STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1189

In the Matter of the Welfare of the Children of:
C. M. F. and A. C. R., Parents.

Filed January 27, 2009
Affirmed
Halbrooks, Judge

Aitkin County District Court
File No. 01-JV-07-987

Raymond T. Horton, P.O. Box 30, Aitkin, MN 56401 (for appellant C.M.F.)

Michelle McLean, 416 South 6th Street, Brainerd, MN 56401 (for respondent A.C.R.)

James P. Ratz, Aitkin County Attorney, Sarah Winge, Assistant County Attorney, 217 Second Street Northwest, Aitkin, MN 56431 (for respondent Aitkin County Health and Human Services)

Laurie Hollingsworth, P.O. Box 593, Ironton, MN 56455 (guardian ad litem)

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

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

HALBROOKS, Judge

Appellant challenges the termination of her parental rights on the grounds that (1) the record does not support the district court's findings that she failed to satisfy the duties of the parent-child relationship, that her children are neglected and in foster care,

and that termination of her parental rights is in the children's best interests; (2) she substantially complied with her case plan and therefore did not fail to correct the conditions that led to her children's placement in foster care; and (3) the district court failed to make findings explaining the causal relationship between the unsatisfied portions of her case plan and her ability to parent. We affirm.

FACTS

On January 2, 2007, respondent Aitkin County Health and Human Services (ACHHS) received an anonymous report regarding the condition of appellant C.M.F.'s home. After a second anonymous report three days later, ACHHS decided to intervene. On January 8, 2007, a social worker and case aide visited appellant's home.

The condition of appellant's home is undisputed. The kitchen floor was strewn with garbage, including cigarette butts and eggshells. Feces-filled diapers lay on the living-room floor. Dirty diapers lay on the floor of appellant's bedroom. The walls, mattress, and carpet of the room had been smeared with feces. Appellant's twin sons I.M.R. and K.C.R., then two years old, wore only dirt-covered diapers.[1] The boys' skin was sticky and covered in dirt. One of the children was carrying a pair of scissors when the social worker and aide arrived.

The social worker and case aide returned to ACHHS to consult with staff members; the status of the case was then changed from a family assessment to a child-protection matter. Two ACHHS social workers returned to appellant's home, which appellant had started to clean. Appellant stated that her home had been "trash[ed]" by

[1] The children were born December 5, 2004, when appellant was 17.

two 16-year-old babysitters that she and a friend had hired for New Year's Eve and by additional minors that the sitters had allowed into the home. The social workers told appellant that she could either place the children in foster care or have a family member care for them while she cleaned the home. Appellant contacted her mother, who came and took the children. When a social worker returned to appellant's home at 1:00 p.m. on January 9, 2007, it was clean. The social worker interviewed appellant and developed a case plan.

On January 18, 2007, ACHHS filed a child-in-need-of-protection-or-services (CHIPS) petition. At the admit-deny hearing, appellant "freely and voluntarily waived her trial rights and admitted that the children are . . . in need of protection or services." Between January 2007 and March 2008, appellant and ACHHS created four case plans. The district court approved, and appellant signed, all four case plans.

The first case plan encompassed the period from January 8, 2007, through July 2007. The goals of this case plan were safety, permanency, and well-being for the children. To achieve these goals, appellant agreed to perform the following tasks: to refrain from using intoxicating chemicals; be subject to random urine analysis; keep her living environment clean and safe; complete a psychological parenting assessment and follow any resulting recommendations; participate in parenting education; sign all necessary releases of information; maintain weekly contact with a social worker; contact her medical-assistance health plan for assistance with transportation to and from the children's medical and dental appointments; seek out community education activities for herself and the children; participate in naming a group of friends or community support

services to assist appellant in a time of crisis; and seek out employment that would meet her family's needs.

Due to appellant's noncompliance with the first case plan, ACHHS recommended that appellant's sons be placed in temporary foster care. At the request of a social worker, appellant consented to voluntary placement of the children.

On May 30, 2007, the district court approved the second case plan and ordered continued out-of-home placement for the children.[2] The children were placed with a foster family on June 22, 2007. The foster parents, with whom the children continue to reside, have expressed interest in adopting the children.

