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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0036**

In the Matter of the Welfare of the Children of: J. H. and J. P., Parents.

**Filed July 8, 2019
Affirmed as modified
Larkin, Judge**

Beltrami County District Court
File No. 04-JV-18-1109

Ross Trooien, Grand Rapids, Minnesota (for appellant J.H.)

David Hanson, Beltrami County Attorney, Elysia Nguyen, Assistant County Attorney,
Bemidji, Minnesota (for respondent Beltrami County Health and Human Services)

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant-mother challenges the district court's order terminating her parental rights, arguing that respondent-county failed to make reasonable reunification efforts and that the district court erred by basing its order for termination on her mental illness. We affirm as modified.

FACTS

Appellant J.H. is the mother of A.E.H. (A.E.), born in 2012, and A.C.H. (A.C.), born in 2017. J.P. is the biological father of A.E. A.C.'s biological father is unknown. Mother had custody of the children prior to the events leading to the underlying child-protection case.

On June 19, 2017, Beltrami County Health and Human Services (the county) received a report alleging that mother had left four-year-old A.E. unsupervised at a band concert and that A.E. had been “running up and down the stairs and in and out of the lobby area unattended.” Mother, who had been performing in the concert, told the county that she had told A.E. to stay in a specific seat during the concert. At the time, mother was pregnant with A.C., and she and A.E. were living in a fish house that did not have cooking or bathroom facilities. After A.C. was born, the hospital reported that mother “needed constant feeding reminders and requested frequent assistance” with providing standard care for A.C. Based on that report, A.C. was placed on a 72-hour protective hold.

On July 6, 2017, A.C. was discharged from the hospital and placed in emergency protective care. On July 10, the county filed a petition alleging that A.E. and A.C. were children in need of protection or services (CHIPS). An emergency-protective-care hearing was held that same day. Based on the evidence presented at the hearing, the district court found that the county had received approximately ten reports regarding mother and A.E. between February and July 2017, including one report alleging that mother was “behaving bizarrely and denying she was pregnant.” The district court found that A.E. and A.C. would

be endangered if they were released to mother's care and transferred physical custody of the children to the county for out-of-home placement.

The CHIPS petition included allegations regarding the band-concert incident, the family's residence in a fish house, and mother's difficulty with A.C.'s basic care. Mother denied the allegations in the CHIPS petition. On September 27 and 28, 2017, the district court held a trial on the petition. Based on the evidence presented at trial, the district court found that mother did not appear to recognize her pregnancy before A.C. was born and asked strange questions about caring for A.C. after his birth, such as, "What do I do if the baby bleeds out?" Mother did not have a plan to provide child care for the children. During visits with the children, mother neglected A.E. and did not know how to care for A.C. Mother also exhibited paranoid thinking. The district court found that the county proved the existence of one or more statutory grounds for a CHIPS finding and adjudicated mother's children as in need of protection or services. Mother was ordered to complete a psychological evaluation and follow any recommendations, to follow the recommendations of a parenting-capacity assessment that she had completed, and to maintain safe and stable housing.

On April 4, 2018, the county petitioned to terminate mother's parental rights to A.E. and A.C. and to terminate J.P.'s parental rights to A.E., alleging the following statutory grounds in support of termination: (1) mother had failed to substantially comply with the duties of the parent-child relationship, (2) reasonable efforts had failed to correct the conditions leading to the children's out-of-home placement, (3) J.P. was not married to mother when A.E. was born and he was not registered with the father's adoption registry,

and (4) the children were neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(2), (b)(5), (b)(7), (b)(8) (2018).

The termination of parental rights (TPR) petition was tried over three days in August, September, and October 2018. The county presented the testimony of 13 witnesses and introduced 26 exhibits. Mother testified on her own behalf. The district court's posttrial findings are consistent with and supported by the following factual record.

During the underlying proceedings, mother had two psychological evaluations. Dr. Sarah Weinzierl performed the first psychological evaluation and diagnosed mother with adjustment disorder with mixed anxiety and depressed mood. The district court found that Dr. Weinzierl's evaluation was brief and "not credible for purposes of evaluating [mother's] mental health."

