

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0865**

In the Matter of the Welfare of the Children of:
L. B. and L. B. (Deceased), Parents

**Filed October 23, 2017
Affirmed
Hooten, Judge**

Mower County District Court
File No. 50-JV-16-2454

Daniel T. Donnelly, Austin, Minnesota (for appellant L.B.)

Kristen Nelsen, Mower County Attorney, Aaron Jones, Assistant County Attorney, Austin,
Minnesota (for respondent county)

Alicia Schultheis, Austin, Minnesota (guardian ad litem)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

On appeal from the termination of her parental rights, appellant mother argues that the record does not support the district court's order because she substantially complied with her case plan. We affirm.

FACTS

Appellant L.B. is the mother of A.B., born in September 2007, and M.B., born in August 2008.¹ In May 2016, Mower County Health and Human Services (MCHHS) filed a children in need of protection or services (CHIPS) petition alleging that A.B. and M.B. were not attending school, that A.B. had reported that one of her mother's male friends had tried to sexually assault her, and that A.B. was fearful that people were trying to kill her mother and M.B. L.B., admitting that she used methamphetamines and testing positive for such use, also expressed great concern for herself and the children's safety and claimed that unidentified people were tapping her phone lines and were trying to harm her and her children.

On May 13, MCHHS removed the children from L.B.'s home and placed the children in foster care. The district court adjudicated A.B. and M.B. as CHIPS, and in July 2016, L.B. signed an Out of Home Placement plan, which required her to (1) complete a chemical dependency evaluation and follow through with treatment recommendations; (2) complete a parenting assessment and follow through with any recommendations; (3) visit and maintain contact with the children; (4) maintain a stable, clean living environment; and (5) cooperate and maintain contact with MCHHS.

After determining that L.B. had not made sufficient progress on her case plan at a six-month permanency progress review hearing on October 26, 2016,² the district court

¹ The children's father passed away in 2014 following complications from a 2012 car accident.

² The district court is required, no later than six months after a child is removed from their parent's home, to conduct a full hearing on the parent's progress, the social service

directed MCHHS to file a permanency petition. On November 22, 2016, MCHHS, claiming that L.B. had not completed her case plan or cooperated with the provision of social services, filed a termination of parental rights petition on two statutory grounds: (1) under Minn. Stat. § 260C.301, subd. 1(b)(2) (2016), L.B. “substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon [her] by the parent and child relationship,” and (2) under Minn. Stat. § 260C.301, subd. 1(b)(5) (2016), “reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child[ren]’s placement” out of the home. The district court held a hearing on the petition on March 21 and April 11, 2017. In an order dated May 16, 2017, after finding that clear and convincing evidence supported both grounds for termination and that termination of L.B.’s parental rights was in the children’s best interests, the district court ordered L.B.’s parental rights to A.B. and M.B. terminated. L.B. appeals.

agency’s reasonable efforts toward reunifying the parent and child, and its efforts toward finding permanent placement if the child cannot return home with the parent. Minn. Stat. § 260C.204(a) (2016). If the parent “has maintained contact with the child and is complying with the court-ordered out-of-home placement plan,” the court can return the child to the parent’s home if the home is safe and return is in the child’s best interests. *Id.* at (c)(1) (2016). Or, the court can allow the parent up to six more months to correct the conditions which led to the child’s placement and to show they are ready and able to parent the child. *Id.* But, if the parent “is not complying with the out-of-home placement plan or is not maintaining regular contact with the child,” the court may order social services to develop a plan for the permanent placement of the child outside of the parent’s home—including considering the child’s relatives and foster parents as possible placement options—and the court may order social services to file a termination of parental rights petition. *Id.* at (c)(2), (d)(3) (2016).

