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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1663**

In the Matter of the Welfare of the Children of:
J. L. I. and J. D. I., Parents

**Filed March 26, 2018
Reversed and remanded
Bratvold, Judge**

Scott County District Court
File No. 70-JV-17-7564

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Considered and decided by Bratvold, Presiding Judge; Cleary, Chief Judge; and
Florey, Judge.

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

BRATVOLD, Judge

Appellant J.L.I. (mother) challenges the district court's termination of her parental
rights. Because respondent, Scott County Health and Human Services (the county), failed
to make reasonable efforts to reunite mother and the children, we reverse the decision

terminating mother's parental rights and remand for the district court to direct the county to provide a case plan and allow a reasonable period for mother to complete it.

FACTS

Mother and father J.D.I. are the parents of L.S.I. (born in 2011), I.G.I. (born in 2012), and A.L.I. (born in 2013) (the children).¹ Mother and father married after the children were born. Father suffers from posttraumatic stress disorder (PTSD), and has a son from a previous relationship. In 2011, father pleaded guilty to domestic assault against his four-month-old son resulting in a skull fracture, broken rib, and bruised arm, based on an incident that arose before mother and father's relationship.

In June 2013, police arrested father for third-degree assault and malicious punishment of a child, for hitting L.S.I. with a belt. At the time of the incident, mother was in the hospital giving birth to A.L.I. Father pleaded guilty to the assault and was placed on probation for five years. The county filed a children in need of protection or services (CHIPS) petition in June 2013, and I.G.I. and L.S.I. were placed out of the home, while A.L.I. remained in mother's care. The family successfully participated in county services,² and the county returned L.S.I. and I.G.I. to mother's custody after 226 days in foster care. In August 2014, based on the recommendation of the county, the court closed the CHIPS file.

¹ Father's parental rights were voluntarily terminated and are not at issue in this appeal.

² The family participated in the following services in the 2013-14 CHIPS case: child protection case management, family assessments, a parenting skills course, family therapy, mental health services, anger management, individual therapy, medication management, supervised visits, safety planning, and family group decision making.

On September 19, 2016, mother called the police and reported that father hit four-year-old I.G.I. on the head three or four times. Mother reported that father was not taking prescribed medications, had been “verbally aggressive in the previous months,” and that she was afraid for the safety of the children. The police arrested father, who was charged with felony domestic assault and malicious punishment of a child. Father remained in custody from September 19 until he was sentenced on December 6, when he pleaded guilty to the assault charge.

The county assigned social worker Nikki Scheef to work with the family, and she met with mother and the children on October 6, 2016. During this meeting, Scheef informed mother that the county planned to move forward with the termination of father’s parental rights. Mother opposed the termination. On October 25, the county referred mother and the children to Scott County Mental Health Center, but mother failed to attend the appointment. Scheef experienced difficulties contacting mother. On November 4, 2016, Scheef spoke with mother by telephone and learned that she and the children had moved to Klemme, Iowa, in order to be closer to mother’s family. According to Scheef, mother was not willing to provide her with an updated address.

At father’s sentencing hearing on December 6, the court imposed five years of probation. After sentencing, mother and father spoke with Scheef and “expressed unwillingness to further work” with child protection services.³ Mother told Scheef that father would join the family in Iowa until “a bed became available” for father to attend

³ The parties stipulated to facts that were not in dispute, and these facts are among those stipulations.

residential treatment for PTSD and traumatic brain injury. When Scheef asked mother and father where the children were that day, mother stated that “they were in the area, but [] was not willing to say where or who they were with.”

On December 6, 2016, the county commenced a CHIPS petition concerning all three children. At this time, the county was granted temporary custody of the children, and they were placed in foster care with a family known to both mother and father. On December 20, 2016, the parties moved the district court to transfer venue of the case to Iowa, where mother was living with the children. But the court declined the request after learning that the Iowa county attorney would not commence an action.

