**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A08-2027**

In the Matter of the Welfare of the Child of:
D. I. K. and C. R. P., Parents.

**Filed May 5, 2009**
**Affirmed**
**Johnson, Judge**

Washington County District Court
File No. 82-JV-08-794

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Considered and decided by Shumaker, Presiding Judge; Johnson, Judge; and Collins, Judge.*

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

**JOHNSON**, Judge

C.R.P. appeals from the district court's termination of his parental rights based on four statutory grounds. We conclude that the record supports the district court's findings

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

with respect to three of the four grounds of termination, that the district court did not err by finding that the county's efforts to reunite C.R.P. with his child were reasonable, and that the district court did not err by finding that termination of C.R.P.'s parental rights is in the child's best interests. Therefore, we affirm.

## FACTS

C.R.N. was born on September 27, 2007, to D.I.K. and C.R.P. On October 17, 2007, C.R.P. was arrested for a violation of the terms of his probation. Several days later, C.R.P.'s prison sentences for a controlled substance offense and an offense of receiving stolen property, which previously had been stayed, were executed, and C.R.P. was incarcerated.

On November 27, 2007, while C.R.P. was still in prison, D.I.K. left C.R.N. with C.R.P.'s sister, saying that she would return shortly. But D.I.K. never returned. On December 5, 2007, C.R.P.'s sister contacted police to say that C.R.N. had been left in her care and that she was financially incapable of caring for him. Five days later, Washington County filed a petition with the district court, alleging that C.R.N. was a child in need of protection. On February 13, 2008, C.R.P. signed a case plan for reunification.

C.R.P. was released from prison on April 21, 2008. Over the next two and one-half months, social workers and specialists evaluated C.R.P. and provided him with services in an effort to reunite him with C.R.N. According to the district court, C.R.P. made only limited progress in improving his parenting skills during visits with C.R.N.

The district court also found that C.R.P. did not fully cooperate with the assistance provided to help him obtain employment, housing, and chemical-dependency treatment.

On June 10, 2008, the county petitioned the district court to terminate D.I.K. and C.R.P.'s parental rights. One month later, on July 14, 2008, C.R.P. tested positive for methamphetamine. In addition, he previously had refused to submit to a chemical test and had failed to remain in contact with his probation officers. Thus, he was arrested for violations of the terms of his probation and taken into custody on August 19, 2008.

The district court held a termination hearing on two days in September 2008. D.I.K. did not appear, and the district court terminated her parental rights by default. C.R.P. appeared and testified in his own behalf. On October 9, 2008, the district court issued its findings of fact and conclusions of law and ordered that C.R.P.'s parental rights be terminated. The district court concluded that the county had proved four statutory bases for termination: failure to comply with duties of parent child relationship, *see* Minn. Stat. § 260C.301, subd. 1(b)(2) (2008); palpable unfitness, *see* Minn. Stat. § 260C.301, subd. 1(b)(4) (2008); failure of reasonable efforts to correct conditions leading to placement, *see* Minn. Stat. § 260C.301, subd. 1(b)(5) (2008); and child is neglected and in foster care, *see* Minn. Stat. § 260C.301, subd. 1(b)(8) (2008). C.R.P. appeals.

## D E C I S I O N

We review the termination of parental rights to determine "whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of*

*Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). A district court must make "clear and specific findings," *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980), and a finding is clearly erroneous "if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole," *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted).

## A. Statutory Bases for Termination

C.R.P. first argues that the district court erred by concluding that the county had proved the facts required by each of the four statutory bases of termination. We address each of the four bases in turn.

### *1. Failure to Correct Conditions Leading to Placement*

A district court may terminate a person's parental rights to a child upon a finding that, after the child's placement out of the home, reasonable efforts "failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). It is presumed that reasonable efforts under this clause have failed upon a showing that:

> (i) . . . [i]n 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 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;
>
> (ii) the court has approved the out-of-home placement plan . . . ;
>
> (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
>
> (iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

Minn. Stat. § 260C.301, subd. 1(b)(5).

C.R.N. was placed under the protective care of Washington County by court order on January 28, 2008. When C.R.P.'s rights were terminated on October 9, 2008, C.R.N. had been in the county's care for over six months. Thus, the first requirement of subdivision 1(b)(5) is satisfied. The second requirement also is satisfied because the district court approved the February 19, 2008, placement plan.

With respect to the third requirement of subdivision 1(b)(5), the conditions leading to C.R.N.'s placement that were within his control were his incarceration, his persistent drug use, and his lack of housing and employment. The evidence shows that those conditions were not corrected. After his release in April 2008, C.R.P. was incarcerated again in August 2008 for another probation violation after he relapsed into chemical use and failed to stay in contact with his probation officer. Furthermore, the evidence shows that C.R.P. had not established permanent housing or employment.

C.R.P. contends that he complied with the court's orders by cooperating with the placement plan. This contention is relevant to the presumption within subdivision 1(b)(5)(iii), which allows the county to establish the third requirement of subdivision 1(b)(5). Proof of that presumption is sufficient but not necessary to prove the ultimate issue, that "conditions leading to the child's placement" have not been corrected. Minn.

