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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2106**

In the Matter of the Welfare of the Child of
E. C. S., S. K. D., J. M. N., Parents.

**Filed May 28, 2019
Reversed and Remanded
Bratvold, Judge**

Chisago County District Court
File No. 13-JV-18-214

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Considered and decided by Ross, Presiding Judge; Bratvold, Judge; and Klaphake, Judge.*

UNPUBLISHED OPINION

BRATVOLD , Judge

Appellant-mother E.C.S. (mother) challenges the district court's decision to terminate her parental rights to her two youngest children. Because respondent Chisago

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

County Health and Human Services (the county), failed to make reasonable efforts to reunite mother and her children, we reverse the decision terminating mother's parental rights, and remand for proceedings consistent with this opinion.

FACTS

Mother and father S.K.D. are the parents of H.D. (born in 2011) and K.D. (born in 2013). Mother also has children with father J.M.N. D.N. was born in 2003 and B.N. was born in 2006.¹ During the time leading up to the termination trial, mother lived with B.N., H.D., and K.D.

Mother and her children have a history of involvement with the county including services provided for children in need of protection (CHIPS). According to the county, the family has “come to the attention of [the county] nineteen (19) times in the last twelve years.” The relevant events leading up to this appeal began with a report from the Chisago Lakes School District to the county in January 2017. The report stated that B.N. and H.D. had several unexcused absences and tardies, and that the school district's letters and phone calls to mother were not successful in correcting the absences. County social worker Caitlin Chandler interviewed B.N. and H.D.; B.N. told Chandler that she suffered from celiac disease and struggled to “get to school because she is ill the majority of the time.” When Chandler met with mother to discuss the absences, mother explained that B.N. missed school because of her health issues. Mother also told Chandler that she “was

¹ Mother voluntarily transferred her custodial rights of D.N., and D.N. has lived with his paternal grandparents since “early 2012.” Mother maintains shared legal custody of D.N. D.N. “was at no time subject to the CHIPS proceedings related to this appeal.”

struggling with a [low] platelet level [and] struggled to get up and out of bed” and that this made it “difficult for her to essentially care for herself” and the children. Chandler testified that mother failed to provide documentation to the school regarding B.N.’s illness and dietary needs. Mother told Chandler that her boyfriend, B.H., helped care for the children on nights while she worked. Chandler expressed concerns to mother “about the children being left in the care of [B.H.], who has a criminal history and substance use.”

After attempting to provide services, Chandler determined that mother was not “address[ing] the educational concerns.” Consequently, the county filed a CHIPS petition in March 2017. In June 2017, mother entered an admission to the CHIPS petition and the district court found that the children were “habitually truant.” The CHIPS adjudication was stayed up to 180 days on the condition that mother comply with the case plan that was agreed to and submitted to the court. The plan addressed mother’s mental-health issues, chemical-dependency concerns, housing instability, and the children’s physical and mental health. Additionally, mother agreed that the children would not be left in B.H.’s care.

Shortly before the CHIPS admission, B.H. was arrested for offenses that were later charged as second-degree controlled-substance possession and criminal vehicular operation while under the influence of a controlled substance. On July 7, 2017, law enforcement executed a search warrant at mother’s home for evidence related to B.H. In a bedroom near where the children were sleeping, law enforcement “located a glass pipe with burnt residue on it.” The residue field tested positive for methamphetamine. Mother admitted to police that she had used drugs the night before. The state charged mother with storing drug paraphernalia in the presence of a child and child endangerment. Law

enforcement removed the children from the home and placed them on a 72-hour hold. Later, the district court issued a protective-care order for foster-care placement. H.D. and K.D. have remained in foster care since being removed from the home in July 2017.²

The district court lifted the stay of the CHIPS proceedings. At a July hearing, the district court ordered mother to comply with the provisions of the out-of-home placement plan, cooperate with services offered by the agency, and arrange visitation with the children. Mother began supervised visits on August 3, 2017. The county filed an amended CHIPS petition in August 2017.

