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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2067**

In the Matter of the Welfare of the Child of:
S. E. M. and R. B. L., Parents

**Filed May 21, 2018
Affirmed
Hooten, Judge**

Isanti County District Court
File No. 30-JV-17-159

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Considered and decided by Schellhas, Presiding Judge; Hooten, Judge; and
Klaphake, Judge.*

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

HOOTEN, Judge

On appeal from an order terminating their parental rights, appellant mother and
appellant father argue that the district court abused its discretion by terminating their

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

parental rights under Minnesota Statutes section 260C.301, subdivision 1(b)(2), (4), and (5) (2016). Appellants also argue that respondent county failed to make reasonable efforts to reunify them with their child. We affirm.

FACTS

Appellants S.E.M. and R.B.L. are the parents of W.R.M.S. (the child), who was born in August 2015. From September 2015 to January 2017, several child protection and law enforcement reports were filed raising concerns about S.E.M.’s and R.B.L.’s parenting of the child. Isanti County Family Services (ICFS) became involved in May 2016 when the agency did a multi-factor family assessment. An ICFS social worker kept contact with the parents from July 2016 to October 2016 but failed to maintain this contact through the remainder of that year.

In January 2017, law enforcement received a welfare call with concerns about the child’s well-being. Law enforcement investigated the home, and due to unsafe living conditions, placed a safety hold on the child. As a result, ICFS moved the child into foster care and developed case plans for both S.E.M. and R.B.L. In March 2017, S.E.M. and R.B.L. each agreed to their respective case plans.

Isanti County (the county) filed a permanency petition to terminate S.E.M.’s and R.B.L.’s parental rights in August 2017. The county based its petition on three statutory grounds: (1) that S.E.M. and R.B.L. refused or neglected to comply with the duties of the parent-child relationship, Minn. Stat. § 260C.301, subd. (1)(b)(2); (2) that they were “palpably unfit” to parent the child, Minn. Stat. § 260C.301, subd. (1)(b)(4); and (3) that

reasonable efforts had failed to correct the conditions leading to the child's removal from the home, Minn. Stat. § 260C.301, subd. (1)(b)(5).

The district court conducted a court trial in November 2017. The parties stipulated to the district court's receipt of 44 exhibits, many of which were child protection and law enforcement reports regarding S.E.M., R.B.L., and the child's welfare. The district court filed an order terminating S.E.M.'s and R.B.L.'s parental rights in December 2017. The district court determined that the county produced clear and convincing evidence supporting the three statutory grounds for termination and that the county made reasonable efforts to reunify S.E.M. and R.B.L. with the child. Both S.E.M. and R.B.L. appeal.

D E C I S I O N

I.

S.E.M. and R.B.L. challenge the district court's decision to terminate their parental rights. We review the district court's findings for clear error and evaluate its decision to terminate parental rights on a particular statutory ground for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). And while the district court in this case terminated S.E.M.'s and R.B.L.'s parental rights on three separate statutory grounds, we will affirm the district court's decision so long as one of the statutory grounds is supported by clear and convincing evidence. See *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). Though the district court may only terminate parental rights for "grave and weighty" reasons, *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (quotation omitted), the district court's decision to terminate parental rights is given

“considerable deference,” *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

The district court may terminate the rights of a parent to a child 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.” Minn. Stat. § 260C.301, subd. 1(b)(2). These duties include “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 failure to fulfill the requirements of a court-ordered case plan provides evidence of the parent’s noncompliance with the duties set forth in the statute. *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 666 (Minn. App. 2012). The district court in this case concluded that due to the parents’ sporadic efforts relating to their respective case plans and their persistent issues of domestic violence, mental health, and chemical usage, S.E.M. and R.B.L. are not able to comply with the duties of parenting the child.

S.E.M. argues that she was not the perpetrator of domestic violence and therefore should not be punished for R.B.L.’s conduct. Her argument is unpersuasive given the evidence in the record. In July 2016, S.E.M. and R.B.L. got into an argument and when she pushed R.B.L., she accidentally injured her eye and went to the hospital. And in October 2016, S.E.M. responded to an argument about who would care for the child by throwing a book and toy at R.B.L. When R.B.L. locked himself in a separate room, S.E.M. pounded on the door, bending its frame. R.B.L. informed law enforcement after this incident that “this stuff happens a lot” and that “he was afraid for his safety.” While R.B.L.

has had his own difficulty in controlling his temper and has displayed aggressive conduct, the evidence supports the district court's finding that S.E.M. has also exhibited violent behavior that is detrimental to fulfilling her role as a parent.

