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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1512**

In the Matter of the Welfare of the Child of:
B. G. and B. C., Parents.

**Filed March 13, 2017
Affirmed
Jesson, Judge**

Chippewa County District Court
File No. 12-JV-16-95

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Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

Appellant-father challenges the termination of his parental rights. Because clear and convincing evidence supports the district court's determination that reasonable efforts failed to correct the conditions leading to the child's out-of-home placement and termination is in the child's best interests, we affirm.

FACTS

The child who is the subject of these proceedings, A.C., was born in September 2013 to father B.C. and mother B.G. The small family lived in Montevideo with extended family nearby. A.C.'s cousin and uncle, and the uncle's girlfriend, C.S., lived within eyesight of A.C.'s home, and A.C.'s aunt also lived in the area. Friction arose between the parents and the extended family over the care of A.C.

In July 2015, the aunt reported to police that she removed the child from the home because the parents were arguing. Four days later, the aunt disclosed to police concerns over mother's drug use, smoking, and overall lack of parenting.¹ A week later, father had an appointment and mother was at work, so father asked the cousin to babysit, but the cousin never agreed. Father left for his appointment. C.S. saw father leave and wondered if the child was left alone. The cousin went into the home to investigate and found two-year-old A.C. sitting in his highchair, home alone. The child was taken to C.S.'s home, and she contacted police, who contacted social services.

Police arrived first and spoke with C.S., who expressed frustration over the child's care and alleged "several domestic situations." Social workers then arrived to find the child, members of the extended family, and police gathered outside C.S.'s residence. A.C. was dirty, with a full diaper, and wearing one shoe. Social workers spoke with the aunt, who said that two weeks prior she had seen methamphetamine accessible to A.C. in a back

¹ As a result of the aunt's disclosures, Chippewa County contacted the parents and offered voluntary services through the Parent's Support Outreach Program, but those services were declined.

bedroom and that she had once seen A.C. pick up a marijuana pipe. She expressed concern about the child not being fed and the dirty conditions of the home and stated that the parents used garbage bags as diapers. C.S. echoed these concerns and said that she had seen father beating up mother in front of the child.

Father returned from his appointment to find the group gathered outside C.S.'s residence. Father was questioned about the alleged drug use, lack of food, domestic violence, and conditions of the home. Social workers wanted to inspect the home in light of the allegations of drugs and dangerous conditions in the home, but father refused. Because of the concerns raised by family members, as well as the fact that a two-year-old had been left home alone, police signed a temporary 72-hour hold, which allowed them to take immediate custody of A.C. A.C. was placed with his aunt. Days later, in an effort to return A.C. to the parental home, social workers met with the parents, offered a safety plan, and requested drug testing and a safety check of the home; the parents refused.

On August 5, 2015, a child in need of protection or services (CHIPS) petition was filed and an emergency protective care (EPC) hearing was held.² Both mother and father appeared at the EPC hearing. Following the hearing, the district court issued an EPC order that concluded that (1) the CHIPS petition established a prima facie showing that A.C. was without adequate care and that the parental home was a dangerous or injurious environment, and (2) A.C. should remain in protective care. Father did not appeal the EPC

² An EPC hearing is a hearing that is generally required if a child has been taken into temporary protective care, as occurred here with the 72-hour hold. Its purpose is to determine if the child should be returned to the parental home or remain in protective care. Minn. R. Juv. Prot. P. 28.01, 30.01, subd. 1.

order. The district court ordered supervised visitation for the parents at the discretion of family services, but permitted the establishment of unsupervised visitation upon completion of drug screening and a home-safety inspection.

Six days later, an admit/deny hearing was held where the parents could either admit or deny the allegations set forth in the CHIPS petition.³ Mother attended; father did not attend. The district court continued the matter,⁴ and two days later at the continued hearing both parents failed to appear. The district court proceeded by default, adjudicated A.C. a child in need of protection or services, and maintained his out-of-home placement. These adjudications were set forth in a CHIPS order. Father did not appeal the CHIPS order.

In late-August 2015, the aunt became unable to care for A.C. Efforts were made to place the child with a relative. Mother had provided a list of three potential placement options: two family friends and A.C.'s grandfather. Father failed to provide a list of potential placement options. Social services spoke with the grandfather, but ultimately determined that he was not a viable option because he had medical issues. A.C. was placed with a foster family in September 2015.

In an effort to reunify the family, Chippewa County Family Services developed an out-of-home placement plan providing the following services for the parents: (1) parenting education/classes; (2) child care services; (3) mental health assessments/services; (4) chemical health services and drug screens; and (5) case management. The district court

³ Minn. R. Juv. Prot. P. 34.01, 35.01, subd. 1.

