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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0798
A08-0799**

In the Matter of the Welfare of the Child of:
A. L. W. and J. C., Jr., Parents.

**Filed January 6, 2009
Affirmed
Lansing, Judge**

Crow Wing County District Court
File Nos. 18-JV-07-2727, 18-J7-07-050132

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Considered and decided by Klaphake, Presiding Judge; Lansing, Judge; and Huspeni, Judge.*

UNPUBLISHED OPINION

LANSING, Judge

In this termination-of-parental-rights proceeding, ALW and JC, Jr. (JC) challenge the district court's findings supporting three grounds for terminating their parental rights:

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

that they failed to abide by the duties of the parent-child relationship, that they failed to correct the conditions that led to out-of-home placement, and that the child is neglected and in foster care. JC challenges the district court's findings supporting termination on the additional ground of palpable unfitness. Because the record provides clear and convincing evidence to support each of the statutory grounds for termination and establishes that the termination of parental rights is in the child's best interests, we affirm.

F A C T S

ALW and JC are the parents of KC. In February 2007, police placed KC on a seventy-two-hour protective hold after arresting both parents for a domestic dispute, and Crow Wing County Social Services filed a child-in-need-of-protection-or-services (CHIPS) petition. Following the arrest, the district court placed KC in foster care and granted the county custody of KC. In a background study, the county received information that ALW and JC had previous domestic-abuse incidents and that JC has a history as a sex offender.

The county scheduled visits for KC with ALW and JC. JC did not attend the first visit. The videotape of the second visit showed that ALW and JC argued throughout the duration, did not interact with KC despite her attempts to get their attention, and began to leave with twenty minutes remaining in the visitation period. As a result, the county scheduled individual visitation for ALW and JC. JC declined to exercise his opportunity for visitation.

In March 2007, one month after KC had been placed in foster care, the county developed a family assessment plan for ALW and returned KC to her care. This decision

was based on ALW's limited history with social services, her ability to provide a safe living environment for KC, and her willingness to cooperate on the family assessment plan. It was also based on ALW's and JC's representations that they had separated and did not intend to reconcile. The county later learned that ALW and JC had married two weeks after the February 2007 domestic dispute.

ALW moved back into JC's home in April 2007, and they placed KC in the crisis nursery for the full time limit of seventy-two hours. Based on these two circumstances, the district court returned KC to foster care in April 2007, and the county developed case plans for both parents.

ALW's case plan required her to complete ParentWorks, obtain employment, attend individual therapy, participate in parent education, complete a chemical-use assessment, participate in a psychiatric consultation, abstain from using mood-altering chemicals, obtain housing independent from JC, and maintain a safe and appropriate home for KC. JC's case plan required him to complete ParentWorks, complete sex-offender treatment, abstain from using intoxicants, participate in individual therapy, complete a domestic-violence program, and submit to random chemical testing.

ALW participated in parenting classes, ParentWorks, and a summer activity group. Although ALW attended these programs, she failed to find safe, appropriate housing and continued to reside in places that were unsuitable for KC. She delayed starting her individual therapy and did not seek medical or other help for her depression. JC made no efforts to comply with four of the six components of his case plan.

In September 2007 the county filed a petition to terminate ALW's and JC's parental rights for failure to comply with the duties of the parent-child relationship, for neglect of KC who remained in foster care, for failure to correct the conditions that caused KC's out-of-home placement, and because they are palpably unfit to parent KC.

At the termination hearing in February 2008, the county presented testimony from KC's psychologist; ALW and JC's social worker; social workers from the summer activity group; the clinical director of CORE Professional Services, P.A.; a psychologist who had assessed ALW and JC; and the cofacilitator of the ParentWorks adult program.

The testimony demonstrated that ALW had completed only three of her nine case-plan goals. The ParentWorks director testified that ALW missed an in-take appointment and group sessions and made no real progress on her goals. The summer activity group social workers testified that ALW focused on herself or other parents instead of KC, placed her own needs above KC's, and achieved no progress on her parenting skills. The psychologist's parenting assessment of ALW showed that she had issues that required therapy, could not distance herself from JC, and was not likely to resolve these issues in the near future. ALW testified that the delay in obtaining therapy was attributable to her struggle to get the necessary paperwork and that her first appointment, shortly before the hearing, was rescheduled because of the counselor's illness. She also said that she had recently found a place to rent, but acknowledged that the landlord had not completed the property purchase, she received no rental assistance, and had no job.

The testimony also demonstrated that JC may have, at best, complied with two of his six case-plan goals. The clinical director of CORE provided testimony on JC's 2004

sex-offender assessment, expressed the opinion that JC could re-offend without therapy, and believed that JC should have no contact with anyone under eighteen, including KC. The psychologist provided an opinion consistent with the director—that JC has issues that require therapy, that he should obtain domestic-abuse treatment, that he should participate in sex-offender treatment, and that he should have no contact with minors. JC testified that the reason he had not participated in his case plan was because of the social worker's racism and friction in their interaction. In rebuttal, JC's previous social worker, from a termination of JC's parental rights to another child, testified that JC refused to participate in a case plan in part because it required sex-offender treatment.