S.E.M. also disagrees with the district court's concerns about her mental health. Within the year before trial, S.E.M. was hospitalized on three separate occasions due to threats of self-harm and other mental-health related concerns. For instance, S.E.M. was involuntarily admitted into the behavioral health unit for five days in May 2017 because she was unable to function and exhibited suicidal ideation. S.E.M. claims that she has demonstrated recent progress with her new therapist. But the evidence supports the district court's assessment that her efforts to engage in therapy have been inconsistent at best. S.E.M. attended some appointments with her initial therapist but was later discharged after her sixth "no-show." She also struggled to make progress with the services of her second therapist and was ultimately discharged when she failed to schedule additional appointments. And though S.E.M. testified that she was making improvements with a new therapist, the guardian ad litem testified that she attempted to contact this therapist but learned that the therapist was no longer associated with the health services agency.¹

R.B.L. points to evidence in the record that observed interactions of him with the child did not raise any serious concerns. But there is also evidence in the record of his "explosive temper" and "unstable lifestyle." For example, in May 2015, R.B.L. slammed

¹ The district court explicitly stated that the guardian ad litem offered a credible account, and we defer to the district court on credibility determinations. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 374–75 (Minn. 1990).

a door—breaking the door’s window—when the child was only five feet away. More recently, S.E.M. notified law enforcement that during an argument in January 2017, R.B.L. threw her to the ground and began to punch and slap her.

And while there is evidence that R.B.L. behaved properly during some supervised visits with the child, his struggles with chemical substance abuse demonstrate that he is unable to resume the role of the child’s parent. R.B.L. completed a chemical use assessment in February 2017, but despite its recommendations for outpatient treatment, he never entered treatment and believed that his drug use was not an issue. Four of his drug screening tests returned positive for cannabinoid. In fact, instead of prioritizing his visits with the child, R.B.L. traveled to California in April 2017 to participate in an event called the “Cannabis Cup.” More importantly, R.B.L., who was prohibited from having contact with the child or S.E.M. after the filing of an order for protection in May 2017, did not have any significant contact with the child from March 2017 to December 2017.

Both S.E.M. and R.B.L. argue that ICFS failed to provide resources and guidance to specifically address issues of domestic violence in their home. But both case plans, which primarily focused on visitation, therapy, and chemical assessments, included general guidelines with respect to domestic violence services. The evidence in the record is clear that neither S.E.M. (mental health therapy) nor R.B.L. (chemical use testing) adhered to the essential elements of their respective case plans.

We also emphasize that the child was diagnosed with post-traumatic stress disorder and an unspecified neurodevelopmental disorder. The district court found that the child has experienced significant delays in development and will benefit most from a predictable

and structured environment. There are multiple reports from multiple reporters in the record that indicate S.E.M. and R.B.L. neglected to care for the child and would be unable to provide a stable living environment. In February 2016, they left the child unsupervised in a hotel while they were at the hotel's bar. In May 2016, medical staff reported that the child was receiving inadequate food and supervision. Around that same time period, residents and staff at a homeless shelter told law enforcement that the child was often left unattended and neglected. In June 2016, S.E.M. left the child unattended lying on his stomach in a kiddie pool. It was also reported that S.E.M. and R.B.L. did not understand the contagious nature of the child's skin infection and lost his prescribed medication after using it only once.

Based on both parents' conduct and their failure to comply with their individual case plans, we conclude that the district court did not abuse its discretion by ruling that both parties refused or neglected to comply with the duties of the parent and child relationship, as articulated in Minn. Stat. § 260C.301, subd. 1(b)(2). Because the district court did not abuse its discretion by terminating their parental rights on this statutory ground, we need not address the two remaining statutory grounds for termination. *See R.W.*, 678 N.W.2d at 55.

II.

S.E.M. and R.B.L. argue that the district court erred by concluding that the county made reasonable efforts towards reunification, as required by Minn. Stat. § 260C.301, subd. 8(1) (2016). We will affirm the district court's decision to terminate parental rights if the county made reasonable efforts to reunite the parent with the child. *In re Children*

of *T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). The statute requires the district court to make “specific findings,” as set forth in Minn. Stat. § 260.012(h) (2016), “that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made.” Minn. Stat. § 260C.301, subd. 8(1). The district court’s findings must include “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.” *Id.*

The district court must determine whether the county’s services 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). Instead of being mere matters of form, these services must provide real and genuine assistance. *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007), *review denied* (Minn. Mar. 28, 2007). “Whether the county has met its duty of reasonable efforts requires consideration of the length of the time the county was involved and the quality of the effort given.” *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990).

