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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1127**

In the Matter of the Welfare of the
Children of: D. M. R., A. G. S. and C. W. S.,
Parents.

**Filed November 19, 2012
Affirmed
Worke, Judge**

Crow Wing County District Court
File Nos. 18-JV-12-184, 18-JV-11-2631

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Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Chutich,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant mother challenges a default judgment that terminated her parental rights to her two minor children, based on the statutory grounds of parental refusal or neglect to comply with parental duties, palpable unfitness, failure of the county's reasonable efforts to correct neglect conditions, and the children remaining neglected and in foster care. Because clear and convincing evidence supports the district court's findings, which support its decision to terminate appellant's parental rights, we affirm.

FACTS

M.R.R. (D.O.B. 4/1/06) and M.L.R. (D.O.B. 1/27/09)¹ came to the attention of Crow Wing County when police received a report on April 4, 2011, that M.R.R. was standing alone near a busy street. Police next received a report on May 25 that M.R.R. was missing. On June 20, the children were taken into emergency protective care and placed on a 72-hour law enforcement hold after police conducted a welfare check. During the first check on June 19, police discovered the home had "unacceptable living conditions," and during the second check on June 20, the children were found "unclean and in the care of an intoxicated male." Respondent Crow Wing County Social Services initiated a child-in-need-of-protection (CHIPS) petition. By district court order, the children were placed out of home on June 22.

¹ The parental rights of the children's fathers were also terminated and are not challenged.

Appellant D.M.R. had lengthy and extensive involvement with child-protective services in Chisago County, beginning in 2001. Appellant had a long history of leaving M.R.R. and her older children alone. Child-endangerment proceedings in Chicago County included determinations of maltreatment and neglect, failure to address medical needs of the children, and abuse of the children by a non-family member. The termination-of-parental-rights (TPR) petition filed by Crow Wing County in this case illuminates a striking chronology of neglect and maltreatment of M.R.R. and M.L.R., including three allegations of appellant using drugs during her pregnancy with M.R.R.; M.R.R. testing positive for cocaine at birth; M.R.R.'s year-long out-of-home placement; a report of medical neglect; Chisago County's thwarting of appellant's plan to permit a convicted felon who was not the father of M.R.R. or M.L.R. to live in her home; appellant's arrest for operating a motor vehicle while under the influence of narcotics; a CHIPS adjudication involving M.R.R. that arose from issues similar to those in this case; M.R.R. spending over a year in out-of-home placement beginning in July 2008; a TPR petition filed in 2008; appellant's voluntary transfer of custody of two of her other children to their fathers; appellant's acknowledgment of a long history of substance abuse; a psychological examination that diagnosed appellant as having cannabis dependence, generalized anxiety disorder, post-traumatic stress disorder, a parent-child relational problem, and mixed personality disorder with paranoid, avoidant and dependent features; and a parenting assessment that reported appellant lacked an understanding of parent-child roles or child development.

After the CHIPS petition was filed in this case, a parenting plan was developed for appellant that addressed issues of appellant's chemical dependency; parenting; mental health; housing; visitation with the children, and provision of the children's basic necessities, such as food, clothing, and bedding. In August 2011, appellant began an intensive out-patient drug-treatment program, which she completed in October 2011. She then failed to complete a low-intensity program or mandatory drug testing. Appellant completed a parenting/psychological evaluation in August 2011 with Dr. Judith Huber. Dr. Huber diagnosed appellant as having a personality disorder (NOS), polysubstance dependence, depressive disorder, and found "rule out" issues of dysthymic disorder, generalized anxiety disorder, cognitive disorder, and schizoid personality disorder. Regarding her recommendation as to services to be offered appellant, Dr. Huber stated,

Given the extensiveness of [appellant's] mental illness and chronic severe dysfunction, it is highly unlikely that she will be able to provide a safe, nurturing home environment for [the children], and certainly not within any reasonable time frame. Her primary issues are maintaining sobriety and improving her mental health. The latter *requires* intensive, long term, appropriate psychotherapy/mental health treatment that will increase her awareness of and healthy coping with her chronic mental health symptoms and vulnerabilities. In addition, because her adult functioning history is so extremely poor, she will need considerable time to develop the many functional skills that she is lacking.

