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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2248**

In the Matter of the Welfare of the Child of: K. A. H. and D. M. W.,
Parents.

**Filed June 10, 2013
Affirmed
Peterson, Judge**

Houston County District Court
File No. 28-JV-12-375

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Considered and decided by Chutich, Presiding Judge; Peterson, Judge; and Smith,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a termination of parental rights following the revocation of a
stay of termination, mother argues that the termination is invalid because the record does

not show a violation of the terms of the stay or that termination is in the child's best interests. We affirm.

FACTS

On September 1, 2011, the four-year-old child of appellant-mother K.A.H. and respondent-father D.M.W. was removed from mother's home by law enforcement, and the child has been in out-of-home placement since then. Respondent Houston County Department of Human Services (the county) filed a petition alleging that the child was in need of protection or services (CHIPS). The district court adjudicated the child in need of protection or services, and, on November 2, 2011, adopted a case plan that required mother to abstain from alcohol and all mood-altering chemicals, complete chemical-dependency assessments and successfully complete all assessment recommendations, and submit to random urinalyses (UAs).

In March 2012, due to mother's failure to comply with the case plan, the district court relieved the county of its responsibility to make reasonable efforts to reunite mother with the child. The county filed a petition to terminate mother's parental rights (TPR), alleging substantial, continuous, or repeated refusal or neglect to comply with parental duties; palpable unfitness; and failure of reasonable efforts to correct the conditions leading to out-of-home placement.

On the second day of the TPR trial in July 2012, mother agreed to a voluntary termination of her parental rights, with the termination to be stayed for two years on specific conditions. Mother signed a consent in support of voluntary termination of her parental rights, a stipulation as to stayed termination, and a stipulation and consent for the

transfer of legal and physical custody of the child to father and his wife. Mother admitted in the consent that she had not complied with the case plan. She stated that the child had been in continuous out-of-home placement since being removed from mother's home and that she understood Minnesota's child-protection law contains time restrictions that limit the amount of time a child can be placed out of the home. She also stated:

7. . . . I have had enough time to discuss with my attorney my rights in the termination matter, including my right to have a trial before a judge who would make the final decision. I understand that if my rights are involuntarily terminated, I cannot return to court to seek a voluntary termination of my parental rights.

. . . .

12. . . . I truly love my child, but I believe that the voluntary termination of my parental rights to the child is in her best interests and is in accordance with Minnesota law. I understand that a consequence of involuntary termination would be that I would never have contact with the child, and I do not wish for that result. I have put much thought into this decision and no one is forcing me to voluntarily terminate my parental rights.

The conditions of the stay included that mother abide by the court orders in her commitment proceeding, comply with and successfully complete an aftercare plan, abstain from the use of alcohol and mood-altering substances, and submit to UAs. The stipulation to the stay provided that "[i]f the court finds that [mother] has violated a condition of the stay, the court shall revoke the stay and [mother's] parental rights to [the child] shall be terminated. . . ." Consistent with mother's signed consent form and stipulation, the district court ordered mother's parental rights voluntarily terminated but stayed the termination for two years.

Mother, who has a significant chemical-dependency problem, was admitted to inpatient treatment following an October 2011 chemical-dependency assessment. While in the program, on one occasion, mother had a male visitor who brought her mood-altering chemicals. On December 1, 2011, mother was discharged from the treatment program before completion due to lack of insurance coverage. Mother was admitted to an aftercare program but left after only two days. Mother admitted using methamphetamine between December 2011 and February 2012. Mother was admitted to a second treatment facility in March 2012 but left because she was under the influence of methamphetamine and did not want to be there.

In April 2012, a civil-commitment petition was filed to involuntarily commit mother as chemically dependent. Mother admitted to the petition on April 24, 2012, and was admitted to a third inpatient treatment facility. Mother left the treatment facility on May 17 but returned voluntarily. Mother left a second time and, after being apprehended by law enforcement, was admitted to a fourth treatment facility. She was provisionally discharged from the fourth treatment facility to a Pathways treatment facility on August 16, 2012. Mother left Pathways on the morning of August 27, 2012, to look for work and did not return. She was apprehended and detained on September 18, 2012, absconded again on September 19, and was apprehended and detained on September 25. Mother submitted to a UA on September 25, 2012, that tested positive for ethyl glucuronide (ETG) and ethyl sulfate (ETS), indicating that mother had “most likely” used alcohol within the preceding two days. By order filed October 29, 2012, the district court found

by clear and convincing evidence that mother remained chemically dependent and that continued commitment was necessary.

