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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0259**

In re the Matter of the Welfare of the Children of:
I. E. K. and K. M. M., Sr., Parents.

**Filed July 15, 2019
Affirmed
Worke, Judge**

Chisago County District Court
File No. 13-JV-18-253

Anne M. Carlson, Anne M. Carlson Law Office, PLLC, St. Paul, Minnesota (for appellant mother I.E.K.)

Janet Reiter, Chisago County Attorney, Jeanine M. Putnam, Assistant County Attorney, Center City, Minnesota (for respondent Chicago County Health & Human Services)

Charlene Larsen, Cedar, Minnesota (guardian ad litem)

Considered and decided by Cochran, Presiding Judge; Worke, Judge; and Florey, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant-mother challenges the district court's termination-of-parental-rights (TPR) order, arguing that the record does not support the conclusions that (1) she abandoned the children, (2) she failed to satisfy her parental duties, (3) she failed to correct the conditions leading to the out-of-home placement, (4) the children are neglected and in foster care, and (5) the county made reasonable efforts to reunify the family. We affirm.

FACTS

In late-March 2018, respondent Chisago County Health and Human Services (the county) received a report that in mid-January 2018, K.M.M. Sr. (father)¹ left his three children in the care of two families. The county had three prior reports concerning abandonment of the children. During the prior investigations, the children reported having no contact with appellant-mother I.E.K. in over three years.

After a children-in-need-of-protection-or-services (CHIPS) petition was filed, mother contacted the county on May 10, 2018, stating that she learned that the children were in foster care. Although mother claimed that father had kept the children away from her and that she wanted them back, she failed to maintain contact with the county. On May 25, 2018, a default CHIPS adjudication was entered. Mother was ordered to complete a case plan, including: (1) complete chemical-dependency and mental-health evaluations and follow the recommendations, (2) find employment and housing, (3) maintain contact with the county, and (4) establish visitation with the children.

On June 13, 2018, mother had her first contact with the children in over three years. Mother was distracted during the video-chat, which she repeatedly paused to play a game. Mother then lost contact with the county. Mother regained contact with the county in August 2018, and maintained weekly contact throughout the month. She also had one phone call with the children in August. Mother found housing, but failed to complete any

¹ Father has not challenged the termination of his parental rights.

of her other case-plan requirements. On September 11, 2018, the county filed a TPR petition, asserting that TPR was in the children's best interests.

On December 27, 2018, the district court held a trial on the TPR petition. Despite mother's attorney's attempts to contact her, mother failed to attend the trial. A social worker testified that mother gave custody to father so that she could take care of "personal issues." The social worker testified that although mother was aware of her case plan since June 1, 2018, she only recently became consistent with visitation and just completed a mental-health assessment days before trial. The social worker testified that she assisted mother in completing her case plan by paying for transportation, making referrals, providing housing lists and contacting homeless shelters, assisting with a job application, and instructing her on how to obtain health insurance. The social worker testified that mother's contact was "very inconsistent." The social worker testified that the phone calls with mother were abrupt, mother ignored the social worker's questions, and mother spoke over the social worker. The social worker testified that it was in the children's best interests to terminate mother's parental rights because mother had not had contact with the children in years and the children do not have a relationship with her.

The children's guardian ad litem testified that it was in the children's best interests to terminate mother's parental rights. She stated that the children are "somewhat ambivalent to the relationship with [mother]" and have not asked for more visits. The social worker testified that over the last two months, mother failed to attend one out of seven of her scheduled visits with the children. The social worker testified that some of mother's behavior during visits was troubling. For instance, mother spent a lot of her

visitation time on the phone, she once brought an unapproved guest, and during a recent visit she was mumbling and ignoring the children.

On January 25, 2019, the district court filed its order terminating mother's parental rights. The district court found that at the time the children were placed in the custody of the county, mother had not had any contact with them for approximately three years. The district court found that the county attempted to assist mother in completing her case plan, but that mother declined assistance. The district court found that mother completed a mental-health assessment on December 21, 2018, and that the court received the report after trial. The district court found that the assessor recommended a chemical-dependency assessment, individual therapy, family psychotherapy, medication evaluation, and a physical examination, but that there was no evidence that mother intended to follow the recommendations. The district court found that the county established statutory grounds for TPR by clear and convincing evidence, and determined that TPR is in the children's best interests. This appeal followed.