Dr. Huber concluded that appellant's "current mental health and function needs *would make it extremely difficult, if not impossible, for her to parent adequately or independently within permanency timelines.*" Referrals were made in various areas to address appellant's mental health, parenting, and employment issues. The TPR petition

specified thirteen services offered to appellant; despite this, appellant failed to demonstrate any effort to obtain employment or a stable home for the children, was uncooperative with social services, and missed scheduled visitation with the children.

Appellant failed to appear at the TPR hearing on May 29, 2012. The district court proceeded with a default hearing. Dene Justen testified that she was the ongoing case worker for the family and participated in drafting the TPR petition; she testified that the information contained in the petition was “true and correct.” She testified that appellant failed her last drug test, refused to submit to testing since October 2011, and that she had been unable to locate appellant since April 23, 2012.² Justen also testified that appellant was unemployed and living with an eighteen-year-old daughter, but that the residence currently appeared to be abandoned. Justen stated that appellant missed the last four bi-weekly visits with the children and that her last visitation was March 28, 2012. Justen concluded that appellant was using chemicals, had no housing, was unemployed, and did not maintain contact with the children. Regarding the children, Justen testified that M.R.R. demonstrated consistent progress in becoming prepared for kindergarten, both academically and behaviorally. Justen testified that it was in the children’s best interests that appellant’s parental rights be terminated.

After summarizing appellant’s status regarding continued substance abuse; county services offered; deficiencies in employment, housing, parenting, and contact with the

² This was the last time appellant had contact with her attorney. Appellant’s attorney could not explain appellant’s nonappearance at the TPR hearing. The district court found that appellant’s attorney made reasonable efforts to contact her.

children; the district court concluded that it was in the children's best interests that appellant's parental rights be terminated. This appeal followed.

DECISION

The parties address this appeal on the merits, although the district court granted default judgment, and appellant did not move to vacate that judgment. On direct appeal from a default judgment, "[o]ur review is limited [] to whether the evidence on record supports the findings of fact and whether the findings support the conclusions of law set forth by the [district] court." *Nazar v. Nazar*, 505 N.W.2d 628, 633 (Minn. App. 1993), review denied (Minn. Oct. 28, 1993), superceded by statute, Minn. Stat. § 518.551, subd. 5b(d). "[O]n appeal from a default judgment, a party in default may not deny facts alleged in the complaint when such facts were not put into issue below." *Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990), review denied (Minn. Apr. 13, 1990); see *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 493 (Minn. App. 1995) ("There are only a limited number of issues that may be raised in a direct appeal from a default judgment. These include arguing that the [] complaint did not state a cause of action or that the relief granted was not justified by the complaint."). Here, the record evidence supports the district court's findings of fact, which support its legal conclusions. However, we will review each of the statutory bases that support the district court's decision, noting that only one statutory ground is necessary to support a termination when it is in the children's best interests. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). The petitioner party bears the burden of proving the conditions supporting termination by clear and convincing evidence. Minn. Stat. § 260C.317, subd.

1 (2010); Minn. R. Juv. Prot. P. 39.04, subd. 2(a). The petitioner must prove “specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child.” *T.R.*, 750 N.W.2d at 661.

Failure to comply with parental duties

Under Minn. Stat. § 260C.301, subd. 1(b)(2) (2010), a district court may terminate parental rights if the parent “has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship[.]” The district court found that clear and convincing evidence in the record to support this basis for termination. Appellant asserts that the district court made no findings “regarding food, clothing, shelter, education, and other care . . . specifically addressed by the statute.” Appellant’s statement is inaccurate.

After the children were removed from her care in June 2011, the district found that appellant made only minimal efforts to address the primary issues that precluded her from being able to care for her children: her mental health and her chemical dependency. The district court found that appellant was discharged from chemical-dependency treatment in January 2012, that she failed to maintain sobriety, and that she had no contact with her individual therapy provider for six to eight weeks prior to the TPR hearing. Without resolving these issues, appellant was unable to meet her children’s basic needs. Further, the district court found that at the time of the hearing appellant had no known residence, no job, and had not been in contact with the children for two months. The district court also found that the county offered appellant numerous services

to address these issues. Clear and convincing evidence supports the district court's findings and determination on this issue.