Stat. § 260C.301, subd. 1(b)(5). The district court found that "the conditions leading to the out-of-home placement have not been corrected." The record supports the district court's finding because C.R.P. was incarcerated again in August 2008 and failed to obtain housing or employment.

C.R.P. also contends that the case plan was not reasonable because treatment for his attention deficit hyperactivity disorder (ADHD) and his chemical dependency was not made available to him. Again, this contention relates to the presumption within subdivision 1(b)(5)(iii). The record does not support C.R.P.'s argument. Rebecca Conroy, a permanency social worker employed by Washington County Community Services, testified that she made significant efforts to assist C.R.P. in completing an application for Medical Assistance so that he could consult with a physician about medication to treat his ADHD but that C.R.P. did not cooperate. C.R.P. argues that the state should have paid for him to see a doctor through other means, but we must presume that the state's provision of care through Medical Assistance is reasonable. Conroy also testified that C.R.P. was required by his placement plan to attend Narcotics Anonymous meetings while incarcerated at MCF-Faribault but that C.R.P. did not do so with regularity. Thus, the third requirement of subdivision 1(b)(5) is satisfied.

With respect to the fourth requirement of subdivision 1(b)(5), the record indicates that social workers made significant efforts to reunite C.R.P. with C.R.N. by attempting to assist him in obtaining housing and employment. Conroy testified that, beginning in May 2008, she worked with C.R.P. to obtain housing and employment. She provided him information on a job fair for ex-offenders, but he failed to attend because he

overslept. A June 2008 placement plan required him to keep a log of his search activity, but C.R.P. failed in July 2008 to provide a log demonstrating progress in his job search. In June 2008, Conroy notified C.R.P. of a "rare opportunity" to apply for Section 8 housing in Minneapolis, but C.R.P. did not apply because he did not want to live in that area. Later in the month, Conroy provided C.R.P. a list of subsidized housing and an invitation to a day-long information session that included a free lunch and a $25 gift card, but C.R.P. did not attend the program. Because the evidence supports the conclusion that the county made reasonable efforts to reunite C.R.P. with his son, the fourth requirement is satisfied.

Thus, the evidence is sufficient to trigger the statutory presumption that reasonable efforts "failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). C.R.P. has not rebutted that presumption. Therefore, the evidence supports the district court's finding that the county's efforts were reasonable and that they failed to correct the conditions leading to placement. Accordingly, we must conclude that "there is nothing the State can do to foster reunification of [appellant] with his [child] due to his own action of becoming incarcerated . . . and his failure to maintain any type of meaningful relationship with the [child]." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004) (some alterations in original) (quotation omitted).

***2. Neglected and in Foster Care***

A district court may terminate a person's parental rights to a child upon a finding that "the child is neglected and in foster care." Minn. Stat. § 260C.301, subd. 1(b)(8). "Neglected and in foster care" refers to a child

> (1) who has been placed in foster care by court order; and
>
> (2) whose parents' circumstances, condition, or conduct are such that the child cannot be returned to them; and
>
> (3) whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child.

Minn. Stat. § 260C.007, subd. 24 (2008).

C.R.P. concedes that the first two requirements are satisfied. C.R.P. argues that the third requirement is not satisfied because necessary services have not been provided to him. But as Conroy testified, the county provided an array of services to C.R.P., including chemical-dependency support groups, assistance in finding housing and employment, and assistance in obtaining medical insurance. Conroy also testified that C.R.P. failed to take advantage of the many opportunities afforded to him. C.R.P.'s failure to comply with the conditions of his probation in October 2007 and July 2008 also demonstrates that he has not made reasonable efforts to "adjust [his] circumstances" by staying out of prison so that he is able to care for C.R.N. *See* Minn. Stat. § 260C.007, subd. 24(3). Thus, the district court's findings concerning this statutory basis of termination are not clearly erroneous.

***3. Palpable Unfitness***

A district court may terminate a person's parental rights to a child upon a finding that

> a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4). In *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703 (Minn. App. 2004), this court held that a parent who had been incarcerated for five out of six years failed to rebut a presumption of unfitness because he failed to remain sober when not incarcerated, did not maintain stable employment, and had no plans for living arrangements or work upon release. *Id.* at 713-14.

The record indicates that C.R.P. was incarcerated for approximately seven of the thirteen months between C.R.N.'s birth and the termination of C.R.P.'s parental rights. A public health nurse testified that, after C.R.P.'s release from prison in April 2008, he made "some improvement" in his parenting skills after his release, and a social worker testified that his "heart was in the right place." Nonetheless, the record also indicates that C.R.P. is unable to stay out of prison so that he can care for C.R.N. In July 2008, three months after his release from incarceration due to a probation violation, C.R.P. again violated his probation by relapsing into chemical use and fleeing law enforcement. The record demonstrates that C.R.P.'s two terms of confinement in 2008 were not isolated occurrences. In the three years before C.R.N.'s birth, C.R.P. often was incarcerated due to three criminal convictions arising from three separate incidents and five occasions in which he violated the terms of his probation or failed to appear for sentencing.

