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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1826, A18-1830**

In the Matter of the Welfare of the Child of: J. A. J. and V. P. H., Parents (A18-1826),

and

In the Matter of the Welfare of the Children of: J. A. J., Mother, H. M. R., Father, and
P. A. J., Presumed Father (A18-1830).

**Filed April 8, 2019
Affirmed
Hooten, Judge**

Stearns County District Court
File Nos. 73-JV-18-1527, 73-JV-18-1528

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

UNPUBLISHED OPINION

HOOTEN, Judge

In a challenge to the district court's orders terminating parental rights to her four children, mother argues that the district court abused its discretion and failed to make findings supported by the record. Because the record supports the district court's findings that reasonable efforts failed to correct the conditions leading to the children's out-of-home placement and termination is in the children's best interests, we affirm.

FACTS

These consolidated appeals arise from the district court's orders terminating mother's parental rights to her four children. Mother's four children were the subjects of two child-protection matters as the oldest child has a different father than the younger three children. Until the children were removed from mother's home in 2017, the four children lived with mother.

The family has been the subject of a number of child-protection cases in counties throughout the state. Stearns County Human Services (SCHS) started providing services to the family because they received a report that the father of the three youngest children assaulted mother in April 2017.

Two months later, police went to mother's home to investigate a separate allegation against her arising out of her care of a vulnerable adult. But because the home had no running water or electricity, the police removed the children. An emergency protective hearing was held the following week, and the district court transferred custody of the children to SCHS with the oldest child being placed with her father. Shortly thereafter, the

three youngest children were returned to mother on a trial home visit, while the oldest child remained in the care of her father.

Mother failed to attend her pretrial hearing in early June. The district court ordered mother to submit to random drug testing, complete a diagnostic assessment and follow recommendations, and maintain safe, stable, and chemical-free housing. But by the end of May, mother was evicted from her home. During the months of June and July, mother and the three children lived in hotels or with mother's friends. When a social worker visited mother and the children at one of the hotels, she found the room "trashed" with empty alcohol bottles in the garbage. Mother refused to submit to drug testing on June 19 and tested positive for amphetamine on June 23, then refused to submit to testing again on July 5 and 19.

In July 2017, due to mother's housing instability and safety concerns regarding her use of alcohol while caring for the children, the district court terminated mother's trial home visit with the three youngest children, but awarded her supervised visits. The next day, mother tested positive for amphetamine and methamphetamine. In August, she repeatedly refused to take drug tests as requested. By the time of trial in 2018, she had refused 51 out of 61 test requests. During this time, mother also started dating a man who was a predatory offender. Social workers and staff at the visitation center observed this man with the children during the children's trial home visits with mother and later during mother's supervised visits with the children. Although mother knew of his predatory-offender status and had an order for protection against him earlier that year, she believed that he did not pose a safety risk to her children.

Mother's supervised visits with her children were troublesome. One visitation supervisor observed that mother had difficulties managing the three youngest children on her own. The supervisor also observed that she often became "frustrated with the children, lacked follow through, and raise[d] her voice." Two visitation supervisors were required to monitor mother's visits, one to record observations during the visit and the other to ensure that the children did not get hurt. Visitation-center staff reported that mother was unable "to manage the three children" and on one occasion, staff called the children's foster parent to pick up one of the children from the visit because mother ignored him when he "screamed for over 20 minutes." Mother was late for her visit on August 16 and brought her predatory-offender boyfriend to the visit with the children. She missed her visit the next day, and showed up late to her visit the following week. Staff agreed to change the time of her visits because she indicated she had difficulties getting transportation at the scheduled times. When mother failed to show up to the next visit at her requested time, the center announced that it would not supervise any of mother's visits in the future. Based on this evidence, in September 2017, the district court suspended all of mother's visitation with the children until she achieved 14 consecutive days of compliance with her case plan.

The next month, mother completed a chemical-dependency evaluation, mental-health assessment, and parenting-capacity assessment. The chemical-dependency evaluator recommended that she complete a chemical-dependency program and a mental-health assessment, and attend individual therapy. Mother attended only one chemical-dependency treatment session and was subsequently discharged for failing to attend.

Mother was diagnosed with major depressive disorder and the mental-health assessment recommended she attend therapy. Even though she was required to attend weekly therapy, she only saw a county-approved therapist once in November 2017 and the record is unclear whether she saw the therapist a second time in 2018.

