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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1266**

In the Matter of the Welfare of the Children of:  
T. M. K., f/k/a M., J. J. M., B. B., J. B., B. H., and S. K.,  
Parents.

**Filed January 21, 2014  
Affirmed  
Peterson, Judge**

Carver County District Court  
File Nos.  
10-JV-13-51  
10-JV-13-328  
10-JV-12-392

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

## **UNPUBLISHED OPINION**

**PETERSON**, Judge

In this appeal from the termination of appellant-mother's parental rights, mother argues that (1) the district court erred in ruling that, under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the Minnesota district court had jurisdiction to terminate mother's parental rights; (2) the record does not support the district court's determinations that mother is a palpably unfit parent, that mother failed to correct the conditions leading to the out-of-home placement, and that the children are neglected and in foster care; and (3) the record does not show that termination of mother's parental rights is in the children's best interests. We affirm.

## **FACTS**

Appellant-mother T.M.K. has six children: K.J.M., born July 13, 1996; C.J.M., born, May 14, 1998; H.M.B.M., born June 22, 2002; A.J.B.M., born February 25, 2006; S.E.H., born April 28, 2009; and M.R.K., born December 13, 2010. J.J.M. is the father of K.J.M. and C.J.M. B.B. is the father of H.M.B.M. J.S.B. is the father of A.J.B.M. B.R.H. is the father of S.E.H. S.C.K. is the father of M.R.K.

Mother and the children have had significant involvement with child-protection services in three Minnesota counties dating back to 2004. In April 2004, Wright County

Social Services (WCSS) completed an educational-neglect assessment. In June 2004, WCSS determined maltreatment after mother was arrested and law-enforcement officers found J.J.M. passed out from alcohol intoxication with the children present and unsupervised. In April 2005, WCSS conducted an assessment of the condition of mother's and J.J.M.'s home. In August 2005, WCSS received a report about the two oldest children encouraging inappropriate sexual touching with the younger children. In March 2006, WCSS completed a second educational-neglect assessment.

In May 2007, McLeod County Social Services (MCSS) conducted an assessment after police officers received a report that the children were unsupervised and found mother at a bar with an alcohol concentration of .236. Between May and October 2007, MCSS provided chemical-dependency case-management services to mother, initiated an adult mental-health assessment for mother, provided child-protection case-management services, and performed a chemical-dependency assessment of mother.

In January 2008, WCSS received a report that mother and J.J.M. were arguing and mother had asked K.J.M. to call 911.

In August 2008, Carver County Community Social Services (CCCSS) filed a petition alleging that K.J.M., C.J.M., H.M.B.M., and A.J.B.M. were children in need of protection or services (CHIPS). The grounds for the petition were lack of appropriate supervision, inadequate food, lack of necessary medical attention, threats of sexual injury, and educational neglect. The children were placed in relative foster care until December 2008.

Although the CHIPS file was closed in May 2009, CCCSS continued to receive reports raising concerns about the children's welfare. In July 2009, CCCSS received a report that A.J.B.M. was unsupervised and had engaged in inappropriate touching with J.J.M. CCCSS also received reports of inappropriate supervision of the children in June and July 2011. Case-management services were opened and provided until mother moved to Illinois with the four youngest children in February 2012. K.J.M. and C.J.M. stayed in Minnesota. Mother and the four youngest children returned to Minnesota on June 2, 2012.

Between 2004 and 2012, mother worked with numerous social workers, guardians ad litem, therapists, and physicians. In July 2012, CCCSS received a report that mother was strangling K.J.M. and C.J.M. on a regular basis. Two weeks later, CCCSS received a report that there was not enough food in J.J.M.'s house and that A.J.B.M., then age six, was asking neighbors for food several days in a row. CCCSS employee Kayla Schaap interviewed K.J.M., C.J.M., H.M.B.M., and A.J.B.M. The children reported incidents of domestic abuse between mother and J.J.M. and stated that sometimes they had to hold down mother to subdue her during arguments.

On August 14, 2012, CCCSS received a child-protection report regarding mother's and J.J.M.'s alcohol use and a physical altercation in which mother, J.J.M., and three of the children were involved. Schaap interviewed H.M.B.M., A.J.B.M., and K.J.M. The children stated that mother drinks rum "all the time to calm down" and that, when she drinks, "it is a lot worse on her angeriness" and she "starts fights for no reason." In one incident, mother became angry when K.J.M. was using a laptop to text J.J.M. about being

honest with Schaap about how mother treats the children. When K.J.M. attempted to prevent mother from destroying the laptop, the laptop hit mother, and mother put her hands around K.J.M.'s throat and squeezed until he was unable to breathe. In another incident, the children became involved in an altercation between mother and J.J.M. during which mother assaulted J.J.M., giving him a black eye, and then tried to choke him.

