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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1694**

In the Matter of the
Welfare of the Children of:
M.T. and E.T., Sr., Parents.

**Filed March 18, 2008
Affirmed
Crippen, Judge***

Hennepin County District Court
File No. 27-JV-06-15567

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Considered and decided by Toussaint, Chief Judge; Peterson, Judge; and Crippen,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellants challenge the findings of fact leading to the termination of the mother's parental rights for four children. Because the findings are adequately supported by the evidence, we affirm.

FACTS

M.T. is the mother of four minor children: E.T., Jr., now age 15; A.B., 12; D.T., 10; and T.T., 9. This appeal is on behalf of M.T. and the two oldest children.¹

The family has a history of sexual and physical abuse and domestic violence. T.T. suffered extensive and repeated sexual abuse at the hands of two of her older brothers—E.T., Jr., and an older sibling who is now an adult. The abuse took place in the family home while the children were under the care of M.T. and E.T., Sr. T.T. reported the ongoing sexual abuse to M.T., who saw physical evidence of the abuse. In response, M.T. told T.T. she would talk to the older brother and told T.T. that if she told anyone about the abuse she would “whoop her butt.” The sexual abuse was witnessed by D.T.; he also reported the abuse to M.T., but also was instructed not to discuss it.

During the termination proceedings, M.T. testified that she was not aware of the abuse until a court hearing in January 2006, but the district court found that this testimony was not credible in light of the other corroborated evidence in the record. Even after the children were in the protection of social services and after M.T. had been given

¹ M.T. married E.T., Sr., who is the presumed father of the four children, and he has not appealed the district court's decision terminating his parental rights.

the opportunity to change the conditions in her home, M.T. retraumatized T.T. by blaming her for the court's and social services' involvement and tried to coach the children to lie about what had happened to them.

T.T. and D.T. also reported being exposed to pornographic movies and sex between their parents; they were told not to tell anyone about the "freaky movies" they watched. In addition, A.B.'s foster family has expressed concern that E.T., Jr., may also have sexually and physically abused A.B.; a possibility that is supported by psychological testing.

T.T. and D.T. described extensive beatings by their father, E.T., Sr., who would hit them with belts, cords, and closed fists. The abuse was reported to M.T., who failed to prevent the abuse or end her relationship with E.T., Sr. Even while the child protection case was pending, M.T. continued her relationship with E.T., Sr., in violation of an order for protection. In addition to the physical abuse experienced by the children, M.T. admitted, and the children confirmed, that they have also witnessed domestic violence, which M.T. suffered for years at the hands of E.T., Sr.

The family initially came to the attention of child protection services in October 2005, when M.T. called child protection authorities after E.T., Sr., struck D.T., then just eight years old, with a belt. M.T. obtained a temporary protection order against E.T., Sr., which expired after M.T. failed to attend a family court hearing.

On October 26, 2005, respondent Hennepin County Human Services and Public Health Department filed a petition alleging that the children were children in need of protection or services. Following a November 1, 2005 hearing on the petition, the

children were briefly ordered out of the home, but were returned to M.T.'s care under protective supervision, so long as she abided by several conditions, including obtaining an order for protection against E.T., Sr.

In January 2006, the children were again removed from M.T.'s care and custody, after the department found E.T., Sr., hiding in a closet during a home visit and learned that he had given M.T. a black eye. After the children were removed, M.T. was allowed supervised visitation. But that visitation ceased in July 2006 after the district court learned that M.T. blamed T.T. for the public-agency involvement, threatened T.T. and D.T. with physical abuse if they continued to talk about the sexual abuse, and advised the children not to talk about what had happened to them. In October 2006, the department filed a petition seeking to terminate the parental rights of M.T. and E.T., Sr. In August 2007, following a five-day trial earlier in the year, the district court determined that five statutory grounds supported termination.

D E C I S I O N

On appeal, decisions to terminate parental rights are reviewed to determine whether the district court's findings address the statutory criteria, whether its findings are supported by substantial evidence, and whether its conclusions are clearly erroneous. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). This court must "closely inquire[] into the sufficiency of the evidence to determine whether the evidence is clear and convincing." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). But "[c]onsiderable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *L.A.F.*, 554 N.W.2d at 396.

