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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A18-1304

A18-1361

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

Filed January 22, 2019

Affirmed

Cochran, Judge

Itasca County District Court
File No. 31-JV-18-236

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Considered and decided by Hooten, Presiding Judge; Rodenberg, Judge; and
Cochran, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

In these consolidated appeals, appellant-parents challenge the termination of their parental rights, arguing that the record does not support a statutory basis for termination,

the county failed to make reasonable reunification efforts, and termination is not in the best interests of the child. Because clear and convincing evidence shows that reasonable efforts by the county failed to correct the conditions leading to the child's out-of-home placement and that termination is in the child's best interests, we affirm.

FACTS

Appellant-mother J.M.H. and appellant-father A.W.S. are the parents of O.W.S., born in November 2016. Mother and father began their relationship in December 2015, two weeks after mother gave birth to a child from a previous relationship. J.M.H. and A.W.S. briefly ended their relationship during mother's child-protection matter involving her other child, but resumed their relationship after mother voluntarily terminated her parental rights to the child in June 2016. Respondent Itasca County Health and Human Services (the county) became involved with the family as a result of mother's termination proceeding involving the other child, which occurred while mother was pregnant with O.W.S.

O.W.S. was born premature in November 2016. The county initiated a juvenile welfare hold prior to his discharge from the hospital and placed him in foster care. Less than two weeks later, the county filed a petition alleging that the child was in need of protection or services (CHIPS). At the time, the county identified the following concerns for the parents: mother's mental instability, father's chemical use, and the parties' history of domestic violence. In January 2017, mother and father admitted that O.W.S. needed protective services, and an out-of-home placement plan was filed with the district court.

The out-of-home placement plan required that mother and father each: cooperate and participate in all supervised visits with O.W.S.; remain sober; comply with all tests for drugs or alcohol; complete a parenting assessment; complete a rule 25 chemical-health assessment and follow all recommendations; attend, cooperate, and successfully complete a domestic-violence program through Advocates for Family Peace; obtain and maintain safe and sober housing; and cooperate with the county social worker, the in-home family service provider, and the Itasca County public-health nurse. Additionally, the out-of-home placement plan required that mother cooperate with her mental-health team and sign all releases of information requested, seek out and obtain either suitable employment or Social Security benefits, and follow all recommendations of probation. The out-of-home placement plan also required that father follow all chemical-health treatment recommendations.

Mother has had ongoing mental-health issues for some time. To address her mental-health needs and her case-plan goals, mother began receiving mental-health case management services in January 2017 with an Adult Rehabilitative Mental Health Services (ARMHS) worker. Mother's ARMHS worker coordinated an initial diagnostic assessment for mother, and mother was diagnosed with borderline personality disorder, generalized anxiety disorder, and posttraumatic stress disorder. Mother initially requested to address her mental-health issues with a peer-support specialist, but after attending a few sessions, mother discontinued peer-support services. Following a search for an individual therapist, in July 2017, mother subsequently received individual therapy services. A few months later, mother also began receiving medication-management services.

Mother and father have also had domestic violence in their relationship. In April 2016, prior to the CHIPS proceeding, father obtained a harassment restraining order against mother. And, one month before O.W.S. was born, father was convicted of felony domestic assault and violating a felony domestic-abuse no-contact order. Both involved mother as the victim when she was pregnant with O.W.S.

On March 4, 2018, approximately one month before the trial in this matter commenced, police responded to a report of domestic violence at the parents' residence. Although mother initially alleged that father threatened her with a knife, father was never charged with any crime arising from the incident. A responding police officer testified that mother had been experiencing mental-health issues that day and attempted to calm herself by taking a shower while fully clothed. After mother and father began arguing, mother yelled at father and threw objects at him. Although mother had mental-health concerns in the days prior to the incident, neither mother nor father reached out for help. Mother also did not utilize her crisis plan developed with her probation officer. Mother pleaded guilty to a gross misdemeanor domestic-assault charge arising from the incident.

Father has a history of chemical dependency that predates this child-protection matter. As a condition of father's probation for his convictions relating to domestic assault and as a recommendation of his rule 25 chemical-health assessment, he is required to refrain from alcohol use. During the pendency of this CHIPS proceeding, father used alcohol at least three times in violation of his probation. The most recent violation was on March 14, 2018. Father used alcohol with his own mother, and it was reported this was not an isolated incident.

