes them unfit. . . . The volatile mix of these two people in a household would provide the type of stress that [L.A.W.’s physician] has indicated would be harmful to [him]. Their refusal to get into

anger management counseling and attempt to do something about the level of uncontrolled anger in their relationship makes them unfit to be parents of [L.A.W.].

Because the record amply demonstrates the parents' ongoing pattern of mutual domestic violence, the negative effect that the violence likely will have on L.A.W., and the substantial likelihood that the violence will continue, in part because of their untreated chemical dependency, we conclude that the district court did not abuse its discretion by relying on this ground to terminate appellants' parental rights.

C. Failure to correct conditions leading to out-of-home placement

A district court may terminate parental rights upon a finding that reasonable efforts have failed to correct the conditions that resulted in the child's out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5) (2010). A presumption of failure of reasonable efforts arises if (1) the child is under age eight and has resided in court-ordered out-of-home placement for six months, (2) the court has approved an out-of-home placement plan, and (3) the conditions leading to the out-of-home placement have not been corrected, which is presumptively shown by a parent's failure to "substantially compl[y] with the court's orders and a reasonable case plan," and (4) the county made reasonable efforts to rehabilitate the parent and reunite the family. *Id.* Although the district court did not rely on it, this presumption applies here.

L.A.W. is not yet two years old and had been in out-of-home placement for approximately 11 months by the time of the TPR trial. Over the course of those 11 months, the county made numerous targeted services available to help both parents correct the domestic violence in the family home, including anger management, mental-

health and chemical-dependency treatment, and couple's counseling. The district court ordered mother and father to comply with the case plans detailing these services, and the county supported the parents' participation by providing transportation, funding, and treatment alternatives. Despite the county's reasonable efforts, both parents failed to take advantage of most of the required services and continued to exhibit the type of impulsive, angry, and violent behavior that led to the out-of-home placement.

Although both parents focus on the reasonableness of the county's efforts, which we addressed above, mother specifically contends that she "did comply with the requirements that were reasonable and actually related to the problem presented." We disagree. The record establishes, and mother does not dispute, that she had not successfully completed any of the required anger-management programming, chemical-dependency treatment, mental-health treatment, or couple's counseling by the time of the TPR trial, and she continued to engage in domestic violence. On this record, we conclude that the district court did not abuse its discretion by determining that reasonable efforts have not corrected the problems that led to L.A.W.'s out-of-home placement.

D. Child neglected and in foster care

A district court also may terminate parental rights upon a finding that a child "is neglected and in foster care." Minn. Stat. § 260C.301, subd. 1(b)(8). A child is "neglected and in foster care" if he (1) "has been placed in foster care by court order," (2) his parents' "circumstances, condition, or conduct are such that the child cannot be returned to them," and (3) his parents, "despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or

conduct.” Minn. Stat. § 260C.007, subd. 24 (2010). To determine whether parental rights should be terminated because a child is neglected and in foster care, a district court considers: the length of time the child has been in foster care; the effort the parent has made to adjust circumstances, conduct, or conditions to allow the child to return to the home; the parent’s contact with the child preceding the TPR petition; the parent’s contact with the responsible agency; the adequacy of services; the availability of relevant services; and the social service agency’s efforts to rehabilitate and reunite. Minn. Stat. § 260C.163, subd. 9 (2010).

Mother argues that the district court failed to consider these statutory factors and that this failure prevents effective appellate review. We are not persuaded. While the district court did not specifically list those factors in its decision, the court’s findings indicate that it considered the required factors with respect to both parents. The district court expressly found that L.A.W. had been in out-of-home placement for 11 months by the time of trial; that mother made only limited efforts under the case plan, and father made almost none; that both parents refused or failed to adjust their circumstances and conduct so that L.A.W. could safely return home; that mother consistently visited L.A.W. but cut some visits short, while father was inconsistent in visitation and voluntarily ended visitation for a period of time; that both parents demonstrated resistance, even hostility, toward county social workers; and that the county made reasonable efforts toward reunification by providing numerous appropriate services, as well as transportation and financial assistance. All of these factual findings have substantial record support, and many are uncontested. On this record, the district court did not abuse its discretion by

concluding that termination of parental rights is warranted because L.A.W. is neglected and in foster care.

III. Best interests

The “paramount consideration” in all TPR proceedings is the best interests of the child. Minn. Stat. § 260C.301, subd. 7 (2010). 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 the child requires balancing three factors: 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.* “Where the interests of parent and child conflict, the interests of the child are paramount.” Minn. Stat. § 260C.301, subd. 7.

The district court found that L.A.W. has “minimal” interest in preserving a parent-child relationship with violent, abusive parents whose own explosive relationship prevent them from adequately caring for a small child. The district court also found that L.A.W.’s illness creates a particular need for a stable environment and consistent medical care, which mother and father are not able to provide and which outweighs any interest either has in continuing to parent L.A.W. Both parents challenge the district court’s best-interests determination.

Mother argues that L.A.W.'s young age makes any determination as to his best interests speculative and that the standard three-factor best-interests analysis is arbitrary and fails to account for cultural ties that L.A.W. will lose if both parents' rights are terminated. We disagree.

First, delaying termination of parental rights until the child is older when the evidence does not indicate any likelihood of improvement in the conditions requiring his out-of-home placement is not in his best interests. *In re Welfare of J.R.*, 655 N.W.2d 1, 5 (Minn. 2003) ("Each delay in the termination of a parent's rights equates to a delay in a child's opportunity to have a permanent home and can seriously affect a child's chance for permanent placement."). Second, the three-factor best-interests analysis affords a court the flexibility to weigh competing factors in addressing a child's best interests, including a parent's interest in continuing to parent her child and the benefit to the child from continuing ties with his birth parents and their culture. *See In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 731 (Minn. App. 2009) (stating that determining a child's best interests involves consideration of "the child's unique circumstances and individual needs," citing multiple statutory standards on best interests). But because the child's interests are paramount, the best-interests analysis also permits the district court to decide that the child's need for a safe, stable environment outweighs the pull of parental affection or cultural ties. Here, the record indicates that the district court considered mother's demonstrated affection for and desire to raise L.A.W. and her concerns that termination of both parents' rights would deprive L.A.W. of cultural connections. The district court did not abuse its discretion by concluding it is in L.A.W.'s best interests to

terminate mother's parental rights because L.A.W.'s need for "a healthy home where all of his needs would be met," which mother is not foreseeably able to provide, outweighs these considerations.

Father asserts that the district court erred in finding termination in L.A.W.'s best interests because "it's hard to see how the love of a mother and father in an adequately supplied home is not in the child's best interest." But the possibility that the record could support an alternative finding does not mean that the district court erred. *See Vangness v. Vangness*, 607 N.W.2d 468, 474 (Minn. App. 2000). This record overwhelmingly establishes that father refused to comply with treatment requirements to correct the conditions that led to L.A.W.'s removal, continued to engage in violent and illegal behavior, and discontinued his visitation with L.A.W. Because father's circumstances present numerous unresolved barriers to providing a safe environment for L.A.W., which are not countered by any evidence that father has a significant interest in continuing the parent-child relationship, the district court did not abuse its discretion by finding that terminating father's parental rights serves L.A.W.'s best interests.

In sum, there is clear and convincing evidence that proves that the county exerted consistent and targeted efforts toward reunification of this family, and despite those efforts both mother and father continued to engage in domestic violence and exhibit untreated mental illness and chemical dependency, which deprive L.A.W. of a safe and stable living environment. On this record, we conclude that the district court did not abuse its discretion by ordering the termination of mother's and father's parental rights.

Affirmed.