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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0021**

In the Matter of the Welfare of the Child of:
J. A. K. and J. M. S.,
Parents.

**Filed May 30, 2017
Affirmed
Toussaint, Judge***

Anoka County District Court
File No. 02-JV-16-879

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Considered and decided by Cleary, Chief Judge; Kirk, Judge; and Toussaint, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Judge

Appellant-mother J.A.K. used methamphetamine while pregnant, prompting Anoka County's involvement with J.A.K. and her daughter, E.M.K. The county later petitioned to

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

terminate J.A.K.'s parental rights to E.M.K. and presented evidence at trial detailing J.A.K.'s struggles with substance abuse, domestic violence, mental health, combative behaviors, and begrudging case-plan compliance. Substantial evidence addressed E.M.K.'s past traumas, her present and future needs, and J.A.K.'s ability to address those needs. The district court acknowledged J.A.K.'s progress and her desire to be reunited with E.M.K., but it nonetheless determined that J.A.K. failed to comply with her parental duties, that reasonable efforts failed to correct the conditions leading to E.M.K.'s out-of-home placement and the termination petition, and that termination was in E.M.K.'s best interests. On appeal, J.A.K. argues that the evidence does not support either statutory ground for termination, that the county failed to provide reasonable efforts toward reunification, and that termination was not in E.M.K.'s best interests. We affirm the district court's termination order because clear and convincing evidence established both statutory bases for termination, the county made reasonable efforts toward reunification, and termination was in E.M.K.'s best interests.

DECISION

The district court may terminate parental rights if clear and convincing evidence establishes: (1) at least one statutory basis for termination; (2) that reasonable efforts were made to reunite the family or that reasonable efforts were not required; and (3) that termination is in the child's best interests. *See In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008); Minn. Stat. § 260C.301, subds. 1(b), 8 (2016). We give "considerable deference" to the district court's termination decision. *S.E.P.*, 744 N.W.2d at 385. But we review the district court's factual findings for clear error. *In re Children of*

T.R., 750 N.W.2d 656, 660 (Minn. 2008). J.A.K. argues that (1) there was insufficient evidence to establish either statutory ground for termination; (2) the county did not provide reasonable efforts toward reunification; and (3) termination was not in E.M.K.’s best interests.

I.

J.A.K. challenges the district court’s determination that clear and convincing evidence supported two statutory grounds for termination. The district court may only terminate parental rights if clear and convincing evidence establishes *at least* one statutory ground for termination. *See S.E.P.*, 744 N.W.2d at 385; *see also* Minn. Stat. § 260C.301, subd. 1(b). We “closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing.” *S.E.P.*, 744 N.W.2d at 385; *see also In re Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011) (stating that district court’s determination of whether a statutory basis for termination is present is reviewed for an abuse of discretion, while “underlying or basic facts” supporting statutory basis for termination are reviewed for clear error), *review denied* (Minn. Jan. 6, 2012). J.A.K. challenges specific components of the district court’s determinations on both statutory bases. Because there is significant factual overlap and similarities, we will address her arguments in the context of both termination grounds.

The district court first determined that J.A.K. failed to comply with her parental duties. The district court may terminate parental rights if it finds that

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, including but

not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable[.]

Minn. Stat. § 260C.301, subd. 1(b)(2). The district court must determine that the parent is not presently able and willing to assume her responsibilities and that the conditions requiring termination will continue for the reasonably foreseeable future. *See In re Welfare of J.K.*, 374 N.W.2d 463, 466–67 (Minn. App. 1985), *review denied* (Minn. Nov. 25, 1985).

The district court also determined that reasonable efforts failed to correct the conditions leading to E.M.K.'s placement. The district court may terminate parental rights if clear and convincing evidence establishes that “following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement.” Minn. Stat. § 260C.301, subd. 1(b)(5). As is relevant here, a presumption that reasonable efforts have failed arises upon a showing that:

- (i) the child resides outside the parental home for a total of 12 of the preceding 22 months;
- (ii) the court approved and filed a section 260C.212 out-of-home placement plan;
- (iii) conditions leading to the out-of-home placement have not been corrected; and
- (iv) reasonable efforts have been made to rehabilitate the parents and reunite the family.

Id. “It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan.” *Id.*

We turn to J.A.K.’s specific arguments.