Dr. Lindsay Kujawa completed the second psychological evaluation. Dr. Kujawa interviewed mother and administered several psychological tests. During the interview, mother was guarded, had a flat affect, made illogical statements, was difficult to track, and did not hold herself accountable. Dr. Kujawa learned that mother had few friends and had a history of methamphetamine, ecstasy, and marijuana use. Psychological testing revealed that mother's cognitive function is "in the low average range," that she is "likely incapable of taking care of herself," and that she has difficulty expressing herself and can be overly belligerent.

Dr. Kujawa diagnosed mother with schizophrenia, which she described as a persistent, lifelong illness, and she recommended medication and psychotherapy to treat it. Dr. Kujawa believed that mother's prognosis was "extremely poor" if she refused treatment

for her illness. Mother did not accept Dr. Kujawa's diagnosis, but the district court found Dr. Kujawa's testimony to be credible. The district court also found that people with schizophrenia face occupational and social impairments, may have delusions, and can experience difficulties in communication, interpreting what others are saying, and expressing thoughts. The district court further found that medication and psychotherapy together were "critical" to treat mother's illness and that psychotherapy alone would be insufficient.

Dr. Thomas Peterson met twice with mother to perform a psychiatric evaluation and discuss medication that could assist in managing her schizophrenia. At the first appointment, Dr. Peterson observed that mother had persecutory thoughts and limited thinking. At the second appointment, Dr. Peterson observed that mother demonstrated poor insight and "presented with a history consistent with schizoaffective disorder." After assessing mother, Dr. Peterson recommended that she take anti-psychotic medication, but mother refused to do so and discontinued her visits with Dr. Peterson. Dr. Peterson believed that mother discontinued her visits because she disagreed with the schizophrenia diagnosis and wanted a second opinion. The district court found that mother's "lack of insight is apparent and concerning" and that her "lack of willingness to take medication demonstrates poor insight and judgment."

Mother was referred to parent-child interaction therapy (PCIT) with the goals of enhancing her relationship with A.E., decreasing A.E.'s externalizing behaviors, and developing healthy communication. Mother met individually with a mental-health professional for the first PCIT appointment and struggled to retain information. Mother

and A.E. both attended the second appointment, but A.E. seemed uninterested and uncomfortable. Mother cancelled the next two appointments, and PCIT was discontinued because the county determined it was not in A.E.'s best interests.

Mother received psychotherapy with the goals of practicing mindfulness routines, expressing feelings and emotions, and improving her level of functioning so that her children could be returned to her. Mother did not make any progress toward these goals, due in part to her short attention span, lack of insight, blunted affect, and refusal to accept her schizophrenia diagnosis and take medication. The district court found that it is “next to impossible to make any progress in psychotherapy when schizophrenia is not treated with medication.” Mother was also referred to physical therapy to address her facial tics. Mother attended only one session of physical therapy.

Mother cooperated with a parenting-capacity assessment. The social worker who did the assessment observed two two-hour interactions between mother and her children. Mother “continually” tried to feed A.C. even when told he did not need to be fed, devoted most of her attention to A.C., and was not able to focus on the children’s needs, attend to their needs consistently, or read their cues accurately. Mother relied on A.E. for assistance in caring for A.C. and was not able to parent both children at once. Mother also exhibited “bizarre and disconnected” behaviors, such as believing that the water in a bottle that she was given to feed A.C. was poisoned. Mother was not receptive to feedback, could not adequately adapt to circumstances around her, and did not understand the importance of the child-protection case. Based on her observations, the social worker informed the county that the visits were “actively harmful” for the children. The district court found that

the schizophrenia diagnosis was consistent with the social worker's observation of a disconnect between mother and the children and with the issues mother had during the assessment.

The county offered to assist mother to obtain mental-health services, and mother met with a county mental-health case manager on a few occasions. Mother's mental-health case was closed, however, because she refused to acknowledge her schizophrenia diagnosis and to actively work to improve her mental health. Mother stated that she was not schizophrenic and therefore did not want to take medication.