D E C I S I O N

We review the district court's TPR decision 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 doing so, this court determines whether the district court's findings address the statutory criteria and whether they "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 manifestly contrary to the evidence or not reasonably supported by the evidence. *In re Welfare of Children of T.R.*,

750 N.W.2d 656, 660-61 (Minn. 2008). This court will affirm a TPR order when “at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child[ren]’s best interests.” *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). This court gives “considerable deference” to the district court’s TPR decision, while carefully reviewing the sufficiency of the evidence to determine whether it is clear and convincing. *S.E.P.*, 744 N.W.2d at 385.

The district court determined that there was clear and convincing evidence that (1) mother abandoned the children, (2) mother neglected to comply with her parental duties and reasonable efforts failed to correct the conditions that led to the children’s out-of-home placement, (3) the children are neglected and in foster care, (4) the county made reasonable efforts to reunify the family, and (5) TPR is in the children’s best interests. Mother challenges the statutory grounds for TPR, but does not challenge the district court’s best-interests determination.

Mother abandoned the children

The district court may terminate parental rights if “the parent has abandoned the child.” Minn. Stat. § 260C.301, subd. 1(b)(1) (2018). Though a statutory presumption for abandonment applies under some circumstances, here the county asserted that the evidence showed that mother abandoned the children. *See id.*, subd. 2(a) (2018). When a statutory presumption does not apply, abandonment requires proof that the parent (1) actually deserted the child, and (2) intends to forsake the duties of parenthood. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 398 (Minn. 1996). Abandonment must be “intentional, rather than due to misfortune [or] misconduct alone.” *Id.* (quotation omitted).

The district court found that mother intentionally abandoned the children when she left them in father's care and did not resume contact after father left the children with family and friends. The district court also found that mother "did not take any actions that indicate an intention to accept parental responsibility for the children." Mother claims that her actions indicate that she did not intend to forsake her parental duties because she was having regular contact with the children. But while mother was in regular contact with the children at the time of trial, she did not do anything else to show that she was willing to assume parental duties. Mother did not find housing or employment, she did not get a chemical-health assessment, and it was only days before trial that she got a mental-health assessment. Further, the record shows that although mother physically showed up for visitation, she was not always appropriately engaged with the children. She was consistently late, she brought an unapproved guest, she talked on her phone, and during one visit she displayed incoherent and erratic behavior. There is clear and convincing evidence that mother abandoned the children.

Mother failed to satisfy her parental duties

Parental rights may be terminated when the parent has "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed . . . by the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(2) (2018). Those duties include providing "food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development." *Id.* "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 her neglect of these duties will likely continue in

the future. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 90 (Minn. App. 2012) (quotation omitted). A parent’s “[f]ailure to satisfy requirements of a court-ordered case plan provides evidence of a parent’s noncompliance” with parental duties and responsibilities. *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 666 (Minn. App. 2012).

The district court found that the county proved that mother refused or neglected to comply with her parental duties because the children have had unstable lives and did not receive the consistency required for their emotional and physical wellbeing. The district court found that mother did not have contact with her children for three years, and that she did not make substantive progress toward her case plan. The district court also found that the county provided reasonable efforts, but mother failed or refused to accept assistance.

Mother argues that she did not neglect her parental duties because she was simply not financially able to provide for them, and because it was father’s actions, not hers, that formed the basis for the CHIPS petition. Mother claims that when the petition was filed “[h]er whereabouts were unknown,” but once she was located, she told the social worker that father prevented her from seeing the children.

First, that mother’s “whereabouts were unknown” when the petition was filed establishes that mother neglected her parental duties. Second, although mother states that father prevented her from seeing the children, the social worker testified that mother reported that she gave father custody while she took care of “personal issues.” Additionally, the evidence establishes that the county attempted to assist mother in satisfying the requirements of her case plan, but mother refused assistance. The social

worker testified that mother would state that she arranged her own appointments, but when the social worker followed up, she learned that mother never arrived for appointments. The record supports the district court's determination that the county established with clear and convincing evidence that mother neglected her parental duties.

