**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A07-1280**

In the Matter of the Welfare of the Children of:
S.M., R.T., and M.O., Parents.

**Filed January 8, 2008**
**Affirmed**
**Wright, Judge**

Martin County District Court
File No. 46-JV-06-9

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Considered and decided by Willis, Presiding Judge; Peterson, Judge; and Wright, Judge.

## U N P U B L I S H E D  O P I N I O N

**WRIGHT,** Judge

In this appeal challenging the district court's transfer of physical and legal custody of her children, appellant argues that the district court erred in its application of Minn. Stat. § 260C.201 (2006) by evaluating conditions other than those that led to the out-of-home placement and by failing to consider appellant's condition at the time of the hearing. Appellant also argues that the district court's determination that the children could not be safely returned to her is unsupported by the record. We affirm.

## FACTS

Appellant S.M. is the mother of A.M. and K.O. On January 12, 2006, human services of Faribault and Martin counties and the Faribault Police Department investigated reports that S.M. was using methamphetamine. S.M. admitted using methamphetamine the previous weekend, and needles were found in her bathroom. S.M. claimed that the needles belonged to a diabetic friend. While in the home, investigators also discovered a bathtub with standing water, children's bath toys, and a wash cloth. S.M. maintained that the water and needles were not accessible or dangerous to the children because she always kept the bathroom door closed. S.M. agreed to submit to drug testing. An oral test indicated the presence of methamphetamine and amphetamine, and a urine test indicated the presence of methamphetamine and THC.

The investigators determined that the children's welfare was in danger. S.M. was permitted to place her children with a relative rather than leave them with the police for an emergency placement. S.M. placed the children with K.O.'s great aunt.

A petition was filed, which alleged two statutory bases for adjudicating the children in need of protection or services (CHIPS): (1) lack of "proper parental care because of the emotional, mental or physical disability, or state of immaturity of the child[ren]'s parent, guardian, or other custodian," and (2) that the children's "behavior, condition, or environment is such as to be injurious or dangerous to the child[ren] or others." Minn. Stat. § 260C.007, subd. 6(8), (9) (2006).

Although S.M. agreed to seek treatment for chemical dependency, she did not do so. Several weeks after the placement of her children with K.O.'s great aunt, S.M. attempted to submit as her own the great aunt's urine for drug testing. When this deception was discovered, S.M. admitted using methamphetamine prior to the drug test. The children were removed from the great aunt's care and held until an emergency hearing for placement with nonrelative foster parents.

In January 2006, human services established a case plan for S.M. to assist her in developing parenting skills and establishing a safe environment for her children. The chemical assessment, which was administered pursuant to the plan, recommended inpatient treatment. S.M. also was required to undergo a psychological assessment, a parenting assessment, and parenting education classes.

S.M. first attempted outpatient treatment, which she did not complete successfully. After completing inpatient treatment, she was discharged to a halfway house. Against the recommendations of the treatment staff, she left the halfway house in June 2006.

Human services subsequently made arrangements for S.M. to live with her children at Harbor Home, a sober environment where chemically dependent mothers can

live with their children while obtaining treatment. In July 2006, shortly before she was to begin living at Harbor Home, S.M. disappeared for approximately two months. During that time, she continued to use marijuana and methamphetamine. She did not see her children until fall 2006, when she requested visitation. Because she continued to test positive for marijuana use, S.M. was permitted only supervised visitation.

On November 2, 2006, S.M. admitted that her children were in need of protection or services. Human services subsequently prepared updated case plans; and the children were placed in foster care with respondents Ann and Michael Schober, A.M.'s paternal grandmother and her husband. Human services also filed a petition for permanent placement with the Schobers.

For the first time during the child-protection proceedings, in December 2006, S.M. received negative drug-test results and began completing the assessments ordered as part of her case plan. But in January 2007, S.M. relapsed and used methamphetamine, resulting in a probation violation. She then entered drug court, completed her assessments, and completed one of the two parenting classes offered by human services.

