

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2008).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-0387, A10-398**

In the Matter of the Welfare of the Child of:
D. M. T. and R. L.,
Parents.

**Filed August 3, 2010
Affirmed
Worke, Judge**

Ramsey County District Court
File Nos. 62-JV-08-2254, 62-JV-09-4196

Patrick McGee, St. Paul, Minnesota (for appellant D.M.T.)

J. Lindsay Flint, St. Paul, Minnesota (for appellant R.L.)

James Laurence, Guardian Ad Litem Program Juvenile and Family Justice Center, St. Paul, Minnesota (for respondent guardian ad litem)

Susan Gaertner, Ramsey County Attorney, Kathryn Eilers, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County Community Human Services Department)

Considered and decided by Stauber, Presiding Judge; Lansing, Judge; and Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant-mother and appellant-father challenge the revocation of a stayed termination-of-parental rights (TPR), arguing that the district court could not revoke the

stay after 180 days, and that termination is not in the child's best interests. Appellant-mother also argues that the record does not show that she failed to comply with the stay's conditions. Because the district court retained jurisdiction and clear and convincing evidence establishes grounds for revoking the stay and demonstrates that termination is in the child's best interests, we affirm.

FACTS

On July 19, 2007, D.T-L. was born to appellant-mother D.M.T. and appellant-father R.L. Shortly after birth, D.T-L. was removed from mother because mother tested positive for cocaine. The county assumed temporary legal custody and the child was placed in foster care. D.T-L. was adjudicated a child in need of protection or services (CHIPS), and the court ordered out-of-home placement. The assigned social worker met with mother and developed a case plan for her.

In May 2008, a TPR petition was filed. At the time, mother was not complying with her case plan, and father still had not been adjudicated the father. The petition alleged three grounds for termination of mother's rights: she failed in her parental duties, she was palpably unfit to be a party to the parent-child relationship, and the child was neglected and in foster care. The petition detailed her criminal history, substance-abuse history, and failure to address issues related to failed parenting, including her failure with two older children who were in long-term foster care. The petition alleged that father was palpably unfit based on his criminal history and frequent incarcerations, including several felonies and a recent burglary conviction. The petition alleged that termination

was in the child's best interests and that reasonable efforts had been made to reunite the family.

In August 2008, D.T-L. was one year old. Mother was living at a shelter and had been working on her case plan. Father had been adjudicated the father and was developing a case plan. By November 2008, mother was minimally complying with her case plan. She did not have suitable housing or employment and continued to have chemical-dependency issues. Father had two recent arrests and had tested positive for marijuana. By early 2009, mother had been working very hard to meet her case-plan goals. She was, however, still lacking suitable housing and employment. Father had stable housing and mother was spending several nights a week at father's home. Father had several positive UAs, but had otherwise been working on his case plan.

In February 2009, the parties drafted settlement agreements under which the parents would admit to the facts providing grounds for TPR, but termination would be stayed "for 90 days with a review hearing at that time, subject to an additional 90 day continuance and further review at the request of any party." TPR was to be stayed "on the condition that [each parent] fully complies with the conditions" in the agreements. Mother was required to: maintain sobriety; participate in Alcoholics Anonymous (AA); secure AA sponsorship; complete parenting classes; attend all the child's medical appointments; keep in contact, cooperate, and be truthful with the social worker and guardian ad litem (GAL); participate in individual therapy; find employment; visit her child; secure stable housing; and remain law-abiding and comply with the terms of her

probation. Father was required to do the same, in addition to completing a father's parenting group.

On February 10, 2009, the district court adopted the agreements. The court found that the parents had waived their rights to trial, admitted the petition's allegations establishing grounds for termination, and that the allegations were deemed true. The court further found that reasonable efforts had been made to rehabilitate and reunite the family and that it was in the best interests of the child "to have the [s]ettlement [a]greements ordered by the court." The district court ordered TPR and stated that the order was "stayed for 90 days, subject to an additional 90 days, on the condition that [the parents] fully comply with the conditions [in the agreements]." The order provided procedures for vacating the stay upon motion, with an opportunity for either parent to request a hearing, which would be limited to compliance with the agreements and the child's best interests.