⁴ The parents had yet to fill out attorney applications. Mother was directed to fill out an application; the district court continued the matter and appointed one attorney, Krystal Lynne, to represent both parents.

approved the plan, which was subsequently revised twice to provide further services, including transportation services, supervised visitation services, and a child development assessment. The parents were provided with transportation to facilitate visitation since A.C.'s foster home was outside of the Montevideo area and visitations were moved to St. Cloud.

In order to comply with the out-of-home placement plan, father was expected to (1) cooperate with social services and attend scheduled appointments; (2) complete chemical testing and undergo a chemical-use assessment if issues were identified; (3) participate in parenting classes in September 2015; (4) complete a diagnostic assessment and follow all recommendations; and (5) provide a list of relatives for placement options and a list of friends that could assist with A.C.'s care. The plan further ordered supervised visitation between the parents and the child.

Initially, father failed to comply with most important aspects of his case plan. He was noncompliant with chemical testing and failed to keep appointments, attend hearings, and attend scheduled visitations. As the case moved into September 2015, he began attending visitations, but failed to attend scheduled parenting classes. The following month, he completed his required diagnostic assessment, which recommended individual therapy, but he began missing visitations again. Further, he failed to attend individual therapy as recommended.

On November 7, 2015, father was arrested for fifth-degree drug-possession; he was convicted and served jail time. While in jail, he underwent a chemical-use assessment and

began chemical dependency treatment, which he eventually completed. He was released in January 2016. He did not attend visitations with A.C. during his time in jail.

Father resumed visitations in February 2016, and the next month he completed a comprehensive assessment and enrolled in parenting classes. His comprehensive assessment recommended a chemical dependency aftercare program. He engaged in aftercare, but missed numerous sessions. Around this time he was charged with theft and attended only one visit with the child in March.

In mid-April 2016, father started to regularly attend visitation. He was court ordered to find independent housing, and he did secure an apartment in Willmar. However, when a safety check of his apartment was completed, several areas of concern were noted, including an obstructed window and a lack of electrical-outlet covers and child-proof cabinets. Father failed to make arrangements for a recheck, and a subsequent visit by a social worker revealed that not all of the safety concerns had been addressed.⁵

Through the end of April and May 2016, father began consistently attending visitation and he completed his parenting classes. However, visitation again became inconsistent in June and July 2016. Around this time, police were called to father's residence because of a verbal argument between father and mother.

On June 7, 2016, a termination of parental rights (TPR) petition was filed against father, alleging that the conditions leading to A.C.'s out-of-home placement had not been

⁵ Social services also believed that mother was residing with father at the apartment, which was a concern because father had been directed to obtain independent housing after a TPR petition was filed against mother.

corrected.⁶ In August 2016, the TPR proceedings came on for trial. That day, mother voluntarily terminated her rights to A.C. Father moved forward with the trial, and testimony was received from mother, father, two social workers, A.C.'s foster parent, A.C.'s guardian ad litem, and a therapist.

Following the trial, the district court filed an order terminating father's parental rights, finding that the conditions leading to A.C.'s out-of-home placement had not been corrected despite reasonable efforts. The district court found that father (1) attended 28 of 57 scheduled visits with A.C., (2) did not appear for drug testing on five occasions and refused testing on three occasions near the time of trial, (3) missed or was late for several appointments, (4) failed to find safe, independent housing because he lived with mother and neglected to correct safety concerns in the home, (5) missed numerous therapy appointments, (6) failed to provide a list of relatives and complete a medical form in a timely manner, and (7) failed to comply with the supervised visitation transportation policy. The district court also found that termination of father's parental rights was in A.C.'s best interests. This appeal follows.

D E C I S I O N

Father steadfastly maintains that his child's initial removal from the home was wrongful. There was no evidence, he asserts, that the child had been abused or that his basic needs were unmet. Rather, according to father, the only lapse was that he momentarily left the child alone. This is not sufficient evidence to support removal, he

⁶ A TPR petition was filed against mother in February 2016.

contends, and even if the removal was appropriate, father alleges that he resolved the “only actionable basis” for removal (leaving the child unsupervised) so that the conditions leading to the child’s out-of-home placement were successfully addressed.

Because father failed to appeal the initial CHIPS and EPC determinations, his arguments concerning the legality of the initial removal are not properly before us. And because we conclude that clear and convincing evidence supports the district court’s determination that reasonable efforts failed to correct the conditions leading to the child’s out-of-home placement and termination is in the child’s best interests, the termination of father’s parental rights was proper.