Palpable unfitness

Under Minn. Stat. § 260C.301, subd. 1(b)(4) (2010), a district court may terminate parental rights if the parent

is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

The district court's findings and the record fully support the district court's decision. As found by the district court, the record included appellant's long history of chemical dependency, which, according to the social worker, was unresolved at the time of the termination hearing, and unresolved and serious mental-health issues that a mental-health evaluator concluded would prevent appellant from parenting within the permanency parameters. The effect to the children of appellant's parenting limitations, either due to her chemical dependency or mental illness, was that they were unsupervised, chronically neglected, subjected to a dirty and dangerous home setting, and their basic needs were unmet by their mother. This evidence is sufficient to demonstrate appellant's palpable unfitness to parent M.R.R. and M.L.R.

County's reasonable efforts

Termination of parental rights is permitted if after a child's out-of-home placement, "reasonable efforts . . . have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5) (2010). A county's reasonable efforts are presumed to have failed if "the parent continues to abuse chemicals," among other circumstances. *Id.*, subd. 1(b)(5)(iv)(E); see *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996) (stating that social service agency's reasonable reunification efforts must be offered to resolve "the problem presented"). Appellant asserts that she was offered inadequate services because despite having a serious mental illness and a noted need for aggressive treatment, she was not offered an adult mental-health worker. Appellant was referred for assignment of a mental-health worker in May 2011, but a worker was not assigned because of a "lack of resources." Thereafter, appellant was assigned an "adult rehabilitative mental health worker" beginning in November 2011. Appellant began therapy, but she cancelled appointments and later began individual therapy with another provider. The district court's findings support these facts. As part of its reunification effort, the county offered psychiatric consultants and medication management, individual therapy, and adult mental-health services. At the time of the TPR hearing, appellant had last met with a therapist six to eight weeks earlier. While the county's efforts in this area may not have been optimal, they were reasonable under the circumstances. There is a sufficient factual basis to support the district court's decision on this ground for termination.

Children neglected and in foster care

Termination of parental rights is permitted if a “child is neglected and in foster care.” Minn. Stat. § 260C.301, subd. 1(b)(8) (2010). To determine whether to terminate parental rights because a child is neglected and in foster care, courts look at the length of time the child has been in foster care; the effort the parent has made to adjust circumstances, conduct, or conditions to allow the child to return to the home; the parent's contact with the children preceding the petition; the parent's contact with the responsible agency; the adequacy and availability of services offered or provided to the parent; and the social service agency's efforts to rehabilitate and reunite. Minn. Stat. § 260C.163, subd. 9 (2010). Appellant asserts that the district court failed to ascertain how long the children were in foster care or to make other required findings, except for a finding that appellant failed to make contact with the children in recent months.

While the district court did not specifically list and apply the factors enumerated in section 260C.163, subdivision 9, the district court's findings are supportive of them. The court specifically found that the children were in out-of-home placement as of June 22, 2011. The court also made express findings related to appellant's two primary conditions that prevented her from parenting her children and appellant's conduct with regard to those conditions, appellant's lack of contact with the children in the two months before the TPR hearing, and the services offered to appellant to address her conditions and the nature of the efforts made by the county to address those conditions. While the district court's findings did not address whether additional services would have been useful, the fact that appellant could not be located in the months before the TPR hearing made any

such finding unnecessary. On this record, the district court's findings support its decision that termination of appellant's parental rights is warranted because the children remained neglected and in foster care.

Children's best interests

Finally, appellant claims that the district court "failed to fully analyze" the children's best interests, as required by law. When a statutory ground for termination exists, "a child's best interests may preclude terminating parental rights." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009 (quotation omitted); see Minn. Stat. § 260C.301, subd. 7 (2010) ("the best interests of the child" are "paramount" in termination proceedings). A best-interests analysis requires consideration and balancing of three factors: the child's interest in preserving a parent-child relationship, the parents' interest in preserving that relationship, and any competing interest of the child. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). A best-interests determination is subject to abuse-of-discretion review. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), review denied (Minn. Jan. 6, 2012).

The district court made a best-interests finding that is strongly supported by the evidence, although it did not make specific findings regarding the *R.T.B.* factors. However, appellant did not appear at the TPR hearing or otherwise express her wishes to continue parenting the children and was out of contact with them and the county for months preceding the TPR hearing. Further, the record shows that the children were very poorly cared for while in appellant's custody and began to thrive when they were placed in foster care. Justen testified that it is in the children's best interests to terminate

appellant's parental rights. We conclude that the district court's best-interests conclusion should be upheld.

Affirmed.