On April 28, 2009, at the first 90-day review hearing, the parents were living together and they had unsupervised visits with D.T-L. The parents were making progress with their case plans. The GAL expressed concern about whether mother intended to live permanently at the current residence. The GAL and social worker recommended a trial home visit, which began on May 6.

At the next review hearing, on July 23, the reports were less positive. Neither parent provided documentation of AA attendance or sponsorship, nor had they shown proof of continued therapy. The GAL reported that requests for a visit with her had gone unanswered. Mother had missed a UA and was not consistently pursuing employment.

Questions remained about whether the home was a stable residence for her. Father missed several UAs and had several positive UAs. He was not remaining law-abiding, and only minimally participating in parenting classes. The district court's order noted that the 180-day stay in the agreement would expire on August 1, but that the parents requested a 45-day extension. The court granted the request and scheduled a hearing for September 1. At the hearing, the county moved to vacate the stay and order TPR. The social worker and GAL repeated concerns regarding compliance with the conditions. It was alleged that mother failed to comply with five conditions and that father failed to meet eight conditions. A hearing was set for October 27.

Before the October hearing, the social worker filed an affidavit that the parents' home was in foreclosure, the parents could not adequately heat the home, and the police had been called to the house on several occasions. The county subsequently learned that mother had left the home without D.T-L. after an abusive incident with father. D.T-L. was removed from the home. In November, the district court revoked the trial home visit, returned D.T-L. to her foster parents, and scheduled a December hearing on the stayed TPR order.

On February 5, 2010, following an evidentiary hearing, the district court rejected the parents' argument that the stayed termination could not be executed after 180 days had passed. The court credited the county's evidence and found that mother violated seven of the conditions and that father violated 11. The court found that the petition's statutory bases for termination were satisfied, based on "overwhelming evidence of . . . the continuing existence of good-cause [] for terminating . . . parental rights that they

admitted in February 2009.” The court stated that the parents “failed [the child] as her parents” and that it was not in the child’s best interests to continue efforts at reunification when she “has effectively been in a sort of legal limbo for most of her life.” The court further stated that the child “deserves a permanent home with a loving, caring adoptive family in a safe, stable, secure and healthy environment.” The district court vacated the stay and ordered both parents’ rights terminated. We consolidated the parents’ appeals challenging the TPR.

D E C I S I O N

Jurisdiction

Parents argue that the district court no longer had subject-matter jurisdiction after the 180-day period elapsed. The district court’s jurisdiction is a question of law, reviewed de novo. *In re Welfare of Children of R.A.J.* 769 N.W.2d 297, 302 (Minn. App. 2009). The fact that the parents asked to extend the agreement is not relevant to the presence or absence of subject-matter jurisdiction because parties cannot waive a defect in subject-matter jurisdiction. *In re Commitment of Giem*, 742 N.W.2d 422, 427 (Minn. 2007).

The district court has jurisdiction in CHIPS and TPR proceedings. Minn. Stat. § 260C.101, subs. 1, 2(1) (2008). If TPR proceedings do not result in termination, the district court still retains jurisdiction if the child is determined to be in need of protection or services. *See* Minn. Stat. § 260C.312(a) (2008). Generally, absent dismissal of a petition, a motion by a party, or a child reaching the age of 19, the district court’s

jurisdiction continues so long as it is in the best interests of the child. Minn. Stat. § 260C.193, subd. 6 (2008).

The district court's jurisdiction continued from the filing of the petition through the hearing on the stayed order. The February 2009 order contemplated continuing TPR jurisdiction. The order provided for hearings on the parents' compliance with the agreements, if necessary, and such hearings naturally could extend the time for decision beyond 180 days. Furthermore, the district court retained jurisdiction despite the passage of 180 days because the child was still in need of protection or services. The court adjudicated D.T-L. as a CHIPS in December 2007. All subsequent orders by the district court continued this ruling, and the notices for both review hearings after the stay designate the hearings as CHIPS proceedings. The CHIPS determination therefore remained in effect as of August 2009 when the agreements' 180-day period allegedly expired. Although a trial home visit was underway, custody remained with the county. Thus, the district court did not lack jurisdiction over the matter.