Present Conditions

The district court expressed “substantial concerns” over J.A.K.’s continued sobriety at the time of trial. J.A.K. argues that the district court gave undue weight to old evidence of her methamphetamine addiction. In termination proceedings, the district court should focus on circumstances at the time of trial. *See In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) (“When considering termination of parental rights, the court relies not primarily on past history, but to a great extent upon the projected permanency of the parent’s inability to care for his or her child.” (quotations omitted)).

J.A.K. emphasizes that she was sober for several months leading up to the trial, that she was a leader for her addiction-recovery group, and that she was residing with her sponsor. But her limited emphasis ignores the context of the district court’s “substantial concern” over her continued sobriety. It did not focus *solely* on J.A.K.’s history of methamphetamine abuse. It heard testimony that J.A.K. had been most stable during her pregnancies, and it knew that at the time of trial, J.A.K. was pregnant again. J.A.K.’s sobriety did not go unrecognized, but the prevailing concern was that “there are additional dangerous and deep-[seated] problems that [J.A.K.] has been unable to overcome,” and that J.A.K. “still lacks the introspection needed to facilitate meaningful change.” The district court did not improperly rely on old evidence; it contextualized J.A.K.’s circumstances at the time of trial, linking concerns about J.A.K.’s sobriety to overarching problems with J.A.K.’s ability to parent E.M.K.

Case Plan Compliance

The district court found that J.A.K. failed to follow components of her case plan, including Dialectical Behavioral Therapy (DBT), aftercare, and parenting class. J.A.K. challenges the district court's finding addressing DBT. She emphasizes that she was waitlisted for DBT programming on July 19, 2016, which she apparently construes as contradicting the district court's determination that she had failed to participate in DBT programming. But the record and J.A.K.'s trial testimony establish that J.A.K. chose to terminate an earlier DBT diagnostic assessment. J.A.K. ignores that she frustrated the process through noncompliance. We cannot say that the finding is clearly erroneous. And J.A.K. does not challenge the district court's findings that she failed to complete aftercare or parenting classes as ordered.

J.A.K. also emphasizes that the district court found that she successfully, although begrudgingly, completed "the important aspects" of her case plan. And relying on her sobriety at the time of trial, she argues that she corrected the central condition leading to E.M.K.'s placement: drug abuse. But her argument overlooks the purpose of compliance: improvement. We have said "there is no presumption that completion of a case plan necessarily equates with a correction of the conditions that led to the out-of-home placement." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 667 (Minn. App. 2012). And as we have explained,

A parent's substantial compliance with a case plan may not be enough to avoid termination of parental rights when the record contains clear and convincing evidence supporting termination. The critical issue is not whether the parent formally complied with the case plan, but rather whether the

parent is presently able to assume the responsibilities of caring for the child.

In re Welfare of Child of J.K.T., 814 N.W.2d 76, 89 (Minn. App. 2012).

J.A.K. did complete a substantial portion of her case plan. But J.A.K.'s past substance abuse was not the only reason for termination: J.A.K.'s addiction, her mental health, the history of domestic abuse, her combative tendencies, and her failure to understand what was appropriate and necessary for E.M.K.'s wellbeing were all relevant conditions. *See In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 323 (Minn. App. 2015) ("Even if the parent eliminates the factual bases that existed at the time of the child's removal, if a new factual basis arises after removal, the condition cannot be corrected until that new factual basis also has been eliminated."), *review denied* (Minn. July 20, 2015).

The district court heard testimony that J.A.K. had failed to sufficiently improve and that she was merely "checking boxes" in her case plan. J.A.K. downplayed the effects of domestic abuse and substance abuse on E.M.K.'s wellbeing. She insisted that E.M.K.'s trauma was attributable to their separation. She failed to recognize certain problems and to develop insight into E.M.K.'s needs. J.A.K. was frequently combative and aggressive with parties involved in her case. There were continuing patterns of emotional dysregulation.

The district court found, "Despite the best efforts of the Court and County this case is far from reunification, even if there was full compliance. [J.A.K.] has worked to check boxes on her case plan, but she has not internalized the lessons to be found there. She has put in a lot of time but made very limited progress." We conclude that the evidence supports

the district court's findings of the underlying facts on these points and its conclusion that J.A.K.'s compliance was insufficient to preclude termination.

Housing

J.A.K. challenges the district court's finding that she had not secured housing for herself or E.M.K. She claims that her ineligibility for a two-bedroom apartment stemmed from the county's failure to recommend a transition to in-home supervision of her daughter; she was not eligible for the housing she sought unless E.M.K. resided with her for "at least half time." J.A.K. argues that the district court erroneously ignored the fact that it could have authorized E.M.K.'s in-home transition "knowing it would allow J.A.K. to secure suitable and safe housing for herself and her child."

