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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1626**

In the Matter of the Welfare of the Children of:
S. M. P., J. W. C. and A. R. L., Parents.

**Filed April 7, 2009
Affirmed
Ross, Judge**

Crow Wing County District Court
File No. 18-J7-06-050671

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Considered and decided by Ross, Presiding Judge; Halbrooks, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

ROSS, Judge

S.M.P. appeals the district court's decision to transfer custody of her daughter, A.R.P., to the child's father, M.D., and M.D.'s romantic acquaintance, T.M. S.M.P. argues that the evidence does not support the district court's findings and order transferring custody. Because the evidence supports the findings and because the district court considered the statutory criteria, we affirm.

FACTS

S.M.P.'s substantial chemical dependency is at the heart of her parental deficiencies. Crow Wing County Social Services initially sought protection for A.R.P. and A.R.P.'s three siblings in 2006 because it believed that S.M.P. was chemically dependent and had a mood disorder that put her children at risk. The district court placed A.R.P. under the protection of Crow Wing County in December 2006 when it determined that S.M.P. could not properly care for her. S.M.P. admitted that her chemical dependency prevented her from caring for her children, and the district court concluded that out-of-home care was necessary and in A.R.P.'s best interests. The district court twice reviewed the case in 2007, and it found that "continued concerns with S.M.P.'s chemical use" warranted A.R.P.'s placement in foster care.

Crow Wing County sought to transfer custody of A.R.P. to M.D. and T.M. M.D. and T.M. have been caring for A.R.P. since she was placed with them for foster care in July 2007. The district court conducted hearings, where it received testimony from 19 witnesses and reviewed almost 40 exhibits. The district court found that in light of

“[S.M.P.]’s consistent instability, chaotic lifestyle, consistent health issues that require medications and clinic visits, severe migraines, and all her prescriptions with their sedative effects,” it would not be in A.R.P.’s best interests to remain in S.M.P.’s custody. It also found that S.M.P. had “consistently and significantly failed to comply with her case plan,” and that it was unlikely that conditions would improve sufficiently to permit her to care for A.R.P. in the reasonably foreseeable future. It concluded that clear and convincing evidence established that transferring custody to M.D. and T.M. would be in A.R.P.’s best interests. S.M.P. appeals.

D E C I S I O N

S.M.P. argues that the evidence does not support the district court’s findings and order transferring custody. This court reviews an order transferring custody to determine whether the district court addressed the statutory criteria and whether its findings are free of clear error and are based on clear and convincing evidence. Minn. R. Juv. Prot. P. 39.04, subd. 1; *In re Welfare of A.R.G.-B*, 551 N.W.2d 256, 261 (Minn. App. 1996). “The paramount consideration in all proceedings concerning a child . . . 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 (2008). A district court ordering a custody transfer must issue detailed findings of fact addressing four factors:

- (1) how the child’s best interests are served by the order;
- (2) the nature and extent of the responsible social service agency’s reasonable efforts . . . to reunify the child with the parent or guardian where reasonable efforts are required;

(3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and

(4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

Minn. Stat. 260C.201, subd. 11(i) (2008). The district court's credibility determinations are entitled to our deference. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

S.M.P. challenges the sufficiency of the evidence supporting three of the district court's statutorily-required findings. She argues that the record does not contain clear and convincing evidence that granting custody to M.D. and T.M. is in A.R.P.'s best interests; that social services made reasonable efforts to reunify S.M.P. and A.R.P.; and that S.M.P. failed to correct the conditions that justified A.R.P.'s out-of-home placement. We address each finding in turn.

A.R.P.'s Best Interests

S.M.P. contends that clear and convincing evidence does not support the district court's finding that granting custody to M.D. and T.M. is in A.R.P.'s best interests. She argues that the evidence was insufficient to overcome the presumption that she can care for the child. The district court found that it is not in A.R.P.'s best interests for S.M.P. to retain custody because S.M.P. has "consistent instability, [a] chaotic lifestyle, consistent health issues that require medications and clinic visits, severe migraines, and [many] prescriptions with . . . sedative effects." The district court derived this finding from the testimony of M.D., T.M., Mary Kay Verkennes (a licensed psychologist who worked

with M.D. and T.M. on the foster care arrangement), and Randolph Hood (A.R.P.'s guardian ad litem).

Verkennes testified that she believes that S.M.P. loves and wishes her daughter well, but she would not recommend that A.R.P. be allowed to visit S.M.P. unsupervised without assurance that her drug use and extensive drug-seeking behavior had ended. Verkennes testified that S.M.P. is predisposed to exaggerate and manipulate others, which she concluded after observing A.R.P. during more than 16 hours in evaluative sessions and seeing S.M.P. during her interactions with A.R.P.

Hood testified that S.M.P.'s home was in "reasonable condition," but he doubted that S.M.P. could successfully parent A.R.P. He mentioned S.M.P.'s extensive use of potentially disorienting prescription drugs. He testified that S.M.P. was not ready to parent for an overnight visit, citing her frequent visits to the doctor, use of prescription drugs, and her unusual behavior that impacts A.R.P.'s conduct.

S.M.P.'s own testimony and courtroom behavior affected the district court's finding. S.M.P. testified about her use of prescription drugs. Besides Ativan, an anti-anxiety medication, she takes many other prescription medications, along with other nonmedicinal treatments for migraines. She testified that although some of her medications may be addictive, she does not believe she will become addicted. S.M.P.'s appearance during her testimony prompted the district court to notice that she appeared to be under the influence of mood altering drugs. She acknowledged that she had recently taken Cymbalta and Ativan, but she failed to see that she was being influenced by the drugs.