DECISION

L.B. argues that the record does not support the district court's termination of her parental rights because she has substantially complied with her case plan, maintained sobriety, and established adequate housing, employment, and support. MCHHS responds that the district court did not abuse its discretion in terminating L.B.'s parental rights. MCHHS maintains that the record supports by clear and convincing evidence the district court's determination that under Minn. Stat. § 260C.301, subd. 1(b)(2), L.B. substantially refused or neglected to comply with the duties imposed upon her by the parent and child relationship and that under Minn. Stat. § 260C.301, subd. 1(b)(5), reasonable efforts under the direction of the district court have failed to correct the conditions leading to the children's placement.

Minnesota courts presume “that a natural parent is a fit and suitable person to be entrusted with the care of a child,” and “custody of their children should not be taken from them but for ‘grave and weighty reasons.’” *Matter of Welfare of P.J.K.*, 369 N.W.2d 286, 290 (Minn. 1985) (citation omitted); *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. Jan. 6, 2012). However, “the law secures parents’ right to custody ‘only so long as they shall promptly recognize and discharge their corresponding obligations.’” *P.J.K.*, 369 N.W.2d at 290 (citation omitted). Thus, the district court has the power to involuntarily terminate parental rights if it finds by clear and convincing evidence that at least one statutory basis for termination exists, and if the court finds that termination is in the best interests of the child. Minn. Stat. § 260C.301, subs. 1(b), 7 (2016); *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137

(Minn. 2014). District courts are also required to “make specific findings: (1) that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made . . . or (2) that reasonable efforts for reunification are not required.” Minn. Stat. § 260C.301, subd. 8 (2016). The “paramount consideration” in a termination of parental rights case is “the best interests of the child.” *Id.*, subd. 7.

Our review gives considerable deference to the district court because its “opportunity to observe the parent and other witnesses who are called to testify is so crucial to an accurate evaluation of what is best for the child.” *Matter of Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995). As such, this court reviews a district court’s decision to terminate parental rights in two steps. *J.R.B.*, 805 N.W.2d at 900–01. We review “findings of the underlying or basic facts for clear error,” but we review for an abuse of discretion whether there is a statutory basis for termination, and whether termination is in the child’s best interests. *Id.* at 901, 905. We will “affirm the district court’s termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family.” *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted).

Statutory Grounds for Termination

Based upon our review of the record, we conclude that the district court did not abuse its discretion by determining that there was clear and convincing evidence that L.B. “substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon [her] by the parent and child relationship.” Minn. Stat. § 260C.301, subd.

1(b)(2). Those duties include, but are 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.” *Id.* A parent’s “[f]ailure to satisfy requirements of a court-ordered case plan provides evidence of a parent’s noncompliance with the duties and responsibilities” of being a parent. *K.S.F.*, 823 N.W.2d at 666 (citation omitted).

And, we conclude that the district court did not abuse its discretion by determining that there was clear and convincing evidence that reasonable efforts under the direction of the district court have failed to correct the conditions leading to the children’s placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5). Reasonable efforts are presumed to have failed if: (1) the child lived outside the parent’s home, by court order, for at least “12 months within the preceding 22 months;” (2) “the court has approved the out-of-home placement plan;” (3) the conditions which lead to “placement have not been corrected;” and (4) “reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.” *Id.*

The record indicates that in July 2016, L.B. obtained a chemical dependency evaluation which recommended that she complete outpatient chemical dependency treatment. Although she was scheduled to begin a chemical dependency treatment program on August 29, she failed to attend and tested positive for methamphetamine on August 31. L.B. did not enroll in a chemical dependency treatment program until after the October 26,

2016 permanency progress review hearing,³ more than five months after the children were removed from her custody and after the district court had already directed MCHHS to file a permanency rights petition. While L.B. completed the inpatient treatment program, she left the program to enter into a less intense program against the recommendation of her therapists. L.B. also failed to comply with the recommendations of her chemical dependency program that she complete outpatient treatment and obtain mental health treatment. On January 30, 2017, she enrolled in the outpatient program and then attended only 8 out of 11 total sessions without completing the program.

