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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-443**

In the Matter of the Welfare of
the Child of: S. T., a/k/a S. T.
and T. L. D. T., a/k/a L. D. T. T., Parents.

**Filed October 24, 2011
Reversed
Hudson, Judge**

Hennepin County District Court
File No. 27-JV-10-8026

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Considered and decided by Ross, Presiding Judge; Hudson, Judge; and Harten, Judge.*

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

UNPUBLISHED OPINION

HUDSON, Judge

Appellant father challenges the district court's termination of his parental rights for his failure to satisfy the duties of the parent-child relationship. Because clear and convincing evidence fails to show that father failed to satisfy those duties, we reverse.

FACTS

In 1997, S.T. (mother), who has cognitive disabilities, was placed under a conservatorship with broad powers relating to the provision of her basic needs, medical or professional care, and additional areas. From 2000 to 2005, mother consented to voluntary transfers of legal custody of three of her children, and legal custody of an additional child was involuntarily transferred. In 2008, she agreed to the adoption of an additional child. Mother met T.L.D.T. (father), who is in his fifties, in 2009, and they were married. In 2009, mother and father agreed to transfer custody of an additional, joint child to the child's maternal grandmother.

In June 2010, mother, who was in the late stages of pregnancy with her seventh child, traveled with father through Wisconsin on their way to Chicago. Mother went into labor and checked into a Wisconsin hospital, where she gave birth to E.T. (the child). Mother identified herself using a friend's name at the hospital and stated that she was from Chicago, because she was fearful that Minnesota authorities would remove the child from her.

When mother returned to Minnesota and brought the child to a clinic for well-child visits, she again used a false name. Clinic personnel, who were concerned about the

child's care because the parents appeared to be having trouble understanding how to mix the child's formula, called child-protection authorities. After investigation, Hennepin County Human Services and Public Health Department (the county) sought emergency protective care for the child based on mother's cognitive delays, her prior history of transfers of legal custody and termination of parental rights of her older children, the fabrication relating to mother's identity, father's prior transfer of legal custody, and father's prior criminal history and issues concerning drinking and domestic abuse. The county also filed a petition to terminate mother's and father's parental rights, which both parents contested.

The district court granted an emergency order for protective foster care and placement, finding that the county made a prima facie case that the child was in an unstable environment, at risk of harm, and in danger due to issues of a parent's behavior or mental health. The order noted that the parents had been offered a voluntary case plan, which included urinalyses (UAs) for father, psychological evaluations, and parenting assessments. The district court did not, however, order the parents to participate in the case plan. Mother participated in her case plan, but, except for providing UAs, father declined to do so.

At trial on termination of both parents' parental rights, the investigating child-protection social worker testified that she had concerns with mother's cognitive delays, mother's criminal history, and possible domestic abuse in mother's marriage with father. She testified that father denied abusing mother. Mother's court-appointed co-conservator also testified that mother had reported abuse by father, but that father was not threatening

in conversations with the co-conservator and that father reported mother to be loud, disruptive, and in need of medication.

A case manager for a parenting program attended by mother testified that mother was affectionate and could meet the child's basic needs, but had difficulty regulating her emotions. The manager questioned mother's ability to care for a toddler based on her difficulty in understanding, especially in view of mother's assertion that she did not need parenting education. The case manager expressed concerns for the child if mother remained in a relationship with father because of mother's observations about father's behavior after he had been drinking.

A family therapist who conducted mother's parenting assessment testified that, based on mother's reporting of father's anger and alcohol use, she believed anger issues in the parents' relationship could create possible problems for the child. The therapist also interviewed the child's grandmother, who believed that father engaged in heavy drinking and abusive behaviors. The therapist did not, however, interview father.

An assigned child-protection social worker testified that father has regular supervised visitation with the child, "obviously loves his daughter," and usually interacts appropriately with the child. She testified that most of the department's efforts in setting up services were related to mother, and medical professionals had expressed no concern that the child had been physically or sexually abused or neglected. She testified that she understood that father had a prior conviction of sexual assault with a weapon, but he indicated he did not need domestic-abuse counseling. She testified that father did not complete his case plan, and, although a short-term structured arrangement with the child

may be successful, she would have concerns about returning the child to father's care based on domestic-violence issues and a past parenting assessment relating to the parents' prior child, which was not made a part of the record.

The child's guardian ad litem testified that she had some safety concerns related to father's parenting because he had failed to strap the child to a table during diapering and sometimes failed to observe that the child had finished a bottle and was sucking on air. She also stated that father had UAs that tested positive for alcohol and declined to address his past history with alcohol. She testified that she would support the child's continuing contact with father, although not active parenting in his home, and she recommended continued foster care or transfer of legal custody.

