STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1842

In the Matter of the Welfare of the Children of:
E. L. H., C. L. B., and J. P., Parents

Filed March 17, 2014
Affirmed
Worke, Judge

Le Sueur County District Court
File Nos. 40-JV-13-48, 40-JV-12-121

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Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Kirk, Judge.

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

WORKE, Judge

Appellant challenges the termination of her parental rights to her three children, arguing that the evidence was insufficient to prove that the conditions leading to the children's out-of-home placement were not corrected despite the county's reasonable

efforts, that termination was not in the children's best interests, and that the district court erroneously admitted evidence about the family from other counties. We affirm.

FACTS

E.L.H.'s three children, Cam.L.B., Cal.L.B., and R.M.P., came to the attention of Le Sueur County Department of Human Services (the department) in September 2012, when the two older children crossed a highway alone and were found unsupervised in a park. E.L.H. admitted that she had permitted this and told the department she thought the children, ages four and five, were old enough to go to a park alone. During a follow-up visit to E.L.H.'s apartment, the children were again found alone, and E.L.H. did not return home for about twenty minutes. The children were placed out of home, and the family became the subject of a CHIPS petition; E.L.H. admitted the petition, acknowledging that she was chemically dependent and unable to care for the children when using controlled substances.

Case plans developed by the department for each child listed identical requirements for E.L.H. to accomplish before the children would be returned to her. E.L.H. was to complete mental-health, chemical-dependency, and parenting assessments, and follow recommendations. She was also required to participate in supervised visitation, accompany the children to medical/dental appointments, cooperate with the children's diagnostic assessments, be involved in the children's education, comply with court orders in criminal matters, assist in a relative search process, maintain stable housing, pursue vocational training to lead to financial self-sufficiency, and maintain medical assistance. E.L.H. signed the case plans.

A significant portion of the county's services were directed toward treating E.L.H.'s chemical dependency. E.L.H.'s first chemical-dependency assessment revealed cannabis dependence, but she did not comply with recommended outpatient treatment. After E.L.H. was arrested for disorderly conduct in January 2013 and transported to a detox facility, she completed a second chemical-dependency assessment that concluded she was cannabis and alcohol dependent and recommended residential treatment. E.L.H. rejected the proffered treatment program and entered a different treatment program in February 2013, but was unsuccessfully discharged after ten days. She was scheduled to enter another residential treatment facility, but failed to attend a scheduled preliminary evaluation and lost the opportunity to participate.

In March 2013, E.L.H. took a third chemical-dependency assessment that reached the same conclusion and made the same recommendation as the second assessment. On March 28, 2013, the department filed a petition to terminate E.L.H.'s parental rights because she failed to correct the conditions leading to the children's out-of-home placement despite reasonable county efforts to reunite the family. In mid-April 2013, E.L.H. was admitted into residential treatment and was successfully discharged in early May 2013 on the condition that she enter a halfway house to learn skills to maintain sobriety. She was asked to leave after three days because of her poor attitude, refusal to complete an assignment, and failure to follow program rules, and was discharged as unamenable to treatment. The district court concluded that this was not successful treatment.

After delays due to E.L.H.'s failure to attend or timely attend appointments, E.L.H. eventually began outpatient treatment in June 2013. During her treatment, E.L.H. had obtained prescriptions for opiates, admitted to "accidentally" ingesting marijuana, drank wine, and had positive test results for alcohol, marijuana, and oxycodone. E.L.H.'s use of opiates violated the facility's total abstinence policy, and she was eventually discharged from this program and given a poor prognosis. The district court found that E.L.H. "continues to associate with people who use drugs and alcohol" and that "[s]he is not yet committed to change in order to be a fit parent for her children." During the course of the case plan, E.L.H. had eight positive urinalysis tests for "THC," a chemical in marijuana, oxycodone, and "ETS," alcohol byproducts; she also provided diluted samples and missed several tests.

Following a six-day termination trial, during which the county offered evidence of other counties' interactions with the family, the district court decided that the statutory ground for termination of E.L.H.'s parental rights was met and that termination of her parental rights was in the children's best interests.

The district court noted that E.L.H. loves her children and that they will miss E.L.H., but concluded:

> The best interests of the children lie in having a safe and stable environment and that is the most important concern to this court. [E.L.H.] has repeatedly demonstrated that she is unable to remain sober and is unable to provide a stable environment for her children. She has steadfastly refused to take the necessary steps to be reunited with her children. Rather she consistently blames others for the problems.