After the children's initial placement in protective custody, mother had supervised visitation three times per week with A.E. and A.C. At the first visit, A.E. appeared to be nervous, and mother did not put A.E. at ease. During the visits mother overfed A.C., clipped A.C.'s fingernails obsessively, unnecessarily changed A.C.'s diapers, had difficulty dividing her time and attention between the children, often focused on A.C. to the detriment of A.E., did not know how to soothe A.C., and did not appear comfortable holding A.C. Mother and A.C. did not appear to have a bond. Because of these issues, and because A.E. exhibited poor behavior after visits with mother—such as refusing to listen to adults, running off in stores, and exhibiting anger toward another child—the county recommended that visits between mother and A.E. cease and that mother's visits with A.C. be shortened. Once visits between mother and A.E. ended, A.E.'s behavior improved. At the time of trial, visits between mother and A.E. had not resumed, and supervised visits between mother and A.C. had occurred approximately once a week.

A.E. received weekly psychotherapy sessions and a diagnostic assessment. Psychological testing revealed that A.E. was anxious, depressed, withdrawn, aggressive, and attention-seeking. A.E. was diagnosed with Post Traumatic Stress Disorder (PTSD); her symptoms included recurring dreams, irritability, hypervigilance, and an inability to concentrate. A.E. coped with her PTSD by acting out and exhibiting aggressive, excessively silly, nonsensical, and sexualized behaviors. A.E. also qualified as emotionally disturbed.

A.E. was referred to individual therapy, family therapy, and Children's Therapeutic Services and Supports. A.E. did not like to discuss mother in therapy, shut down when mother was brought up in conversation, and often "exhibit[ed] behaviors such as defiance, physical aggression and sexualized behaviors" after visitation with mother. The district court found that A.E. "made significant strides in therapy and her behaviors once visitation with [mother] ceased."

The district court's findings regarding mother's testimony indicate that mother did not understand the circumstances that led to removal of her children or why others were concerned regarding her inability to adequately care for A.C. in the hospital. The district court found that mother "has difficulty maintaining consistent employment" and "is not financially responsible." At the time of the TPR trial, mother lived in an apartment, but she retained her fish house as a "backup plan" and did not understand why living in a fish house would not meet her children's basic needs. Mother had unrealistic expectations regarding the cost of child care. Mother also did not have insight into her employment,

believing that after she lost her job she could simply move to the Twin Cities area and become a flight attendant.

The district court found that mother had “exhibited numerous examples of mental instability.” For example, following one supervised visit she asked a county employee what the charges would be for assaulting someone with a baseball bat and stated that she did not want to go through with it if assault charges were \$10,000.00. On another occasion mother believed that a nonexistent ceiling fan was talking to her. Mother also claimed to have heard A.E. screaming from miles away, reported that people were going to kill her, and believed that meat in the children’s tacos was tainted and that “people were murdered by putting paint down their throats.” The district court found that mother’s mental-health issues “could put the children in harm’s way” if they were in her care.

The district court made detailed findings regarding all of the services that were offered to mother and found that “[t]here is no reason to believe that [mother] will ever accept her diagnosis and will make progress regarding her mental health.” The district court specifically found that the county had made reasonable efforts to rehabilitate mother and reunite the family.

The district court concluded that the county had proved, by clear and convincing evidence, the following statutory grounds for termination: (1) mother is palpably unfit to be a party to the parent-child relationship; (2) mother had substantially, continuously, or repeatedly refused or neglected to comply with the duties of the parent-child relationship; (3) reasonable efforts had failed to correct the conditions leading to out-of-home placement; (4) the children were neglected and in foster care; and (5) the children were

born to a mother who was not married to the child's father and no person filed notice of intent to retain parental rights. See Minn. Stat. § 260C.301, subd. 1(b)(2), (b)(4), (b)(5), (b)(7), (b)(8). The district court also concluded that termination of mother's parental rights is in the children's best interests. Mother appeals.