On January 25, 2017, the county filed an expedited petition to terminate father’s parental rights. On January 26, mother entered an admission to the CHIPS petition and the court ordered mother to complete a psychological evaluation, participate in supervised visitation with the children, and cooperate in developing and implementing a case plan. Scheef and mother spoke several times about the need for urgency, given the short permanency timelines resulting from the prior out-of-home placement of I.G.I. and L.S.I. in 2013.

The county prepared out-of-home placement plans for each child, dated February 22, 2017, in which mother was directed to complete “a psychological evaluation to determine if there are any barriers preventing [mother] from seeing the risk [father] poses, her ability to prioritize and protect her children and the impact of the physical abuse to the children.” Mother did not sign these plans and the plans were not submitted to the court for approval.

In a March review hearing, mother told the court that she had scheduled the psychological evaluation, but refused to inform the county where she was completing the evaluation. The court ordered mother to complete the evaluation and to provide the county with signed releases. Scheef also sent mother a letter on April 10, 2017, clarifying that mother was court-ordered to complete the evaluation.

On April 19, mother completed a “clinical assessment” with Dave Fox, LISW at WellSource in Iowa. WellSource was an approved provider, as indicated on a list that the county gave mother. Mother, however, failed to inform the county about this assessment.

On April 26, 2017, the county filed a petition to terminate mother’s parental rights. The county asserted that mother failed to satisfy the duties of the parent-child relationship, she was a palpably unfit parent, and that reasonable efforts had failed to correct the conditions leading to the children’s out of home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5) (2016). Shortly after, the county amended the termination petition to add an additional basis for termination, Minn. Stat. § 260C.301, subd. 1(b)(8), asserting that the children were neglected and in foster care. Mother entered a denial to the petition.

At review hearings on April 27, June 22, and July 27, the court found “[m]other and [f]ather are both participating in regular and consistent visitation with the children, but there has been limited progress in other areas of the case plan.” The court issued orders following each review hearing requiring that mother receive a psychological evaluation, participate in supervised visitation, and cooperate in formulating a case plan. The district court orders also provided that mother was required to allow the county to provide “collateral information” for the psychological evaluation.

On May 10, 2017, mother met with Scheef and signed out-of-home placement plans for each child; however, she wrote “under duress” next to her signature on each placement plan. Mother also signed the release of information to WellSource “under duress.” According to Scheef, WellSource rejected the release and would not forward mother’s records and evaluation to the county.

On May 26, mother met with Dr. Dan Courtney at WellSource to complete a psychological evaluation. Dr. Courtney’s written report, which was a trial exhibit, included one recommendation for mother—weekly individual therapy. Dr. Courtney’s report also stated that he attempted to contact the county, but did not receive any response. Mother completed a new release for the county to contact WellSource on June 22. WellSource has “since closed down,” and “attempts by the parties in July to contact [] WellSource and Dr. Courtney have been unsuccessful.”

Sometime in July or early August, mother told the county that she has been attending individual therapy on a weekly basis with Karen Delger, LISW, since May 2017. Mother signed a release for the county to contact Delger on August 9.

Throughout the out-of-home placement period, both parents participated in supervised visits with the children. No safety concerns were reported. In fact, the county received “positive” reports about the parents’ interactions with the children. The children do not have special needs.

Mother’s termination trial took place on August 16, 22-23, 2017. The court heard testimony from father, mother, Delger, Scheef, Christine Harder, Scheef’s supervisor in the child protection unit of the county, Joni Johnson, guardian ad litem, and Holli Buhr,

foster parent. Delger testified that mother was diagnosed with PTSD and adjustment disorder with anxiety. Delger testified that she had no concerns with mother's ability to parent the children, but also testified that her opinion was the result of mother's "self-report[ing]" and she had not reviewed court documents regarding the county's concerns for the safety of the children. Delger also testified that mother had told her that she would be getting a divorce, which was different from her plan to reunite with father when therapy began.

Father testified that he was financially supporting mother but he and mother were no longer in a relationship and he expected them to divorce. Father explained that he resided in Moorhead and was in a relationship with another woman. Father also testified that he chose to end the marriage, and mother wanted to "work [] towards mending the marriage." He testified that he only communicated with mother about the children, court proceedings, and finances. Finally, father testified that mother was aware of his child-abuse conviction from 2011 at the time they began their relationship.