We will affirm the district court's decision to terminate as long as at least one statutory ground is supported by clear and convincing evidence and termination is in the child's best interests. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

1. Grounds for Termination

Initially, we review the district court's findings that termination of M.T.'s parental rights was warranted because she refused or neglected to comply with the duties imposed by the parent-child relationship. The governing statute addresses circumstances when it is clearly proved that a parent has "substantially, continuously, or repeatedly refused or neglected to comply" with parental duties, including provision of "care and control necessary for the child's physical, mental, or emotional health and development." Minn. Stat. § 260C.301, subd. 1(b)(2) (2006). The statute also requires a showing that reasonable social-service efforts have failed to correct the condition or would be futile to offer. *Id.*

Trial courts are required to make clear and specific findings that conform to the statutory requirements, and the evidence must address conditions that exist at the time of the hearing. *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980). The court should not primarily rely on past history, but instead should rely "to a great extent upon the projected permanency of the parent's inability to care for his or her child." *In re Welfare of A.D.*, 535 N.W.2d 643, 649 (Minn. 1995) (quotation omitted). Even so, a parent's improvement immediately before the termination hearing does not necessarily make clearly erroneous a district court's conclusion that the poor parenting would likely continue. *In re Welfare of J.K.*, 374 N.W.2d 463, 466 (Minn. App. 1985), *review denied*

(Minn. Nov. 25, 1985). *But see In re Welfare of M.H.*, 595 N.W.2d 223, 227 (Minn. App. 1999) (concluding that termination was not warranted when parent had “in fact made *significant* progress in fulfilling the plan and her failures to comply could not be blamed entirely on her”) (emphasis in original).

Appellants do not dispute findings on the family’s history that there was a willful failure to protect and care for the children. Rather, they assert that the court’s findings on neglect of duties and other statutory grounds are erroneous because the district court failed to consider M.T.’s compliance with her case plan and because there is insufficient evidence to establish that M.T. will not be able to care for the children in the future. In the context of the neglect-of-duties statute, this argument relates to the need for a showing that reasonable social-service efforts have failed to correct past conditions; appellants do not dispute the quality of services given but argue they should be continued.

Although the court recognized that M.T. had made some progress on her case plan, it found that this progress was inadequate and was hampered in part by M.T.’s learning and cognitive disabilities and personality disorder.

The children have progressed in their course of placement since their removal in January 2006. Due to M.T.’s slow progress, failures in completing her case plan, and her handicaps, the district court inferred that she would not be able to adequately parent her children in the foreseeable future. This inference is consistent with precedent. *See In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003) (stating that a parent’s “failure to satisfy key elements of the court-ordered case plan provides ample evidence of his lack

of compliance with the duties and responsibilities of the parent-child relationship”); *In re Welfare of H.K.*, 455 N.W.2d 529, 533 (Minn. App. 1990) (concluding that the evidence supported conclusion that the present conditions of neglect would continue when the appellant failed to complete chemical dependency, domestic violence, and parenting programs), *review denied* (Minn. July 6, 1990); *In re Welfare of A.H.*, 402 N.W.2d 598, 603 (Minn. App. 1987) (concluding that “[a]ppellant’s long history of debilitating mental illness, her poor prognosis, and the children’s special needs” supported termination due to substantial and continuous neglect of the child); *In re Welfare of D.D.K.*, 376 N.W.2d 717, 722-23 (Minn. App. 1985) (concluding that the trial court’s termination of a mother’s and father’s parental rights on numerous grounds, including neglect of duties, “was supported by clear and convincing evidence that each had failed to follow the written case plan and that neither parent would be able to provide adequate care for a ‘special needs’ child”).

Although M.T. has taken some positive steps since she began complying with her case plan in September 2006, the record supports court findings that there were significant shortcomings in her progress. About one month before the start of trial, M.T. finally began her parenting education program; she had been referred to such programs since her case began. Given her late start, the earliest she could possibly complete the program was in October 2007. M.T. also completed the Families Moving Forward Program and chose to retake the course. M.T. completed her psychological evaluation, but failed to begin individual therapy until August 2006, despite having been referred nearly a year earlier, and had missed some appointments. Although M.T. completed

programming designed to address her destructive relationship with E.T., Sr., she continued to actively seek him out in 2006 and continued to have at least some contact with him within two months of the start of trial. Divorce proceedings had begun between M.T. and E.T., Sr., but they were initiated by E.T., Sr.