DECISION

Minnesota courts presume that “a natural parent is a fit and suitable person to be entrusted with the care of his or her child.” *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). Generally, “it is in the best interest of a child to be in the custody of his or her natural parents.” *Id.* Thus, Minnesota courts will terminate parental rights only for “grave and weighty reasons.” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). A petitioner bears “the burden of producing clear and convincing evidence that [a] statutory termination ground[] exists.” *In re Welfare of C.K.*, 426 N.W.2d 842, 847 (Minn. 1988). A district court's decision in a TPR proceeding must be based on evidence concerning the conditions that exist at the time of the trial. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007), *review denied* (Minn. July 17, 2007). Termination of parental rights is intended for those situations in which it appears “that the present conditions of neglect will continue for a prolonged, indeterminate period.” *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980).

There are nine statutory grounds for terminating parental rights. See Minn. Stat. § 260C.301, subd. 1(b) (2018). In a TPR appeal, an appellate court examines the record to determine whether the district court applied the appropriate statutory criteria and reviews its factual findings for clear error. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 249 (Minn.

App. 2003). We give considerable deference to the district court's credibility determinations. See *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) ("Considerable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses.").

An appellate court reviews the district court's ultimate decision to terminate parental rights for an abuse of discretion. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136-37 (Minn. 2014). We will affirm the district court's decision to terminate parental rights if at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004), so long as the county made reasonable efforts to reunite the family if reasonable efforts were required, *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005).

I.

Mother contends that the district court erred by finding that the county made reasonable efforts to reunite her with her children.

Reasonable efforts to prevent placement of a child outside the home and for rehabilitation and reunification are required unless the district court determines that the petition states a prima facie case that one of several circumstances not relevant here exists. Minn. Stat. § 260.012(a) (2018). "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).

In determining whether reasonable efforts have been made, the district court must consider whether services offered to the family 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). A district court must consider “the length of the time the county was involved and the quality of effort given.” *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). The county’s efforts must be aimed at alleviating the conditions that predicated the out-of-home placement, and the efforts must conform to the problems presented. *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996); *H.K.*, 455 N.W.2d at 532.

The district court here found that the county “made reasonable efforts to rehabilitate [mother] and reunite the family.” Those efforts included PCIT, individual therapy for both mother and A.E., physical therapy for mother, a parenting-capacity assessment, two psychological evaluations for mother, supervised visitation, and mental-health and medication-management services. The district court found that these services were “concrete, meaningful, and appropriate based upon the family’s specific needs.” The district court also found that numerous services that the county offered mother were discontinued or were ineffective because mother refused to participate in the services or to acknowledge that she needed the services. The proffered services targeted mother’s mental-health issues.

Mother argues that “the district court did not elaborate in any of its orders, including the order terminating [her] parental rights, on how [the county] offered reasonable efforts”

to reunify mother and her children. We disagree. The district court made extensive findings regarding the county's reunification efforts, including lengthy recitations of the various services that were offered or provided to mother.

Mother argues that the case plan established during the CHIPS proceeding was not updated as required by statute and that "its contents were bare." But the county provided or offered multiple services beyond those listed in the initial case plan. Mother also argues that the county's provision of services was not reasonable because "nothing was offered to address concerns over housing, feeding [A.C.], or providing adequate supervision to [the] children" and that the services thus "did not address the concerns leading to the out of home placement." Again, we disagree. The county offered assistance in obtaining housing resources, and mother found appropriate housing. As to the other child-care issues, the record clearly shows that mother was unable to properly address those issues without first improving her mental health, which accounted for her inability to provide proper care.

Mother also argues that the county's services were inadequate because the county never increased her visits with the children. But A.E.'s behavioral concerns after visits with mother supported the county's decision to limit visitation, and mother stopped attending the PCIT that was intended to improve visitation. Mother argues that PCIT was improperly terminated and that the county "never revisited the issue of resuming PCIT," but it is clear from the record that mother effectively ended this service by failing to attend and engage in therapy.