A permanency hearing was held on February 28, April 6, and April 12, 2007. At the hearing, Dr. Joseph Switras, S.M.'s psychologist, testified that S.M. has the ability to be an appropriate parent only if she addresses her mental health and anger issues, learns to work with those offering services to help her, continues with parent education, and remains free from chemical use.

The district court found that, "[t]o date, [S.M.] has not been able to consistently, for a significant period of time, deal with her mental health issues, work with Human

Services, control her anger, or remain chemical free." It identified ongoing problems, including S.M.'s refusal to cooperate with human services since February 2007, the presence of a known methamphetamine dealer at her apartment in April 2007, and S.M.'s decision to take her children out of the county contrary to human services' instructions. The district court also found that S.M. disregarded human services' instructions to refrain from bringing the children to the prior foster parents' home because their teenage son was being investigated for alleged sexual contact with a young child. Indeed, S.M. testified that she planned to bring the children to that home for care if she relapsed. Alternatively, she would bring the children to her mother's home, despite testifying that she "could not be too sure" whether her mother used controlled substances.

The district court found that the conditions that led to the children's out-of-home placement had not been sufficiently mitigated and concluded that a permanent placement with the Schobers is in the children's best interests. The district court reasoned that

> [a]lthough [S.M.] has made significant strides in her chemical addiction recovery and has recently complied with portions of her parenting plan, the amount of time it took her to take action in accordance with the parenting plan, her historic lack of enthusiasm regarding the plan, her continuous lack of cooperation with Human Services and the distance she still has to go on her chemical addiction recovery all favor the children being permanently placed.

The district court ordered that physical and legal custody of A.M. and K.O. be transferred to the Schobers. This appeal followed.

## D E C I S I O N

### I.

S.M. argues that the district court's decision to transfer legal custody of her children is founded on an incorrect application of Minn. Stat. § 260C.201 (2006). The interpretation of a statute presents a question of law, which we review de novo. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 54 (Minn. 2004).

"The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2 (2006). Minnesota law requires that if a child under the age of eight is placed outside the parent's home, a permanency hearing must be held "no later than six months" after the placement "to review the progress of the case, the parent's progress on the out-of-home placement plan, and the provision of services." Minn. Stat. § 260C.201, subd. 11a(a); *see also* Minn. Stat. § 260C.201, subd. 11a(c)(1)(ii) (permitting district court to continue matter for six additional months before conducting permanency hearing). Following the hearing, the district court may order the child returned to his or her parent, a permanent placement, or the termination of parental rights. Minn. Stat. § 260C.201, subd. 11(c). If the district court orders a permanent placement outside the home, the order must include, among other findings, a finding "that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home." *Id.*, subd. 11(i)(4).

S.M. argues that the children were removed from her care because of allegations of illegal drug use in her home and that this condition has been remedied. Permanent

placement outside the home was erroneous, she argues, because she had not used drugs for five months at the time of the hearing, was participating in drug court, and had completed chemical dependency treatment. S.M.'s characterization of the reason for the out-of-home placement is incomplete.

The January 2006 CHIPS petition was premised on two statutory bases: (1) that the children were "without proper parental care because of the emotional, mental, or physical disability, or state of immaturity" of the parent; and (2) that the children's "behavior, condition, or environment is such as to be injurious or dangerous to the child[ren] or others." Minn. Stat. § 260C.007, subd. 6(8), (9) (2006). Although the petition clearly addressed the danger posed by S.M.'s drug use and the drug paraphernalia in the home, the petition also addressed the unsafe conditions found in S.M.'s home (standing water in the bathtub, the presence of needles accessible to the children) and the presence of another person (A.M.'s father) who has significant chemical-dependency problems residing there. Although S.M. initially denied these bases, in November 2006, S.M. admitted that her children's "behavior, condition, or environment" was injurious to them or others. Minn. Stat. § 260C.007, subd. 6(9). Thus, although S.M.'s drug abuse contributed in large part to the out-of-home placement, the conditions that led to the out-of-home placement are broader than her history of drug abuse.