J.A.K. was approved for a two-bedroom apartment in March 2016, subject to the condition that "there would need to be a 2-person household, e.g. mother and child." But the record also informs us that in October 2016, much closer to trial, J.A.K. moved out of her apartment and moved in with her sponsor. But even ignoring J.A.K.'s choice to move in with her sponsor, her argument that the county and district court prevented her from securing housing is circular; it would have required the district court to return E.M.K. to J.A.K. to fulfill a condition relevant to determining whether E.M.K. should be returned to J.A.K. The argument is unpersuasive.

Domestic Abuse

The district court concluded that J.A.K. had "failed to correct the domestic abuse at the heart of this case." J.A.K. and J.M.S., E.M.K.'s father, had a long history of domestic abuse. J.M.S. violently abused J.A.K. on several occasions, including while J.A.K. was

working her case plan. E.M.K. witnessed and became involved in some of these abuses, contributing to her post-traumatic stress disorder (PTSD). And testimony established that J.A.K. failed to recognize the significance of the domestic abuse on E.M.K. and often attempted to shift the focus to E.M.K.'s separation from J.A.K. to explain E.M.K.'s trauma.

J.A.K. emphasizes that she completed domestic-abuse programming and implies that this contradicts the district court's conclusion. It is true that J.A.K. received certificates of completion for domestic-abuse programming, but the district court's prevailing concern was that J.A.K. repeatedly sought contact with J.M.S. The record establishes that J.A.K. arranged for J.M.S. to see E.M.K. at a park despite a court order prohibiting the contact, repeatedly sought out J.M.S. and was violently abused on several occasions, and on the day of trial, objected to the default termination of J.M.S.'s parental rights because she believed that J.M.S. could still support E.M.K.

Although J.A.K. "checked the boxes" concerning the domestic-abuse issue, the record supports the district court's conclusion that J.A.K. failed to correct the domestic-abuse issue. And J.A.K.'s continuing involvement with J.M.S., and her persisting belief that he could support E.M.K., support the district court's conclusion that "[t]ermination is necessary to ensure that [J.A.K.] does not allow contact between [E.M.K.] and [J.M.S.] The Child's mental, physical, and emotional safety necessitates the termination."

Conclusion

We are unpersuaded by J.A.K.'s arguments addressing specific components of the district court's statutory determinations. There is sufficient clear and convincing evidence supporting the district court's findings of fact underlying its determinations that J.A.K.

failed to comply with her parental duty to provide for E.M.K.'s physical, mental, and emotional health, and that reasonable efforts to correct the underlying conditions either failed or proved futile. Therefore, the district court did not abuse its discretion by invoking these statutory bases to terminate J.A.K.'s parental rights. J.A.K. lacked the insight and understanding necessary to care for E.M.K., she downplayed her role in contributing to E.M.K.'s trauma, she remained combative and aggressive throughout the proceedings, she did not have suitable housing at the time of trial, and she persisted in her belief that J.M.S. could be a father to E.M.K. We have carefully reviewed the record, and despite J.A.K.'s urging, we affirm the district court's determinations on both statutory bases for termination. We turn to J.A.K.'s reasonable-efforts and best-interests arguments.

II.

The district court concluded that the "services provided to [J.A.K.] have been reasonable and future efforts would be futile." J.A.K. argues that the county failed to provide reasonable efforts toward reunification. In any proceeding under section 260C.301, the district court must find either:

- (1) that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family; or
- (2) that reasonable efforts for reunification are not required as provided under section 260.012.

Minn. Stat. § 260C.301, subd. 8; *see also* Minn. Stat. § 260.012(a) (2016) ("Reasonable efforts to prevent placement and for rehabilitation and reunification are always required . . ."). When the district court considers whether reasonable efforts have been

made, it must consider whether the efforts were: “(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances.” Minn. Stat. § 260.012(h) (2016).

J.A.K. attributes her January 2016 relapse in part to the unanticipated emotional effects of the adoption of her son, who was born in May 2015. The significance of this, she argues, is that her social worker failed to recommend any supportive services focusing on the emotional impact of the adoption. She characterizes that failure as unreasonable. She urges us to remand her case to the district court with instructions that reasonable efforts, presumably programming focusing on post-adoption emotional impact, be ordered with a transition plan returning E.M.K. to her care.