The record also demonstrates that C.R.P. was unable to obtain housing or employment, even with significant assistance from county social workers. As discussed above, Conroy testified that she attempted to assist C.R.P. in obtaining housing, employment, and medical care but that these efforts failed because C.R.P. did not cooperate.

In light of this evidence, we conclude that C.R.P.'s repeated incarceration and inability to obtain housing and employment constitute "specific conditions directly relating to the parent and child relationship" that are of a "duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child." Minn. Stat. § 260C.301, subd. 1(b)(4); *see also W.L.P.*, 678 N.W.2d at 713-14. Thus, the district court's findings concerning this statutory basis of termination are not clearly erroneous.

***4. Failure to Comply with Parental Duties***

A district court may terminate a person's parental rights to a child upon a finding that

> the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable.

Minn. Stat. § 260C.301, subd. 1(b)(2).

C.R.P.'s primary argument attacking this basis of termination is that the district court did not make any findings as to whether C.R.P. was financially able to care for C.R.N. A district court's findings must "address the statutory criteria," *S.E.P.*, 744 N.W.2d at 385. A district court must find that a parent is "physically *and* financially able" to care for the child. Minn. Stat. § 260C.301, subd. 1(b)(2) (emphasis added). Because the district court's findings do not address C.R.P.'s financial abilities, the findings do not support the conclusion that C.R.P. refused or neglected to comply with the duties imposed upon him by the parent and child relationship. *See In re Children of Wildey*, 669 N.W.2d 408, 415 (Minn. App. 2003) (holding that requirements of subdivision 1(b)(2) not satisfied because district court did not consider whether incarcerated parent was financially able to care for children), *aff'd as modified sub nom., In re Welfare of Children of R.W.*, 678 N.W.2d 49 (Minn. 2004).

Therefore, we conclude that three of the four statutory bases of termination on which the district court relied are proper.

**B. Reasonable Efforts at Reunification**

C.R.P. next argues that the district court erred by concluding that the county made reasonable efforts to reunite him with C.R.N. In every termination action, the district court must make specific findings that

> (1) . . . reasonable efforts to prevent the placement and to reunify the child and the parent were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family; or

> (2) . . . reasonable efforts at reunification are not required as provided under section 260.012.

Minn. Stat. § 260C.301, subd. 8 (2008). A district court's finding of reasonable efforts will be affirmed if it is supported by clear and convincing evidence. *See In re Children of T.A.A.*, 702 N.W.2d 703, 709-11 (Minn. 2005).

C.R.P. contends that the county's efforts were not reasonable because he did not receive treatment for his ADHD or his chemical dependency. Contrary to C.R.P.'s argument, the record indicates that the county made significant efforts to assist C.R.P. in this way. Dr. Scott Fischer conducted a psychological evaluation of C.R.P. and recommended that C.R.P. consult with a physician to address his ADHD. As noted above, Conroy made significant efforts to assist C.R.P. in completing an application for Medical Assistance to obtain treatment for his ADHD, but C.R.P. did not cooperate. Furthermore, during C.R.P.'s incarceration at MCF-Faribault, he was not only permitted to attend Narcotics Anonymous meetings but required to attend them, but he failed to do so with regularity. In light of the evidence, we conclude that the county's efforts to reunite C.R.P. with C.R.N. were reasonable.

**C. Best Interests of the Child**

C.R.P. next argues that the district court erred by concluding that termination is in C.R.N.'s best interests. "The 'paramount consideration' in termination of parental rights proceedings is "the best interests of the child." *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 672 (Minn. 2008) (quoting Minn. Stat. § 260C.301, subd. 7 (2006)). Consideration of the best interests of the child is a necessary condition, but not a

sufficient condition, for the termination of parental rights. *T.R.*, 750 N.W.2d at 664 n.6; *R.W.*, 678 N.W.2d at 54.

The district court made extensive findings regarding C.R.N.'s best interests. The district court found that C.R.N. is "flourishing" in foster care and has bonded with his foster parent, who is willing and available to meet C.R.N.'s needs. In contrast, the district court found that C.R.N. has only a minimal bond with C.R.P. The district court also found that C.R.N. is receiving necessary medical treatment and therapy to address developmental delays, which the child would be unlikely to receive if C.R.P. retained parental rights. The district court further noted that C.R.N. has had one visit with a prospective adoptive family and that his foster care provider is willing to "minimize any difficulties and disruption a transfer to a permanent home will entail."

C.R.P. does not directly challenge these findings but, rather, argues that he loves his son. That is undisputed. Based on our review of the record, however, including the testimony of the foster parent, we conclude that the district court's findings concerning the child's best interests are not clearly erroneous. Thus, the district court's conclusion that termination of C.R.P.'s parental rights is in C.R.N.'s best interests is supported by substantial evidence.

**Affirmed.**