Mother testified that she stayed married to father after the 2016 incident because she "felt biblically" that she needed to remain "loyal to [her] husband." But mother also testified that they have been physically separated since September 2016 and she intends to "remain separated" from father. Mother acknowledged that she was not employed outside the home, and she depended on father financially, but added that she also received some government support for a diagnosed disability.

Mother testified that therapy with Delger helped her focus on the children and "what [she] need[ed] to do to get them back." Mother also testified that, until the 2013 CHIPS

case, she was not fully aware of the details of father's 2011 domestic assault conviction. Mother testified that she did not want to give Scheef her address in Iowa because she was afraid that the county would "take [her] children" from her. Finally, mother attempted to explain her delay and lack of cooperation in completing the psychological evaluation; she testified that she "didn't feel like [she] should have to have one due to the fact that [she was] not the abusing parent," and that she had followed the "safety plan" when she reported the incident to police in September 2016.

Scheef testified that no one contacted her to provide collateral information on mother's psychological evaluation. Scheef also testified that mother's visits with the children have "gone well" and the children "look forward to visiting with her." Scheef recommended termination, however, because she was concerned for the children's safety due to mother's lack of engagement with the county and her lack of insight into her relationship with father and the risk he presented to the children. Scheef conceded that no case plan had been adopted by the court, but added that the parties were guided by court orders.

Harder testified that, in her opinion, mother's psychological evaluation failed to address whether mother prioritized her relationship with father over the children's safety and whether mother understood the risk father posed to the children's safety. Harder also testified that mother was uncooperative with the county's efforts. Finally, Harder recommended termination due to mother's lack of progress and the children's need for permanency. The guardian ad litem also recommended termination because of mother's

failure to comply with the court orders and because mother prioritized “her resistance to working with the county” over getting the children back in her care.

The district court terminated mother’s parental rights on October 6, 2017. The court found that mother loved the children and had exercised quality visits with them, but also found that mother had “demonstrated a pattern of putting her own needs of remaining committed to [father] ahead of the safety and well-being of her children.” The court found that mother and father had an ongoing relationship and that mother knew of father’s child-abuse conviction in 2011 no later than the 2013 CHIPs proceeding. The court also found that mother was financially dependent on father, and that mother’s testimony regarding her “wholly new commitment to remain separate from [father was] not credible.” The court also found that after the 2016 assault, mother remained committed to and in contact with father, as demonstrated by her plan to allow father to stay with the children in Iowa.

The district court also found that the county had made reasonable efforts to rehabilitate mother and reunify the family. The district court found mother “wholly responsible” for delays in timely completing her psychological evaluation and for the county’s inability to serve as a collateral source. The district court also found mother “directly hindered progress” by signing a release “under duress.” The district court held that the following statutory grounds existed to terminate mother’s parental rights: mother failed to satisfy the duties of the parent-child relationship, is a palpably unfit parent, failed to correct the conditions leading to the out-of-home placement, and the children are neglected and in foster care. The district court also determined that termination was in the children’s best interests. Mother appeals.

DECISION

We review an order terminating parental rights to determine “whether the trial court’s findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether those findings are clearly erroneous.” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). We will affirm the district court’s termination of parental rights when a statutory ground for termination is supported by clear and convincing evidence, termination is in the best interests of the child, and 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). We decide mother’s appeal based on our analysis of the last element—the county’s obligation to make reasonable efforts to reunify mother with her children.

Mother argues that we must reverse the district court’s order terminating her parental rights because the county never provided her with a court-approved case plan defining the steps that she needed to take to address the conditions that led to the out-of-home placement; therefore, it was not clear to her what was required for reunification. Mother argues that the only direction she received was in multiple court orders, which required her to: (1) “[p]articipate in psychological evaluation, sign release, and allow agency to provide collateral information to assessor”; (2) “[r]egular supervised visits”; and (3) “[c]ooperate in developing and implementing a case plan.” Mother also contends that she complied with all court orders.