During the pendency of the CHIPS case, mother and father have changed their residence multiple times. At the start of the case, mother and father located and moved into a rental house. But in February 2017, after the county moved supervised visits to the parents' rental house, the county raised concerns about potential mold in the home. Despite the county's concerns, mother repeatedly denied the existence of a potential mold issue. The county encouraged mother and father to contact their landlord, look into renters' rights organizations, and locate mold-testing providers. Meanwhile, the county also searched for providers and, by April 2017, acquired funding for mold testing to take place. After the testing took place in July 2017, the house tested positive for mold.

A trial home visit started on September 22, 2017, after the parents secured housing with mother's grandfather, mother began engaging in individual therapy, and the parents completed domestic-violence intervention programs through Advocates for Family Peace. The county terminated the trial home visit a little over one month later, following an investigation that raised concerns about O.W.S.'s safety, the parents' abilities to meet his basic needs, allegations of mother's use of profanities towards O.W.S., allegations of father's lack of care for the child, the lack of nutritional foods offered to O.W.S., and an incident between mother, O.W.S., and mother's grandfather.¹ Due to the incident with mother's grandfather, in November 2017, mother and father moved out and purchased a

¹ Mother was caring for O.W.S. on the date in question. While mother was in the kitchen, O.W.S. was in the living room where mother's grandfather was watching television. O.W.S. attempted to reach electrical cords in the living room. To keep O.W.S. away from the cords, mother tried to put O.W.S. in a mechanical swing in the living room but he refused. Mother placed O.W.S. back on the floor and he again tried to reach the cords. Mother's grandfather then put O.W.S. in the swing and did so with "some force."

mobile home. The county provided financial assistance to renovate the home. Less than one month before trial, on March 30, 2018, an in-home parenting worker was in the home and found that it was not ready for a child. But photographs admitted at trial showed the home to be in adequate condition to care for the child.

On January 24, 2018, the county filed a petition to terminate J.M.H.'s and A.W.S.'s parental rights to O.W.S. The county alleged statutory grounds for termination under: (1) Minn. Stat. § 260C.301, subd. 1(b)(2) (2018), substantial, continuous, or repeated refusal or neglect to comply with the duties imposed upon the parent by the parent-child relationship; and (2) Minn Stat. § 260C.301, subd. 1(b)(5) (2018), reasonable efforts have failed to correct the conditions leading to the child's out-of-home-placement.

Following an eight-day trial, the district court terminated mother's and father's parental rights. The district court considered the testimony and recommendations of the county, the parents' probation officer, O.W.S.'s foster parent, various service providers, mother, father, and the guardian ad litem. The district court also heard testimony from the police officer who responded to the call for assistance at the parents' home on March 4, 2018. The district court found that the county proved by clear and convincing evidence each of the statutory grounds for termination. Additionally, the district court found that the county made reasonable efforts to reunify the family and that termination is in the best interests of the child. Mother and father appeal.

D E C I S I O N

An appellate court reviews an order that terminates parental rights "to determine whether the district court's findings (1) address the statutory criteria and (2) are supported

by substantial evidence.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). We defer to the district court’s exercise of discretion but closely assess whether the evidence is clear and convincing. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). “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 A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018).

I. The district court did not abuse its discretion in determining that reasonable efforts failed to correct the conditions leading to the child’s out-of-home placement.

A district court may terminate parental rights if clear and convincing evidence shows that reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child’s out-of-home placement.² Minn. Stat. § 260C.301, subd. 1(b)(5). It is presumed that reasonable efforts have failed upon a showing that: (1) the child has lived outside the parent’s home, by court order, for at least “a cumulative period of 12 months within the preceding 22 months”; (2) “the court has approved the out-of-home placement plan”; (3) the conditions which led 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.*

² Because Minn. Stat. § 260C.301, subd. 1(b)(5) requires a reasonable-efforts analysis as part of the statutory basis for termination of parental rights, we do not provide a separate analysis of the county’s reunification efforts.

Mother challenges the district court's determinations as to the second, third, and fourth factors—that the district court approved the out-of-home placement plan, mother and father have not corrected the conditions leading to the out-of-home placement, and the county made reasonable reunification efforts. Additionally, father asserts that there is insufficient evidence to support the district court's determination that reasonable efforts have failed to correct the conditions leading to the child's out-of-home placement.