The county filed a motion to revoke the stay of termination after mother absconded from Pathways on August 27, 2012. The county filed an amended motion to include mother's conduct between September 18 and September 25. At the hearing on the county's motion, the district court took judicial notice of the CHIPS proceeding and testimony presented at an October 23, 2012 hearing to determine the need for continued commitment of mother as a chemically dependent person. Following an evidentiary hearing, the district court ordered mother's parental rights voluntarily terminated based on findings that mother had committed three significant violations of the stay and that termination was in the child's best interests.

This appeal followed. This court denied mother's motion to strike from the record on appeal documents from the CHIPS and commitment proceedings.

D E C I S I O N

I.

An appellate court reviews a decision to terminate parental rights to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by clear and convincing evidence. *In re Welfare of T.P.*, 747 N.W.2d 356, 362 (Minn. 2008). This court will defer to the district court's termination decision if at least one statutory ground for termination is proved by clear and convincing evidence and if termination is in the child's best interests. *In re Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008).

When deciding a motion to revoke a stay of a termination of parental rights, the district court must determine whether a statutory ground for termination exists and whether a parent violated the terms of the stay. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 94 (Minn. App. 2008). The court may terminate parental rights “with the written consent of a parent who for good cause desires to terminate parental rights.” Minn. Stat. § 260C.301, subd. 1(a) (2012). This court will not reverse the district court’s revocation of a conditional stay of a voluntary termination of parental rights absent an abuse of discretion. *D.F.*, 752 N.W.2d at 95.

In the facts section of her brief, mother argues that the only factual basis for the termination in the consent and stipulation documents was that mother failed to comply with the case plan and that there is no case plan included with the district court’s order for a stayed termination or “finding as to what action or forbearance on the part of [mother] constituted a breach of the case-plan.” But a case plan was adopted by the district court on November 2, 2011, and case-plan goals included that mother “complete chemical dependency assessments and successfully follow and complete all recommendations of their respective assessment” and abstain from alcohol and all mood-altering chemicals. In the consent in support of voluntary termination, mother admitted violating the case plan; the evidence shows that she violated the case plan by leaving three treatment facilities before being discharged and by using methamphetamine between December 2011 and February 2012.

The district court found that mother violated significant conditions of the stay by failing to comply with and successfully complete the aftercare plan at Pathways, running

from law enforcement after being recommitted to the fourth treatment facility, and providing a positive UA that showed that she most likely had used alcohol within the two days preceding the test. Contrary to mother's argument that it was "taken for granted" that she violated the stipulation by absconding from Pathways and from the persons who transported her to a medical appointment, the district court made specific findings on those violations, and the findings are supported by clear and convincing evidence.

Mother argues that "[t]here was never [a] direct showing that [mother] used or abused drugs or alcohol. It was shown that [mother] left treatment without being discharged, and absconded from security transport while at a medical appointment." But mother admitted using methamphetamine between December 2011 and February 2012, and a UA administered on September 25 indicated that she most likely used alcohol within the preceding two days. Mother was diagnosed as chemically dependent and was admitted to four different treatment programs, but she has not successfully completed any of them, and her commitment was continued on October 29, 2012, based on clear and convincing evidence that she continued to be chemically dependent.

Mother argues that the result of the September 25 UA that indicated the use of alcohol could have been a false positive. But the test result indicated it was "most likely" that mother had used alcohol within the preceding two days. Mother's test results showed a value of 18,300 for ETG and 18,800 for ETS. A toxicologist explained that incidental exposure to alcohol resulting from use of products such as mouthwash or cough medicine can result in positive ETG and ETS results. But according to recent scientific publications, values over 500 are not indicative of incidental exposure, and

values over 1,000 indicate “heaving drinking on the same day or previous two days or light drinking on the same day.” The toxicologist gave examples of ETG values resulting from incidental exposure to alcohol; the highest was 246, which resulted from three one-ounce doses of cough medicine. Lower values resulted from using a vapor product that contained alcohol every 15 minutes for eight hours and from using four ounces of mouthwash four times daily. The ETG and ETS values in mother’s test results are inconsistent with incidental exposure to alcohol and support the finding that the test results showed that mother used alcohol while she was on the run.

