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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1890**

In the Matter of the Welfare of the Children of:
C. P. B., III,
and J. A. B.-T.,
Parents.

**Filed March 18, 2008
Affirmed
Klaphake, Judge**

Goodhue County District Court
File No. 25-JV-06-604

Kent D. Laugen, 306 West Avenue, Red Wing, MN 55066 (for respondent father C.P.B., III)

Leah M. Diorio, 2000 Old West Main Street, Red Wing, MN 55066 (for appellant mother J.A.B.-T.)

Stephen N. Betcher, Goodhue County Attorney, Goodhue County Justice Center, 454 West Sixth Street, Red Wing, MN 55066 (for respondent Goodhue County)

Lynn Elg, 509 West Fifth Street, Red Wing, MN 55066 (respondent guardian ad litem)

Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

On August 31, 2007, the district court terminated the parental rights of appellant J. A. B.-T to her two children, H.B., born August 4, 1992, and C.B., born January 31, 1998.

The district court's termination order relied on four statutory bases: abandonment, failure to comply with parental duties, failure to contribute to the children's financial support, and palpable unfitness, all in violation of Minn. Stat. § 260C.301, subd. 1(b) (1)-(4) (2006). The court also found that termination is in the children's best interests. Because the record provides clear and convincing evidence that appellant abandoned the children and that termination is in their best interests, we affirm.

DECISION

“Parental rights are terminated only for grave and weighty reasons.” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). An appellate court reviews a termination decision to determine whether the district court's findings address the statutory criteria and whether those findings are supported by clear and convincing evidence. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). Only one statutory ground need be proven for termination if termination is in a child's best interests. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396-97 (Minn. 1996).

Under Minn. Stat. § 260C.301, subd. 1(b) (1) (2006), the district court may terminate a parent's rights if the parent “has abandoned the child.” The term “abandon” is not defined by statute; however, the statute provides that a parent is presumed to have abandoned a child if

the parent has had no contact with the child on a regular basis and not demonstrated consistent interest in the child's well-being for six months and the social services agency has made reasonable efforts to facilitate contact, unless the parent establishes that an extreme financial or physical hardship or treatment for mental disability or chemical dependency or

other good cause prevented the parent from making contact with the child.

Minn. Stat. § 260.301, subd. 2(a)(1) (2006). The district court did not apply the statutory presumption and, in its absence, a finding of abandonment “requires both actual desertion of the child and an intention to forsake the duties of parenthood.” *L.A.F.*, 554 N.W.2d at 398 (quotation omitted). The supreme court has distinguished between intentional conduct and conduct “due to misfortune” in determining whether conduct constitutes abandonment. *Id.*

Here, the district court’s finding of abandonment was premised in part on appellant’s failure to comply with the terms of a June 29, 2003 order that required her to complete psychological and chemical dependency evaluations and follow through with their recommendations, and complete a parenting assessment. The order precluded contact with the children until these requirements were met. Appellant argues that it was due to her misfortune that she failed to obtain the required evaluation and assessment and not due to her intentional desire to abandon the children. She claims that she is a poor reader and was uncertain what action to take in response to the 2003 order. She testified that she visited several different doctors, and they, as well as she, were uncertain what tests she was required to take. After she took a blood and urine test in 2003, she assumed that the physician would submit her results to the district court. She admittedly made no further efforts to comply with the 2003 order until 2006.

The record also shows, however, that while appellant claimed at the termination hearing that her poor reading prevented her from understanding the directives of the 2003

order, she had sufficient mental capacity and reading skills to comply with the order. In her recent psychological assessment, appellant stated that her comprehension for reading passages is “fine.” During an intake assessment, she also stated that after she received special education services in high school, she “got A’s in reading” and reported that “her memory and cognitive functioning are adequate.” Further, the record of the termination hearing does not suggest that appellant is mentally impaired, as she was able to understand and respond to questions at the hearing.

The court’s determination of abandonment necessarily included an assessment of appellant’s credibility, which the court apparently found lacking. *See In re Welfare of the Children of J.B.*, 698 N.W.2d 160, 167 (Minn. App. 2005) (stating “[t]he weight to be given any testimony . . . is ultimately the province of the fact-finder”). We conclude that the record provides clear and convincing evidence of abandonment because appellant failed to comply with the June 29, 2003 order that mandated her compliance before she could have contact with her children and she did not show that her abandonment of them was due to her misfortune.

Appellant argues that her case is unlike other cases where a parent has never lived with his or her children and clearly intends to desert them. But appellant’s conduct shows most of the classic earmarks of abandonment: she failed to financially support the children, or, after the district court’s order in June 2003, inquire about them, seek contact with them by complying with the court order, or otherwise pursue her parental rights. Because we find ample record support for the district court’s determination of

abandonment, we decline to individually address the other bases for termination found by the district court. *See L.A.F.*, 554 N.W.2d at 396-97.

Finally, appellant claims that termination of her parental rights is not in the children's best interests. *See* Minn. Stat. § 260C.301, subd. 7 (2006) (best interests of child paramount in termination proceedings). The district court found that "termination is overwhelmingly in the children's best interests." Because of the length of time that appellant has been apart from the children and because she has failed to meet any of the children's needs, as well as the district court's findings demonstrating that the children do not wish to be in contact with appellant and that they are in a stable and loving environment with their father and his new wife, the record fully supports the district court's finding on the children's best interests.

Affirmed.