On December 4, 2017, the district court adopted a placement plan, which had an effective date of September 25, 2017. Mother did not sign the December 2017 placement plan, although the district court found that the county met with mother “jointly” to make the plan. The plan included approximately 20 goals or objectives for mother, including: abstain from alcohol and other mood-altering substances; complete a chemical-dependency assessment and comply with recommendations; submit to random drug testing; complete a psychological evaluation, comply with the evaluation’s recommendations, and allow the results to be sent to the county; arrange supervised visits with the children; maintain suitable employment, housing, and physical health; and demonstrate an ability to parent her children in a safe and healthy way.

² B.N. was placed in the care of her paternal grandparents, who also care for her brother, D.N. After the termination petition was filed, mother and father J.M.N. agreed to voluntarily transfer permanent physical and legal custody of B.N. to J.M.N.’s parents. Accordingly, B.N. was removed from the permanency proceeding.

On July 13, 2018, the county filed a petition to terminate mother's parental rights to H.D. and K.D.³ The county asserted that mother's parental rights should be terminated for the following statutory bases: Minn. Stat. § 260C.301, subd. 1(b)(2) (2018) (parent failed to satisfy the duties of the parent-child relationship); Minn. Stat. § 260C.301, subd. 1(b)(4) (2018) (parent is palpably unfit to be a party to the parent-child relationship); and Minn. Stat. § 260C.301, subd. 1(b)(5) (2018) (reasonable efforts failed to correct the conditions leading to the out-of-home placement).

Mother's termination trial took place over several days, beginning on September 18, 2018. The county's social-worker witnesses, Chandler, Chris Johnson, and Amanda Mitby, provided testimony about the family's 2017 CHIPS cases, and the county's involvement with the family since 2006. Mitby testified that mother complied with many of the case plan's requirements. For example, evidence established that mother completed chemical-dependency assessments, neuropsychological testing, parenting assessment, and attended parenting classes; mother also sought assistance at Nystrom & Associates for Adult Rehabilitative Mental Health Services (ARMHS) and therapy, and completed an intake for medication management. In addition, mother obtained employment and stable housing, remained law abiding, and abstained from alcohol and other mood-altering substances.

³ The petition also sought to terminate mother's parental rights as to B.N.; see note 2 for further details. And the petition sought to terminate father S.K.D.'s parental rights, but his termination proceedings were bifurcated and his parenting status is not an issue in this appeal.

Despite completing many of the case plan's requirements, Mitby testified that mother did not gain insight from the services provided and failed to complete several of the case-plan goals. For example, mother completed chemical-dependency assessments, but failed to timely comply with recommendations for mental-health therapy and a neuropsychological evaluation. Mother underwent a neuropsychological exam in April 2018; yet, as of June 2018, the county asserted that she had only attended three therapy sessions. Mother completed an intake for medication management, but the county contended that she failed to attend follow-up appointments. In addition, the county witnesses testified that mother failed to prioritize her visits with the children. According to the county, mother "was late to, cancelled, or no showed approximately 37 visits out of 90."⁴

With regard to demonstrating her ability to parent and understand the children's needs, mother participated in a parenting assessment with Frank Weber, a licensed psychologist. Weber testified at mother's trial about the assessment, in which Weber concluded that mother "lacks insight into how her own choices and interpersonal relationships are impacting her ability to provide a stable and loving home." The parenting-assessment report also stated that mother failed to take responsibility for the

⁴ This statement is concerning because it was repeated in the district court's analysis and implies that mother missed many visits without providing notice. In fact, based on the termination petition and Mitby's testimony, in 2018, mother had only one "no call, no show" visit. Mother cancelled "approximately four or five" visits, but did so after informing the county that she would be unable to attend. Mother was late for at least 12 visits, but was allowed to complete the visits. Based on this record, mother appears to have missed approximately six visits in 2018.