In this case, the district court determined that the county met its burden of providing reasonable efforts. The district court found that ICFS began coordinating visits with the family in July 2016 and connected the parents with public health services that provide resources to families. The district court noted that it was troubled by the fact that ICFS did not maintain contact with the family during the last couple months of 2016. Nevertheless,

the district court determined that ICFS made reasonable efforts towards reunification after the child was removed from the home in January 2017.

S.E.M. argues that ICFS never permitted her to demonstrate her parenting skills because she was only allowed limited supervised visits. But the district court's findings illustrate that ICFS offered S.E.M. many services that were designed toward furthering her relationship with the child. These services included coordinating supervised visitation for the parents and the child, offering S.E.M. visitation schedules, and providing the child with transportation services. And when the family moved to Redwood County, ICFS continued to assist in conducting supervised visitations by making payments for the parents' transportation and providing S.E.M. with gas cards. S.E.M. does not make a persuasive argument that contact with a child during a supervised visit cannot be meaningful or offer an opportunity to display parenting abilities.

R.B.L. claims that the county failed to make reasonable efforts to reunify him with the child after his arrest in May 2017. Citing *In re Children of Wildey*, R.B.L. argues that his incarceration did not relieve the county of its duty to continue making reasonable efforts in providing him resources for his case plan. See 669 N.W.2d 408, 413 (Minn. App. 2003), *aff'd as modified*, 678 N.W.2d 49 (Minn. 2004). The district court found that *prior to R.B.L.'s incarceration*, the county made significant and ongoing efforts to ensure contact between the parents and the child.

“[I]t is well established that incarceration alone does not necessarily preclude a person from acting in a parental role.” *In re Welfare of A.R.B.*, 906 N.W.2d 894, 899 (Minn. App. 2018) (quotation omitted). But what constitutes reasonable efforts depends

on the problem presented, *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008), and a parent’s incarceration may change what qualifies as “reasonable” in working towards reunification. *A.R.B.*, 906 N.W.2d at 899. The social worker testified at trial that she was unaware of R.B.L.’s whereabouts since his release from custody and that she had not spoken to him since April 2017. When asked about her efforts to reunify R.B.L. with the child since April 2017, the social worker explained:

There’ve been limited efforts. I haven’t known—you know, he’s been in jail at times and so that’s been happening and then I didn’t know where he was when he was not in jail. And I can’t provide those efforts if he’s not in touch with me and letting me [k]now where I can reach him.

The social worker attempted to justify her explanation by stating that she needed to prioritize other cases during those months. The social worker gave a similar explanation for not maintaining contact with the parents in late 2016, stating that she had to put the case “on my back burner” as she focused on other placement cases.

The assessment of whether the agency’s efforts at reunification were reasonable is further complicated by the fact that R.B.L. was prohibited from having any contact with the child after an order for protection was filed in May 2017. And, as the district court noted in its order, there is some evidence in the record that R.B.L. was hostile towards those involved with the child’s care. For instance, ICFS received a child welfare report from an anonymous individual in January 2017. The reporter chose to remain anonymous due to fears that R.B.L. and S.E.M. would retaliate. The reporter also mentioned that the parents threatened the reporter about reporting to child protection and that R.B.L. would comment that he fantasized about murdering the reporter.

Unlike in *A.R.B.*, in which the county failed to create a case plan for the incarcerated parent, ICFS did develop a case plan specific to R.B.L. See *A.R.B.*, 906 N.W.2d at 899. And even though R.B.L. did not agree to the case plan until late March 2017, ICFS began providing services to the family as early as May 2016. ICFS undertook several rehabilitative measures to help R.B.L. with his chemical dependency issues. And, as stated previously, when the family moved to Redwood County in March 2017, ICFS arranged transportation for the parents to visit with the child. Despite these arrangements, R.B.L. chose not to attend the first visit in April 2017 and instead flew to California to participate in the “Cannabis Cup” event. Therefore, based on these circumstances, including R.B.L.’s inability and unwillingness to visit with the child, we conclude that the record supports the district court’s determination that the county made reasonable efforts to rehabilitate R.B.L.

In light of the array of services provided to S.E.M. and R.B.L., we conclude that the district court was within its discretion in deciding that the county made reasonable efforts towards reunification. See *S.E.P.*, 744 N.W.2d at 387 (affirming termination of parental rights after concluding that reunification efforts were reasonable when county provided variety of different services).

Affirmed.