S.M. appears to overlook the second portion of the statute, which requires that the children be able to "safely return home." Minn. Stat. § 260C.201, subd. 11(i)(4). The children's best interests are the "paramount consideration." Minn. Stat. § 260C.001,

subd. 2. Mitigation of the original conditions alone is insufficient if it remains unsafe to return the children to the parent. Thus, the district court was required to look beyond S.M.'s sobriety to determine whether she was capable of safely caring for her children at home. As such, the district court did not err by considering evidence beyond S.M.'s drug use in determining that transfer of legal and physical custody was in the children's best interests.

S.M. also argues that the district court failed to evaluate S.M.'s condition at the time of the permanency hearing. The district court must address the conditions at the time of the hearing and rely "not primarily on past history, but to a great extent upon the projected permanency of the parent's inability to care for his or her child." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) (quoting *In re Welfare of A.D.*, 535 N.W.2d 643, 649 (Minn. 1995)) (other quotation omitted).[1]

S.M. argues that, at the time of the hearing, her condition was such that the children could be returned to her in the reasonably foreseeable future. But the district court identified numerous current conditions supporting its conclusion that S.M. was unable to care for the children, including her lack of employment, short history of sobriety and long history of relapses, and lack of an adequate relapse plan. The district court's acknowledgment of a parent's relatively short sobriety does not unduly focus on the parent's history. Rather, it addresses the need to develop an adequate relapse plan

[1] *S.Z.* addresses the termination of parental rights rather than a permanent transfer of custody. But both child-protection options employ similar standards to assess the welfare of a child. *See In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996) (applying termination-of-parental-rights standard of review to permanent placement).

particularly when, as here, the parent has frequently relapsed, even after completing chemical-dependency treatment. The district court properly considered the relevant conditions as they existed at the time of the hearing.

Additionally, S.M. argues that Minnesota law permits less restrictive alternatives. But S.M. has not satisfied the statutory requirements for the alternatives she identifies. Rather, on these facts, the available alternative—termination of parental rights—is *more* restrictive than the disposition ordered by the district court. *Compare* Minn. Stat. § 260C.201, subd. 11(j) (permitting modification of an order for permanent legal and physical custody after one year in accordance with Minn. Stat. § 518.18) *with* Minn. Stat. § 260C.317, subd. 1 (2006) (terminating all parental rights, including right "to appear at any further legal proceeding concerning the child").

**II.**

S.M. also argues that the facts do not support the district court's findings and conclusion. When reviewing a permanent-placement order, we determine "whether the [district] court's findings address the statutory criteria and are supported by substantial evidence, or whether they are clearly erroneous." *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996) (quotation omitted). To challenge a district court's findings of fact successfully, a party "must show that despite viewing the evidence in the light most favorable to the [district] court's findings . . . the record still requires the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

S.M. contends that "[t]he facts in this case show that there was an ever-moving target for [S.M.] to reach to have her children returned." We disagree. Indeed, S.M. is in treatment, attends Alcoholics Anonymous meetings, and has controlled her bipolar disorder through medication. But these accomplishments, while significant, do not satisfy other important aspects of the case plan or make it safe for the children to be returned to her home.

Among the requirements of the case plan, S.M. must remain free of any mood-altering chemicals, including alcohol; successfully complete inpatient treatment and follow all after-care recommendations; develop a relapse plan to address any issues that may affect her children's safety or well-being; learn and demonstrate appropriate parenting skills; complete parenting and psychological evaluations and follow resulting recommendations; obtain appropriate housing; and obtain and maintain employment. The district court found that S.M. had remained chemically free for approximately five months but that she "still has a ways to go in her recovery." Although she completed inpatient treatment, she has had several subsequent relapses and permitted a known drug dealer in her home. The district court also found that she was unemployed and her relapse plan was inadequate because it did not include safe alternatives for the children in the event of relapse. Moreover, despite S.M.'s contention that she is properly medicated, testimony at the hearing establishes that she did not start taking medication until after the permanency hearing began.

Accordingly, there is ample support in the record for the district court's findings, and they adequately support its conclusion that "[t]he conditions which led to the out-of-

home placement of the children have not been corrected to the point where the children can return home."

**Affirmed.**