KC's psychologist testified that KC had reactive attachment disorder, had made good progress with her foster-care mother, and that her past problems would likely resume if she returned to a home environment in which domestic violence occurred.

Following the hearing, the district court issued its findings of fact and conclusions of law. The district court found clear and convincing evidence that ALW and JC had neglected the duties of the parent-child relationship, that reasonable efforts had failed to correct the conditions that caused KC's foster-care placement, that KC was neglected and in foster care, that JC is palpably unfit to parent, and that termination is in KC's best interests. Based on these findings, the district court terminated ALW's and JC's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2006). From those determinations, ALW and JC appeal.

DECISION

A district court may terminate parental rights only if clear and convincing evidence establishes that a statutory ground for termination exists and the termination is in the child's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). In reviewing an order terminating parental rights, we closely inquire into the sufficiency of evidence, taking into account the clear-and-convincing standard, and also taking into account that it is the district court that assesses the credibility of witnesses. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

I

First, ALW and JC challenge the district court's findings that clear and convincing evidence establishes that they neglected their parental duties. District courts may terminate parental rights if the parent "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed" by the parent-child relationship. Minn. Stat. § 260C.301, subd. 1(b)(2).

The record demonstrates that ALW made efforts to comply with her case plan by attending parenting classes, a summer activity group, and ParentWorks. But she was unable to complete ParentWorks and did not make any real progress in the parenting classes or the summer program. Significantly, she was consistently unable to meet her other case plan goals—she did not obtain safe and appropriate housing for KC, obtain a job, or begin individual therapy. Her significant lack of progress on major parts of her case plan and the failure to even begin other parts of the plan show that she has neglected the duties of the parent-child relationship. *See In re Child of Simon*, 662 N.W.2d 155,

163 (Minn. App. 2003) (noting that failure to complete key elements of case plan is proof of “lack of compliance with duties and responsibilities of the parent-child relationship”). The district court did not err by concluding that ALW neglected her parental duties or by terminating her rights under Minn. Stat. § 260C.301, subd. 1(b)(2).

JC made no tangible effort to comply with four of the six components in his case plan. His general lack of participation and unwillingness to even sign the plan demonstrate his neglect of the parent-child relationship. *See Child of Simon*, 662 N.W.2d at 163 (noting that failure to complete key elements of case plan is proof of noncompliance with duties of parent-child relationship). The district court did not err by concluding that JC neglected his parental duties or by terminating his rights under Minn. Stat. § 260C.301, subd. 1(b)(2).

II

Second, ALW and JC challenge the district court’s findings that reasonable efforts failed to remedy the conditions that caused the out-of-home placement and therefore termination of their parental rights is proper under Minn. Stat. § 260C.301, subd. 1(b)(5). Under this provision, a presumption arises that conditions leading to the child’s out-of-home placement remain uncorrected if the evidence shows that the child is under eight and has been residing out of the parental home for six months, that an out-of-home placement plan has been filed and approved, that the parents have not substantially complied with the reasonable case plan and the court’s orders, and that social services made reasonable efforts to rehabilitate and reunite the family. *Id.*, subd. 1(b)(5).

At the time of the termination hearing, KC had lived outside the parental home for ten months. The case plan for ALW had been approved and filed at the beginning of that time period, and JC's case plan had been mailed to him by certified mail eight months before the hearing. Social services made reasonable efforts to rehabilitate and reunite by offering no fewer than eighteen different services to both parents. ALW's inconsistency and JC's nearly complete failure to comply with a case plan, support the district court's findings that they failed to correct the conditions that caused the out-of-home placement.

ALW had yet to obtain safe, appropriate housing for KC. She lived in JC's home for about four months, in another home where domestic-abuse incidents occurred, in a women's shelter, and planned to move to an apartment where the landlord did not yet have legal possession of the property. Her delays in releasing records, obtaining public assistance, and finding a therapist resulted in a ten-month gap between her case plan's effective date and her first therapy appointment. She missed the first in-take appointment for the ParentWorks program, arrived thirty minutes late for the second in-take appointment, and also missed several of the classes. Although the program director was flexible in working with ALW, she made only minimal progress and did not complete the program.

ALW completed the chemical-use and abstention goals, but the record indicates no history of substance abuse. She also completed the parenting-education classes but did not effectively use any of the information. She completed the psychiatric consult but failed to obtain the prescribed antidepressants until just before the termination hearing. ALW's efforts show, at best, minimal compliance only shortly before the termination

hearing. *See In re Welfare of D.C.*, 415 N.W.2d 915, 918-19 (Minn. App. 1987) (rejecting minimal compliance that occurred right before parental-rights-termination hearing). Based on the record, the evidence clearly and convincingly supports the district court's finding that ALW failed to correct the conditions leading to the out-of-home placement and supports termination under Minn. Stat. § 260C.301, subd. 1(b)(5).