Lastly, mother argues that her first psychological evaluation was delayed, that the two psychological evaluations she eventually received were "entirely inconsistent," and

that the county's "inexplicable failure to offer therapy to [her] until March, 2018" was unreasonable. But all of the treatment professionals who testified at trial agreed that individual therapy alone was insufficient to manage mother's mental-health issues and that mother also needed medication. Although it is unfortunate that mother was not immediately offered individual therapy, she was offered PCIT and by the time of the TPR trial, mother had been attending weekly individual therapy sessions for approximately five months without making progress toward accepting her schizophrenia diagnosis and need for treatment. Thus, the district court found that "[t]here is no reason to believe that [mother] will ever accept her diagnosis and will make progress regarding her mental health."

In sum, the record supports the district court's determination that the county made reasonable reunification efforts. The record also supports the district court's conclusion that those reasonable efforts failed to correct the conditions leading to out-of-home placement, justifying the district court's order for termination under section 260C.301, subdivision 1(b)(5), which provides for termination when,

following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement. It is presumed that reasonable efforts under this clause have failed upon a showing that:

(i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with

the child and the parent is complying with the out-of-home placement plan;

(ii) the court has approved the out-of-home placement plan required under section 260C.212 and filed with the court under section 260C.178;

(iii) conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan; and

(iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

Mother argues that "reasonable efforts were not offered, so the presumption does not apply." She also argues that her "substantial compliance with her case plan and compliance with court orders rebut the presumption that the conditions leading to the out of home placement were not corrected." Those arguments are unavailing because reasonable efforts were made and because the district court's order does not indicate that it applied or relied on the statutory presumption in terminating mother's parental rights.

Mother further argues,

The conditions leading to out of home placement were lack of supervision, inability to feed the child, lack of adequate housing, and concerns over [her] mental health. [She] obtained housing on her own, and there has not been any proof at the time of the trial that she cannot provide adequate supervision, that she cannot properly feed the newborn, or that concerns over her mental health warrant continued out of home placement.

The critical issue is whether mother "is presently able to assume the responsibilities of caring for the [children]." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012). The district court's findings are supported by the record and clearly and

convincingly establish that mother is not able to do so because she has not corrected the primary condition that led to the children's placement: her inadequately treated mental illness.

II.

Mother contends that the county failed to prove a nexus between concerns regarding her mental health and the need to terminate her parental rights.

Mental illness, in and of itself, is not sufficient basis for the termination of parental rights. In each case, the actual conduct of the parent is to be evaluated to determine his or her fitness to maintain the parental relationship with the child in question so as to not be detrimental to the child. If the parent remains permanently unable to care for the child, the rights are to be terminated. If, however, the evidence indicates that within a foreseeable time, the parent will be able to care for the child, then the district court should decline to terminate parental rights and should establish a supervised plan to give custody to the parent with whatever counseling and assistance is appropriate. Thus, while the nature of the parent's condition may support termination, it does not do so *ipso facto*.

S.Z., 547 N.W.2d at 892 (quotation and citations omitted).

The district court's findings describe several manifestations of mother's untreated mental illness that indicate she is not fit to maintain a relationship with the children and that continuing the relationship would be detrimental to the children. For example, on one occasion when mother was meeting with a mental-health case manager, she asked for a ceiling fan to be turned off because it was "sending impulses to her," but there was no fan in the room. During supervised visits, mother "continually" wanted to feed A.C. and change his diaper even when she was told that those tasks had just been done or were not necessary. Mother asked a county employee what the penalty would be for assaulting

someone with a baseball bat and stated that she wanted to hurt the people who were keeping her kids from her because they were telling lies. Mother indicated that it would be appropriate for her family to live in the fish house she owns, even though it does not have a bathroom or cooking facilities. Mother also indicated that she believes she can find 24-hour care for A.E. and A.C. for only \$25 per week. And mother once concluded—without support—that taco meat had been tainted and insisted that A.E. not eat it.