L.B.'s case plan also required that she follow the recommendations of a September 2016 parenting assessment requiring that she complete individual mental health counseling and dialectical behavioral therapy (DBT) classes. But, it was not until November 17, 2016, again after the October 26, 2016, permanency progress review hearing, that she began her individual therapy sessions in conjunction with her inpatient chemical dependency treatment program and underwent DBT therapy. On December 20, 2016, after she left her inpatient chemical dependency treatment program, she began biweekly individual mental health therapy sessions, but stopped attending therapy and ceased her involvement in any services when she moved to Texas on February 22, 2017.

The case plan also required that she visit and maintain contact with her children, who were continuously in foster care from May 13, 2016 through the date of the district court's order terminating L.B.'s parental rights on May 16, 2017. The district court found

³ After the October 26 hearing, L.B. completed an updated chemical dependency evaluation which recommended that she enroll in an inpatient treatment program.

that A.B. and M.B. were removed from L.B.'s care because of educational, mental, and emotional neglect, and as a result of L.B.'s mental health illness and chemical abuse.

Initially, visits were scheduled between L.B. and her children, and later arrangements were made for L.B. to telephone her children three times each week, but L.B. frequently failed to make the scheduled visits and telephone calls. One of the children's therapists reported that as a result of their missed visits and telephone calls with their mother, the children were regressing in their therapy. When L.B. spoke with the children, she focused on her issues and promised them that they would return home. The therapist indicated that because L.B.'s absence in their lives was an underlying cause of A.B. and M.B.'s mental health issues, her missed visits and telephone calls, as well as her unfulfilled promises, were detrimental to the children's progress in therapy. The therapist recommended that when L.B. visited or spoke to the children, she should focus on the children, rather than herself, and that she not make promises to the children which she could not fulfill. After L.B. only made 7 out of the scheduled 13 visits, MCHHS, upon the recommendation of the therapist and the children's guardian ad litem, suspended her visits with the children on August 5, 2016. MCHHS later suspended L.B.'s telephone contact with the children after she failed to make the calls as planned and failed to interact with the children in a manner recommended by their therapist. From January 9 through March 21, 2017, L.B. was allowed to maintain contact with the children by writing letters, but, during that period of time, she only sent two letters to them.

Both of the children's therapists emphasized that a stable environment was especially important for M.B. and A.B. M.B.'s therapist observed that M.B. "has been left

by his mother in the care of a third party at least once per year since 2012, frequently for months at a time.” The therapist opined that as a result of his unstable environment, M.B. suffered from reactive attachment disorder, attention deficit hyperactivity disorder, oppositional defiant disorder, and generalized anxiety disorder. The therapist explained that because of M.B.’s disorders, especially his reactive attachment disorder, M.B. needs a predictable environment because it gives him a better sense of feeling safe and connected to the people caring for him. As a result of M.B.’s mental health issues, it is more difficult for him to establish relationships, including rapport with his therapist, and he needs to have a predictable environment because of it. His therapist noted that if M.B. had to move to a new therapist, it is likely that such move will involve a period of adjustment before M.B. would be able to open up to the new therapist.

A.B.’s therapist also noted the importance of a stable and predictable environment for A.B. She diagnosed A.B. with adjustment disorder, depression, and anxiety. Adjustment disorder involves difficulty with making a big life transition, and exhibiting a lot of anxiety and depression related to the life transition. During therapy, A.B. indicated that she felt her role in the family was to take care of everyone and make sure everyone was safe. According to the guardian ad litem, A.B. was “worried about her mother being suicidal and having to stop her from harming herself or leaving the home so she didn’t do anything.” The therapist determined that one of the causes of A.B.’s mental health concerns was her history of living with a caregiver with an untreated mental illness and multiple moves related to her mother’s reports that they were being chased by people who wanted to hurt her and the children.