Mother failed to correct the conditions leading to the out-of-home placement

Parental rights may be terminated when reasonable efforts have failed to correct the conditions leading to the children's out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5) (2018). Although the presumptions under this statutory basis do not exist here, the district court determined that the evidence showed that reasonable efforts failed to correct the conditions leading to the out-of-home placement. *See id.*; *S.E.P.*, 744 N.W.2d at 386.

The district court found that the children had been in out-of-home placement for approximately eight months because they did not have a parent present and able to provide for their needs. Mother argues that her actions did not lead to the children's out-of-home placement and that once she learned of the out-of-home placement, she contacted the county to regain custody.

But mother's actions led to the out-of-home placement because she left the children before father left them in the care of other families. And although mother contacted the county and *reported* that she wanted custody, she did not follow her case plan to *show* that she wanted custody. The county attempted to assist mother in several ways, but mother often declined assistance. The district court did not err in finding that reasonable efforts failed to correct the conditions leading to the children's out-of-home placement.

The children are neglected and in foster care

A district court may terminate parental rights if the children are “neglected and in foster care.” Minn. Stat. § 260C.301, subd. 1(b)(8) (2018).

“Neglected and in foster care” means a child:

(1) who has been placed in foster care by court order; and

(2) whose parents’ circumstances, condition, or conduct are such that the child cannot be returned to them; and

(3) whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child.

Minn. Stat. § 260C.007, subd. 24 (2018).

The district court determined that the children have been in foster care since April 2018. The district court found that mother’s circumstances made it so that the children could not be returned to her because she has not cared for them in over three years, she has untreated mental-health issues, she has not completed a chemical-dependency evaluation, she has not found stable housing, and she has not found employment. The district court determined that mother failed to make reasonable efforts to adjust her circumstances despite the rehabilitative services offered to her.

Mother argues that the children are in foster care because of father’s actions and claims that she was expected to reunify under father’s timeline despite the county not locating her until late May. Mother also asserts that she did not refuse any rehabilitative services. But again, if mother had not left the children three years earlier to attend to her “personal issues,” the children would not have been left without a parent when father left

them. Additionally, mother received her own case plan and was not expected to reunify under father's case plan. The record supports the district court's conclusion that the county proved with clear and convincing evidence that the children are neglected and in foster care.

Reasonable efforts to reunify the family

In a TPR proceeding, the district court must determine whether the county made reasonable efforts to reunite the family. *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). The county's efforts must "be aimed at alleviating the conditions that gave rise to out-of-home placement, and they must conform to the problems presented." *J.K.T.*, 814 N.W.2d at 88. Determining whether the county provided reasonable efforts requires consideration of the length of the county's involvement, and the quality of the effort given. *Id.* 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 made reasonable efforts by (1) ensuring the children were placed together, (2) establishing a case plan, (3) providing telephone contact, (4) requesting drug testing to ensure safe visits, (5) allowing face-to-face visits, (6) providing transportation assistance, (7) assisting in referrals for mother to address her

mental-health and chemical-dependency issues, (8) assisting mother in locating housing, (9) making repeated attempts to maintain contact with mother, (10) providing services for the children, and (11) working on a relative search and engaging in alternative placement for the children. The district court determined that the county's efforts were reasonable and adequate and aimed at finalizing the permanency plan to reunify the family.

Mother argues that the duration and quality of the county's efforts fell short. But the county provided mother with her case plan on June 1, 2018. Mother's inability or unwillingness to comply with the case plan by December 2018 is entirely the result of her own doing. The social worker testified that despite efforts in maintaining contact with mother, the weekly phone calls were hasty and unproductive. In a six-month period, mother was required to visit her children, maintain contact with the county, get health insurance, find housing, find employment, and get mental-health and chemical-dependency assessments. She was offered assistance in meeting her case plan, but failed to satisfy the requirements. The district court did not err in finding that the county established with clear and convincing evidence that the county made reasonable efforts to reunify the family.

Affirmed.