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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-906
A11-907**

In the Matter of the Welfare of the Children of:
C. J. R., G. J. R. and K. A. M., Parents.

**Filed October 24, 2011
Affirmed
Peterson, Judge**

Itasca County District Court
File No. 31-JV-10-2912

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Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and
Peterson, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In these consolidated appeals from a district court order that transfers legal and physical custody of three children, appellant-mother argues that (1) the record does not support the determinations that (a) the transfer is in the children's best interests, (b) the county made reasonable efforts to reunify the family, and (c) mother lacked the ability to use services provided by the county to correct the conditions leading to the children's out-of-home placement; (2) the district court should have granted mother's motion for additional time to reunify the family; and (3) the district court made erroneous evidentiary rulings. Appellant-father argues that (1) the record does not support the determinations that (a) the county's reunification efforts were reasonable, (b) reunification efforts would have been futile because reunification was not possible in the reasonably foreseeable future, and (c) transferring custody is in his child's best interests; and (2) the district court should have granted father's motion for additional time to reunify the family. We affirm.

FACTS

Appellant-mother C.J.R. was the custodial parent of J.T.L, born in November 2000; A.E.L, born in November 2002; and G.K.R., born in May 2006. Appellant-father G.J.R. is the father of G.K.R. The father of J.T.L. and A.E.L. is not a party to this action. Mother also has an older child, R.J.L., who was born in 1996. Mother voluntarily transferred physical and legal custody of R.J.L. to relatives in January 2006. Mother has had nearly constant child-protection involvement in her life since R.J.L.'s birth.

St. Louis County Social Worker Nancy Melin began working with mother in July 2003. Melin formed a workgroup that coordinated services for mother for three and one-half years. Melin first met father in 2004 and learned about his methamphetamine use and multiple incidents of domestic abuse against mother, which had resulted in police intervention.

In September 2005, following a domestic-violence incident that resulted in police intervention, Melin told mother that she would consider the children to be in need of protection or services if mother continued to allow father to have contact with her and the children. Mother told Melin that she did not intend to allow father back into her life and that the children would be protected. In October 2005, father was present at mother's apartment when police executed an arrest warrant for father. Police found the apartment uninhabitable, and mother agreed to a voluntary out-of-home placement for J.T.L. and A.E.L.

When mother's apartment was still uninhabitable on November 30, 2005, St. Louis County filed a children-in-need-of-protection-or-services (CHIPS) petition. In January 2006, the district court found that J.T.L. and A.E.L. were children in need of protection or services and ordered that they be placed out of home. Mother was ordered to comply with the case plan and participate in women's-advocates meetings to address the issue of domestic violence. Melin testified that, during the 2005-2006 CHIPS action, mother used services and made progress. Father was incarcerated during this time. G.K.R. was born in May 2006, and J.T.L. and A.E.L. were returned to mother in June 2006. In August 2006, Melin became concerned because mother began missing

appointments shortly after the children were returned to her and violated court orders by allowing contact between father and the children.

Venue for the CHIPS proceeding was transferred to Itasca County when mother and the children moved to Grand Rapids. G.K.R. was added to the CHIPS petition, and guardian ad litem Judy Blackmarr and social worker Lindsay Nelson Schultz were appointed to the case. Blackmarr and Schultz both recommended that the no-contact order between father and the children be lifted, provided that father comply with conditions to ensure the children's safety. Schultz met with mother and father to develop a case plan, and services were provided to help mother and father meet case-plan goals.

During the spring of 2007, mother began experiencing serious health problems that made it difficult, and sometimes impossible, for her and father to comply with case-plan requirements. Based in part on mother's health problems, Blackmarr and Schultz recommended dismissing the CHIPS action. Mother and father told Schultz that they would continue with services after the action was dismissed, but they failed to show a willingness or the ability to do so. After the CHIPS action was dismissed, between August 2008 and January 2010, Itasca County received five reports of domestic abuse and neglect. Both Blackmarr and Schultz testified that, in hindsight, the CHIPS action had been dismissed prematurely.

Itasca County Social Worker Sherry Palkki met with mother and father to create a voluntary case plan in November 2008. Mother and father missed several appointments with the in-home family-services provider assigned to their case. Mother and father were also referred to a family therapist, but they did not contact her. In March 2009, the

county closed the case and discontinued services due to mother's and father's failure to comply with the case plan.

In September 2010, police responded to a report of a domestic disturbance at the family's residence. Father admitted using methamphetamine and was arrested for violating his probation conditions. Itasca County Health and Human Services Investigator Maisie Blaine also went to the residence, where she observed toys, garbage, and clothing strewn around the front porch; a strong garbage odor coming from the kitchen and living room; empty food wrappers and containers covering the kitchen and living-room floors; empty food and juice containers, soiled clothing, and blankets covering the floor in the children's bedrooms; and mattresses without sheets in the children's bedrooms. The children were removed from the home. No clean clothing was found for them when they were removed from the home.

