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**STATE OF MINNESOTA  
IN COURT OF APPEALS**

**A07-1232**

**A07-1233**

**A07-1321**

In the Matter of the Welfare of the Child of: D.D., Parent.

In the Matter of the Welfare of the Child of: K.D. and D. F., Parents.

**Filed February 26, 2008**

**Affirmed**

**Schellhas, Judge**

Becker County District Court

File No. J0-07-50042

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Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

## UNPUBLISHED OPINION

**SCHELLHAS**, Judge

In these consolidated appeals, appellants challenge the termination of their parental rights. Appellants D.D. and K.D. contend that the county failed to provide adequate services for reunification, and K.D. contends that the county failed to grant her additional time to comply with the case plan. Appellant D.F. contends that the district court erroneously relied on conditions that no longer existed at the time of trial, failed to review each of the appellants independently when assessing whether termination is proper, and failed to consider other permanency disposition options at trial. Because the evidence presented at trial is sufficient to show that appellants received adequate reunification services, that the conditions at the time of trial supported parental termination for all appellants, and that parental termination is in the children's best interests, we affirm.

### FACTS

Appellant D.D. is the mother of M.D., born on February 2, 1997. Within an 11-month period in 2002 and 2003, M.D. was removed from D.D.'s care twice, based on the unsanitary condition of D.D.'s home. Appellant K.D. is D.D.'s adult daughter. K.D. and appellant D.F. are the parents of a son, D.O.F., born on December 27, 2004. K.D., D.F., and their son, D.O.F., reside with D.D. and her daughter, M.D., in a trailer. D.O.F. has also been the subject of previous child-protection proceedings. In February 2005, D.O.F. was adjudicated a child in need of protection or services (CHIPS) after Becker County

Human Services (the county) sought to remove D.O.F. from his parents' care based on his failure to thrive. D.O.F. was placed in foster care and then returned to the care of K.D. and D.F. In June 2005, services were again mandated by the county for D.O.F., based on the unsanitary condition of the home. In April 2006, the county closed its CHIPS file on D.O.F. because K.D. and D.F. refused to cooperate with or speak to the caseworker.<sup>1</sup>

On October 13, 2006, M.D. and D.O.F. were removed from their home and placed in foster care because the home was unhealthy, unsanitary, and cluttered, and because of domestic violence between D.D. and D.F. The county investigator observed that the floor was completely covered with clutter in most areas of the home, with only small pathways through the clutter; the hallway had boxes stacked almost halfway up the wall; and litter and food containers were scattered throughout the home.

The county filed CHIPS petitions on behalf of M.D. and D.O.F., alleging that the children were CHIPS under Minn. Stat. § 260C.007, subds. 6(2)(i)-(iv) (a child has been a victim of physical or sexual abuse, resides with or has resided with a victim of domestic child abuse, resides with or would reside with a perpetrator of child abuse, or is a victim of emotional maltreatment), 6(9) (2006) (a child whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others).

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<sup>1</sup> Although not a matter presently in controversy in this case, we find disturbing the county's (or any county's) decision to close a child-protection file because of parents' refusal to cooperate regarding matters affecting their children's welfare.

An emergency protective-care hearing was held on October 17, 2006, and interim custody of the children was transferred to the county. An admit/deny hearing on the CHIPS matters was held on October 24, 2006. On October 30, 2006, the county filed proposed case plans and presented them to D.D., K.D., and D.F. All three parents initially refused to sign their case plans. D.F. returned his signed case plan in early November 2006.

On November 14, 2006, D.D. admitted that M.D. was in need of protection or services under Minn. Stat. § 260C.007, subd. 6(9); and K.D. and D.F. admitted that D.O.F. was in need of protection or services under Minn. Stat. § 260C.007, subd. 6(9). As a result of the admissions, both M.D. and D.O.F. were adjudicated CHIPS on November 14, 2006. Only after the district court ordered D.D. and K.D. to comply with their case plans did D.D. and K.D. sign their case plans in January 2007.

The case plans for all three parents were substantially similar because they resided in the same home, had issues with mental health, and a history of domestic violence. Each case plan provided for: individual counseling; intensive in-home counseling; family resource assistance; supervised visitation; family group decision-making conferences; CEP and workforce center assistance; and gas vouchers. K.D.'s and D.F.'s case plans also included parenting classes and anger-management counseling for D.F.

