

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0037**

In the Matter of the Welfare of the Child of B.C., Parent.

**Filed August 5, 2019
Affirmed
Kalitowski, Judge***

Hennepin County District Court
File Nos. 27-JV-17-5078; 27-JV-16-4989

Marisela E. Cantu, Cantu Law Firm, P.A., St. Paul, Minnesota (for appellant B.C.)

Michael O. Freeman, Hennepin County Attorney, Britta Nicholson, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

Laurel Ferris, Minneapolis, Minnesota (guardian ad litem)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Kalitowski, Judge.

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

KALITOWSKI, Judge

Appellant challenges the district court's order terminating her parental rights, arguing that (1) the district court's key findings of fact are not supported by the record,

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

(2) reasonable efforts were not made to correct the conditions that led to her child's out-of-home placement, and (3) termination of her parental rights is not in the best interests of her child. We affirm.

FACTS

Appellant B.C. is the mother of two children, who were referred to as Child 1 and Child 2 in the district court's order. In September 2016, it was reported that appellant beat Child 1 with a belt, spoon, and stick, for which she was criminally charged with malicious punishment of a child. Respondent Hennepin County Human Services and Public Health Department (the department) subsequently filed a petition for emergency protective care, requesting protective services for Child 1 and Child 2. The petition was granted and Child 2, who was four years old at the time, was placed in foster care on September 21. At that time, appellant voluntarily entered into a court-ordered case plan aimed at reunifying the family, which recommended a chemical-dependency assessment, parenting assessment, domestic-violence/anger-management counseling and to follow further recommendations, to cooperate with the department and the guardian ad litem (GAL), and to have reasonable supervised visitation and telephone communications. A child in need of protection or services (CHIPS) adjudication was entered in August of 2017.

During the reunification process, Child 2 reported that she was sexually abused by her sibling, Child 1, while in appellant's care. Child 2 also implied that she was sexually abused by a former boyfriend of appellant. Evidence was presented that when appellant was given this information, she repeatedly denied that Child 1 would have abused Child 2 and was not open to discussing the topic.

Appellant was ultimately served with a petition to terminate her parental rights (TPR) in October 2017. The district court ordered a transfer of legal and physical custody of Child 1 to his father. Appellant voluntarily consented to the transfer of Child 1 and the matter concerning Child 2 was tried in late 2018. Multiple witnesses testified at the trial, including the social worker assigned to appellant's case, a GAL, Child 2's therapist, Child 2's foster parent, examining psychologists, and appellant.

The district court terminated appellant's parental rights to Child 2 in December 2018. The district court cited three separate statutory grounds as a basis for termination: neglect of parental duties, palpable unfitness, and reasonable efforts failed to correct the conditions leading to the child's placement. On appeal, appellant argues that the district court's termination is not supported by the evidence, the county failed to make reasonable efforts to correct the conditions leading to the child's out-of-home placement and to unify the family, and termination was not in the best interests of Child 2.

D E C I S I O N

When this court reviews a district court's decision to terminate parental rights, we "determine whether the district court's findings address the statutory criteria and whether the . . . 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). The district court's decision to terminate parental rights is reviewed for abuse of discretion. *In re Welfare of the Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). This court will affirm the district court "when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in

the best interests of the child, provided that the county has made reasonable efforts to reunite the family.” *S.E.P.*, 744 N.W.2d at 385 (citations omitted). Here, the district court terminated appellant’s rights on three statutory grounds, concluding that reasonable efforts were made to reunify the parent and child, and that terminating appellant’s rights was in the best interests of Child 2.

I. Neglect of parental duties.

Under Minn. Stat. § 260C.301, subd. 1(b)(2) (2018), the district court may terminate parental rights if it finds that a parent has “substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon [her] by the parent and child relationship.” So long as a parent is physically and financially able, “the duties imposed” include “providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child’s physical, mental, or emotional health and development.” *Id.* Failure to satisfy requirements of a court-ordered case plan is evidence of a parent’s noncompliance with the duties and responsibilities imposed under subdivision 1(b)(2). *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003). To grant a petition for termination on this ground, the district court must find that, at the time of termination, the parent is not “presently able and willing to assume [her] responsibilities” and that the parent’s neglect of these duties “will continue for a prolonged, indeterminate period.” *In re Welfare of J.K.*, 374 N.W.2d 463, 466-67 (Minn. App. 1985) (quotation omitted), *review denied* (Minn. Nov. 25, 1985).

The district court determined that there was clear and convincing evidence to support termination on this statutory basis, indicating that its concern “is primarily the

child's emotional and mental health needs, along with a concern about the potential for inappropriate discipline." In terminating appellant's parental rights, the district court cited appellant's "repeated issues with anger management, poor parental boundaries, and her failure to acknowledge Child 2 was sexually abused while in her care."

To rebut the district court's ultimate conclusion, appellant challenges two factual findings. Specifically, she argues that the district court erred by finding that (1) she avoided and resisted her case plan, and (2) her supervised visits were terminated because they were emotionally harmful to Child 2. But the district court emphasized that it was "not terminating [appellant's] rights based on a few incidents at visits," but because appellant has an "inability to understand her child's precarious mental and emotional health and respond and nurture appropriately." Moreover, the fact that appellant may have formally complied with some elements of her case plan did not preclude the district court from terminating her parental rights if appellant was unable to demonstrate that she could comply with the duties imposed on her by the parent and child relationship. *See In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012) ("A parent's substantial compliance with a case plan may not be enough to avoid termination of parental rights when the record contains clear and convincing evidence supporting termination.").