S.M.P. asserts that she was “no longer engaged in drug seeking behavior” and that she “was maintaining one primary physician for her medical needs,” but this assertion is contradicted by her own testimony and that of her primary physician. S.M.P. uses Flexeril, a muscle relaxant that causes confusion, memory loss, and an inability to function. She admitted to having two recent prescriptions for Flexeril, only one from her primary physician. Despite her testimony that her primary physician knew about all of her visits to medical professionals, her physician was unaware that twice within three days in April 2007 S.M.P. obtained two additional prescriptions for Flexeril by visiting the emergency room and complaining of migraines. As recently as three months before trial, she obtained prescriptions for Flexeril from her physician because of alleged shoulder pain, and from her dentist because of alleged nighttime teeth-grinding. When S.M.P. responded to questions about the amount of Ativan she had taken just the previous day and the amount of Flexeril prescribed to her, she demonstrated her lack of awareness by saying it was not a priority for her to remember and that she had more important things to worry about.

Testimony from social workers and records of S.M.P.’s contacts with case workers revealed that S.M.P.’s prescription-drug use left her drowsy, incapacitated, and unable to attend to A.R.P.’s well-being. On one occasion, S.M.P. slept midday while she was scheduled to work. When S.M.P. awoke, she discovered a neighbor boy in her home standing over A.R.P., whose diaper had been removed. On another occasion, an in-home visit by a social worker ended early because S.M.P. was incapacitated.

Clear and convincing evidence supports the district court's findings that transferring custody to M.D. and T.M. is in A.R.P.'s best interests. Testimony from M.D., T.M., Verkennes, and Hood supports the conclusion that S.M.P. cannot provide a safe environment for A.R.P., but that M.D. and T.M. can.

Reasonable Efforts to Reunite

S.M.P. contends that clear and convincing evidence does not support the district court's finding that Crow Wing County made reasonable efforts to reunify S.M.P. and A.R.P. She claims that the efforts were "minimal," and that she was not "offered any assistance." We are persuaded otherwise. Minnesota Statutes section 260.012 (2008) requires social service agencies to make reasonable efforts to "eliminate the need for removal and to reunite the child with the child's family at the earliest possible time." The district court found that reasonable efforts had been made, and the record supports that determination.

The county prepared, and the court ordered and regularly reviewed, a detailed case plan that would permit S.M.P. to reunite with A.R.P. The initial case plan required psychological and parenting evaluations, assigned a chemical dependency worker, provided for mental health services, and established a visitation schedule. County social service workers facilitated S.M.P.'s efforts to follow her case plan and visited S.M.P.'s home to monitor parental interaction and to promote her ability to parent A.R.P.

The record supports the conclusion that S.M.P.'s own actions prevented Crow Wing County from successfully reuniting her with her daughter. The licensed psychologist who conducted a parenting assessment was prepared to update the

assessment but S.M.P. refused to participate. S.M.P. failed to cooperate with Adult Mental Health Services, the Family Works Program, and with required behavioral therapy. Clear and convincing evidence supports the district court's finding that the county made reasonable efforts to reunite mother and daughter.

Persistence of Conditions Requiring Out-Of-Home Placement

S.M.P. also contends that clear and convincing evidence does not support the district court's finding that she failed to correct the conditions that justified A.R.P.'s out-of-home placement. We conclude that the evidence supports the district court's finding that S.M.P.'s progress was not sufficient to permit her to care for A.R.P.

S.M.P. repeats her claim on appeal that she stopped drug-seeking behavior and has resolved her chemical dependency issues. Her own testimony and conduct during the trial belies that claim. The district court noted that S.M.P. "appeared to be under the influence of mood altering chemicals" during her testimony. Her testimony reveals that she received multiple types of narcotic pills for various maladies over the previous 18 months. We acknowledge that S.M.P. took medication allegedly "prescribed for substantiated medical reasons," and that she "voluntarily returned 30 of the pills to her primary physician." The district court does not suggest that taking medication as prescribed for actual infirmities would justify varying S.M.P.'s parental rights. But S.M.P. acknowledged having two separate prescriptions for the muscle relaxant Flexeril, which causes her to hallucinate, and she admitted to taking it inappropriately, "not like it was prescribed." She also admitted to filling her prescriptions at multiple pharmacies in violation of her case plan.

Many witnesses testified about S.M.P.'s persistent dishonesty and exaggerations, particularly in relation to her seeking and obtaining medication for alleged ailments, prompting the district court to question her credibility regarding the claimed bases for her medication. In her parenting assessment, S.M.P. admitted that she intentionally induced migraine headaches to obtain drugs. The district court was therefore free to discount her claims to have resolved her chemical dependency issues. It justifiably concluded that "it is impossible to determine whether [S.M.P.] is actually suffering from her numerous ailments . . . , or whether she is simply feigning."

The district court found, and the evidence reflects, a variety of other ways S.M.P. failed to meet the requirements of her case plan. She refused to cooperate to obtain an updated assessment. Instead, she sought a separate assessment from a registered nurse and clinical nurse specialist; but the district court concluded that the separate assessment relied on information insufficient to accurately reflect S.M.P.'s mental health. The district court credited testimony that S.M.P. did not maintain a clean and safe home, where she allowed her other children to use drugs and alcohol. She also failed to remain law abiding, being recently convicted of driving an uninsured vehicle and of possessing an insurance card that she fashioned. Clear and convincing evidence supports the district court's finding that S.M.P. has failed to correct the conditions that justify A.R.P.'s out-of-home placement. Because the evidence supports the district court's findings, and because the district court considered the statutory criteria, we affirm.

Affirmed.