Parents advanced various contract theories to argue that the county violated the agreements by permitting the extension or seeking revocation beyond the 180-day period. Although the proceedings and further attempts at reunification continued through 2009 under the rubric of stayed TPR agreements, we decline to analyze such agreements in precisely the same way we would address an ordinary contract. The prevailing consideration here is the best interests of the child, a consideration that would be ill-served by focusing too closely on principles unique to contract law. *See In re Welfare of P.R.L.*, 622 N.W.2d 538, 544 (Minn. 2001) (stating that settlement tools "cannot exist

outside the statutory mandate that decisions are to serve a child's best interests"). Although TPR settlement agreements are permitted and their terms generally enforceable, the question when a stayed TPR order is executed is whether, at that time, statutory grounds for termination are shown to exist by clear and convincing evidence. *Id*; see also *In re Welfare of Children of B.J.B.*, 747 N.W.2d 605, 611 (Minn. App. 2008) (concluding statutory basis for termination satisfied when stayed order executed).

Here, when the stay was vacated in February 2010, the statutory bases for termination were proven by clear and convincing evidence. This evidence included the parents' admissions a year earlier and abundant proof that they had failed to comply with conditions specifically designed to address those admitted issues. The district court's order vacating the stay amply discussed and explicitly confirmed that good cause for termination continued to exist.

Mother's Conditions

Mother argues that the district court clearly erred in finding that she failed to comply with the conditions of her agreement. The district court found that mother failed to satisfy seven of the conditions, and these findings influenced the court's conclusion that statutory bases for TPR continued to exist when it executed the order. See *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 90 (Minn. App. 2008) (stating that district court must determine if conditions of stay were violated and whether violations justified execution of order). We review the TPR order to determine whether the district court's findings are supported by substantial evidence, and whether they are clearly erroneous.

P.R.L., 622 N.W.2d at 543. We defer to the district court’s assessment of witness credibility. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

First, mother was required to maintain sobriety, to “submit to random UA testing,” and to have no positive UAs. Any “[f]ailure to obtain a UA test on the day it [was] requested [was deemed] a positive UA.” Mother missed scheduled UAs and had a diluted UA. She violated the condition. Furthermore, the social worker expressed doubt regarding mother’s denial of using alcohol and the district court credited the social worker’s testimony. The record also shows that the October domestic-abuse incident involved alcohol use by both parents. The district court’s finding of failed compliance is supported by substantial evidence.

Second, mother was required to attend weekly AA meetings and to provide written verification of her attendance “by the first day of [the following month].” Mother did not timely provide documentation of attendance. The social worker testified that she did not believe that mother attended the meetings. In fact, after mother provided attendance documentation, the social worker indicated that she had evidence that mother fabricated her attendance log. The district court’s finding that mother failed to comply with this condition is supported by substantial evidence.

Third, mother was required to “maintain an AA [] sponsor” and provide contact information to the social worker within two weeks of signing the agreement. Mother did not provide information about a sponsor for many months, and when she finally provided a name, the social worker questioned whether mother’s friend was an appropriate sponsor. Mother then provided a second name, but when the social worker called to

verify the second name, the person denied knowing mother. The record provides substantial evidence that mother failed to comply with this condition.

Fourth, mother was required to “contact and meet with the [GAL] . . . as requested by the GAL.” The GAL attempted to arrange meetings, but had difficulty getting mother to agree on times. When the GAL recommended extending the agreement, she did so only because she had not had sufficient opportunity to observe the child in the parents’ home. They finally scheduled a meeting for August 24, but mother canceled the visit. The district court’s finding that mother failed to comply with this condition is supported by the record.