The district court granted CCCSS's petition to terminate mother's parental rights to all six children on grounds of palpable unfitness, failure of reasonable efforts to correct the conditions resulting in out-of-home placement, and the children being neglected and in foster care. Custody of K.J.M. and C.J.M. was returned to J.J.M., and custody of the four younger children was transferred to an aunt, K.C., and M.L. This appeal by mother followed.

## **D E C I S I O N**

### **I.**

The UCCJEA, Minn. Stat. §§ 518D.101-.317 (2012), governs subject-matter jurisdiction over child-custody matters. Applying the UCCJEA involves questions of subject-matter jurisdiction, which this court reviews de novo. *Schroeder v. Schroeder*, 658 N.W.2d 909, 911 (Minn. App. 2003).

A district court that makes an initial child-custody determination has continuing, exclusive subject-matter jurisdiction over the child-custody proceedings until

(1) a court of this state determines that the child, the child's parents, and any person acting as a parent do not have significant connection with this state and that substantial

evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or (2) a court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

Minn. Stat. § 518D.202(a) (2012). Under the UCCJEA, a "child custody determination" includes determinations made in both CHIPS and termination-of-parental-rights (TPR) proceedings; and a child's "home state" is the state where the child lived with a parent for at least six consecutive months immediately before a child-custody proceeding is commenced. Minn. Stat. § 518D.102(d), (e), (h) (2012). If this state does not qualify as the home state and there has not been a prior custody determination, a court of this state has jurisdiction to make an initial custody determination if another state does not qualify as the home state and the child and the child's parents, or the child and at least one parent or person acting as parent, have a significant connection with this state other than mere physical presence; and substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships. Minn. Stat. § 518D.201(a)(2) (2012).

Mother argues that Illinois had exclusive jurisdiction over this case. The district court made detailed findings explaining its conclusion that Minnesota has jurisdiction over this proceeding. The court found that it had continuing jurisdiction over the five oldest children under Minn. Stat. § 518D.202 based on custody determinations in previous CHIPS proceedings in Carver, McLeod, and Wright County. The court also found that the four fathers of the five oldest children were living in Minnesota when this termination proceeding was commenced. In addition, mother and the children have

significant involvement with social services in Minnesota dating back to 2004, C.J.M. and K.J.M. lived in Minnesota with J.J.M. when mother and the other children moved to Illinois, and none of the children were in Illinois long enough for it to qualify as a home state. Finally, all of the children were present in Minnesota when this CHIPS proceeding was commenced, and, although mother expressed an intent to return to Illinois, she maintained housing in Minnesota and had no permanent residence in Illinois. The evidence supports the district court's conclusion that Minnesota has subject-matter jurisdiction to determine the custody of the five oldest children.

Regarding the youngest child, M.R.K., the district court found that she did not have a home state within the UCCJEA definition because she had not lived in either Minnesota or Illinois for six consecutive months before this proceeding was commenced. Mother argues that M.R.K. continued to reside in Illinois through the summer of 2012. But the evidence supports the district court's finding that M.R.K. was in Minnesota for about two and one-half months during the summer of 2012 and that the two and one-half months was not a temporary absence from Illinois under Minn. Stat. § 518D.102(h) because mother had terminated the lease for M.R.K.'s residence in Illinois, M.R.K. did not have a residence to return to in Illinois on August 14, and mother had moved her property back to Minnesota before August 14. The evidence supports the district court's conclusion that Minnesota has subject-matter jurisdiction to determine M.R.K.'s custody.

## **II.**

An appellate court reviews a decision to terminate parental rights to determine whether the district court's findings address the statutory criteria and whether the district

court's findings are supported by clear and convincing evidence. *In re Welfare of Child of T.P.*, 747 N.W.2d 356, 362 (Minn. 2008). In doing so, “[w]e give considerable deference to the district court’s decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing.” *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted). “[W]e review the district court’s determination of whether a particular statutory basis for involuntarily terminating parental rights is present 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). If at least one statutory ground alleged in the petition is supported by clear and convincing evidence and termination of parental rights is in the child’s best interests, we will affirm. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). The county bears the burden of proving a ground for termination. *In re Welfare of M.H.*, 595 N.W.2d 223, 227 (Minn. App. 1999).