incidents that led to the children being removed from the home and mother does not “appear appropriate to independently parent her children.” Mother also participated in a neuropsychological evaluation with a licensed clinical psychologist, Dr. Fischer. The psychological assessment concluded that:

[T]he results of [mother’s] neuropsychological testing are such that would likely create deficits in her functioning in all areas, including employment, money management, education, socialization, and parenting. These results suggest that it would be extremely difficult for [mother] to learn a new skill given her severe memory deficits. She also would be significantly challenged in coping with the unexpected changes that occur in everyday life situations (e.g., lack of cognitive flexibility).

Both assessments were admitted at trial. Read together, the assessments describe mother’s chemical-dependency history, traumatic brain injury (TBI) and related memory impairment, and mental-health diagnoses.

The district court heard testimony about K.D.’s needs and mental-health issues from treating physicians. Dr. Nos-Tollefson and Dr. Deling testified that K.D. has been diagnosed with disinhibited social engagement disorder, global development delay, adjustment disorder, anxiety, depression, language disorder, and speech sound disorder. Dr. Nos-Tollefson also testified that K.D. has been exposed to traumatic experiences including “adult chemical use, witnessed domestic violence, was the victim of neglect, and possibly exposed to chemicals in utero.” K.D. has an individualized education program (IEP), and the guardian ad litem (GAL) testified that her needs are being met in her current foster home and through individual therapy.

The district court also heard testimony about H.D.'s needs and development. H.D.'s therapist, Lauren Sinn, testified that H.D. was diagnosed with PTSD due to her exposure to multiple traumatic events, including "witness[ing] domestic violence," overdosing on methadone as an infant, and experiencing multiple moves and changes in her living environment, including foster care. H.D. is in therapy, and, according to the GAL, has shown significant progress since being removed from the home.

C.C., the paternal grandmother, testified regarding a 2011 incident where S.K.D. used a methadone syringe to administer Tylenol to H.D., who was taken to the hospital for a drug overdose. Mother was working at the time of the overdose. C.C. testified that she took the blame for the incident, but her son S.K.D. was caring for H.D. at the time. C.C. also testified that she was aware of a domestic-abuse incident between S.K.D. and mother, where mother called for help after S.K.D. held her arms down on the bed, and C.C. intervened.

Mother testified regarding her drug use, which began when she was 18 years old. Mother also testified that she attended chemical-dependency treatment and was sober from approximately 2010 to 2016, then relapsed in 2016, and again in 2017, but that she had not used since July 2017, when the children were removed from the home. Mother also testified about past trauma, a car accident that caused her TBI, and her mental illnesses. Finally, mother testified that she is currently employed, attending therapy once a week, living with her grandmother, working on her parenting skills, not using drugs, and ended her relationship with B.H.

On December 14, 2018, the district court issued findings of fact and conclusions of law and terminated mother's parental rights. On December 20, 2018, the district court issued amended findings of fact and conclusions of law and order, correcting a clerical error in the previous order. The court found the county witnesses' testimony to be credible, and did not find mother credible because she "testified in her own self-interest." The district court found that the county had provided reasonable efforts to reunite the family. The court concluded that the following statutory grounds supported termination of mother's parental rights by clear and convincing evidence: mother failed to satisfy the duties of the parent-child relationship; mother is palpably unfit to be a party to the parent-child relationship; and reasonable efforts failed to correct the conditions leading to the children's out-of-home placement. The court also concluded that termination was in the children's best interests. Mother appeals.

D E C I S I O N

Mother appeals from the district court's order terminating her rights, arguing that the district court erred in four ways: (1) the district court misapplied the presumption of palpable unfitness; (2) the record does not support the district court's determination that she failed to satisfy her parental duties; (3) the record does not support the district court's determination that she failed to correct the conditions leading to the out-of-home placement; and (4) the district court erred in concluding that the county made reasonable efforts to reunite the family.