On February 20, 2007, the county filed petitions to terminate the parental rights of D.D., K.D., and D.F. The termination-of-parental-rights petitions were based on the grounds that the parents failed to comply with the duties of the parent and child

relationship, the parents are palpably unfit, and reasonable efforts have failed to correct the conditions leading to the children's out-of-home placement.

An admit/deny hearing on the termination-of-parental-rights petitions was held on March 13, 2007. At the hearing, the county requested a court order, relieving the county of its obligation to provide reasonable efforts toward reunification and ceasing visitation between the parents and their children. The guardian ad litem (GAL) supported the decision to discontinue efforts toward reunification. The district court granted the county's request. The district court also granted the county's motion to consolidate the parties' termination trials.

At the May 2007 termination trial, the parties' caseworker testified that the same services had been provided to D.D. since 2002, and to K.D. and D.F. since 2005, and that she had not observed any benefit or improvement as a result of the services. The parties' in-home therapist testified that the family had taken steps toward change, but could not testify that additional time would be beneficial to the family. Jan Haugrud, who provided therapy to D.D. and K.D., testified that the family was making improvements based on their self-reporting. The GAL testified that the family had complied with the case plan but had not made any progress on the identified issues that led to the out-of-home placements of M.D. and D.O.F.

The district court found that the parties had "more than a sufficient amount of time to comply with the recommendations of [their] case plan[s]." As to all three parents, the district court found that the evidence supported the existence of three independent statutory grounds for termination, Minn. Stat. § 260C.301, subd. 1(b)(2), (4) and (5), and

terminated D.D.'s rights to M.D., and terminated K.D.'s and D.F.'s rights to D.O.F. All three parents, D.D., K.D. and D.F., filed appeals, and this court consolidated them.

## DECISION

On appeal in a termination proceeding, this court “[is] limited to determining whether the findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether they are clearly erroneous.” *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997); *see* Minn. Stat. § 260C.301, subd. 1(b) (2006) (listing nine criteria). “Considerable deference is due to the district court’s decision because a district court is in a superior position to assess the credibility of witnesses.” *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). But this court must “exercise great caution in proceedings to terminate parental rights.” *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). This court closely inquires into the sufficiency of the evidence to determine whether the evidence is clear and convincing. *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998).

A district court may involuntarily terminate parental rights when clear and convincing evidence supports at least one statutory basis for termination. Minn. R. Juv. Prot. P. 39.04, subd. 1; *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). Here, the district court concluded that termination of all parties’ parental rights was necessary because: (1) D.D., K.D., and D.F. failed to abide by the duties imposed on them by the parent-child relationship, *see* Minn. Stat. § 260C.301, subd. 1(b)(2); (2) reasonable efforts failed to correct the conditions leading to the out-of-home placement, *see* Minn. Stat. § 260C.301, subd. 1(b)(5); and (3) D.D., K.D., and D.F. are

palpably unfit parents, *see* Minn. Stat. § 260C.301, subd. 1(b)(4). The district court also determined that termination is in the best interests of M.D. and D.O.F.

### ***Termination of D.D.’s parental rights***

D.D. argues that the district court erred in finding that the county made reasonable efforts to reunite her with M.D. A district court may not terminate unless it finds that the county has made reasonable efforts to reunite the family and that termination is in the child’s best interests. Minn. Stat. § 260C.301, subs. 7, 8 (2006). Therefore, even if statutory grounds for termination exist, we must determine whether there is clear and convincing evidence that the county made reasonable efforts to reunite the family. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005).

“Reasonable efforts” at rehabilitation are services that “go beyond mere matters of form so as to include real, genuine assistance.” *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). Whether the services a county provides 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 efforts. *Id.* “The county’s efforts must assist in alleviating the conditions that gave rise to the dependency adjudication.” *Id.*

D.D. argues that the county did not engage in reasonable efforts because the county failed to provide services directed toward correcting D.D.’s alleged “hoarding” disorder. But D.D. was not diagnosed with any type of hoarding disorder and trial testimony established that hoarding is not a recognized mental-health diagnosis. D.D.’s child, M.D., was adjudicated CHIPS when the district court found that the condition or

environment of the home was dangerous to M.D. At the time she was placed in foster care, nine-year-old M.D. lacked basic hygiene skills and was unable to dress herself. M.D.'s previous out-of-home placements were also related to the unsanitary condition of the home.