The second case plan started on April 10, 2007. Appellant agreed to perform several new tasks: to have her utilities reconnected; set up a monthly budget plan with the utility companies; pay her rent in a timely manner; meet with a physician or psychiatrist; set an appointment with a physician regarding a previous diagnosis; attend the Workforce Center to study for the GED and work on a job search; participate in mentorship sessions at the children's foster home; participate in the children's routine medical and dental appointments; and visit the children twice weekly. Other tasks continued from the first case plan were: to keep the living environment safe and clean; sign all releases of information; work with the parenting educator; maintain weekly contact with a social worker; refrain from using intoxicating chemicals; secure and maintain employment; and submit to random urine analysis.

[2] Each of the final three case plans consists of two parts—one for each twin.

The third case plan started on June 22, 2007, continuing the goals of the two previous plans. Appellant agreed to perform several new tasks, many of which included a deadline. By June 27, 2007, appellant was to provide a list of relatives' names, addresses, and phone numbers to ACHHS. By July 15, 2007, appellant was to set up a budget plan with the utility companies and submit proof to ACHHS; obtain the results of a May 2007 medical procedure; submit to ACHHS a list of people who could act as a support system in a time of crisis; contact at least three daycare providers regarding availability and submit proof to ACHHS; and obtain estimates for the installation of her new dryer and submit them to ACHHS. Appellant also agreed to take the GED examination in July 2007. Appellant's other new tasks included: allowing ACHHS to make unannounced home visits; taking all prescribed medications; seeking out community resources that could benefit appellant; attending all scheduled visits with her children; preparing a budget and submitting it to ACHHS; and being responsible for providing diapers, wipes, meals, snacks, and activities during the visits. Several tasks were carried over from the previous case plans: to keep the living environment safe and clean; pay rent in a timely manner; sign all releases of information; maintain weekly contact with a social worker; work with the parenting educator; attend the Workforce center; participate in the children's medical appointments; refrain from using intoxicating chemicals; secure and maintain employment; and submit to random urine analysis.

On October 18, 2007, ACHHS petitioned the district court to terminate appellant's parental rights to I.M.R. and K.C.R.

The fourth and final case plan started on December 10, 2007. Appellant's new tasks included: completing an application for energy assistance; avoiding non-supportive or negative individuals; completing a public-assistance application for medical coverage and food support; completing parenting-education homework; preparing a budget and submitting it to ACHHS; opening and maintaining a bank account; and providing weekly job-search logs and her current part-time employment schedule to ACHHS. Several tasks were carried over from the previous case plans: to keep living environment safe and clean; set up a utilities budget and provide proof to ACHHS; pay rent in a timely manner; take all prescribed medications; obtain results of her May 2007 medical procedure and provide any recommendations for follow-up care to ACHHS; sign all releases; maintain weekly contact with a social worker; participate in parenting education; attend the Workforce Center and prepare for her GED; attend all scheduled visits; participate in her children's medical appointments; secure full-time employment; provide ACHHS with written proof of available daycare; obtain and submit dryer-installation estimates; and be responsible for providing diapers, wipes, meals, snacks, and activities during visitation time.

In March 2008, the district court issued an order relieving ACHHS of "the obligation to provide efforts to eliminate the need for placement and to reunite the children with either parent." Appellant's termination-of-parental-rights (TPR) trial took place in April 2008. On June 11, 2008, the district court terminated appellant's parental

rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2), (5), (8) (2006).[3] And its conclusion that the termination of appellant's parental rights is in the best interests of the children.[4]

In August 2008, appellant moved the district court to stay the termination of her parental rights. After a hearing, the district court denied appellant's motion. This appeal follows.

D E C I S I O N

A district court may order termination of parental rights on the basis of one or more of the nine criteria listed in Minn. Stat. § 260C.301, subd. 1(b) (2006). "Termination of parental rights will be affirmed as long as at least one statutory ground for termination 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). This court reviews a termination of parental rights to determine if the district court's findings address the statutory criteria, if substantial evidence supports the findings, and if the findings are clearly erroneous. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). On review, "[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." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

[3] The next day, the district court issued an amended order. The original order mistakenly terminated appellant's parental rights pursuant to an additional statutory basis.

[4] The parental rights of the children's father were also terminated; he does not appeal.

I.

The district court may terminate a parent's rights involuntarily if, "following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). A presumption that reasonable efforts have failed is established upon a showing that

> (i) a child has resided out of the parental home . . . . In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;
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> (ii) the court has approved the out-of-home placement plan required under section 260C.212 and filed with the court under section 260C.178;
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> (iii) conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan; and
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> (iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

Id.