This court reviews the district court's termination of 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). While we give considerable deference to the district court’s decision to terminate parental rights, we closely inquire into the sufficiency of the evidence to determine whether the evidence was 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. *Id.* We decide this appeal based on our analysis of the fourth issue raised by mother’s brief to this court. Because our decision on the fourth issue results in reversal and remand, we do not fully analyze the other three issues raised by mother. But this opinion does comment on some aspects of issues that we believe are likely to arise on remand.

I. The district court’s conclusion that the county provided reasonable efforts to reunite the family is not supported by the record.

“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) (quotation omitted), *review denied* (Minn. Mar. 28, 2007). For the county’s efforts to be reasonable, the services offered 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) (2018). The

district court must make “specific findings” that the county made reasonable efforts. Minn. Stat. § 260C.301, subd. 8 (2018).

Mother contends that the district court erred in deciding that the county provided reasonable efforts to reunite the family for three reasons, each of which we discuss in turn.

A. The case plan did not specifically address the family’s needs.

When a child is placed in foster care by a court order, the county’s reasonable efforts to reunite the family include the responsible social services agency’s preparation of an out-of-home case plan. *In re Welfare of Children of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018). The case plan must identify the specific reasons why the child was placed in foster care, the changes or requirements a parent must make or satisfy in order for their child to return home, and the services that are available to help a parent achieve these changes or requirements and reunify the family. Minn. Stat. § 260C.212, subd. 1(c)(2), (3) (2018). Further, the out-of-home case plan must be reflected in a written document that is prepared jointly with a parent, signed by a parent, approved by the court, and explained to all involved parties. *Id.*; *A.R.B.*, 906 N.W.2d at 897.

Preliminarily, we note that there is some uncertainty as to mother’s involvement with the preparation of the case plan. The case plan included approximately 20 goals or tasks, which the district court found mother substantially attained. While the case plan was adopted by the district court on December 4, 2017, mother did not sign the out-of-home placement plan. Mother asserts in her brief to this court that she did not participate in drafting the plan and the plan was not explained to her. The district court found, despite mother’s lack of signature, that the county met with mother “jointly” to make the plan. The

record, however, does not include testimony from the county social worker who created the case plan, which includes a note that she met with mother “to jointly make this plan.” At trial, Mitby testified that she was not assigned to mother’s case until January 2018, yet it was her understanding that mother “was given a copy” of the plan in August 2017, and mother was aware of the case-plan requirements.

It is true that the plan was submitted to the district court for approval in December 2017. But the district court’s approval of the plan and the parent’s signature and participation in the case plan are separate requirements, and the statute requires that both must be satisfied. Thus, even if mother knew of the plan’s requirements, the county’s alleged failure to include her in the drafting and obtain her signature violates the statutory requirements. As stated above, the “out-of-home placement plan means a written document . . . prepared . . . jointly with the parent.” Minn. Stat. § 260C.212, subd. 1(b) (2018). “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) (2018)) (emphasis added). The district court’s finding misses the point when it states that the county met with mother to make the plan. The district court erred in not determining mother’s involvement in drafting and agreeing to the case plan.

More fundamentally, based on our detailed review of the record and the county’s reasons for concluding that mother had failed to correct the conditions leading to out-of-home placement, we conclude that mother is correct in asserting that the case plan did not include services adequate to meet the needs of the family nor did it

sufficiently explain changes that mother needed to make for the children to return home. See *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008) (“[T]he nature of the services which constitute reasonable efforts depends on the problem presented.” (quotation omitted)).