M.T. had completed chemical-dependency treatment and aftercare, but she had tested positive for cocaine on August 7 and 11, 2006; missed a couple tests; admitted to selling cocaine; failed to attend her AA/NA meeting; and did not obtain a sponsor. M.T. was also unable to provide safe and suitable housing for her children, since she planned to move into a single-person, sober-housing apartment.

Importantly, M.T. was unable to articulate, both in interviews and at trial, appropriate responses or actions that she would take in light of the various risks that her children may encounter. She failed to complete a safety plan or plan of action to utilize in the event that her children showed signs of sexual abuse. Moreover, therapists for the two youngest children, T.T. and D.T., recommended against contact with M.T. and testified that such contact might not be appropriate for years.

Based on this evidence, the court concluded that although M.T. had recently made progress on her case plan, she had not completed it, nor would she complete it in the foreseeable future, explaining that “it appears that these conditions would continue for an indeterminate period” and that they “will not be resolved in the foreseeable future.” The district court had no confidence that M.T. would ever be able to adequately parent these four children, and its findings are supported by the evidence. The district court’s neglect-of-duties findings are adequately supported by the evidence.

In addition, the district court found that four other grounds for the termination of M.T.'s parental rights existed, concluding that M.T. is palpably unfit to be a party to the parent-child relationship, Minn. Stat. § 260C.301, subd 1(b)(4) (2006); that M.T. failed to correct the conditions that led to the out-of-home placement, *id.*, subd. 1(b)(5); that T.T. suffered egregious harm while under M.T.'s care, *id.*, subd. 1(b)(6); and that the children are neglected and in foster care, *id.*, subd. 1(b)(8). In each instance, the district court's findings are detailed and complete with regard to the statutory grounds. The court's conclusion that termination on these four grounds is warranted is premised on the long history of abuse, the handicaps and disorders suffered by M.T., the slow progress M.T. had made, the special needs of the four children, the reasonableness of the department's efforts, and the ultimate incompleteness and inadequacy of M.T.'s achievement of the goals provided by her case plan. These detailed findings are adequately supported by the evidence and must be affirmed.

2. Best Interests of the Children

Even if there is a statutory ground for termination, this step may not be taken unless it is in the child's best interests. *In re Welfare of D.J.N.*, 568 N.W.2d 170, 177 (Minn. App. 1997). The district court "must consider a child's best interests and explain its rationale in its findings and conclusions." *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). A best-interests analysis "balance[s] three factors: (1) the child's interest in preserving the parent-child relationship, (2) the parent's interest in preserving the parent-child relationship, and (3) any competing interest of the child." *In re Welfare of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004) (quotation omitted). A child's need for

stability, other needs, and preferences may constitute competing interests. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). In most cases, it is presumed that the child's best interests are served by being with the parent. *A.D.*, 535 N.W.2d at 647.

Appellants contend that termination is not in the children's best interests because of the bonded relationship that M.T. has with her four children, especially the two older children, and because T.T. requires therapy with her mother in order to overcome the abuse that T.T. suffered. We acknowledge the importance of the parent-child bond, but determine that the district court adequately considered the appropriate factors in its best-interests analysis. The court noted that all four children had expressed a desire for reunification; thus, the court considered the children's stated preferences. But the court also explained that the evidence at trial overwhelmingly indicated that the children had no stability, no rules, and no supervision when they resided with M.T.; that T.T. was the victim of sexual abuse while under M.T.'s care and that the abuse was witnessed by D.T.; that the children were physically abused; and that the children's health considerations, including their extensive mental and developmental health needs, would not be served by returning home. Accordingly, the court concluded that termination of M.T.'s parental rights was in the children's best interests. Appellants dispute the district court's weighing of the evidence in reaching these findings, but in no instance have appellants showed us clear error that would permit a reversal.

Affirmed.