I. Father’s challenges to the EPC and admit/deny proceedings are untimely.

Father asserts that his due process rights were violated when the district court failed to receive evidence at the EPC hearing and adjudicated A.C. a child in need of protection or services by default at the admit/deny hearing. He also challenges the sufficiency of the evidence for removing A.C. from the home and alleges removal was the result of his refusal to consent to a search of his residence. His challenges are untimely.

In a juvenile protection matter, persons aggrieved by a final order affecting a substantial right may appeal that order, but such an appeal must be filed within 20 days of notice of the filing of the final order. Minn. R. Juv. Prot. P. 47.02, subds. 1, 2. Here, father has appealed only the district court’s order of August 29, 2016, terminating his parental rights.

In this case, the EPC order was not an appealable final order affecting substantial rights. *See In re Welfare of E.G.*, 876 N.W.2d 872, 873-74 (Minn. App. 2016) (ruling that

intermediate dispositional orders are not appealable as a matter of right).⁷ The CHIPS order was an appealable final order. Minn. R. Juv. Prot. P. 47.02, subd. 1. Father could have raised his challenges to the EPC and admit/deny proceedings following the CHIPS order, but he did not. Because the time for appealing the CHIPS order has expired, that order is final, and challenges to that order amount to an improper collateral attack on that ruling. *See Dieseth v. Calder Mfg. Co.*, 275 Minn. 365, 370-71, 147 N.W.2d 100, 103 (1966) (stating, in a civil case, that “[e]ven though the decision of the trial court in the first order may have been wrong, if it is an appealable order it is still final after the time for appeal has expired”); *Nussbaumer v. Fetrow*, 556 N.W.2d 595, 599 (Minn. App. 1996) (stating Minnesota does not permit collateral attacks on facially valid judgments), *review denied* (Minn. Feb. 26, 1997).

II. Clear and convincing evidence supports the district court’s termination of father’s parental rights on the ground that reasonable efforts have failed to correct the conditions leading to A.C.’s out-of-home placement.

Father argues that the statutory criteria for termination of his parental rights were not met because he corrected the condition that led to A.C.’s removal. He argues that the only substantiated basis for removal of A.C. was lack of supervision, and this condition

⁷ As a practical matter, father has not provided this court with transcripts from either the EPC or the CHIPS proceedings, so we are left with a limited picture of what occurred. While it is unclear what evidence was admitted in those prior proceedings, we do note that an EPC determination may be based upon the allegations set forth in the petition if those allegations constitute a prima facie showing of endangerment. Minn. R. Juv. Prot. P. 30.08, subd. 1. As such, father’s argument that the district court failed to receive evidence at the EPC hearing appears unavailing even if it were properly before us.

was corrected through parenting classes. Father also argues that he substantially complied with the requirements imposed by the district court.

A district court may terminate parental rights if there is clear and convincing evidence establishing at least one statutory ground for termination and termination is in the child's best interests. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). We review the district court's findings in a termination case for clear error, *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008), and its decision to terminate for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

Here, termination of father's parental rights required a showing that reasonable efforts failed to correct the conditions leading to A.C.'s out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5) (2016). Given father's challenges to the termination of his parental rights, it must be determined what conditions led to A.C.'s out-of-home placement and whether those conditions were corrected. We first address the conditions that led to A.C.'s out-of-home placement.

In determining what conditions led to a child's out-of-home placement, reviewing courts examine the conditions that gave rise to the child's CHIPS adjudication. *In re Child of E.V.*, 634 N.W.2d 443, 447-48 (Minn. App. 2001); *In re Welfare of M.A.*, 408 N.W.2d 227, 235-36 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987). Here, the CHIPS order found that (1) the parents were unable or unwilling to provide necessary food, clothing, shelter, education, or other required care; and (2) the child's environment was injurious or dangerous.

Contrary to father's argument that the only condition leading to the child's out-of-home placement was a single incident of lax supervision, the conditions leading to A.C.'s out-of-home placement were more numerous and substantial. A.C. was removed because of inattentive and neglectful parenting, as well as alleged drug use and domestic abuse in the home.⁸

We next turn to determine whether these conditions were corrected. There is a presumption that the conditions leading to the child's out-of-home placement have not been corrected if the parent has not "substantially complied with the [district] court's orders and a reasonable case plan." Minn. Stat. § 260C.301, subd. 1(b)(5)(iii). Here, the district court found that father had not complied with the court's orders and a reasonable case plan. Clear and convincing evidence supports this determination.