First, the parenting assessor’s determination that mother was not “appropriate to independently parent her children” was, in large part, why the county sought to terminate mother’s rights. Yet, the case plan included few services or requirements aimed at overcoming mother’s parenting deficits. See, e.g., *Matter of Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996) (stating that mental-health services should be “tailored to the problem that prevented [mother] from being able to parent”). For example, the case plan did not explicitly require that mother receive parenting-education classes. Instead, the case plan provided that mother should “demonstrate the ability to parent her children in a safe and healthy way. Demonstration of these parenting abilities may be completed by successful completion of a parenting education course.” Although the county did not require parenting education, mother attended a parenting-education course. At trial, Mitby testified that this course was not “especially appropriate” because of mother’s “extensive needs” and that family therapy would have been more beneficial. But the county did not assist mother in requiring or completing a more “beneficial” program. And the county did not inform mother why the parenting class she chose was not adequate to address her parenting deficits.

Additionally, the case plan required that mother complete a psychological evaluation and “follow all of the recommendations of the assessment.” Mother completed

this evaluation, and the assessor recommended that mother receive ARMHS support, which could assist her with “managing mental health symptoms, including scheduling and maintaining appointments, managing housework and other responsibilities, parenting skills, sober support, social functioning, interpersonal functioning, and self-care.” Mother testified that she has an ARMHS worker, and has received services that are related to her ability to be a responsible parent.

We are troubled that the district court accepted Mitby’s conclusion that mother could not parent independently, even though Mitby never received any significant information from mother’s ARMHS worker. Mitby testified that she had never spoken on the phone or had a planned visit with mother’s ARMHS worker, although Mitby had tried to contact him. Because the county limited this aspect of its services to mother and merely made unsuccessful phone calls to the ARMHS worker, we conclude that the county did not provide “real, genuine assistance” related to mother’s neuropsychological and mental-health issues that prevent her from parenting independently. *See S.W.*, 727 N.W.2d at 150.

The county also asserted, and the district court found, that mother had a “long history of allowing her children to be supervised and cared for by inappropriate caregivers.” The district court also found that mother “had no insight” into how B.H.’s criminal history “could affect her children.” But, as mother argues to this court, the case plan includes no services directed at this issue and fails to even state that mother needed to end her relationship with B.H. for the children to be returned to her care. Although the county offered testimony that it conveyed to mother that B.H. was not

allowed at supervised visits, the case plan failed to provide clear guidance because it did not include the specific changes mother must make, regarding her relationships and choice of caregivers, in order for her children to return home. Minn. Stat. § 260C.212, subd. 1(c)(2), (3).

In sum, the termination of mother's parental rights was based mainly on mother's perceived inability to adequately parent the children and understand their needs. But, as we have stated, the county's services and case-plan requirements did not sufficiently address these issues. *See T.R.*, 750 N.W.2d at 664. The county undisputedly offered mother many services throughout the years. Yet when those services are compared with the reasons for termination, we are left with the conviction that the December 2017 case plan is a detailed boilerplate checklist, with no indication of what mother should prioritize, and the case plan also failed to include sufficient services to help achieve reunification, or remedy mother's purported parenting failures.

B. The county did not provide mother with a meaningful opportunity to demonstrate an ability to appropriately parent the children.

The district court's decision to terminate was also based largely on its determination that mother cannot provide for the children's needs. The district court found specifically that the children have "serious mental health needs" and need "six (6) hours of therapy per week," and mother is not capable of meeting those needs. But the record does not show reasonable efforts by the county to allow mother a meaningful opportunity to show whether she can meet her children's needs. *See* Minn. Stat. § 260.012(h) (providing that

services must be “available and accessible” and “consistent and timely”). Two examples illustrate the county’s failure in this area.