This appeal followed.

D E C I S I O N

A district court's decision to terminate parental rights must be supported by one of the statutory grounds stated in Minn. Stat. § 260C.301, subd. 1(b) (2012). Clear and convincing evidence is required to support a termination decision, and termination must be in a child's best interests. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004); Minn. Stat. § 260C.301, subd. 7 (2012). We review the district court's findings for clear error and its decision for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012); *see In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008) (stating that appellate courts "defer to the district court's decision to terminate parental rights").

The district court determined that E.L.H. failed to correct the conditions that led to the children's out-of-home placement, even though the county made reasonable efforts to reunite the family. There is a statutory presumption that reasonable efforts have failed if (1) the child is under eight years old and has been in placement for more than six months, unless the parent has maintained contact with the child and has complied with the case plan; (2) the court has approved a case plan; (3) the conditions that led to the child's out-of-home placement have not been corrected; and (4) reasonable efforts to reunite the family were made by a social-service agency. Minn. Stat. § 260C.301, subd. 1(b)(5). Even when a parent attempts to comply with a case plan, the parent may still fail to

correct conditions that led to the out-of-home placement. *See In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012).

The department offered E.L.H. assessments and services for her mental health, chemical use, and parenting skills, as well as specific support services related to the family's basic needs. Of major concern was E.L.H.'s failure to achieve sobriety so that she could address other areas that would support her being able to parent. The record plainly shows that she did not avail herself of proffered chemical-dependency treatment options and never successfully addressed this substantial barrier to being able to properly care for her children. E.L.H. argues that she attained a "minimal level of proficiency" to parent by participating in residential treatment, individual psychotherapy, random drug screening, attending AA/NA meetings, and other offered services. She concedes that she was offered numerous services but claims that none of them pertained to the issue that formed the basis of the children's out-of-home placement—that she left the children unattended. But the case plans were drafted to address the many reasons why E.L.H. may have left her children alone, and "[t]he critical issue is . . . whether the parent is presently able to assume the responsibilities of caring for the child." *Id.* Because the services offered were reasonable under the circumstances, and there is clear and convincing evidence that the services offered failed to correct the conditions that led to the children's out-of-home placement, we conclude that the district court did not abuse its discretion by terminating E.L.H.'s parental rights.

E.L.H. also challenges the district court's best-interests determination. The district court must consider and make findings on whether termination of parental rights is in a

child's best interests. Minn. Stat. § 260C.301, subd. 7 (2012); *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546-47 (Minn. App. 2009). The child's best interests must be weighed against the parent's rights. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 378 (Minn. 1990). But best interests of the child are paramount in termination proceedings, and conflicts in the "rights of the child and rights of the parents are resolved in favor of the child." *J.R.B.*, 805 N.W.2d at 902.

The district court acknowledged the bond between E.L.H. and the children but concluded that placing the children in "a safe and stable environment" was in the children's best interests. The court ruled that E.L.H. was unable to meet the children's needs for safety and stability because she "steadfastly refused to take the necessary steps" to do so. The children had been placed out of home for nearly 12 months at the time of the district court's termination decision. *See In re Welfare of J.R., Jr.*, 655 N.W.2d 1, 5 (Minn. 2003) (noting that "delay in the termination of a parent's rights equates to a delay in a child's opportunity to have a permanent home and can seriously affect a child's chance for permanent placement"). The record includes clear and convincing evidence supporting the district court's decision that termination was in the children's best interests.

E.L.H. also argues that the district court erred by admitting evidence about her family that was generated in two other counties before Le Sueur County became involved in this case, asserting that the evidence lacked foundation, was irrelevant to the current proceedings, and denied her a fair trial. Whether to admit evidence is a discretionary decision made by the district court. *See In re Welfare of Children of J.B.*, 698 N.W.2d

160, 172 (Minn. App. 2005). This court will grant a new trial for improper evidentiary rulings only if a party can demonstrate prejudicial error. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997). We observe no abuse of discretion here. But, even if the district court erroneously admitted this evidence, the error was harmless in light of the whole record, which includes strong evidence that independently supports the district court's termination decision. *See In re Welfare of Children of D.F.*, 752 N.W.2d 88, 98 (Minn. App. 2008) (applying harmless-error rule to due-process argument in a termination-of-parental-rights case).

Affirmed.