Court-approved case plans are presumed reasonable. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 388 (Minn. 2008). Here, under the court approved case plan, father was expected to (1) cooperate with social services and attend scheduled appointments; (2) complete chemical testing and undergo a chemical-use assessment if issues were identified; (3) participate in parenting classes in September 2015; (4) complete a diagnostic assessment and follow all recommendations; and (5) provide a list of relatives

⁸ As noted in the district court's TPR order, A.C. was removed due to "suspected drug use, ineffective parenting, neglect of the child, the presence of domestic abuse in the presence of the child, failure to supervise the child, access by the child to drugs and drug paraphernalia, refusal to complete drug screens and allow the home to be inspected, and unwillingness to work with family services to develop a safety plan."

for placement options and friends that could assist with A.C.'s care. Further, supervised visitation was established by order of the district court.

Father attended only 28 of 57 scheduled visits with A.C. As noted by the district court, these missed visits prevented father from progressing to unsupervised and trial home visitation "so that meaningful work towards reunification could occur." His attendance at family services appointments was poor. He did not complete all of his required drug screens. The district court specifically found that he refused drug testing three times total in July/August 2016, which was just prior to trial, and failed to appear for drug screens five times total in January/February 2016. He missed aftercare appointments and failed to complete aftercare by the time of trial. He was ordered to "maintain an independent, permanent home suitable for [A.C.]," but was living with mother and failed to correct safety concerns in the home. He failed to provide a list of relatives, which impeded placement with a relative and led to A.C.'s placement with a foster family. And he failed to consistently attend individual therapy, as recommended by his diagnostic assessment.

Clear and convincing evidence supports the district court's conclusion that father did not substantially comply with his reasonable case plan and the district court's orders. As such, the record supports the statutory presumption that father failed to correct the conditions leading to A.C.'s out-of-home placement. The district court agreed with therapist Deena McMahon's assessment of father's case compliance: "[Father] has simply not done the work his son needed him to do."

Father contends that he did substantially comply. He argues that he completed parenting classes, obtained appropriate housing, completed treatment, and commenced

individual therapy. Father overstates his compliance. He did eventually complete parenting classes. However, he did not attend the classes that had been scheduled in September 2015; he did not complete parenting classes until May 18, 2016. Regarding housing, father failed to correct safety concerns in his home and was residing with mother, despite being ordered to live independently. He completed treatment after being convicted and serving jail time for drug possession, but he continued to miss drug tests and aftercare appointments, and he had not completed recommended aftercare by the time of trial. Lastly, father admitted to not attending individual counseling.

As such, the district court properly concluded there was a presumption that father failed to correct the conditions leading to A.C.'s out-of-home placement. The district court ultimately concluded that father failed to overcome this presumption, a conclusion that is supported by the record, which indicated persisting issues with parental neglect, drug use, and domestic disturbances in the home.

And beyond any statutory presumption relating to his case compliance, there is clear and convincing evidence that father failed to correct the conditions that led to A.C.'s out-of-home placement. He only attended half of his scheduled visitations. This evidences ongoing neglect of parental duties and an unwillingness to provide A.C. necessary care. We have previously stated that “a parent has a duty to maintain the relationship of parent-child with a child in foster care” and held that attending only half of scheduled visits and minimally cooperating with reunification efforts is sufficient grounds for termination. *In re Welfare of D.C.*, 415 N.W.2d 915, 917-19 (Minn. App. 1987). While father's inability to obtain safe and stable housing, his conviction for drug possession, and his failures to

consistently submit to testing and undergo individual therapy are all clear evidence that father did not correct the conditions leading to the child's removal, the most convincing evidence is the chronic failure to visit with the child. The district court did not abuse its discretion in terminating father's parental rights.

III. Termination of father's parental rights was in A.C.'s best interests.

In a termination-of-parental-rights case, the best interests of the child is "the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2016). A district court must make "findings regarding how the order is in the best interests of the child." Minn. R. Juv. Prot. P. 42.08, subd. 1(b). In analyzing the best interests of the child, the district court must balance three factors: "(1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). This court applies an abuse-of-discretion standard of review to a district court's determination that termination of parental rights is in a child's best interests. *J.R.B.*, 805 N.W.2d at 905.

Here, the district court made extensive findings on why termination of father's parental rights was in A.C.'s best interests. The district court concluded that A.C.'s interests in "a healthy, stable and safe environment" outweighed any interests in maintaining the parent-and-child relationship. The district court noted that father loves A.C., but the child is not attached to father and is confused by visits, a confusion compounded by the fact that father "chose to cancel or not request six visits in June and July" of 2016. The district court's determination is consistent with the testimony of A.C.'s guardian ad litem, who testified that she feared moving A.C. from his foster home

placement would create an “attachment disruption.” Likewise, therapist Deena McMahon, who performed an attachment assessment, testified that the child was not attached to father and that it would be devastating for A.C. to be removed from his foster parents. The district court concluded that termination of father’s parental rights is in A.C.’s best interests. We agree.

Affirmed.