The county filed a petition for transfer of legal and physical custody to an aunt and uncle of J.T.L. and A.E.L.¹ Following a court trial, the district court ordered legal and physical custody transferred to the aunt and uncle and denied the parents' new-trial motions. Mother and father filed separate appeals. This court ordered the appeals consolidated.

DECISION

A transfer of permanent legal and physical custody requires that the district court consider: (1) the best interests of the child; (2) the nature and extent of reasonable efforts

¹ The aunt is the sister of J.T.L.'s and A.E.L.'s father, and the uncle is her husband.

to reunite the family; (3) the parent's efforts and ability to use services to correct the conditions that led to out-of-home placement; and (4) whether the conditions that led to the out-of-home placement have been corrected. Minn. Stat. § 260C.201, subd. 11(i) (2010). "Consistent with the level of proof generally required in child protection proceedings," a permanent placement determination must be supported by "clear and convincing evidence." *In re Welfare of A.R.G.-B*, 551 N.W.2d 256, 261 (Minn. App. 1996).

Best interests

Mother argues that the district court failed to consider that the children's lives had always centered on their mother and that there were only sporadic instances when mother failed to meet their needs. But the district court found:

Throughout their lives, the Children have experienced continued instability, have witnessed domestic violence between Mother and [Father], have lived in a home in which both parents have used methamphetamine, and have twice been removed based on the unsanitary, uninhabitable condition of the home.

The district court found that the "patterns of domestic abuse, chemical abuse, and unsanitary living conditions" persisted despite extensive services offered by St. Louis County and Itasca County and that that environment had had a profound effect on the children. The district court also found:

Although Mother has substantially complied with most of the provisions of her case plans, it would take months of continued services for Mother to fully address her mental health issues, domestic abuse history, and barriers to effective parenting. Mother's therapist Ana Periera credibly testified that Mother will need at least one additional year of therapy

before she realizes long-term change. Martin Jeffrey Toonstra, who completed Mother's parenting capacity assessment, recommended that Mother should have a safe, sanitary home free from domestic violence for at least one year to make her home safe for the Children on a permanent basis. Although Mother has regularly accessed services throughout her case plan, Mother could not provide a safe, stable home for the Children in the reasonably foreseeable future.

These findings are supported by clear and convincing evidence, and they show that there have been more than sporadic instances when mother failed to meet the children's needs. Even if the children's lives have centered on their mother, the district court did not err in concluding that the transfer of custody is in their best interests because mother has repeatedly failed to meet their needs.

Father argues that placement with the aunt and uncle is not in G.K.R.'s best interests because G.K.R. is not biologically related to them. The district court found that G.K.R., who showed some developmental delays and behavior problems when placed with the aunt and uncle, had made noticeable progress and responded well to the aunt and uncle's "firm yet loving style of discipline." The district court found that the aunt and uncle treat all three children with equal care and love and "are able to provide a safe, stable, loving environment in which the Children's daily needs are met. The Children have flourished in out-of-home placement with [aunt and uncle]: they are excelling academically, socially, and participating in extracurricular activities." These findings are supported by clear and convincing evidence, and they show that the fact that G.K.R. is not biologically related to the aunt and uncle does not demonstrate that the transfer of custody is not in G.K.R.'s best interests.

Reasonable efforts

To be reasonable, the county's efforts must be designed to address "the problem presented." *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). Whether efforts are reasonable "requires consideration of the length of time the county has been involved with the family as well as the quality of effort given." *In re Welfare of M.G.*, 407 N.W.2d 118, 122 (Minn. App. 1987) (quotation omitted). But a county's efforts must be realistic under the circumstances of the case and do not include efforts that would be futile. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004). As an alternative to findings regarding the adequacy and appropriateness of services, Minn. Stat. § 260.012(h) permits the court to "determine that provision of services or further services for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances."

The district court made detailed findings about the services that have been provided to father and mother since 2005 and found that further reunification efforts would be futile. The court found credible testimony by four social workers and the guardian ad litem that mother is in a pattern of cyclical compliance, meaning that mother is initially compliant but that her compliance diminishes over time and barriers to effective parenting persist, necessitating further intervention by social services. The court found that, despite receiving "targeted, intensive, individualized services in both St. Louis County and Itasca County" for ten years, the same barriers to safe parenting (chemical abuse and mental-health problems, domestic discord and failure to maintain the home) continued to exist.