The parenting-capacity assessor, a licensed psychologist, conducted an interview and observed mother during a visit with her children. As it had been five months since she saw the children, the psychologist noted that the bond between mother and child was weak. The psychologist found that mother “is incapable of sustaining any commitment to a rehabilitation plan” and her “prognosis for sobriety at this time is very poor.” Finally, the psychologist stated, “As for her parenting readiness, she will remain ill-prepared to accept full-time parenting responsibilities for her children into the foreseeable future, if ever.”

Mother requested on several occasions that she resume visitation with the children. The county social worker explained the district court’s order that she must comply with the case plan for two weeks in order to reinstate visits and that, because mother consistently refused to take court-ordered drug tests or tested positive for methamphetamine, she had not complied with the case plan for the requisite time period.

In February 2018, the county filed petitions to terminate mother’s parental rights to all four children. The county based its petitions on the following statutory grounds: (1) that mother neglected to comply with her parental duties under Minn. Stat. § 260C.301, subd. 1(b)(2) (2018); (2) that mother is palpably unfit to be a parent under Minn. Stat. § 260C.301, subd. 1(b)(4) (2018); and (3) that reasonable efforts failed to

correct the conditions leading to the children's placement under Minn. Stat. § 260C.301, subd. 1(b)(5) (2018). Mother denied the petitions.

After termination proceedings began, and a year after the children were removed from the home, mother was charged with three fifth-degree controlled substance offenses that occurred over a period of five months. She was ordered to participate in drug court in September 2018, a month before the termination-of-parental-rights trial. The drug court ordered mother to participate in random drug testing and to complete treatment. Of the seven drug tests she was required to take in October 2018 as required by the drug court, she missed two tests and tested positive for methamphetamine twice. And at the time of trial, she had not started treatment.

Mother's termination-of-parental-rights trial took place later that month. At the time of trial, the oldest child was ten years old, and the three youngest children were four, three, and two years old. The district court heard testimony from mother, both adjudicated fathers, the parenting-capacity psychologist, mother's current SCHS worker, and the children's guardian ad litem. Following trial, the district court terminated mother's parental rights to all four children, finding that there was clear and convincing evidence to support all three statutory grounds alleged in the petitions and that termination was in the children's best interests. Mother appeals.

D E C I S I O N

We review the termination of parental rights "to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Children*

of *S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). A factual finding is clearly erroneous “if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660–61 (Minn. 2008) (quotation omitted). “Termination of parental rights will be affirmed as long as at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child’s best interests.” *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). And, in most cases, the county must show that it made reasonable efforts to reunite the parent with the children. *In re Welfare of A.M.C.*, 920 N.W.2d 648, 655 (Minn. App. 2018). Appellate courts review the district court’s ultimate decision to terminate parental rights for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

In terminating mother’s parental rights, the district court determined that there was clear and convincing evidence that (1) reasonable efforts failed to correct the conditions that led to the children’s out-of-home placement, (2) mother is a palpably unfit parent, and (3) mother failed to comply with her parental duties, and that termination was in the children’s best interests. Mother challenges all three statutory grounds for termination and the district court’s best-interests finding, but we address only the statutory ground that reasonable efforts failed to correct the conditions leading to the children’s placement under Minn. Stat. § 260C.301, subd. 1(b) and the district court’s best-interests determination.

Reasonable efforts failed

Mother challenges the district court’s determination that reasonable efforts failed to correct the conditions that led to the children’s out-of-home placement. Under this

statutory ground for termination, the failure of reasonable efforts is shown if: (1) a child under the age of eight has resided out of the home for six months, or an older child has resided out of the home for one year, unless the parent has maintained regular contact with the child and is complying with the out-of-home placement plan; (2) the court has approved the out-of-home placement plan; (3) the conditions have not been corrected; and (4) the county has made reasonable efforts toward reunification. Minn. Stat. § 260C.301, subd. 1(b)(5).

Mother makes two general challenges to the district court's finding that reasonable efforts failed to correct the conditions: (1) mother was not given a reasonable amount of time to further complete her case plan, and (2) the district court failed to make the required findings to support its determination. First, mother argues that she "was presently able to assume the responsibilities of caring for the children, especially if allowed additional time." But evidence that problems leading to out-of-home placement have not been resolved by the time of trial is sufficient to show that efforts have failed to correct the conditions leading to out of home placement. *In re Welfare of J.L.L.*, 396 N.W.2d 647, 651 (Minn. App. 1986). If a parent eliminates the factual bases leading to the children's removal but a new factual basis has arisen since removal, the new factual basis must also be removed before the condition is considered corrected. *See In re Welfare of D.L.D.*, 865 N.W.2d 315, 324 (Minn. App. 2015), *review denied* (Minn. July 20, 2015). In *In re the Welfare of A.H.*, this court determined that the parent was given sufficient time to correct the conditions leading to out-of-home placement when she received services for several years and her physicians

indicated that there was little hope her condition that precluded her from parenting would improve. 402 N.W.2d 598, 604 (Minn. App. 1987).