A. Court Approved Out-of-Home Placement Plan

Pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5)(ii), a case plan is presumed reasonable if the court has approved the out-of-home placement plan. *See S.E.P.*, 744 N.W.2d at 388. Here, the district court adopted an out-of-home placement plan in an order dated January 23, 2017. The parents agreed to and signed the out-of-home placement plan. Mother's argument that the second factor has not been met is, therefore, unpersuasive.

B. Correction of Conditions Leading to Out-of-Home Placement

It is presumed that the conditions leading to out-of-home placement have not been corrected upon a showing that a parent has “not substantially complied with the court's orders and a reasonable case plan.” Minn. Stat. § 260C.301, subd. 1(b)(5)(iii). The district court found that both parents have not substantially complied with their case plan, but instead have “gone through the motions of attempting to comply.” The district court further found that “[t]here has been no progress made by the parents from the beginning of the case plan until the current time to address the underlying issues which precipitated the child protection case.” Those underlying issues include: mother's mental-health instability,

father's chemical use, and the parents' history of domestic violence. The district court's findings are supported by the record.

Based on the testimony of the county social worker and mother's ARMHS worker, the record reflects that mother inconsistently engaged in mental-health services. After completing the initial diagnostic assessment in February 2017, mother attended only a few sessions with her peer-support specialist. Although mother expressed an interest in pursuing individual therapy in May 2017, she did not actually begin therapy until July 2017 despite her ARMHS worker's offer to assist in locating a provider. Mother's social worker testified that when she worked with mother on her case-plan goals, mother was very vague about her plans for mental-health services or "completely resistant."

Throughout his involvement with child protection, father failed to refrain from the use of alcohol. Prior to this case, father completed chemical-dependency treatment and was aware of his obligations to refrain from alcohol use. But father violated his probation by consuming alcohol on at least three occasions during the pendency of this CHIPS proceeding—the first because he felt like having a beer, the second because he joined in a co-worker's birthday celebration while at work, and the third on March 14, 2018 with his own mother. On one occasion, his alcohol concentration tested as 0.153. Father's alcohol use added stress to his relationship with mother.

Mother and father's case plan also required them to address domestic-violence issues in their relationship. Although mother and father attended domestic-violence programming as required by their case plan, the district court found that "both indicate they did not learn much through the program." Additionally, the district court found that the

March 4, 2018 domestic assault “demonstrates [the parents’] failure to learn from domestic violence programming.”

At trial, the social worker testified that despite the services offered throughout mother’s and father’s involvement with child protection, the county continued to have concerns regarding domestic violence between the parents, mother’s mental health, and father’s chemical health. The social worker further testified that “with all the providers and services that have been offered for the year and a half . . . we’re still right back where we had started.” The district court’s findings that mother and father failed to substantially comply with their case plan and have not corrected the conditions leading to the out-of-home placement are supported by the record.

C. Reasonable Efforts

During a termination-of-parental-rights proceeding, the district court must also determine whether a county made reasonable efforts to reunite the parent with his or her child. Minn. Stat. § 260C.301, subds.1(b)(5), 8(1) (2018); *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008). Reasonable efforts 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) (quotation omitted), *review denied* (Minn. Mar. 28, 2007). In order to determine whether efforts were reasonable, the district court must consider whether the services offered 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) (2018). “Whether the county has met its

duty of reasonable efforts requires consideration of the length of the time the county was involved and 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 addition, what constitutes “reasonable efforts” depends on the facts of each case. *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996).

Here, the district court found that the county made reasonable efforts to reunify the family. The district court specifically found that mother and father’s case plan included: in-home family services, public-health services, psychological or therapeutic services, domestic-violence counseling, medical services, flex funding for home repairs, mold testing, visitation, transportation, child-protection case-management services, and mental-health case management.

Throughout its order, the district court detailed the services that the county made available to mother and father. The district court found that mother received mental-health services, including ARMHS case management, peer-support specialist services, individual therapy, and medication management. Mother and father also received in-home parenting instruction, Attachment Bio-behavior Catch-up programming, and psychological and parenting-capacity assessments. Father received chemical-dependency services through probation, including chemical-dependency assessments and urinalysis requests. The district court also found that probation provided safety planning, phone cards, and gas vouchers.