We are unpersuaded. As the county emphasizes, J.A.K. was offered extensive services aimed at addressing mental health, chemical dependency, and domestic abuse. The failure to offer one service specific to the emotional impact of the adoption does not render the county’s efforts unreasonable. The county offered comprehensive services comporting with the considerations of section 260.012(h). We see no error in the district court’s determination that the county made reasonable efforts toward reunification.

III.

J.A.K. challenges the district court’s determination that termination was in E.M.K.’s best interests. The district court must also determine that termination is in the child’s best interests before terminating parental rights. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). “In analyzing the best interests of the child, the 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); *see also* Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). “[T]he best interests of the child must be the paramount consideration,” and if the child’s interests and parent’s interests conflict, the child’s interests take priority. Minn. Stat. § 260C.301, subd. 7 (2016). “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 received a substantial amount of evidence addressing E.M.K.’s best interests. It learned that E.M.K. had been involved in and witnessed domestic abuse and drug abuse. It knew that E.M.K. was diagnosed with PTSD that manifested in troubling behaviors. It heard how E.M.K. had grown comfortable with her foster parents, her aunt and uncle, and reviewed allegations that contact with J.A.K. was disruptive to E.M.K.’s progress in recovery. And it considered testimony detailing E.M.K.’s need for stability, permanency, safety, comfort, and support. Significantly, testimony and record documents addressed J.A.K.’s inability to recognize and provide for those needs.

The district court did not discount J.A.K.’s interest in maintaining the parent-child relationship; it recognized J.A.K.’s love for E.M.K. and her determination to have E.M.K. returned to her care. (“Mother loves the Child. Mother’s love of the Child has never once been called into question.”) Nonetheless, the district court did determine that “at this time, and in the reasonable future, she is unable to provide a safe, calm, understanding,

therapeutic environment necessary for [E.M.K.] It is in [E.M.K.'s] best interest that she not be reunited with [J.A.K.]”

J.A.K. argues that the evidence established that deregulating behaviors surrounding E.M.K.'s PTSD were linked to J.M.S., not J.A.K. She details a history of visitation characterized by benign interactions and no notable problems. She also emphasizes E.M.K.'s troubled behavior in her foster placement, apparently inferring that E.M.K.'s problems were the result of the foster placement.

J.A.K. directs us to visitation notes describing her interactions with E.M.K. as evidence that E.M.K. was not fearful of her. She focuses on an April 28, 2016 report to the district court. E.M.K.'s foster parent apparently reported that, on March 30, J.A.K. took E.M.K. and that E.M.K. started screaming until she was set down, then ran back to the foster parent. The foster parent reported further maladaptive behaviors after the visit. J.A.K. is correct that the corresponding visitation notes indicate that the closest visitation date was March 28, 2016, and that no notes exist proving a visitation date of March 30, 2016. The relevant entry appears as follows in the report to the district court:

3/30/16: Kinship Foster Parent 1 reported to ACSS that at the ECFE visit on 3/30/16, [E.M.K.] did not want to go inside

It is not clear whether the information relayed is “patently false,” as J.A.K. claims, or if the date of the reported visit and entry were merely incorrect. J.A.K. suggests that the disparity between the foster parent’s statements and J.A.K.’s characterizations of good visits “should have given both the social worker and the court a reason to question the veracity of the foster care provider.” She asks, “If the child was behaving badly only in the foster home,

why wasn't it assumed that it was due to the child wanting to be with her mother, rather than the foster care providers[?]"

J.A.K. urges us to "carefully review" the record to understand that E.M.K. "was not distressed when she was with her mother." She claims that she exhibited a positive relationship with E.M.K. and that "the evidence presented at trial give[s] this Court valid reasons to determine that the district court failed to fully examine the best interests of the child." The county emphasizes that E.M.K. functioned poorly while in J.A.K.'s care and that her behaviors regressed when visiting J.A.K. It asserts that "J.A.K. demonstrated by her actions that she was not capable of putting E.M.K.'s needs before her own."

We have carefully reviewed the record, and we decline J.A.K.'s invitation to reverse because the district court's best-interests determination finds ample independent support in the record. The district court weighed J.A.K.'s interest in maintaining the parent-child relationship against conditions preventing her from providing E.M.K. with the care E.M.K. required. It considered that E.M.K.'s foster placement provided her with the type of stable and comforting environment she needed. And it appropriately considered E.M.K.'s best interests as paramount. The district court did not abuse its discretion by determining that termination was in E.M.K.'s best interests.

Affirmed.