Here, the district court found that:

SCHS has made reasonable efforts to reunify [mother] with the children, including housing assistance, scheduling of assessments and therapy appointments, arranging supervised visitation, providing transportation to UA's and scheduled appointments and encouraging the use of [a] shelter to address the trauma of her domestic abuse and provide assistance with housing, therapy, shelter care and parenting skills. Reasonable efforts have failed due to [mother's] continued chemical use, criminal behavior, frequent incarceration and failure to cooperate and follow through with the requirements of her disposition and case plan.

. . . .

There is clear and convincing evidence that [mother] has failed to correct that the conditions that led to the out of home placement by failing to maintain safe and adequate housing for the children and by failing to successfully engage in CD treatment and individual counseling to address significant chemical use and mental health concerns.

The district court did not clearly err in making this finding as there is compelling evidence that mother had not corrected the conditions leading to out-of-home placement or the conditions that arose since the children were removed. The children had been out of mother's home for more than 16 months, which is significantly longer than the statutory periods of six months for younger children or one year for older children. And not once during the 11-month period leading up to trial did mother comply with her case plan for two consecutive weeks. For that reason, mother did not see her children for more than five months until she participated in a court-ordered parenting assessment. The county gave

her a number of referrals to agencies providing housing and domestic-violence assistance in order to help mother find stable housing and address her issues with domestic violence, but mother failed to follow through with these referrals.

Importantly, mother failed to address her chemical-dependency and mental-health issues. She was discharged from treatment for failing to attend more than one session and only attended county-approved therapy twice. The guardian ad litem testified at trial that, for the foreseeable future, mother is unlikely to parent the children in a chemical-free environment. After the county petitioned to terminate her rights, and more than a year after the children were removed, mother was charged with three separate drug offenses. She was ordered to participate in drug court a month before the termination-of-parental-rights trial, but continued to miss and test positive on drug tests ordered by the drug court. By the time of trial, she had been sober for a short time, but had not shown she could provide stability or safety for her children. As the county points out, mother was in and out of jail during the months leading up to her termination-of-parental rights hearing for drug and other charges. Accordingly, there is clear and convincing evidence that mother failed to correct these conditions.

Second, mother argues that the district court abused its discretion by determining that the county made reasonable efforts to reunify mother with her children. During a termination-of-parental-rights proceeding, the district court must determine whether a county made reasonable efforts to reunite the parent with her child. *T.R.*, 750 N.W.2d at 664. 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). “Whether the county has met its duty of reasonable efforts requires consideration of the length of time the county was involved and the quality of effort.” *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). In order to determine if efforts were reasonable, the district court must determine 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).

The district court found that the county provided reasonable efforts to mother by providing her with housing assistance and recommendations to work with a domestic abuse shelter to address her trauma. The county also provided transportation for mother to attend visitation and other appointments, but mother often turned down the assistance. The county helped mother schedule her chemical-dependency and mental-health assessments, but mother failed to follow through with treatment and therapy. The district court’s findings are not clearly erroneous as the evidence supports its findings. Therefore, we cannot say that the district court abused its discretion by ruling that the county made reasonable efforts to correct the conditions that led to out-of-home placement.

Mother briefly argues that the district court failed to make specific findings on the reasonableness of the county’s efforts. But a district court need not address each element when the record supports the conclusion that reasonable efforts have failed. *See In re Welfare of Children of B.J.B.*, 747 N.W.2d 605, 611 (Minn. App. 2008). The district court’s findings are sufficient to show that the county provided reasonable efforts to mother

by providing chemical-dependency and mental-health assessments, coordinating and offering to provide rides to mother's therapy sessions and treatment, and providing mother with housing and domestic-violence agencies for assistance in finding a safe and stable home and addressing her domestic-violence trauma. Accordingly, the district court did not abuse its discretion in finding that the county provided reasonable efforts to reunify mother with her children.