Mother and father argue that the county’s delay in procuring a mold test for their rental house impeded their ability to secure adequate housing and make progress on their

case plan. The record does not support the parents' argument. Although the testing occurred a number of months after the county identified a potential mold issue in February 2017, the delay was not solely attributable to the county. Rather, the delay was also caused by mother's ongoing resistance to the existence of the potential problem, the landlord's unwillingness to become involved, and mother's and the county's inability to locate test providers in the area. Importantly, mold testing is not a typical service offered by the county. In addition, after the parents' rental housing tested positive for mold in July 2017, the parents were able to find suitable housing with mother's grandfather and the trial home visit commenced at this location. The parents moved out at the end of October after an incident involving the grandfather, which ended the trial home visit. In November 2017, the parents purchased and moved into a mobile home. The county provided funding to the parents for renovations to make the mobile home suitable for a child. The county made reasonable efforts to assist the parents with mold testing and to secure adequate housing.

The parents further assert that the county failed to offer reasonable services to address the stress in their relationship. This argument also is not supported by the record. The out-of-home placement plan, approved by the district court, provided domestic-violence programming for each parent through Advocates for Family Peace. In addition, mother was provided with mental-health services. And the county social worker and the parents' parole officer both encouraged the parents to engage in couples counseling. The district court did not err in finding that the county made reasonable reunification efforts.

Further, the district court's findings satisfy Minn. Stat. § 260C.301, subd. 8(1), which requires "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.” The district court made an explicit finding that the county made reasonable reunification efforts. In its findings of fact, the district court also detailed the services offered to mother and father through their out-of-home placement plan and probation. After detailing these services, the district court ultimately determined that mother and father had not made progress since the beginning of their case plan “to address the underlying issues which precipitated the child protection case.”

In sum, the district court did not abuse its discretion in invoking Minn. Stat. § 260C.301, subd. 1(b)(5) as a basis for terminating mother’s and father’s parental rights. Clear and convincing evidence supports the district court’s conclusion that reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child’s placement. Because a single statutory basis for termination is sufficient to affirm a district court, we need not address the other statutory basis for termination found by the district court. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

II. The district court did not abuse its discretion in determining that termination is in the child’s best interests.

“The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child.” Minn. Stat. § 260C.001, subd. 2(a) (2018). “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). The district court “must consider a child’s best interests and explain its rationale in its findings and conclusions.” *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). “[C]onflicts between the rights of the child and rights of the parents are resolved in favor of the child.” *In re Welfare of the Children of J.R.B.*, 805 N.W.2d 895, 902 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012); *see also* Minn. Stat. § 260C.301, subd. 7 (2018). This court applies an abuse-of-discretion standard to a district court’s determination that termination of parental rights is in a child’s best interests. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008).

Mother and father argue that the district court’s findings regarding O.W.S.’s best interests are inadequate because the findings do not expressly weigh the three best-interest factors. Mother further contends that the district court’s determination that termination is in the best interests of the child is unsupported by the record.

This case is distinguishable from *Tanghe* cited by mother. In that case, the district court failed to make any specific findings on the best interests of the children. 672 N.W.2d at 626.

Here, the district court specifically found that termination of parental rights is in “the child’s best interests.” The district court explained that O.W.S. “deserves and has a right to a home that is nurturing, safe, and able to meet his needs, which he is not able to have with his parents due to [m]other’s emotional dysregulation, [f]ather’s chemical dependency, and both parents’ poor decision making and lack of a safe and violence-free home.” In addition, the district court specifically found that O.W.S.’s “needs cannot be

currently met by the parents, nor can they be met in the foreseeable future.” In making its determination, the district court considered the evidence in the record, including testimony from a psychologist about O.W.S.’s need for a stable environment, the recommendation of the guardian ad litem that termination is in O.W.S.’s best interests, and testimony from the parents that they love O.W.S. and wish to parent him. The district court’s findings regarding termination of parental rights, including its specific finding that termination is in O.W.S.’s “best interests,” are sufficient and supported by the record.³ The district court did not abuse its discretion in determining that termination is in the best interests of O.W.S.

Affirmed.

³ While it would have been preferable for the district court to make specific findings regarding each of the three factors set forth in Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3), that rule, by its terms, does not require a specific finding on each of the three factors. Rather, the rule provides that “the court shall make a specific finding that termination is in the best interests of the child” and “analyze” the three factors. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3).