The district court, relying on the children's therapists, found that both children need safety, stability, and predictable parents, and that L.B. has not shown that she is ready or able to be the stable and predictable parent that A.B. and M.B. need. In addition to her failure to provide consistency in her contacts with the children, L.B. has been unable to provide a stable and consistent living environment. Since initiation of the CHIPS proceeding in May 2016, until the first date of the termination of parental rights hearing on March 21, 2017, L.B. has lived in Lyle, Austin, and Sleepy Eye, Minnesota, and in Texas. MCHHS has not always known where L.B. was living, and was unaware that she had moved to Texas until a court proceeding. In fact, the reason L.B. missed several scheduled visits with her children was because she moved from Austin to Sleepy Eye and did not have reliable transportation to the visitation center in Austin. L.B. argues her housing in Texas is adequate. But, because she did not comply with the requirements of her case plan to stay in contact with MCHHS, the county has been unable to evaluate L.B.'s housing in Texas. And, L.B.'s living in two states and four cities in less than a year's time supports the district court's finding that L.B.'s housing has not been stable.

L.B.'s "decision to abandon all contact with social services in February 2017" is an additional reason the district court found "that the present conditions of neglect would continue for an indefinite period of time." As set forth above, L.B. has failed to comply with any of the other requirements of her case plan. And, at the time of trial, L.B. had made no showing that she was able to provide the children with a stable living environment or was otherwise in a position to perform her duties as a parent.

L.B. also does not argue that the county failed to make reasonable efforts to reunite her with her children. Rather, she only argues that she has made sufficient efforts to correct the conditions that led to the out-of-home placement of the children. Based upon this record, we conclude that the district court's factual findings were not clearly erroneous and that despite the provision of reasonable efforts by MCHHS, L.B. has failed to comply with her case plan and correct the conditions that led to the out-of-home placement of her children. Thus, the district court did not abuse its discretion in concluding that L.B. failed to perform the duties imposed upon her related to the parent and child relationship, and that reasonable efforts, under the direction of the court, have failed to correct the conditions that led to the children's out-of-home placement.

Best Interests

The district court's conclusion that termination of L.B.'s parental rights is in the best interests of A.B. and M.B. was also not an abuse of discretion. When deciding what is in "the child's best interests, the district court must balance the preservation of the parent-child relationship against any competing interests of the child." *K.S.F.*, 823 N.W.2d at 668 (citation omitted); see Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3) ("[T]he court shall make a specific finding that termination is in the best interests of the child and shall analyze: (i) the child's interests in preserving the parent-child relationship; (ii) the parent's interests in preserving the parent-child relationship; and (iii) any competing interests of the child.").

However, when the interests of the parent and child conflict, “the interests of the child are paramount.” Minn. Stat. § 260C.301, subd. 7.

While L.B., A.B., and M.B. all have interests in preserving the parent-child relationship, A.B. and M.B. have an overriding interest in establishing parental bonds with a stable and predictable parent. The district court made specific findings that “the children in this matter are in particular need of stability based on a persistent history of instability as a result of [L.B.]’s actions,” and that a stable and predictable environment is important for both A.B.’s and M.B.’s mental health. The persistent history of instability in the children’s lives supports the district court’s finding “that prompt, permanent placement is in the best interests of the children.” See *Matter of Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) (“[T]he best interests of a child are not served by delay that precludes the establishment of parental bonds with the child by either the natural parent or adoptive parents within the foreseeable future.”). And, because L.B. is not able to be the consistent and stable parent that A.B. and M.B. need, and because she has been unable to correct the conditions leading to their placement, the district court’s finding that the termination of L.B.’s parental rights is in A.B.’s and M.B.’s best interests was not an abuse of discretion.

The district court’s findings that L.B. failed to comply with her duties as a parent and that L.B., despite the provision of reasonable services and efforts by MCHHS, was not able to correct the conditions that led to the children’s out-of-home placement were not clearly erroneous. Therefore, the district court did not abuse its discretion by determining that termination of L.B.’s parental rights was appropriate under Minn. Stat § 260C.301,

subd. 1(b)(2), (5), and that such termination of parental rights was in the best interests of the children.

Affirmed.