At trial, D.D.'s therapist testified that she had met with D.D. 35 times as part of D.D.'s case plan. The county presented evidence that D.D. refused assistance relating to the improvement of the condition of the home. D.D. did not believe that her home's cluttered condition or cleanliness was a problem, and the county's efforts to correct the conditions of the home were met with D.D.'s anger and noncompliance. D.D. refused to allow service providers to see M.D.'s bedroom throughout the course of the case plan and refused entry into the home entirely on one visit. When D.D.'s capacity-to-parent evaluation recommended a psychiatric evaluation, D.D. became angry and said that she did not want to visit a psychiatrist because she had so many times in the past and she was not a candidate for medication. D.D. never progressed enough on her case plan to have unsupervised visits with M.D. In fact, M.D.'s supervised visits with her mother had to be reduced in length from four hours to one hour because of their negative impact on M.D., who would frequently awake crying in the middle of the night after visits.

The county's efforts to assist D.D. in improving her home's condition were met with anger and refusal to comply, and D.D. was unwilling to recognize or attempt to address any issues relating to the unsanitary and unsafe condition of the home. We conclude that the evidence clearly and convincingly supports the district court's findings that the county's efforts were reasonable and attempted to address D.D.'s mental-health

issues and the condition of the home, and D.D.'s refusal to comply made any further efforts futile.

*Termination of K.D.'s parental rights*

K.D. contends that the county did not provide reasonable efforts to reunite her with D.O.F., arguing that the case plan did not address the hoarding issue and that the county did not provide her with additional time to comply with her case plan. Again, the county had no evidence that providing hoarding-specific treatment was essential for reunification. The county used the same efforts to address the condition of the home with D.D. and K.D. K.D. also met with the therapist approximately 35 times. K.D. had also received services from the county when D.O.F. was previously removed from her care. But, like her mother, K.D. did not think the condition or cleanliness of the home was an issue. K.D. met suggestions about improving the conditions of the home and removal of clutter with anger and noncompliance. The evidence clearly and convincingly supports the district court's finding that the county used reasonable efforts to address the unsanitary and cluttered condition of the home.

K.D. contends that the district court's finding that she had more than a sufficient amount of time to comply with the recommendations of the case plan is not supported by the evidence at trial. Under Minnesota law, if a child is under eight years of age when the CHIPS petition is filed, a permanency hearing must be conducted within six months of the child's placement. Minn. Stat. § 260C.201, subd. 11a(a) (2006). If the district court finds that a parent has maintained contact with the child and is complying with the court-

ordered placement plan, the district court may continue the matter for an additional six months. *Id.*, subd. 11a(c).

K.D. argues that the finding that she had ample time to comply with the case plan is not supported by the evidence because two of the service providers testified that they recommended giving K.D. more time to comply with the case plan. But clear-and-convincing evidence exists to support the district court's finding that K.D. had ample time to comply. At the time the termination petition was filed, D.O.F. had been in out-of-home placement for a cumulative time period of 279 days. From February 2005, two months after D.O.F. was born, until March 2007, K.D. received county services in connection with her care of D.O.F., excluding only the six-month period when the county closed the CHIPS file due to the parents' noncompliance.

Both K.D.'s parenting-class instructor and therapist testified that they thought K.D. would benefit from additional time to comply with the case plan, but the parenting instructor also testified that most of the changes she saw were temporary and she could not tell if K.D. was making long-term changes. Similarly, K.D.'s therapist testified that while K.D. had begun to make changes in expression of anger, K.D. needed to make a major change, and the therapist was unsure if any extension of time would be beneficial or productive. Neither K.D.'s instructor nor her therapist had observed K.D. with D.O.F.

In contrast, all of the service providers who had observed K.D. interact with D.O.F. testified against providing more time to comply with the case plan. The GAL testified that K.D. was not willing to make the changes and was just going through the motions of attending appointments. She also testified that the family had not utilized the

resources the county provided and further time with those resources would not make a difference. The in-home-visitation supervisor similarly testified that she did not see the family make progress on nutritional recommendations or show improvements in other areas.

The social worker also testified that although K.D. attended all of her appointments and seemed to enjoy parenting classes, she seemed incapable or unwilling to integrate the knowledge and skills to utilize them in her role in the home as D.O.F.'s mother. K.D.'s supervised visits with D.O.F. were chaotic and involved many displays of anger and disruption to D.O.F. Like M.D., after visits, D.O.F. awoke numerous times in the middle of the night crying. Because of the effect on D.O.F. of K.D.'s anger, the supervised visits had to be reduced from four hours to one hour. K.D. never progressed enough on her case plan so that she could have unsupervised contact with D.O.F. We conclude that the evidence clearly and convincingly supports the district court's finding that K.D. had sufficient time to comply with the case plan.