The county’s brief to this court appears to acknowledge that no case plan was submitted to the district court. At oral argument, the county candidly conceded that this

was true, but argued that a case plan was not required because mother did not comply with court orders. In essence, the county argues that mother was not given a case plan because mother's failure to cooperate precluded the county from developing one.

In a termination proceeding, the district court must determine whether the county has provided reasonable efforts to rehabilitate the parent and reunite the child and parent. *In re Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008). "Reasonable efforts at rehabilitation are services that go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotations omitted), *review denied* (Minn. Mar. 28, 2007). For efforts to be reasonable, the services the county offers must be: (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).

If a social-services agency determines that the children must be removed from a parent, the agency "shall . . . prepare an out-of-home placement plan addressing the conditions that [the] parent must meet before the child can be in that parent's day-to-day care." *In re Welfare of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018) (quoting Minn. Stat. § 260C.219(a)(2)(i) (2016)). The "out-of-home placement plan means a written document . . . prepared . . . jointly with the parent or parents or guardian of the child." Minn. Stat. § 260C.212, subd. 1(b) (2016). "The plan 'shall be' signed by the parent, submitted to the court for approval, and explained to all persons involved in its implementation." *A.R.B.*, 906 N.W.2d at 897 (quoting Minn. Stat. § 260C.212, subd.

(1)(b)(1), 3(c)). The case plan must describe “the specific reasons for the placement of the child in foster care, and when reunification is the plan, a description of the problems or conditions in the home of the parent or parents which necessitated removal of the child from home and the changes the parent or parents must make for the child to safely return home,” as well as the “services offered and provided to prevent removal of the child from the home and to reunify the family.” Minn. Stat. § 260C.212, subd. 1(c)(2), (3).

The county argues that the court ordered mother to complete a psychological evaluation with the county serving as a collateral source. Although mother eventually completed the evaluation, she did so without input from the county, she delayed releasing the evaluation to the county, and the evaluation lacked information necessary to formulate a case plan. Mother contends that she did what the county asked her to do: she had a clinical assessment in April; when informed that more was required, she had a psychological evaluation in May, and then proceeded with weekly individual therapy, which was the only recommendation in the psychological evaluation.

It is true that the county’s failure to provide a court-approved case plan may be excused when the failure is directly attributable to the parent. *A.R.B.*, 906 N.W.2d at 898. But as this court recently stated in *A.R.B.*, “the lack of a case plan is excusable only in extreme circumstances, like when a parent repeatedly abandons her child and states that she wishes to relinquish her parental rights, or when efforts to reunite the family would be futile because, for example, no parent-child relationship ever existed.” *Id.* (quotations omitted). None of the “extreme circumstances” apply here. *Id.*

Next, the county argues that despite the lack of a case plan, mother was “repeatedly told what was required for reunification.” But just recently, this court rejected the same argument in *A.R.B.*, stating that “the county’s proposed exception [to the case plan requirement] [did not] square[] with the statute. And we are persuaded by [appellant’s] counter that it was impossible for him to know what steps he needed to take to correct the conditions in the absence of a case plan” *Id.* at 899. Although the county and court orders informed mother that she needed to complete a psychological evaluation, she was not informed what changes she must make before her children would be returned to the home. See Minn. Stat. § 260C.212, subd. 1(c)(2). On this record, we conclude that neither court orders directing mother to take preliminary steps, nor informal directions from the county are a substitute for a court-approved case plan.

We recognize that the district court attributed delays in obtaining the psychological evaluation to mother, who, at times, was uncooperative. The district court also found that mother failed to comply with the court’s order to allow the county to provide collateral information for her psychological evaluation. These findings are supported by the record. Therefore, we do not suggest that the district court should unsettle the current out-of-home placement until mother has in fact overcome the conditions that led to the out-of-home placement. We hold only that, on this record, because the county did not make reasonable efforts to reunite mother and her children by providing a case plan, the district court abused its discretion by terminating mother’s parental rights. We therefore reverse the termination of mother’s parental rights and remand for the district court to allow the county to prepare

jointly with mother a case plan, as defined by statute, and allow mother the opportunity to complete it.

Reversed and remanded.