Appellant has failed to rebut the district court's determination that she cannot presently care for Child 2, a child with special needs stemming in part from the sexual abuse she suffered while in appellant's care. Testimony that the district court found to be credible established that Child 2 repeatedly reported being sexually abused by Child 1, that Child 2 had an obsession with kissing other children, played with dolls in a sexualized

manner, and displayed concerning behavior, which included screaming, crying, yelling, and hurting other children. When this information was presented to appellant, she responded throughout the reunification process—and at the trial—by denying the possibility that Child 1 sexually abused Child 2. The district court found it “alarming that [appellant] has failed to acknowledge this abuse, or even its possibility,” stating that this raises serious concerns about her ability to protect Child 2, thus increasing the risk of additional victimization in the future.

The fact that Child 2 reported being sexually abused while in appellant’s care, and has special needs stemming from that sexual abuse, does not alone establish a sufficient basis to terminate appellant’s parental rights. But when confronted with this evidence, appellant failed to establish to the district court that she could provide and care for Child 2 in the future. To the contrary, the district court found that appellant’s testimony was “frequently incredible” and that she “displayed a fundamental lack of understanding of how to protect Child 2 from additional harm.” *See In re Welfare of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007) (“We defer to the district court’s determinations of witness credibility and the weight to be given to the evidence.”).

The district court also cited appellant’s anger issues, which contributed to her use of inappropriate discipline. Despite completing anger-management therapy, the record demonstrates that appellant continued to lash out, sometimes in aggressive ways. Specifically, there was evidence introduced that appellant allegedly hit her husband in the face at the Mall of America after becoming upset with him. And appellant’s supervised visits with Child 2 were ultimately cancelled because, among other things, she became

overtly angry and started yelling at supervising staff during a scheduled parenting observation. Appellant's actions, viewed in light of her psychologically diagnosed personality disorder—which correlated to her “strong tendency to be reactive, impulsive and aggressive when frustrated and under distress . . . [and] could [result in] further use of physical punishment of her children,” support the district court's findings regarding appellant's inability to parent Child 2.

In sum, appellant's challenges to the district court's factual findings fail to address the substance of its decision to terminate her rights. And there is no evidence in the record that disputes the district court's finding, which has ample support in the record, that appellant possessed an “inability to understand her child's precarious mental and emotional health and respond and nurture appropriately.” Consequently, there is support for the district court's conclusions that, at the time of termination, appellant was not presently able to assume her parental responsibilities and that appellant's neglect of these duties would continue for an indeterminate period of time. See *J.K.*, 374 N.W.2d at 466-67 (stating that to terminate parental rights the district court must find past neglect and that the conditions requiring termination will continue for an indeterminate period). Because we conclude the district court properly determined that appellant's parental rights should be terminated under this statutory ground, we need not address the additional grounds for termination cited by the district court. See *S.E.P.*, 744 N.W.2d at 385 (affirming the district court's termination of parental rights when at least one statutory basis is met).

II. Reasonable efforts.

Appellant also challenges the district court's findings and conclusion that reasonable efforts were made to reunify the child and parent. The termination statute requires the district court to make findings "that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made." Minn. Stat. § 260C.301, subd. 8(1) (2018). When determining whether reasonable efforts have been made, the district court must consider "whether services to the child and 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).

The record provides ample support for the district court's findings that "the Department exercised due diligence . . . to offer services that were timely, available, relevant and culturally appropriate for the child and family, to remedy the circumstances requiring the [out-of-home placement] and permit reunification." Specifically, the record demonstrates that appellant had issues with physical discipline, so parenting education was offered with the express goal of teaching appropriate discipline strategies. She also had anger issues, so she was offered anger-management programming. There were concerns that appellant's mental health was interfering with her ability to interact safely and positively with Child 2, so individual therapy was offered. When concerns arose about appellant's engagement in her case plan or her interactions with Child 2 in the context of Child 2's special needs, witnesses testified that appellant was not receptive to those conversations, minimized the concerns raised, and often deflected her behaviors and

blamed others. Finally, there is no dispute that the services were provided in appellant's native language, Spanish. We conclude that the district court's reasonable efforts findings are supported by the record.

III. The child's best interests.

The decision to terminate parental rights requires a conclusion that termination is in the best interests of the child. *See S.E.P.*, 744 N.W.2d at 385 (requiring that termination is in the best interests of the child). Thus, even if there is a statutory basis for terminating a parent's rights, a child's best interests are the paramount consideration. Minn. Stat. § 260C.301, subd. 7 (2018). Where the interests of the parent and children conflict, the interests of the children prevail. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(5) (2018). The district court's determination of best interests is reviewed for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905. Appellant argues that the district court abused its discretion in finding that terminating her parental rights was in Child 2's best interests. We disagree.

In its order, the district court acknowledged that Child 2 loves appellant, and that appellant loves Child 2. But the court also found that Child 2 is afraid of appellant and had nightmares regarding returning to appellant's care. The court acknowledged Child 2's interests, including her significant time in foster care, appellant's failure to understand Child 2's emotional needs, Child 2's history of abuse, and Child 2's need for a level of stability and protection that appellant cannot provide. Thus, the court appropriately considered the competing interests and found that termination was in Child 2's best interests. Because the court's findings are supported by substantial evidence, we conclude the district court did not abuse its discretion in making its best-interests determination. *See*

J.K.T., 814 N.W.2d at 92 (“Because the best-interests analysis involves credibility determinations and is generally not susceptible to an appellate court’s global review of a record, we give considerable deference to the district court’s findings.”) (quotation omitted).

Affirmed.