### ***Termination of D.F.'s parental rights***

D.F. argues that the district court failed to consider termination of each parent's rights individually and failed to make adequate findings to terminate his parental rights. This court must review each termination decision cautiously and independently. *In re Welfare of M.A.*, 408 N.W.2d 227, 231 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987). The district court included joint findings for K.D. and D.F. in several instances and arguably could have made more individualized findings for each parent. But the district court did consider D.F.'s behavior individually in reaching its decision to

terminate his parental rights. Because of the relationship between D.D., K.D., and D.F., it was not error for the district court to consider the collective actions of the parties, as well, in reaching its decision.

At trial, the district court heard testimony from D.F. about how he had obtained and retained employment, had attended anger-management counseling, and had the ability to cook. But the district court also heard testimony that D.F. was “enmeshed” with D.D. and K.D. Testimony established that part of a previous case plan had required that K.D. and D.F. move to a residence separate from D.D., and they did not comply. A recommendation for a separate residence was again made in 2006 when D.O.F. was placed in foster care, and K.D. and D.F. again refused to move. D.F. made no attempt to differentiate his parenting ability from that of D.D. and K.D. The evidence tended to show that D.F. has little or no parenting skills because he failed to demonstrate anything but minimally adequate interaction with D.O.F. during supervised visits. The district court’s findings are supported by adequate independent clear and convincing evidence that D.F.’s rights should be terminated.

D.F. contends that the district court improperly relied on conditions that no longer existed at the time of the termination hearing. “When considering termination of parental rights, the court relies 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) (quotation omitted). Therefore, the evidence offered in support of the termination petition must address conditions existing at the time of the hearing. *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001). This does

not mean, however, that the parent's past conduct is irrelevant. *See* Minn. Stat. § 260C.301, subd. 1(b)(4) (providing that in determining whether a parent is palpably unfit, the court considers duration and nature of pattern of conduct or conditions).

We note that the district court's findings refer to domestic violence, including a finding that D.F. admitted that domestic violence occurred between the adults in the home. No evidence was presented at trial that domestic violence was still occurring, and D.F. testified that there was no ongoing domestic violence.

The district court's decision to terminate D.F.'s parental rights was based primarily on the unsanitary condition of the home and D.F.'s failure to demonstrate adequate parenting skills during the case plan, not on the occurrence of domestic violence. Excluding the district court's concern about D.F.'s history of domestic violence, the court's findings are supported by clear and convincing evidence that D.F. often failed to interact with D.O.F. during visits, engaged in inappropriate behavior in the presence of D.O.F., and failed to complete basic parenting duties, such as, preparing meals or changing D.O.F.'s diaper. D.F. failed to take an active role in correcting any conditions that led to the out-of-home placement or in affirmatively establishing himself in a parenting role. Because it appears that the district court's decision to terminate D.F.'s parental rights are supported by clear-and-convincing evidence of circumstances that existed at the time of trial, the decision to terminate is not erroneous.

Finally, D.F. argues that the district court erred by not considering a legal transfer of custody to a relative under Minn. Stat. § 260C.201, subd. 11(c)(2), (d) (2006). Upon review of court-ordered placement and permanent-placement determinations, a district

court may order a disposition that includes “permanent legal and physical custody to a relative in the best interests of the child.” Minn. Stat. § 260C.201, subd. 11(d)(1). However, “an order for transfer of permanent legal and physical custody to a relative shall only be made after the court has reviewed the suitability of the prospective legal and physical custodian.” *Id.* Neither the county nor D.F. filed a petition for permanent placement with a relative prior to the termination trial. No relative was identified at trial, and the district court did not have the opportunity to properly review the suitability of this unidentified relative as a permanent placement for D.O.F. prior to or even at the termination trial. D.F. did not request a continuance to further investigate the potential relative placement. Under these circumstances, the district court did not err in declining to consider relative placement for D.O.F.

Even if the district court did err, the evidence presented at trial suggested that the possible relative placement was only feasible if termination of parental rights occurred. Because the district court had no evidence identifying a possible relative placement or establishing that a permanent relative placement was a viable placement option at the time of the termination trial, any error is harmless.

**Affirmed.**