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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-620**

In the Matter of the Welfare of the Child of:
J. M. and K. N., Parents

**Filed August 29, 2011
Affirmed
Ross, Judge**

Becker County District Court
File No. 03-JV-10-2595

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Considered and decided by Hudson, Presiding Judge; Minge, Judge; and Ross, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Appellant Becker County Human Services asks us to reverse the district court's decision refusing to terminate the parental rights of respondents J.M. and K.N. to their infant daughter. The county removed the newborn girl from her parents, deeming her to

be a child in need of protection or services because J.M. and K.N.—both chemical substance abusers—failed to take her to the hospital after her premature birth in the couple’s home and she was born addicted to prescription drugs. The district court approved a case plan designed to rehabilitate J.M. and K.N. and reunite their family, and the county later petitioned to terminate their parental rights. In the three months preceding the termination hearing, both parents abstained from chemicals and followed key requirements of the plan. The district court found no statutory basis to terminate parental rights and denied the county’s petition. Because the record supports the district court’s finding that the county did not prove that the parents failed to correct the conditions leading to the infant’s out-of-home placement, we affirm.

FACTS

J.M. and K.N. lived together and cared for J.M.’s toddler, C.C.M., several days each week. J.M. became pregnant with B.N. in late 2009, and, following a tip, a Becker County Human Services caseworker confirmed through drug testing that J.M. was using, and possibly abusing, prescription drugs.

J.M. delivered B.N. prematurely in the couple’s house in May 2010, at 36 weeks gestation. Despite the prematurity, J.M. and K.N. did not take their child to the hospital. The county caseworker suspected that they were avoiding the hospital to prevent infant and placenta drug testing, and the county immediately obtained an emergency order from the district court to remove B.N. and C.C.M. from the couple. The county placed C.C.M. in his father’s exclusive custody, and it took B.N. to the hospital for medical care. Doctors discovered that B.N. had been born addicted to prescription drugs, and they

admitted her into an isolated unit for two weeks. There, they gave her oxygen and intravenous fluids and medication to prevent her seizures. The county placed B.N. in foster care after her discharge from the hospital.

J.M. and K.N. agreed that B.N. was a child in need of protection or services. (C.C.M. was also the subject of county concern and his legal and physical custody was transferred to his father, a decision that is not contested in this appeal.) J.M. told county workers that she was ingesting prescription drugs and that K.N. sometimes physically abused her. The county developed a case plan, approved by the district court, to rehabilitate J.M. and K.N. and to reunite B.N. with them. The plan required both parents to submit to drug and alcohol testing, complete a capacity-to-parent evaluation and follow its recommendations, and regularly meet with county social workers. It also required J.M. to complete a chemical-dependency assessment and follow its recommendations, participate in individual counseling and psychiatric care, and avoid unnecessary prescriptions. It required K.N. to complete a chemical-dependency assessment and follow its recommendations if he tested positive after drug and alcohol testing. And it required him to complete an anger-management assessment. The plan's objective was to assure B.N.'s permanent placement within six months.

A permanent-placement decision did not occur within six months. But after faltering at the start, J.M. and K.N. began to comply with the case plan.

J.M. had initially failed to follow the case plan. She took the required chemical-dependency assessment in June, but she disagreed with its conclusion that she needed inpatient treatment for addiction to opiates. She took the assessment again in June and

once more in July with the same results. She finally entered an inpatient treatment program in August but left and twice relapsed. Her first relapse included becoming intoxicated and riding with K.N. while he was driving while intoxicated and bringing drugs and alcohol back to the treatment facility. Her second relapse coincided with the relapse of her treatment sponsor.

K.N. tested positive for marijuana and alcohol use. He was also arrested for driving while intoxicated and for fleeing from police. He underwent a chemical-dependency evaluation, which recommended that he participate in outpatient treatment. He began that treatment when he was released from jail for drunk driving. He also took the capacity-to-parent evaluation, which concluded that he should attend domestic-abuse classes. He did not immediately begin taking the classes on his release.

In November the county petitioned the district court to terminate J.M. and K.N.'s parental rights to B.N., alleging that six months had passed since B.N.'s out-of-home placement and the problems that led to the placement had not been corrected. At that time, J.M. had not completed treatment and K.N. had not completed domestic-abuse classes. Neither was abstaining from prohibited chemicals.

But changes occurred in the approximately three months between the county's November petition for termination and the district court's hearing on the petition. J.M. had become pregnant with another child by K.N. and entered a different treatment program. She was discharged from the inpatient care component of the program after one month and told she would successfully complete the program once she completed a halfway-house component. She initially refused to move to the halfway house, however,

because she believed that the county was improperly preventing her from enrolling in a facility where she could also have B.N.

At least during the early months of the case plan while J.M. and K.N. continued to misuse chemicals, they had rarely visited B.N. K.N. missed a month of visitation because he was in jail. And J.M. missed visitation during the time she was out of treatment. While she was in treatment, she saw B.N. only a few times per month. But in the later months, both parents increased visits substantially. After K.N. was released from jail and J.M. was discharged from the inpatient portion of her program, they visited B.N. three days every week.