The court may terminate a parent’s rights if it finds that “the child is neglected and in foster care.” Minn. Stat. § 260C.301, subd. 1(b)(8) (2012). Termination of parental rights is appropriate under Minn. Stat. § 260C.301, subd. 1(b)(8), when (1) the children have been placed in foster care by court order; (2) the parent’s circumstances, condition, or conduct are such that the children cannot be returned to the parent; and (3) the parent, “despite the availability of needed rehabilitative services, [has] failed to make reasonable efforts to adjust her circumstances, condition or conduct, or [has] 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 (2012); *see also* Minn. Stat. § 260C.163,

subd. 9 (2012) (listing factors to consider in determining whether child is neglected and in foster care).

The six children were placed in emergency foster care by district court order on August 14, 2012, and had not been returned to a parent's custody up to the time of the TPR trial, which occurred in late April and early May 2013. Mother's circumstances were such that the children could not be returned to her. Mother has mental-health issues that affect her ability to parent, and she has failed to address them. She has also failed to address her problem with alcohol abuse, a problem that has resulted in an unsafe environment for the children, examples of which include a lack of food in the house, a lack of supervision for the children, and the children becoming involved in physical altercations. There are also concerns regarding possible abuse of prescription medication by mother.

During the current proceeding, CCCSS provided case plans to mother for each of the children. The case plans were reviewed and updated and filed with the court. The case plans were approved and found reasonable by the district court. "[A] case plan that has been approved by the district court is presumptively reasonable." *S.E.P.*, 744 N.W.2d at 388. Risk and safety assessments were completed to help mother understand the children's parental needs. Mapping sessions and team meetings were conducted to help mother understand the process and expectations. Visitation was scheduled, and psychological and substance-abuse evaluations were ordered. Mother, however, failed to take advantage of these services and continued to deny responsibility for her actions. CCCSS Child and Family Services Director Dan Koziolk testified that this case was one

of the most severe cases of chronic neglect CCCSS has ever seen and that very little progress was made.

Appellant left the area for seven weeks in January and February 2013. She missed about 20 scheduled visits or contacts with the children. The district court made findings regarding appellant's failure to change her circumstances, appellant's inconsistency in visitation and other contact with the children, appellant's inconsistent contact and communication with CCCSS and service providers, the appropriateness, adequacy, and reasonableness of CCCSS's efforts to rehabilitate appellant and reunify her with the children, and the futility of further efforts.

The district court's findings address the factors listed in Minn. Stat. § 260C.163, subd. 9, and are supported by clear and convincing evidence. The district court did not abuse its discretion in determining that the children were neglected and in foster care. Because a single statutory basis is sufficient to support a termination, we do not address the other statutory grounds determined by the district court.

### **III.**

In every termination proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2012). Even if a statutory ground for termination exists, the district court must still find that termination of parental rights or of the parent-child relationship is in the best interests of the child. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). In considering the child's best interests, the district court must balance the preservation of the parent-child relationship against any competing interests of the child. *In re Welfare of M.G.*, 407 N.W.2d 118, 121

(Minn. App. 1987). “Competing interests include such things as a stable environment, health considerations and the child’s preferences.” *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). “Where the interests of parent and child conflict, the interests of the child are paramount.” Minn. Stat. § 260C.301, subd. 7. “We review a district court’s ultimate determination that termination is in a child’s best interest for an abuse of discretion.” *J.R.B.*, 805 N.W.2d at 905.

The district court found that returning custody of K.J.M. and C.J.M. to J.J.M. was

in their best interests because [J.J.M.] has shown a willingness to improve his situation, not involve [mother] in the boys’ lives, maintain a safe and healthy environment for the boys, and has always shown a capacity to be a stable force in the lives of all of the children. [J.J.M.] has never been diagnosed as chemically dependent, and has never been accused of physical or emotional abuse of any of the six children. [J.J.M.] testified to recognizing that family therapy for himself and the children would assist in everyone’s healing. [J.J.M.] testified to having a local support system. The Court is also convinced [J.J.M.] will encourage contact with the four younger children given his on-going involvement in the lives of all six children and being a father figure to all of them their whole lives.

The district court found that transferring custody of the four younger children to K.C. and M.L. was in their best interests because the children were thriving and healthy in K.C. and M.L.’s home and because keeping the four younger children together was in their best interests.

The district court found that terminating mother’s parental rights was in the children’s best interests “because of the chronic neglect, harm and chaos suffered throughout the years by all the children in [mother’s] care. [Mother] is unable to make

the necessary changes for the safety and wellbeing of the children. Anything less than termination of [mother's] rights risks further harm and trauma to the children.”

The district court's findings are supported by clear and convincing evidence, and the court did not abuse its discretion in determining that termination was in the children's best interests.

**Affirmed.**