The district court found that ACHHS was entitled to this presumption. The district court also addressed subdivision 1(b)(5)(iii), stating:

> The conditions leading to the out-of-home placement have not been corrected. Petitioner is entitled to the presumption . . . that the conditions leading to the out-of-home placement have not been corrected based on a showing that [appellant] and [the children's father] have not substantially complied

> with the Court's orders and a reasonable case plan. This showing is based on the Findings above and has not been rebutted.

The district court made extensive findings as to appellant's noncompliance with the four case plans. The district court found that between January 8 and April 10, 2007, appellant did not fully comply with the first case plan. Specifically, appellant attended three of eight parenting-education sessions; failed to contact the social worker on a weekly basis; did not attend the Workforce Center; failed to pay her rent or utilities consistently; did not schedule any routine medical appointments for the children; and did not provide contact information for individuals who could assist her in a time of crisis.

The district court found that between April 19 and June 22, 2007, appellant did not fully comply with the second case plan. Specifically, appellant did not attend any parenting-education sessions from April until June 2007; did not attend the Workforce center on three scheduled occasions in April 2007; did not attend four of 23 scheduled visits with her children; failed to attend a dental appointment for the children; and did not maintain regular contact with ACHHS.

The district court found that between June 22 and December 5, 2007, appellant did not fully comply with the third case plan. Specifically, appellant did not pay her past-due rent on a timely basis; did not submit to ACHHS an agreement with her landlord to pay the past-due rent; did not submit to ACHHS proof of a budget plan with the gas and electric company; did not take advantage of any community resources with the exception of an occasional visit to the food shelf; did not provide proof of employment when she applied for public assistance and medical insurance, resulting in the denial of those

applications; did not submit a list of family members' names and addresses to ACHHS; attended nine of 18 parenting-education meetings; did not return all homework assignments; failed to attend four visits with her children in July 2007, one in August 2007, three in October 2007, and one in November 2007; did not obtain her GED; did not submit her job-search log to ACHHS; did not submit to ACHHS proof of daycare rates and availability; did not submit to ACHHS an estimate for the installation of the dryer; did not maintain weekly contact with ACHHS; and by August 7, 2007, was not keeping her home clean on a regular basis.

The district court found that between December 5, 2007, and April 2, 2008, appellant did not fully comply with the fourth and final case plan.[5] Appellant did not maintain weekly contact with the social worker; missed eight of 14 parenting-education sessions; used alcohol on at least two occasions; did not submit a job-search log, daycare information, or an estimate for installation of the dryer to ACHHS; did not attend the Workforce center; and missed one visit with her children in December 2007, three visits in January 2008, and one visit in February 2008.

On February 28, 2008, the district court ordered that all reasonable efforts cease. At that point, appellant's mother had paid appellant's past-due rent. As of the date of trial, appellant had not repaid her mother. Appellant was behind on her utility bills but had made arrangements to pay them. After February 28, appellant was required to arrange for a supervisor for visits with her children; one visit in March 2008 was cancelled because she failed to do so.

[5] April 2, 2008, was the first day of appellant's TPR trial.

Appellant argues that the district court erred in making "no findings of a causal connection between the noncomplied elements of [appellant]'s case plan and her ability to parent." The only legal authority that appellant cites is *In re Children of T.R.*, 750 N.W.2d 656, 663 (Minn. 2008). But *T.R.* addressed causation in the context of subdivision 1(b)(4), not subdivision 1(b)(5). 750 N.W.2d at 661–64. Appellant seems to make an extension-of-law argument in urging this court to perform a causation analysis. We decline to do so. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987).

Appellant argues that she substantially complied with the provisions of her fourth case plan. She contends that some of the tasks that she failed to complete should be considered complete because she (1) completed the task to some extent; (2) completed the task, albeit in an untimely manner; or (3) fulfilled the purpose of the task. She contends that these tasks, in addition to the tasks she completed in accordance with the case plan, add up to substantial compliance with the case plan. Appellant also argues that many of the tasks she failed to complete are not of grave enough importance to justify terminating her parental rights. Specifically, appellant argues that her failure to complete a medical-assistance application and household budget, to make weekly contact with her social worker, to arrange daycare, and to install a dryer do not rise to the level of "grave

and weighty" reasons to justify termination of her parental rights. Appellant cites to *In re Welfare of H.M.P.W.*, 281 N.W.2d 188 (Minn. 1979), in support of her argument.[6]

Appellant's two arguments appear to be a request for this court to second-guess the district court's determination that appellant did not substantially comply with any of her reasonable case plans.[7] But our scope of review 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). Appellant makes no argument that the district court failed to address the statutory criteria. We conclude that substantial evidence supports the district court's findings that appellant did not substantially comply with any of her four case plans. We also conclude that the district court's findings are not clearly erroneous. In light of the undisputed facts, clear and convincing evidence supports the district court's conclusion that reasonable efforts have failed to correct the conditions leading to the placement of appellant's children.

