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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1447**

In re the Matter of the Welfare of the Children of:
S.M.K. and L.C.S., Parents.

**Filed April 6, 2020
Affirmed
Rodenberg, Judge**

Pine County District Court
File No. 58-JV-19-23

Michael K. Pepin, Michael K. Pepin Law Offices, Pine Springs, Minnesota (for appellant-mother S.M.K.)

Reese Frederickson, Pine County Attorney, Sydney Silko, Assistant County Attorney, Pine City, Minnesota (for respondent department)

Cynthia Bell, Pine City, Minnesota (guardian ad litem)

Considered and decided by Rodenberg, Presiding Judge; Smith, Tracy M., Judge;
and Klaphake, Judge.*

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant-mother S.M.K. appeals from the district court's order terminating her parental rights, arguing that the record does not support the district court's determination

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

that respondent-county made reasonable efforts to reunify mother with her children. We affirm.

FACTS

Mother has two children, L.P.S. (born in 2010) and K.K.S. (born in 2012). L.C.S. is the adjudicated father of both children.

On March 26, 2018, police officers responded to a reported disturbance at mother's home. Mother and father were both arrested. The children went to stay with a relative.

On April 16, 2018, the county agency filed a petition alleging the children to be in need of protection or services (CHIPS) under Minn. Stat. § 260C.007, subd. 6 (2016). The district court ordered the children into the emergency protective care of the county. The county placed the children with a relative where they remained through October 2018. Mother did not appear at the emergency protective care (EPC) hearing, the admit/deny hearing, or the disposition hearing in the CHIPS case.

On June 1, 2018, the children were adjudicated in need of protection or services. The district court adopted the county's case plan and ordered mother and father to comply with the plan. The case plan required mother to: (1) complete a chemical-use assessment and follow all resulting recommendations; (2) complete a diagnostic assessment and follow all resulting recommendations; (3) participate in individual and family therapy; (4) remain abstinent from non-prescribed substances and submit to random testing; (5) participate in parenting-skills education; (6) obtain and maintain employment; (7) obtain and maintain safe housing; and (8) remain in contact with the county and the guardian ad litem, and to sign releases as either deemed necessary. Mother did not sign the written case plan because

she did not appear in court for the dispositional hearing. But mother later testified that she was aware of her obligation to follow the case plan, recalled reviewing it with the case manager on July 27, 2018, and understood what was expected of her.

On March 7, 2019, the county filed a petition to terminate mother's and father's parental rights (TPR). The TPR petition alleged three statutory grounds: neglect of parental duties under Minn. Stat. § 260C.301, subd. 1(b)(2) (2018); palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4) (2018); and failure to correct the conditions leading to the children's out-of-home placement under Minn. Stat. § 260C.301, subd. 1(b)(5) (2018).

On July 24, 2019, the district court received father's voluntary written consent to termination of his parental rights. Father's rights were terminated on this basis, and father does not appeal the termination of his parental rights. A two-day trial was held on July 24 and July 30, 2019, concerning the termination of mother's parental rights. The district court heard testimony from mother, the children's therapist, the children's foster mother, the county case manager, and the guardian ad litem.

On August 23, 2019, the district court ordered the parental rights of mother involuntarily terminated. The district court, in a detailed order, recognized that mother made some attempts to comply with her case plan. She completed two chemical-use assessments, participated in random testing, obtained a diagnostic assessment, attended individual therapy, and participated in parenting education during supervised visits with her children.

The district court also found, however, that mother failed to remain abstinent from mood-altering chemicals; never obtained a job; never found “safe, sustainable, suitable housing”; and maintained only “sporadic and inconsistent” contact with the county workers and the guardian ad litem during the pendency of the CHIPS case.

The district court found that the county proved each of the three statutory grounds for termination of mother’s parental rights alleged in the petition and that it made reasonable efforts “to rehabilitate the parents, reunify the children with the parents, and finalize a permanency plan for the children.” The district court found 18 separate and specific ways in which the county provided these reasonable efforts. The district court found that termination of parental rights is in the best interests of the children.