Although the district court’s findings do not specifically address good cause for termination, the district court’s findings support a termination based on reasonable efforts failing to correct the conditions leading to out-of-home placement. A statutory ground for termination exists when, following the child’s out-of-home placement, reasonable efforts, under the court’s direction, have failed to correct the conditions leading to the child’s placement. Minn. Stat. § 260C.301, subd. 1(b)(5) (2012). It is presumed that reasonable efforts have failed upon a showing that:

- (A) the parent has been diagnosed as chemically dependent by a professional certified to make the diagnosis;
- (B) the parent has been required by a case plan to participate in a chemical dependency treatment program;
- (C) the treatment programs offered to the parent were culturally, linguistically, and clinically appropriate;
- (D) the parent has either failed two or more times to successfully complete a treatment program or has refused at two or more separate meetings with a caseworker to participate in a treatment program; and
- (E) the parent continues to abuse chemicals.

Id., subd. 1(b)(5)(iv).

The record shows that mother was diagnosed as chemically dependent, required by a case plan to participate in a chemical-dependency treatment program, and offered the opportunity to participate in appropriate treatment programs. Regarding the fourth and fifth factors, within one month after the stay was entered, mother absconded from a treatment program and, one day after being apprehended and ordered to return to the treatment facility, absconded again. When she was apprehended and detained after absconding the second time, a UA was positive for alcohol use, and, on October 29, 2012, her commitment was continued based on clear and convincing evidence that she continued to be chemically dependent. Clear and convincing evidence supports a termination of mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5), based on mother's failure to rebut the statutory presumption. *See In re Welfare of Children of B.J.B.*, 747 N.W.2d 605, 611 (Minn. App. 2008) (upholding revocation of stay when parent failed to rebut presumption stated in Minn. Stat. § 260C.301, subd. 1(b)(5)(iv)).

Mother cites authority regarding due-process standards in a TPR proceeding.

Whether a parent's due-process rights have been violated in a TPR proceeding is a question of law, which we review de novo.

The parent-child relationship is among the fundamental rights protected by the constitutional guarantees of due process. Due process requires reasonable notice, a timely opportunity for a hearing, the right to counsel, the opportunity to present evidence, the right to an impartial decision-maker, and the right to a reasonable decision based solely on the record.

D.F., 752 N.W.2d at 97.

Mother does not specify her due-process argument, but the consent to termination shows that she was represented by competent counsel and that she understood her rights and the potential advantages of agreeing to a voluntary termination versus the risks of proceeding to trial and having her parental rights involuntarily terminated. At the July 27, 2012 hearing, the district court reviewed the conditions of the stay and explained the consequences of violating the stay. The district court conducted an evidentiary hearing on the county's motion to revoke the stay, and mother was given an opportunity to present evidence at the hearing. The process afforded mother satisfied the requirements listed in *D.F.*

II.

When 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); *see* Minn. Stat. § 260C.301, subd. 7 (2012) (“[T]he best interests of the child” are “paramount” in termination proceedings). A best-interests analysis requires consideration and balancing of 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). To facilitate effective appellate review, a district court’s findings on the child’s best interests must provide insight as to the facts or opinions most supportive of the ultimate conclusion that termination is in the child’s best interests and must show the district court’s comprehensive consideration of the statutory criteria. *In re*

Tanghe, 672 N.W.2d 623, 626 (Minn. App. 2003). A best-interests determination is subject to abuse-of-discretion review. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

Mother argues that “the District Court did not weigh the best interests of the child, and that the County Petitioner, proceeded in this matter under the assumption that the only requirement was to find a violation of the terms of the stay.” This argument is refuted by the district court’s explicit conclusion that “[r]evocation of the stay is in the child’s best interest and continues to be supported by the child’s Guardian ad Litem.” Although the district court did not explain the analysis that led to this conclusion, the district court specifically found that “mother believed that voluntary termination of parental rights to the child was in [the child’s] best interests.” And there is ample evidence in the record that termination is in the child’s best interests, including that mother’s chemical-dependency issues make her unable to parent the child and contributed to mother’s failure to participate in supervised visits according to the case plan. Between December 2011 and July 2012, mother saw the child only twice, and there is no evidence that she participated in supervised visits with the child during the stay of termination. Also, the child has been in out-of-home placement since September 1, 2011, and has a need for permanency.

The district court did not abuse its discretion in determining that termination is in the child’s best interests and revoking the stay of termination.

Affirmed.