II.

We next address appellant's argument regarding the district court's determination that termination of her parental rights is in the children's best interests.

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[6] *H.M.P.W.* did not address a case plan but merely reiterated the rule that "parental rights should not be terminated except for grave and weighty reasons." 281 N.W.2d at 190 (quotation omitted).

[7] Court-approved case plans are presumed reasonable. *S.E.P.*, 744 N.W.2d at 388. Appellant does not contend that any of her case plans was unreasonable.

Because a child's best interests are the paramount consideration in a termination-of-parental-rights proceeding, the district court cannot terminate parental rights unless it is in the child's best interests. *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 149 (Minn. App. 2007), *review denied* (Minn. Mar. 28, 2007); *see also* Minn. Stat. § 260C.301, subd. 7 (2006) (stating that "the best interests of the child must be the paramount consideration" in a TPR proceeding). In evaluating a child's best interests, the district court balances "(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 R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992).

Appellant's sole argument regarding the district court's best-interests determination involves the testimony of the guardian ad litem. After making 213 findings of fact, the district court concluded that the termination of appellant's parental rights was in the children's best interests. Only four of these findings mention the guardian ad litem:

> 204. That Laurie Hollingsworth . . . is the guardian a[d] litem. . . . That on April 23, 3008, the Court received the guardian ad litem report.
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> 205. That Hollingsworth testified that it is her belief that the children should be [appellant]'s number one priority. After reviewing the file, interviewing [appellant], and attending approximately seven (7) visits with [appellant] and the children, it is her conclusion that the children are not [appellant]'s number one priority but have been placed on "the back burner."

> 206. That Hollingsworth believes that . . . [appellant] has done "too little, too late." As a result, it is her testimony that it is in the children's best interest that [appellant's] parental rights be terminated and that the children remain with the Moes.
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> . . . .
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> 213. That in summary, the Court agrees with the guardian ad litem that with regard to the issues presented their respective compliance with the provisions of their case plans that [the children's father] has "done nothing" and [appellant] has done "too little too late."

Appellant contends that the guardian ad litem's testimony should not have been given weight because the guardian ad litem last observed appellant and her children on February 15, 2008, two months before the guardian ad litem testified at trial.[8] Appellant is correct that evidence received by the district court must address conditions that exist at the time of the hearing. *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980); *see also In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001). But appellant's contention that the district court may not consider any evidence regarding the past has no legal support; rather, the consideration of a child's best interests requires consideration of the past as well as the future. *See In re Welfare of M.P.*, 542 N.W.2d 71, 74-77 (Minn. App. 1996) (examining history of parent-child relationship), *overruled in part on other grounds by In re Welfare of J.M.*, 574 N.W.2d 717, 723 (Minn. 1998).

Appellant also argues that the district court should not have considered the guardian ad litem's testimony because the guardian ad litem spent a total of eight or nine hours observing the interaction of appellant and her children over a period of 16 months.

[8] We note that appellant's TPR trial was originally scheduled for February 2008.

When appellant's attorney questioned the guardian ad litem about this figure, the guardian ad litem explained that "[i]t's been kind of hard when you set up time aside to go and observe visits and [appellant] cancels." The guardian ad litem further testified that she thought five visits totaling eight to nine hours over the course of 16 months were sufficient to form an opinion in this case as to the children's best interests. Appellant does not cite to any legal authority in support of her allegation that eight or nine hours' worth of observation by a guardian ad litem should be disregarded by the district court. We therefore decline to address this issue. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994).

We conclude that the district court had sufficiently clear and convincing evidence to support its finding that the termination of appellant's parental rights is in the children's best interests. Because we affirm the termination of appellant's parental rights based on Minn. Stat. § 260C.301, subd. 1(b)(5), and the best interests of the children, we need not address the other statutory grounds for termination. *See In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005).

Affirmed.