Mother testified that she gave a different name in the hospital to prevent the child from being taken from her, and she did not tell father of the false name. She denied that father yelled or hit her. She testified that father drank alcohol, but she was not aware of his current drinking habits because she had not lived with him for four months. She testified that she was in the process of divorcing father.

Father testified that he is still legally married to mother, but she "comes and goes as she pleases" from his apartment. He testified that he has five living biological children and has participated in raising additional children of his partners in other relationships, although he has not raised a child to adulthood. He denied hitting mother. Father acknowledged that he used to drink heavily, but testified that he stopped drinking 18 months earlier and that he believed the hospital may have made mistakes in its UA testing. He testified that he had been charged with three DWIs and was currently on

probation and on home confinement with electronic monitoring after a DWI conviction. He testified that he did not need the services offered by his voluntary case plan because he had already been through domestic-abuse programming, he was familiar with children, and he was not currently drinking.

The district court issued its findings of fact, conclusions of law, and order terminating both parents' parental rights. The district court terminated mother's parental rights on the basis that she had failed to rebut the presumption of palpable unfitness to be a party to the parent-child relationship, which was based on the previous transfers of legal custody and termination of parental rights to her other children. The district court terminated father's parental rights on the basis that he had neglected to comply with the duties of the parent-child relationship, and reasonable efforts by the county failed to correct the conditions leading to the filing of the petition. The district court found that clear and convincing evidence existed that it was in the child's best interests that mother's and father's parental rights be terminated.

Father has appealed the termination of his parental rights; mother has not.

D E C I S I O N

I

Father first challenges the district court's subject-matter jurisdiction over the permanency proceedings. Jurisdiction is a question of law, which this court reviews de novo. *In re Welfare of Children of R.A.J.*, 769 N.W.2d 297, 302 (Minn. App. 2009).

The district court has original and exclusive jurisdiction in child-protection matters and in proceedings to terminate parental rights. Minn. Stat. § 260C.101, subds. 1, 2

(2010). Father argues that the district court lacked jurisdiction to order the termination of his parental rights because the child was being “properly cared for by capable parents.” *See In re Welfare of T.L.L.*, 453 N.W.2d 355, 357 (Minn. App. 1990) (concluding that juvenile court lacked subject-matter jurisdiction over child-protection matter when circumstances showed that the child’s mother adequately met child’s needs). But the district court initially exercised its jurisdiction by ordering emergency protective care based on mother’s history with child protection as to six other children, travel to Wisconsin with father for the child’s birth, and furnishing a false name to hospital officials. The county had also received reports of father’s domestic abuse related to mother, which, if substantiated, could impact the child’s safety. The district court appropriately authorized an out-of-home placement for the child and did not err by continuing to exercise jurisdiction to address the child’s need for permanency. *See* Minn. Stat. § 260C.101, subd. 2.

II

Father challenges the merits of the district court’s decision to terminate his parental rights. Parental rights may be terminated only for “grave and weighty reasons.” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). Courts presume that a natural parent is a fit and suitable person to be entrusted with the care of the parent’s child and that it is usually in the best interests of the child to be in the custody of a natural parent. *In re Welfare of Clausen*, 289 N.W.2d 153, 156 (Minn. 1980). This court reviews a district court’s decision to terminate parental rights to determine whether the district court’s findings address the statutory criteria and 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).

A district court may not order the termination of parental rights unless it is proved by clear and convincing evidence that at least one statutory ground for termination exists. *In re Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). The court must make its decision based on evidence concerning the “conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period.” *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001). We “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).

The district court found that clear and convincing evidence existed that father’s parental rights should be terminated because he neglected to comply with the duties imposed by his relationship with the child, as set forth in Minn. Stat. § 260C.301, subd. 1(b)(2) (2010). That ground for termination requires “that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties” of the parent-child relationship. *Id.* This may include failure to provide the child with necessary clothing, food, shelter, education, and additional care necessary for mental, physical, or emotional development, provided that the social service agency’s reasonable efforts have failed to correct the conditions alleged by the petition, or that reasonable efforts would be unreasonable because they would be futile. *Id.*

Father maintains that the record does not provide proof by clear and convincing evidence that he has failed to comply with the duties of the parent-child relationship. He initially argues that the district court erred by terminating his parental rights based on his failure to follow the county's voluntary case plan because the district court did not order him to comply with that plan. We agree. A parent's failure to satisfy the requirements of a court-ordered case plan is evidence of a parent's noncompliance with the duties and responsibilities in section 260C.301, subdivision 1(b)(2). *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003). But here, the district court's initial order for emergency protective care and placement, a form order with boxes checked, recites only that father "has been offered" a voluntary case plan and does not order that he follow the case-plan recommendations. In additional interim orders, the district court found that father denied the allegations in the petition for termination, but it did not order him to comply with the case-plan recommendations. The district court's orders never required father to follow the case plan, but instead gave father discretion as to whether to take advantage of the services offered. Under these circumstances, we cannot conclude that father's failure to follow the case-plan provides clear and convincing evidence that he failed to comply with the duties and responsibilities of the parent-child relationship. *Cf. id.* (concluding that a parent's "failure to satisfy key elements of the court-ordered case plan provide[d] ample evidence of his lack of compliance with the duties and responsibilities of the parent-child relationship"). The district court erred to the extent that it based its termination of father's parental rights on his failure to follow the voluntary case plan.