The district court conducted a hearing on the county's petition and denied it. The court held that both parents had substantially complied with the case plan. It found that K.N. had been required to "provide a drug free environment," which it held he had accomplished, observing that the county introduced no evidence that he had used drugs since he began treatment in November 2010. It also found that he successfully enrolled in (although not yet completed) a domestic-abuse program. The district court recognized that J.M. "had difficulty complying with her case plan" but found that, although she "has not completed treatment yet, there is no evidence that she has used chemicals since entering treatment . . . on December 2, 2010." It concluded that "[s]he has been sober for more than three months" and has "finally addressed . . . her chemical dependency." The district court also found that the county failed to make reasonable efforts to reunify J.M. and B.N.

The county appeals.

DECISION

The county contests the district court's decision not to terminate J.M.'s and K.N.'s parental rights to B.N. On review of a district court's determination of a termination of parental rights petition, we examine whether the district court addressed the statutory criteria and whether its findings reflect clear error. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). "A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660–61 (Minn. 2008) (quotation omitted).

A district court may involuntarily terminate a person's parental rights if it finds that (1) the petitioner proved by clear and convincing evidence the existence of one of nine statutory bases for termination, *see* Minn. Stat. § 260C.301, subd. 1(b)(1)–(9) (2010), and (2) termination of parental rights is in the best interests of the child, Minn. Stat. § 260C.301, subd. 7 (2010). *See S.E.P.*, 744 N.W.2d at 385. The district court concluded that the county failed to prove its alleged statutory basis for termination, which is 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." *See* Minn. Stat. § 260C.301, subd. 1(b)(5). To satisfy this statutory basis, the county needed to establish by clear and convincing evidence (1) that B.N. was out of the home for at least six months, (2) that, during that time, J.M. and K.N. did not have regular contact with her or they did not comply with the court-approved placement plan, (3) the conditions leading to B.N.'s out-of-home placement have not been corrected, and

(4) the county made reasonable efforts to rehabilitate J.M. and K.N. and to reunite the family. *See id.* The district court found that the county failed to prove two of these elements—that the conditions leading to out-of-home placement have not been corrected and that the county made reasonable efforts to reunite the family.

That the conditions leading to out-of-home placement have not been corrected is presumed “upon a showing that the . . . parents have not substantially complied with the court’s orders and a reasonable case plan.” *Id.*, at subd. 1(b)(5)(iii). The district court concluded that both parents substantially complied with the case plan. It recognized, as the county’s counsel acknowledged at oral argument on appeal, that the primary condition leading to the out-of-home placement was the parents’ addictions to chemical substances. And it found that because both parents demonstrated sobriety in abstaining for at least three months (four months for K.N.), they had corrected the condition that had led to the placement.

We recognize that the case plan was designed to be completed, and a permanency decision made, within six months. But the parents were not responsible for the delay and the district court appropriately evaluated the merits of the county’s termination petition based on the circumstances as they existed at the time of the hearing, nine months after the initiation of the case plan. *See In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980) (emphasizing that evidence in a termination-of-parental-rights case “must address conditions that exist at the time of the hearing”).

The county contends that the parents’ sobriety is not enough, emphasizing their failure to meet details of the case plan, particularly J.M.’s failure to move to the halfway

house as recommended by her assessment. But the county seems distracted by the means rather than focused on the end. Meeting the case plan's particulars was only the means. Whether or not J.M. moved to a halfway house, according to the district court's factually supported finding, she attained a drug-free lifestyle—the end contemplated by the case plan's various means. The district court, which approved of the case plan, reasonably determined that the condition that the case plan was intended to remedy had been remedied.

The county also relies on the district court's separate order transferring legal custody of C.C.M. to C.C.M.'s father, emphasizing its finding that J.M. had *not* corrected the conditions leading to C.C.M.'s out-of-home placement. Although this finding may appear to be inconsistent with the presently challenged finding, especially given that C.C.M. and B.N. were removed from J.M.'s care at the same time and under similar circumstances, the apparent inconsistency is not a basis for reversal. We need not decide whether the findings are irreconcilable because only one of them is subject to our review in this appeal, and we have already determined that that one is supported by the record. And even if both findings were before us, we have no reason now to conclude that the alleged inconsistency between them should be resolved by rejecting the finding as to J.M.'s parental rights to B.N. rather than by rejecting the finding as to her custody of C.C.M. We observe also that the two orders rest on substantively different statutory criteria and that the transfer of C.C.M.'s legal custody to his father under Minnesota Statutes section 260C.201, subdivision 11 (2010) may be modified, *see* Minn. Stat. § 260C.201, subd. 11(j)(2010), while termination of parental rights cannot.

Because sufficient evidence sustains the district court's finding that the county failed to prove that the conditions leading to B.N.'s out-of-home placement have not been corrected, we do not address the challenged finding that it also failed to prove that the county's reunification efforts were reasonable or the question of whether termination was in B.N.'s best interests.

Affirmed.