Fifth, mother was required to “participate in individual therapy” and family or group therapy if requested by the social worker or mother’s therapist. Mother had a therapist, but discontinued therapy for most of the summer while the stay was in place. After obtaining a new therapist in August 2009, she saw him only a couple of times, and did not participate in couple’s therapy, despite the therapist’s recommendation. The district court’s finding that mother failed to comply with this condition is supported by the record.

Sixth, mother was required to “remain law-abiding.” She did not comply with this condition, because she was convicted of two gross misdemeanors in August 2009. Finally, mother was required to “cooperate and be truthful with” the social worker and GAL. The social worker and GAL questioned mother’s truthfulness, and stated that gaining her cooperation was difficult. The social worker believed that mother fabricated her AA documentation and also testified that mother had not been forthcoming about

difficulties living with father. And mother failed to inform the social worker and GAL about her conviction. The record supports the district court's finding that mother was not cooperative or truthful with the social worker and GAL.

Although some failures are more serious than others, the district court's findings on all seven of mother's violated conditions are supported by the record; thus, the finding that she failed strict compliance is not clearly erroneous. The district court also found that mother did not *substantially* comply with the conditions; this conclusion is supported as well. Mother failed strict compliance on half of her conditions. The failure to cooperate and be truthful is particularly troubling, because it undermined the social worker's and GAL's capacity to help mother. And the social worker specifically testified that mother's noncompliance was significant, because it showed that she was not addressing concerns critical to her ability to parent D.T-L. The failures support the district court's TPR order.

Best Interests

Both parents challenge the district court's conclusion that termination is in the best interests of D.T-L. In termination proceedings, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2008). The district court "must consider a child's best interests and explain its rationale in its findings and conclusions." *In re Termination of Parental Rights of Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). The consideration consists of balancing 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). In the context of a stayed TPR,

decisions controlling termination are to be made at the time the stay is vacated. *See P.R.L.*, 622 N.W.2d at 544 (stating that issue on appeal is whether grounds for termination existed at time stay was lifted). Review consists of “determining whether the district court’s findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether they are clearly erroneous.” *Tanghe*, 672 N.W.2d at 625. Our review accounts for “the substantive evidentiary burden of clear and convincing evidence.” *Id.*

The district court’s findings show that it thoroughly considered D.T-L.’s best interests and explained its rationale for concluding that termination served those interests. The court found that mother has a “history of chemical dependency, criminal activity and failure as a parent” and that she “has been unable to provide a healthy, stable home for [the child] on a consistent basis since the time of [the child’s] birth.” The district court found that father too “has a significant criminal history and history of chemical dependency/abuse.” It noted that, as of October 2009, mother felt unsafe at father’s home, and that “[i]t is inconceivable that [the child] would be any safer” based on father’s “recent history of domestic violence.” It found that the child had been in alternative care for 24 months out of the 30 months since her birth, and that the parents’ conduct precluded returning her to their care for the foreseeable future. In numerous findings, the district court addressed the child’s need for a “safe, secure, and most importantly, permanent home,” and stated that the parents’ failures to address issues or to comply with services and conditions demonstrated their inability to provide permanency for the child. The court stated that D.T-L.’s needs outweighed each parent’s desire to

parent her, and expressly stated in numerous findings that termination is in D.T-L.'s best interests.

The record provides clear and convincing support for the district court's finding. In entering the agreements, parents admitted to allegations in the TPR petition, which laid out their criminal histories and their inability to parent up through February 2009. The evidence of the parents' failures under the agreements—affirmed with respect to mother and not challenged by father—shows that they continued to succumb to the same failures they admitted to in February. And the testimony at the revocation hearing discussed concerns that remained up to the time of the hearing, including the October domestic-violence incident, difficulty with sobriety, and instability in housing. The record does show that the parents love the child and had a strong interest in maintaining a parent-child relationship, but their failures to meet the necessities of providing a suitable home weighed against D.T-L.'s interest in the relationship, and weighed heavily in favor of her competing interest in being adopted and achieving a permanent home. The district court's conclusion that termination is in D.T-L.'s best interests is supported by substantial evidence and is not clearly erroneous.

Affirmed.