Mother argues that reasonable efforts were not provided because the children were not provided with counseling, so the guardian ad litem was not able to indicate how a custody transfer would affect them. But the district court made specific findings addressing the effect of a custody transfer on the children. The district court found that the aunt and uncle are suitable custodians who are genuinely concerned for the children's welfare and willing to care for them until age 18, that the children have adjusted well to living with the aunt and uncle, that the older children are making academic progress and participating in extracurricular activities, that the youngest child has advanced considerably since being enrolled in Head Start, and that the aunt and uncle have facilitated supervised visits with mother and father and believe that it is important for the children to maintain a relationship with their parents. These findings are supported by clear-and-convincing evidence and indicate how a custody transfer affects the children.

Father argues that the record does not support the determinations that the county's reunification efforts were reasonable and that further reunification efforts would have been futile because reunification was not possible in the reasonably foreseeable future. Father contends that the district court improperly "relied on a history of child protection intervention that exceeded the timeline of Mother and Father's relationship." This argument is without merit. The district court made specific findings about father's progress with his case plan. The district court noted father's acknowledgement that he got a "slow start" on fulfilling his case-plan requirements and lack of a satisfactory explanation for the delay. The district court stated that it was troubled by the delay because, without the demands of childcare or work, father "should have had ample time

to schedule appointments and follow through with services.” The district court found that father had complied with some case-plan provisions but that “it would take months of intensive services for [father] to fully address his mental health issues, domestic abuse history, and barriers to effective parenting.” The court noted the recommendations of Martin Jeffrey Toonstra, who conducted father’s parenting-capacity assessment, that father maintain sobriety and a safe, sanitary home free from domestic violence for at least one year to show the capacity for long-term change. The court found credible the testimony of the coordinator of an intervention program that “it was ‘too early’ to judge whether [father] had gained insight into his history of domestic violence.” For these reasons, the district court found that father could not provide a safe, stable home for the children in the reasonably foreseeable future.

Father argues that the 2007 CHIPS action was dismissed because of the family’s compliance and that the family functioned successfully from reunification in June 2006 to September 2010. But contrary evidence was presented at trial. Itasca County received five reports of abuse and neglect between 2008 and 2010. Following removal in 2010, A.E.L. expressed concerns about domestic violence in a statement to Blaine, and G.K.R. acted out domestic violence when playing with dolls. The district court cited A.E.L.’s statement and G.K.R.’s role playing in finding not credible mother’s testimony that, until the September 2010 incident, father had not been physically violent toward her since 2005. The district court also found not credible father’s testimony that, before his arrest on September 2, 2010, he had relapsed on methamphetamine only once. The district court noted that drug paraphernalia was found hidden in the bathroom and that J.T.L.

reported observing that father and his acquaintances would sometimes go into the bathroom together, suggesting more than an isolated relapse. We defer to the district court's credibility assessments. *In re Welfare of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007).

Father argues that the services offered by the county during the 2010 proceeding were inadequate and untimely and that he was in compliance with his case plan. These arguments also challenge the district court's assessment of witness credibility.

Ability to correct conditions leading to out-of-home placement

Citing her own testimony and that of her treatment providers that she was making good progress, mother argues that the district court erred in finding that she has not shown an ability to use services to correct the conditions leading to out-of-home placement. Mother's argument essentially challenges the district court's assessment of witness credibility. The district court found that before the children were removed in September 2010, conditions in the family home were deteriorating and both mother's and father's mental health were deteriorating. The district court also considered the numerous services provided during the previous ten years and the persistent barriers to effective parenting and found:

Despite extensive, ongoing provision of services by St. Louis County and Itasca County, the same barriers to safe parenting have persisted: chemical abuse issues, domestic discord, failure to maintain mental health, and failure to maintain the home, resulting in uninhabitable living conditions. Continued intervention by social service agencies has been necessary to address the same underlying issues.

....

... Despite such interventions, Mother and [Father] have not shown that they are capable of using services to correct the conditions leading to the Children's out-of-home placement on a long-term basis.

These findings are sufficient to support the district court's determination that further reunification efforts would have been futile. Although mother and father have had some success in their reunification efforts, they have not been able to sustain their success.

II.

Mother and father argue that the district court erred in denying their requests to continue the permanency determination for six months. The decision to grant or deny a continuance will not be reversed absent an abuse of discretion. *In re Welfare of J.A.S.*, 488 N.W.2d 332, 335 (Minn. App. 1992). "[T]he court shall commence proceedings to determine the permanent status of a child not later than 12 months after the child is placed in foster care or in the care of a noncustodial parent." Minn. Stat. § 260C.201, subd. 11(a) (2010). For a child under age eight, if the child would benefit from reunification with the parents, the court may continue the permanency determination for up to an additional six months. *Id.*, subd. 11a(a) (2010).