This appeal followed.

D E C I S I O N

Mother argues on appeal that the district court erred by finding that the county made reasonable efforts to reunify her with her children. As support for her argument, mother cites her difficulties communicating with the county and trial testimony from the children’s therapist that the county was working toward termination instead of reunification.

In order to terminate mother’s parental rights, the district court needed to find clear and convincing evidence of at least one of the statutory bases alleged in the petition. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 906 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). The district court found each of the three statutory bases alleged in the petition was proved by clear and convincing evidence.

One of the statutory bases for termination the district court found to have been proved was that reasonable efforts under the direction of the court failed to correct the conditions that initially led to the children's out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5). This statutory basis for termination necessarily includes a finding of reasonable efforts. *See* Minn. Stat. § 260C.301, subd. 1(b)(2). Because mother's challenge on appeals is to whether the county's efforts to reunify her with the children were reasonable, we examine the record on the district court's conclusion that this statutory basis for termination was proved.

"We review an order terminating parental rights to determine whether the district court's findings (1) address the statutory criteria and (2) are supported by substantial evidence." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). When reviewing a termination order "[w]e must closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *Id.* (quotations omitted). We review the district court's determination that a statutory basis to terminate parental rights exists for an abuse of discretion. *Id.* "An abuse of discretion occurs if the district court improperly applied the law." *Id.* We review the factual findings for clear error. *Id.* "A finding is clearly erroneous if it is manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* (quotations omitted).

"Reasonable efforts" means "the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family." Minn. Stat. § 260.012(f) (2018). The district court, when determining whether reasonable efforts were made, "shall 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)(1)-(6) (2018). “Whether the county has met its duty of reasonable efforts requires consideration of the length of time the county was involved and the quality of effort 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 aim to alleviate the conditions giving rise to out-of-home placement. *J.K.T.*, 814 N.W.2d at 88.

The district court found that “[t]he services offered [by the county] were relevant to the safety and protection of the children, adequate to meet the needs of the child and family, culturally appropriate, available and accessible, consistent and timely, and realistic under the circumstances.” There is substantial evidence in the record to support this determination.

Mother argues that the case manager continually tried to contact her by phone or text “even though the [case manager] knew that Mother had a very difficult time receiving phone calls or text messages.” The record establishes that mother had a phone that could receive calls or text messages when connected to wi-fi. Mother would connect to her neighbor’s wi-fi to use her phone. The case manager knew this and used text messaging to mother’s phone to contact mother. Although this mode of communication was not perfect, it is unclear from this record what else the case manager could have done to keep in contact with mother. The children were placed out-of-home and mother had a case plan that contemplated their return to mother’s care if she complied with the plan and remedied

the conditions that led to their placement. Mother was repeatedly absent from court hearings in the CHIPS case. The responsibility to regularly check for text messages was on mother—and she had every incentive to connect to wi-fi and retrieve her messages if she wanted to comply with the case plan of which she agrees she was aware.

In addition to attempting to contact mother by phone or text messaging, the case manager also “attempted seven pop in visits at Mother’s home during May, June, and July” of 2019. The case manager was also eventually able to get mother a government-issued cellular phone, delivered that phone to mother, programmed her own phone number into mother’s new phone, and gave mother instructions for keeping the phone activated.

The record as a whole supports the district court’s determination that the county provided reasonable efforts to reunify. And the record supports that those reasonable efforts under the court’s direction did not correct the conditions leading to the initial CHIPS adjudication and out-of-home placement. The cause of that failure was not the county’s lack of effort, but was, instead, mother’s failure to successfully work on the case plan. Mother does not challenge the district court’s finding that termination of her rights is in the children’s best interests, and review of the record reveals that the record indeed supports that factual finding. We therefore affirm the termination under Minn. Stat. § 260C.301, subd. 1(b)(5).

Because we affirm the termination under Minn. Stat. § 260C.301, subd. 1(b)(5), we need not consider the other statutory bases for termination. *J.R.B.*, 805 N.W.2d at 906.

Affirmed.