There was also an incident in which mother claimed to have heard A.E. screaming in a pool although mother was several miles away at the time. On that occasion, mother called one of the foster parents and demanded that he check his pool because she believed A.E. may have been in danger. Mother testified that her friend was on a phone call and “it sounded like [A.E.] was being interrogated in the background” and that A.E. “is afraid to swim or afraid of the water.” Thus, mother thought “maybe they were trying to push [A.E.] in the water or throw water on her or something.”

The record contains additional evidence that mother’s mental illness was detrimental to her children. Dr. Kujawa’s psychological evaluation reported that mother was once living with a family friend and refused to use the bathroom or water in the residence because she believed—without support—that the water was contaminated. The evaluation also reported that mother had a “difficult time” believing that she was pregnant with A.C. and was in denial about her pregnancy, claiming that “her stomach seems to expand in the heat and shrink down in the cold” and questioning whether her pregnancy might actually be a tumor. Dr. Kujawa’s evaluation also included statements from mother that A.C. had green eyes when he was born but his eyes turned blue after she swaddled him

in a blanket and that A.E. had been struck by lightning and lifted up into the air by the force of the lightning strike. The parenting-capacity assessor testified that when mother was given a bottle to feed A.C. during one supervised visit, mother believed that the water in the bottle was poisoned.

Mother argues that, “[e]ven assuming [she] suffers from schizophrenia, experts testified [at trial] that individuals with schizophrenia can function on a day-to-day basis and care for their children.” She further argues that trial testimony indicated that she “functions well for someone who might suffer from schizophrenia” and that there was not substantial evidence that she, “at the time of trial, exhibited conduct which would be detrimental to [her] children.” Finally, she argues that her “mental health concerns can easily be managed.”

Mother is correct that medical professionals testified regarding the ability of individuals with schizophrenia to function in society and that schizophrenia can be managed. But that testimony was qualified with statements that such individuals often need medication, as well as a support system, to manage their illness and that mother could not succeed without medication. Dr. Peterson testified that “with proper medication and treatment [mother] might be able to function toward the higher end in her life but she needs medicine.” Dr. Kujawa testified that mother’s prognosis was “[e]xtremely poor” if she continued to refuse treatment. Mother’s psychotherapist testified that “if [mother] doesn’t get medicated her life is not going to improve a whole lot.”

Although the record suggests that it could be possible for mother to manage her schizophrenia and function normally in her day-to-day life with the aid of medication, it

also clearly and convincingly establishes that mother refuses to accept her schizophrenia diagnosis and the attendant treatment recommendations. And even if mother functions well with respect to her self-care, the record clearly establishes that she cannot adequately care for her two young children. The circumstances of this termination case, like many others, are sad and unfortunate. And mother's arguments are not entirely without merit. But on this record, the district court did not abuse its discretion by terminating mother's parental rights based on her untreated mental illness and its detrimental impact on her children.

In sum, clear and convincing evidence supports the district court's order for termination of mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5). However, the district court should not have terminated mother's parental rights based, in part, on palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4), because the county did not assert palpable unfitness as a basis for termination in its petition. *See In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008) (stating that "termination of parental rights cannot be based on a statutory ground that was not included in a petition to terminate parental rights").¹ We therefore affirm as modified, without reviewing the other

¹ The county concedes that Minn. Stat. § 260C.301, subd. 1(b)(4), does not apply because it was not alleged in the petition and therefore cannot be used as a ground for termination. The county also states that Minn. Stat. § 260C.301, subd. 1(b)(7), was incorrectly applied to mother. *See* Minn. Stat. § 260C.301, subd. 1(b)(7) (providing for termination "in the case of a child born to a mother who was not married to the child's father when the child was conceived nor when the child was born the person is not entitled to notice of an adoption hearing under section 259.49 and the person has not registered with the fathers' adoption registry under section 259.52"). We appreciate the county's candor on these points.

grounds on which the district court relied. *See R.W.*, 678 N.W.2d at 55 (“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.”).

Affirmed as modified.