JC also failed to rebut the presumption that the conditions causing the out-of-home placement remain uncorrected. JC cannot recall reading his case plan, did not sign it, and may have, at best, completed the abstention from intoxicant use and random testing, but the record indicates no history of substance abuse. He made no effort to complete ParentWorks, individual therapy, sex-offender treatment, or domestic-violence treatment.

JC's only attempt to rebut this presumption involves his testimony about his social worker's racist comments towards him. But another social worker in a prior termination case testified that JC refused to comply largely because his case plan required sex-offender treatment. The district court considered the witnesses' credibility when determining whether JC rebutted the presumption. *See L.A.F.*, 554 N.W.2d at 396 (noting that district court has superior position to assess witness credibility). Clear and convincing evidence supports the district court's findings that JC failed to correct the conditions leading to out-of-home placement and that termination is proper under Minn. Stat. § 260C.301, subd. 1(b)(5).

III

ALW and JC contend that the district court's findings were conclusory and failed to consider their efforts to comply when terminating their parental rights under the foster-

care provision of Minn. Stat. § 260C.301, subd. 1(b)(8). If a child is neglected and in foster care, a district court may terminate a parent's rights. *Id.* For a child to be considered neglected and in foster care, a court order must have placed the child in foster care; the parent's circumstances, conditions, and conduct prevent the child's return to the family; and the parent, despite the availability of needed rehabilitative services, fail to make reasonable efforts to address the conditions and circumstances preventing the child's return. Minn. Stat. § 260C.007, subd. 24 (2006).

The record supports the district court's findings that KC was neglected and in foster care. KC was placed in foster care in April 2007.

The record also establishes that ALW's circumstances and conduct prevent KC's return. ALW has not remedied the conditions that prevented KC's return. She has no safe, appropriate housing. She has no employment. She still associates with JC. She has not become a more effective parent and is unable to focus on KC or adequately address KC's needs. *See In re Welfare of J.J.L.B.*, 394 N.W.2d 858, 861 (Minn. App. 1986) (relying on fact that when mother visited, she spent more time with foster parents than children), *review denied* (Minn. Dec. 17, 1986). ALW has not made reasonable efforts to address the problems. She still has a tenuous living situation, has taken only minimal steps toward completing her case plan, and has failed to address the larger underlying issues that caused the out-of-home placement. ALW maintains contact with JC despite his untreated domestic-abuse and sex-offender issues, and ALW defends JC's past sexual-offense conduct. Because ALW failed to make reasonable efforts, and the conditions that caused KC's removal from the home continue to exist, the district court

did not err when it terminated ALW's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(8).

JC's circumstances also prevent KC's return, and JC has not made reasonable efforts despite available rehabilitative services. He has not sought sex-offender or domestic-abuse treatment. He has had no contact with KC since May 2007. Clear and convincing evidence supports the district court's findings that, despite the availability of rehabilitative services, JC has failed to remedy the circumstances that necessitated the out-of-home placement and that termination is proper under Minn. Stat. § 260C.301, subd. 1(b)(8).

IV

JC also challenges the district court's finding that he did not rebut the presumption of palpable unfitness. Palpable unfitness to be part of the parent-child relationship is a basis for termination of parental rights under Minn. Stat. § 260C.301, subd. 1(b)(4). If a previous termination of parental rights has occurred, then reasonable efforts to reunite and rehabilitate are not required. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 250 (Minn. App. 2003). After an involuntary termination, a presumption arises that in future termination cases, the parent is palpably unfit, and the parent must prove parenting fitness. Minn. Stat. § 260C.301, subd. 1(b)(4).

JC failed to rebut the presumption of palpable unfitness. In an earlier proceeding a district court terminated his parental rights for another child. He has not exercised his opportunity to see KC since May 2007. Even though he interacted positively with KC during a parenting assessment, the psychologist noted that his narcissistic personality

disorder made him incapable of identifying and responding to KC's needs. *See In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004) (noting that parent made positive steps but based on past relapses and failure to call counselors, she had not rebutted presumption of palpable unfitness).

JC's only evidence to overcome the presumption was his testimony that his social worker made racist comments to him. But the district court rejected this claim and the record supports the district court's determination. In an earlier parental-rights termination with a *different social worker*, JC also refused to comply with his case plan and told that social worker that he "would rather go back to prison than go to sex-offender treatment." Because JC's case plan for KC required sex-offender treatment, the district court could reasonably determine that the second social worker's interaction with JC was not the reason that JC failed to comply with his case plan. We defer to the district court's determination of the credibility of JC and of the case worker. *See L.A.F.*, 554 N.W.2d at 396 (stating that district court's superior position to assess witness credibility merits considerable deference). We conclude that the district court did not err in determining that JC failed to rebut the palpably unfit presumption.

V

The district court also made findings that the termination of ALW's and JC's parental rights is in KC's best interests because no substantial likelihood exists that they will be able to provide for KC's ongoing physical, mental, or emotional needs in the foreseeable future; KC's foster home can provide for her needs; and the foster home is a possible permanent home, which would provide KC with needed stability. The record

supports these findings on KC's best interests. Thus, the district court did not err in finding that it is in KC's best interests to terminate ALW's and JC's parental rights.

Affirmed.