First, the county did not allow any unsupervised visits between mother and the children. The GAL agreed at trial that unsupervised visits are “generally the first step towards getting the kids reunified with the parents.” The GAL also agreed that, in April 2018, she had sent Mitby an email stating that she was “comfortable with unsupervised visits” between mother and the children. Mitby responded that she had “strong opinions about wanting to wait” and made the unilateral decision not to “move forward” with unsupervised visits. Then, in June 2018, mother moved for “trial home [unsupervised] visits,” and, at a hearing, the district court “indicate[d] that the county should move to unsupervised visits in coordination with the [GAL], once the [GAL] feels it’s an appropriate way to proceed.” When asked at the termination trial what steps she took to move forward with unsupervised visits after this hearing, Mitby testified that she consulted with her supervisor, and ultimately decided she was not “comfortable moving towards unsupervised visits.” Because the termination petition relied on the county’s determination that mother was unable to “parent her children,” the county’s efforts should have been aimed at helping mother demonstrate how she cared for her children and provide any necessary assistance. We are troubled by the county’s failure to provide unsupervised visitation that was recommended by the GAL and approved by the district court.

Second, the county did not establish that it provided mother with sufficient opportunity to participate in specialized care for her children. As part of the case plan, mother was required to utilize services for her child’s “developmental, educational,

medical, and mental health needs.” The county determined that mother failed to complete this requirement. The county cited, however, a single instance where mother was invited to and missed an IEP meeting in March 2018. But, other than a single meeting, Mitby agreed that mother did not miss “anything that has been asked of her with regard to the children’s developmental, education, medical, or mental health needs.” Accordingly, the record does not support the district court’s conclusion that mother could not “assume the responsibilities” for the children’s health needs when the record reflects that she only failed to attend one IEP meeting. Frankly, our review of the record suggests that it is incomplete on important details about mother’s participation in, transportation to, attendance at, and follow up for her children’s special needs. As a starting point for the district court’s assessment of this issue, the record must establish that mother was provided with an opportunity to participate and then document what followed.

In sum, the county did not provide mother with a meaningful opportunity to demonstrate her ability to parent the children. *See T.R.*, 750 N.W.2d at 666.

C. The record does not support the district court’s conclusion that mother’s completion of the case plan was rote.

The county recognized at trial that mother completed many, or most, of the plan’s requirements. The county alleged, however, that mother’s completion was “superficial,” “rote,” and she failed to gain insight into the plan’s goals. The district court found that, although mother completed “most of her case plan in spring of 2018, [she] has not gained insight from the services provided” and her completion of the plan was “not adequate.” On

appeal, mother argues that she was not informed that she had failed to sufficiently comply with the plan or meet the county's expectations.

The record evidence supports mother's argument. Mitby testified that, in part, mother's lack of progress with the case plan led to the county's decision to file the permanency petition in July 2018. But Mitby also testified that she did not express her concerns about mother's compliance until around March 2018, almost eight months after the children had been removed from the home. And it is not clear when, if ever, the county communicated to mother that her compliance with the case plan was superficial and did not satisfy the county's expectations. It is also not clear, based on our review of the record, that mother's completion of the plan was "rote." The county offered no evidence that mother's compliance was insincere, except to say that mother's compliance with services increased after the termination case was filed.⁵ But given mother's substantial compliance with more than 20 requirements in this case plan, and the county's vague claim that she increased her intensity after the termination petition was filed, we find no record support for the finding that mother's *near* completion of the case plan was inadequate, and we conclude that the district court clearly erred in making this finding.

⁵ We recognize that a parent's delayed compliance with a case plan is significant and material when children are in need of protection and services. *See In re Welfare of A.J.C.*, 556 N.W.2d 616, 622 (Minn. App. 1996), *review denied* (Minn. Mar. 18, 1997). We also recognize that a parent's complete compliance with a case plan is no guarantee that a termination petition will be denied. *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 667 (Minn. App. 2012). Nonetheless, on this record, we cannot affirm the district court's determination regarding the county's reasonable efforts to reunite this family.

In sum, on this record, we conclude that the county failed to provide relevant services, failed to allow mother an opportunity to demonstrate her ability to parent with assistance, and show that mother's completion of the plan was insufficient. We conclude that the county failed to make reasonable efforts to reunite mother and her children. Accordingly, we reverse the termination of mother's parental rights and remand to the district court.