We next address whether father's behavior, apart from his failure to comply with the recommendations of the voluntary case plan, provides clear and convincing evidence of his failure to fulfill the duties imposed by the parent-child relationship.

Father argues that the record does not provide clear and convincing evidence of his inability to parent the child. The district court found that father had a "serious alcohol problem," based on evidence of father's three DWI arrests; his current active probation for DWI; and his failure to follow the no-use condition of his probation, which had resulted in an order for chemical-dependency treatment. The district court noted father's alcohol-positive UA results while on probation and found that his lack of insight into the effect of his drinking on his parenting ability suggests an inability to properly care for the child.

Although a parent's unaddressed chemical-dependency issues may be relevant in a proceeding to terminate parental rights, a parent's chemical use alone does not render that parent unfit to care for a child. *In re Welfare of Children of T.R.*, 750 N.W.2d at 662. In *T.R.*, the supreme court concluded "that alcohol or substance use does not render a parent palpably unfit in the absence of a causal connection between that substance use and the parent's inability to care for the child." *Id.*; see also *In re Children of T.A.A.*, 702 N.W.2d 703, 710 (Minn. 2005) (concluding that "no causal relationship" existed between mother's drug use and her inability to parent her children, and affirming termination of parental rights on alternate ground).

We agree with the district court that the record contains significant evidence of father's alcohol use, including a history of chemical dependency and recent UAs that

tested positive for alcohol. But we conclude, based on *Welfare of T.R. and Children of T.A.A.*, that this record fails to show by clear and convincing evidence that father's alcohol use has resulted in his neglect of the duties imposed by the parent-child relationship. *See* Minn. Stat. § 260C.301, subd. 1(b)(2). The district court found, based on the child-protection social worker's testimony, that except for minor issues, father interacted appropriately and warmly with the child. In addition, the social worker acknowledged that most of the services offered by the county related to mother, not father, and that no medical professionals perceived that the child was abused or neglected. Because the record fails to show a connection between father's chemical use and any inability to attend to the child's needs, we conclude that the district court's finding that father's lack of insight into his chemical-dependency demonstrates his inability to care for the child is not supported by substantial evidence.

We have similar concerns with respect to the district court's findings regarding father's relationship with mother and the allegations of domestic abuse between mother and father. The district court found that father's refusal to accept that neither he nor mother needed parenting education provided evidence that he would be unable to provide for the child's needs and that father's denial of an abusive history with mother places the child at risk for witnessing or being subjected to additional domestic abuse. But the record shows that father has participated in regular visitation and demonstrated appropriate behavior toward the child. In addition, although the record contains vague and conflicting testimony relating to father's possible abuse of mother, no evidence indicates that the child has ever been at risk as a result of that possible abuse. Father's

testimony that he does not need parenting education does not, by itself, raise a reasonable inference that he has neglected the duties of the parent-child relationship. And father's opinion as to mother's ability to parent the child is not relevant because mother testified that she was ending her marriage to father and has not appealed the termination of her parental rights.

Further, evidence supporting termination of parental rights must relate to "conditions that exist at the time of termination." *In re Welfare of P.R.L.*, 622 N.W.2d at 543. Although the record contains evidence that mother previously reported allegations of domestic abuse to investigating professionals, both mother and father denied allegations of abuse at trial, and the county introduced no evidence of domestic-abuse-related convictions. Given mother's stated plan for divorce, her potential absence from the home, and the lack of any finding of past domestic abuse of mother, the record lacks substantial evidence to support the finding that the child would likely be exposed to domestic abuse.

Although additional child-protection proceedings may be warranted, we conclude that the county failed to sustain its burden to show by clear and convincing evidence that father's parental rights should be terminated under Minn. Stat. § 260C.301, subd. 1(b), based on his failure to comply with the duties imposed by his relationship with the child. Therefore, we need not address the child's best interests. *See In re Welfare of M.H.*, 595 N.W.2d 223, 228 (Minn. App. 1999) (noting that "[a]lthough a child's best interests are paramount in a decision to terminate parental rights, . . . a court may not base termination of parental rights solely on the best interests of a child" (citation omitted)). Because the

findings and the record do not support termination under the statutory criteria advanced by the county, we conclude that the district court erred by terminating father's parental rights.

Reversed.