To terminate parental rights, the petitioner must provide clear and convincing evidence that one of the statutory grounds justifying termination under Minn. Stat. § 260C.301, subd. 1(b), is satisfied. *See In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005) ("Only one ground must be proved for termination to be ordered."). Here, the district court also found mother failed to satisfy her parental duties and that she is a palpably unfit parent. It appears to us that the record supports each of these grounds as well, but because the record amply supports the district court's reasonable-efforts-failed finding, we need not discuss the other statutory bases for termination found by the district court. *See In re Welfare of A.D.*, 535 N.W.2d 643, 650 (Minn. 1995).

Best interests

Mother challenges the district court's determination that termination of her parental rights is in the children's best interests. We will affirm a termination decision if "at least one statutory ground alleged in the petition is supported by clear and convincing evidence and termination of parental rights is in the child's best interests." *T.R.*, 750 N.W.2d at 661. The children's best interests are the paramount consideration in a termination proceeding. Minn. Stat. §§ 260C.001, subd. 2(a), .301, subd. 7 (2018). A best-interests analysis

requires consideration of the child and parent's interests in preserving the parent-child relationship and of any competing interests of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *see also J.R.B.*, 805 N.W.2d at 905 (“Competing interests [of the child] include such things as a stable environment, health considerations[,] and the child’s preferences.” (quotation omitted)).

Here, the district court found:

The children’s best interests are clearly served by the termination of [mother’s] parental rights. There has been no discernible improvement in the conditions that led to the out of home placement in May, 2017. The children have been in out of home placement for more than sixteen months and are entitled to permanence and stability. The current placement, unlike the chaos and deprivation experienced prior to their removal from the home, meets the physical, mental and emotional needs of the children.

Record evidence supports the district court’s best-interests determination. The district court weighed the children’s needs in having a stable and permanent home against their interest in preserving the relationship with their mother. Because the home with their mother could not provide the stability and consistency that small children need, and the children had stability in their foster placement or for the oldest child with her biological father, the district court concluded that termination was in the children’s best interests. The district court noted that the youngest three children “have adjusted and are doing well in their current placement” and that their “physical, mental and emotional needs are being met.” It noted that the oldest child was “thriving in the care and custody of her father” and that she “is happy, well-adjusted and doing well in school.”

Mother makes a number of arguments in challenging the district court's best-interests finding. She first argues that the district court should not have relied on the testimony of the parenting-assessment psychologist or the guardian ad litem. But we afford the district court considerable deference in credibility determinations as it is in the best position to assess credibility. *In re the Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). For that reason, we will not disturb the district court's reliance on the testimony of the psychologist and guardian ad litem.

Mother also argues that her chemical-dependency issues do not interfere with her ability to provide basic care and adequate nutrition for the children. We have previously held that a child's best interests were supported by termination of parental rights because, although the parent wanted to provide a home for the child, the parent had a history of chemical abuse, lacked parenting skills, and made relatively few steps to address the problems. *In re J.L.L.*, 396 N.W.2d at 651–52 (Minn. App. 1986). Because the parent in *J.L.L.* failed to adequately address the underlying issues, the district court could not determine when the parent would be able to assume parental responsibilities. *Id.*

Here, mother failed to take steps during the 16 months her children were in out-of-home placement to address her chemical-dependency and mental-health issues. Although she argues that she never abused drugs when caring for the children, the record shows otherwise. Mother was discharged from treatment for failing to attend more than one session. Although services were encouraged and provided to her to address her housing issues, she failed to follow through. By the time of trial, she had been sober for about two weeks, but failed to show she could provide stability for her children. Despite her desire

to care for her children, the district court did not err in determining that the children's need for stability, permanency, and an environment that can provide what they need physically, emotionally, and mentally outweighed mother's interests in parenting the children.

Mother last argues that her temporary issues with chemical abuse do not overcome her rights as a parent. But her contention that she only struggled with parenting starting in 2017 when she became a victim of domestic violence is unsupported by the record. Mother has been the subject of five family investigations and seven family assessments over the years. Prior to this case opening, there were reports that the children subject to this appeal were found wandering outside alone on several occasions and that the children were left in the oldest child's care when she was only nine years old. There is also evidence that mother had chemical-dependency issues before 2017. Mother's argument that she only struggled with parenting starting in 2017, when the father of her youngest children physically assaulted her, is not supported by the record. Accordingly, the district court did not abuse its discretion in determining that termination of mother's parental rights was in the children's best interests.

Because record evidence supports the district court's findings, and because the district court properly applied the law to those findings, the district court did not abuse its discretion when it terminated mother's parental rights to all four children.

Affirmed.