II. Additional remand considerations

Because the district court has discretion on the scope of the proceedings on remand, we offer additional comments on the remaining issues raised by the parties. *See In re Estate of Vittorio*, 546 N.W.2d 751, 756 (Minn. App. 1996) (providing that this court may address issues that will arise on remand "in the interest of judicial economy").

First, the district court determined that the county had proven by clear and convincing evidence that mother was palpably unfit to be a party to the parent-child relationship. Minn. Stat. § 260C.301, subd. 1(b)(4). On appeal, mother asserts that the district court erred by applying the presumption of palpable unfitness in her case because she "has never had her parental rights involuntary terminated, and therefore, the statutory presumption does not apply." We agree.

A parent is presumed to be palpably unfit if the parent's rights to one or more children have been involuntarily terminated or "the parent's custodial rights to another child have been *involuntarily transferred* to a relative." *Id.* (emphasis added). Mother is correct that the presumption does not apply to her; mother *voluntarily* transferred her

custodial rights of D.N. and B.N. to their paternal grandparents. A voluntary transfer of rights does not give rise to the palpably-unfit presumption. *See id.* In its decision, the district court stated that a parent may rebut the presumption of unfitness and then concluded that mother had failed to rebut the presumption. On remand, the district court should not apply the presumption in mother's case.

Second, the district court found that mother was "palpably unfit due to her struggles with mental health, lack of insight into her children's mental-health needs, and lack of insight into her interpersonal relationships." Under the palpably-unfit basis for termination, the county must prove "a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child." *T.R.*, 750 N.W.2d at 661; *see also* Minn. Stat. § 260C.301, subd. 1(b)(4). A parent's mental illness, alone, cannot be used as the basis for terminating parental rights. *S.Z.*, 547 N.W.2d at 892. As the district court found, mother has "taken steps to address concerns regarding" her mental-health issues. Mitby also agreed at trial that mother did not miss "anything that has been asked of her with regard to the children's developmental, education, medical, or mental health needs." Accordingly, the findings in the district court's opinion regarding mother's deficits in functioning do not rise to a "pattern of specific conduct or specific conditions" that are detrimental to the welfare of the children. *See id.*

Third, the district court determined that mother substantially, continuously, or repeatedly refused or neglected to comply with the duties of a parent, within the meaning

of Minn. Stat § 260C.301, subd 1(b)(2). Under this factor, the court must find that *at the time of termination*, the parents are not “*presently* able and willing to assume [their] responsibilities” and that the parents’ neglect of these duties “will continue for a prolonged, indeterminate period.” *J.K.T.*, 814 N.W.2d at 90 (emphasis added). The court must make “clear and specific findings conforming to the statutory requirements, and the evidence must address conditions that exist at the time of the hearing.” *Id.* In its conclusion that mother neglected to comply with the duties of a parent, the district court considered the previous “nineteen (19) child protection intake reports over the years.” The district court also reflected that mother “voluntarily transferred her other two children,” which it concluded showed her lack of parenting skills. But mother’s past CHIPS involvement and decision to voluntarily transfer her parental rights does not support the court’s determination that she is *presently* unable to parent. For example, based on our review of the record, out of the 19 CHIPS intake reports, 14 predate 2015. On remand, the district court should consider the conditions that exist at the time of the hearing when deciding whether mother has neglected her parental duties.

We recognize that the parenting assessment supports the district court’s finding that mother is “not presently able to assume the responsibilities of caring for” the children. Therefore, we do not suggest that the district court should unsettle the current out-of-home placement until mother can, in fact, “demonstrate the ability to parent her children in a safe and healthy way.” But, based on this record, the county failed to make reasonable efforts to reunite mother and her children. Thus, we reverse and remand this matter to the district

court for proceedings consistent with this opinion. The district court may at its discretion reopen the record.

Reversed and remanded.