Citing *In re Welfare of Child of T.T.B. & G.W.*, 724 N.W.2d 300, 306 (Minn. 2006), the district court found that although permanency review was not mandated for J.T.L. at 11 months, it was not impermissible because Minn. Stat. § 260C.201 sets outside limits for permanency determinations. Although a permanency proceeding was required, given the lengthy history of domestic violence, mental-health problems,

controlled-substance abuse, unsanitary living conditions, failure to use available services, and the parent-assessment recommendation that both mother and father should have a safe, sanitary home free from domestic violence for at least a year to demonstrate the capacity for long-term change, the district court did not abuse its discretion by denying the requests to continue the permanency determination for six months.

III.

“Absent an erroneous interpretation of the law, whether to admit or exclude evidence is a question within the district court’s broad discretion.” *In re Child of Simon*, 662 N.W.2d 155, 160 (Minn. App. 2003).

Mother argues that the district court erred in admitting (1) documentary evidence of and testimony about her previous contacts with child protection, because the contacts were not relevant to the current proceeding; and (2) documentary evidence of both past and current contacts, because the documents were prepared for litigation.

Evidence relating to a termination decision must address conditions that exist at the time of the hearing. *In re the Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980). But evidence of ongoing, unresolved problems can be relevant to current conditions. *See In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (noting five-year history of services provided by counties and upholding finding that active and reasonable efforts failed when several social services and healthcare providers concluded that appellant would be unable to care for children in foreseeable future); *In re Welfare of J.L.L.*, 396 N.W.2d 647, 651 (Minn. App. 1986) (rejecting argument that findings addressing parent’s ongoing, unresolved problems were based on past acts). Because the

reports from previous child-protection cases involved ongoing, unresolved problems, the district court did not err in finding them relevant to the current proceeding.

Hearsay evidence is generally inadmissible unless qualified under an exception. Minn. R. Evid. 802. “A memorandum, report, record, or data compilation prepared for litigation is not admissible under the [business-records] exception.” Minn. R. Evid. 803(6). When determining whether a document was prepared for litigation, the district court must consider when and by whom the report was made and the purpose of the report. *Nat’l Tea Co. v. Tyler Refrigeration Co.*, 339 N.W.2d 59, 62 (Minn. 1983).

Based on testimony by three social workers and a child-protection investigator, the district court found that case notes were kept in the regular course of their work, regardless of whether a CHIPS case exists, and that child-protective-services case plans are created to facilitate reunification. The district court also cited Minn. Stat. § 260C.193, subd. 2 (2010), which permits the court to “consider any report or recommendation made by the responsible social services agency, . . . guardian ad litem, . . . the child’s health or mental health care provider, . . . or any other information deemed material by the court.” The district court did not abuse its discretion in determining that the documentary evidence of mother’s past and current contacts with child protection were not prepared for litigation and, therefore, were not inadmissible as hearsay.

Mother argues that out-of-court statements of J.T.L. and A.E.L. were inadmissible hearsay. The district court admitted the statements under Minn. Stat. § 260C.165 (2010), which provides that an out-of-court statement not otherwise admissible is admissible in a CHIPS proceeding if (1) the statement is made by a child under age ten, (2) describes

“any act of physical abuse or neglect of the child by another,” (3) the court finds sufficient indicia of reliability, and (4) the proponent of the statement gives notice to parties.

The children were under age ten when they gave their statements to Blaine in September 2010. Both children stated that they were not fed regular meals in the family home, and A.E.L. stated that she had eaten only potato chips the day before the removal. Both children reported that they were expected to clean the home and that father did not regularly do so. The district court found the statements were corroborated by Blaine’s observation of “deplorable conditions in the [family] home, including a lack of food, when the children were removed from the home in September 2010.” Itasca County gave notice of its intent to offer the statements to the other parties. Because the statutory requirements were satisfied, the district court did not abuse its discretion in admitting the statements.

The district court did not abuse its discretion in finding that A.E.L.’s statement that she was “worried that, um, when they fight, that [Father’s] gonna kill my Mom and then I cry” was admissible under Minn. R. Evid. 803(3) (excepting from the hearsay rule statement of “then existing state of mind, emotion, sensation, or physical condition”).

Mother argues that the district court erred in admitting testimony by Melin and Schultz about her ability to parent the children in the future. “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise”

Minn. R. Evid. 702. Expert witnesses are permitted to testify to ultimate factual issues. Minn. R. Evid. 704; *see also Doren v. Doren*, 431 N.W.2d 558, 561 (Minn. App. 1988) (upholding district court's qualification of social worker as expert witness). The district court did not abuse its discretion in admitting Melin's and Schultz's testimony.

Affirmed.