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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0399**

In the Matter of the Welfare of the Children of:
C.M.R., C.L.T., and C.G.M., Parents.

**Filed November 1, 2021
Affirmed
Segal, Chief Judge**

Becker County District Court
File No. 03-JV-20-1878

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Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge;
and Halbrooks, Judge.*

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

On appeal from the district court's termination of parental rights to her three
children, mother argues that the district court erred in concluding that statutory grounds for

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

termination were proven and that the county made active efforts to reunify the family. We affirm.

FACTS

Appellant C.M.R. is the mother of three children. C.L.T. is the father of the two oldest children, who were born in 2011 and 2012. C.G.M. is the father of the youngest child, who was born in 2016. C.L.T. is an enrolled member of the White Earth Band of Ojibwe. The two oldest children are therefore eligible for enrollment as members and they each qualify as an “Indian child” covered by the protections of the Indian Child Welfare Act (ICWA) and the Minnesota Indian Family Preservation Act (MIFPA). 25 U.S.C. § 1903(4) (2018); Minn. Stat. § 260.755, subd. 8 (2020).

Mother has a history of substance-abuse problems, which has led to multiple child-protection proceedings. Her first involvement with child protection occurred in 2011 after she had a positive drug screen while pregnant with the oldest child. In February 2012, mother tested positive for methamphetamine and the child was briefly removed from mother’s care. The child was adjudicated a child in need of protection or services (CHIPS) in March 2012. Mother gave birth to her second child during the pendency of the child-protection matter. This case was closed in September 2013 after mother successfully completed treatment.

Mother’s second child-protection matter started in October 2014, when social services in Hubbard County received a child-maltreatment report concerning the two oldest children. Mother failed to pick up the children from childcare and, when law enforcement located mother, she was paranoid, rambling, and seemed to be “under the influence.” The

officers brought mother to the emergency room because she exhibited signs of a psychotic incident that they thought may have been caused by methamphetamine use. The children were removed from mother's care and eventually placed with relatives.

Hubbard County filed a termination of parental rights (TPR) petition. Because the children are Indian children protected under ICWA and MIFPA, the case was transferred to White Earth Tribal Court. During the pendency of that case, mother gave birth to the youngest child. Hubbard County received a child-maltreatment report shortly after the birth because the baby was experiencing withdrawal symptoms as a result of mother's use of suboxone. Mother went through treatment and regained custody of the children in October 2016. The case was closed in January 2017.

The current child-protection matter was opened after mother's arrest on June 27, 2020, for driving while impaired. All three children were in the car at the time of the traffic stop. The arresting officers suspected that mother was under the influence of methamphetamine. A hypodermic needle and baggie containing what appeared to be methamphetamine were found in mother's handbag that was located between mother and one of the children in the front seat of the car. Law enforcement placed an emergency 72-hour hold on the children, and a social worker transported them to a foster home. Mother admitted to law enforcement that she used methamphetamine earlier that morning and had methamphetamine in her purse. A social worker collected hair samples from the children, and the youngest child's sample tested positive for the presence of methamphetamine.

On June 30, 2020, respondent Becker County Human Services (the county) filed a CHIPS petition. The district court issued an emergency protective-care order the next day

continuing the placement of the children in foster care. The district court also determined that ICWA and MIFPA applied to the proceedings because the two oldest children were eligible for enrollment as members of the White Earth Nation.

The county social worker, the guardian ad litem (GAL), and a representative from the White Earth Nation met with mother on July 30 to develop an out-of-home placement plan. Mother participated in the meeting, but said that she would not sign the plan until she had the chance to speak with her attorney. The social worker later asked mother several times if she had reviewed the case plan with her attorney and was ready to sign it, but mother was “not ever able to give [her] a straight answer.” The county ultimately submitted the case plan to the district court for approval without mother’s signature. Mother never objected to the case plan and the district court approved the plan on August 27, 2020.

The primary goals identified in the case plan were for mother to address her chemical-dependency and mental-health issues. The plan required mother to complete a chemical-use assessment and follow recommendations, comply with testing for substances, complete a parenting-capacity evaluation, attend scheduled visits with the children, demonstrate financial and educational support for the children, cooperate with the social worker, and remain law-abiding.

Mother completed a chemical-use assessment on July 22, 2020, but was dissatisfied with the recommendation for inpatient treatment and requested the opportunity to seek a second opinion. The county permitted mother to seek a second opinion, which she did not

obtain until October 1, 2020.¹ The second assessment similarly recommended inpatient treatment because mother tested positive for methamphetamine at the assessment. Mother attended an intake appointment later that month, but the treatment facility determined that she was not an appropriate candidate for inpatient treatment because she tested negative for methamphetamine at the intake and self-reported that she last took methamphetamine in August 2020.² Mother ultimately started outpatient treatment on December 15, 2020.

Mother completed a parenting-capacity assessment, and the evaluator recommended against reunification. The evaluation indicates that mother showed an adequate functioning in just one out of 17 positive parenting factors, and that the evaluator did not recommend reunification “due to serious safety concerns.” The evaluation lists mother’s “drug addiction, lack of functional stability, personality disorder, and mental health issues” as factors that contributed to her “neglectful parenting.” When the evaluator met with mother to go over the recommendation, mother became so angry that the evaluator abruptly ended the meeting. The court record also shows that mother failed to attend four consecutive visits with the children in November 2020, and one in December.

¹ Mother claims that the delay was the county’s fault. She maintains that she objected to having the county provide collateral input to the evaluator for the second dependency assessment. She points to the county’s refusal to accede to her objection as the cause of her delay in scheduling. Mother conceded at trial, however, that “the process requires collateral input from the agency,” in this case, the county.

² Mother refused to submit to drug testing by the county between August and November 2020. Mother’s next drug test was on November 12, 2020, and was conducted at the visitation center’s request after mother failed to attend several visits with her children. The test was positive for methamphetamine.

The county petitioned to terminate mother's parental rights. The petition alleged three statutory bases for termination: that mother was palpably unfit to parent, that reasonable efforts failed to correct the conditions that led to the children's out-of-home placement, and that the children were neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(4), (5), (8) (2020). In January and February 2021, the district court held a three-day TPR trial. The district court heard testimony from mother, the social worker, a qualified-expert witness³ representing the White Earth Nation, the GAL, the social worker involved in mother's 2011-13 child-protection matter, and the evaluator who completed the parenting-capacity assessment. All the witnesses, except mother, testified in support of termination of mother's parental rights.

On March 8, 2021, the district court issued an order terminating mother's parental rights.⁴ The district court determined that the county had made active efforts to reunify the family, that the county had proven all three alleged statutory grounds for termination beyond a reasonable doubt, and that termination was in the children's best interests. Mother now appeals.

³ A qualified-expert witness is "an individual who (1) has specific knowledge of the Indian child's tribe's culture and customs . . . and (2) provides testimony as required by the Indian Child Welfare Act . . . regarding out-of-home placement or termination of parental rights relating to an Indian child." Minn. Stat. § 260.755, subd. 17a (2020); *see also* 25 C.F.R. § 23.122(a) (2020).

⁴ The district court also terminated the parental rights of both fathers. The fathers did not respond or participate in the district court proceeding, and their parental rights are not at issue on appeal.

DECISION

Mother asserts two arguments in this appeal. First, she argues that the district court abused its discretion in determining that the county proved a statutory ground for termination because she maintains that she was making substantial progress on her case plan and that any delays were the fault of the county, not her. Second, she challenges the district court's determination that active efforts were made to reunify the family.

On appeal from a district court's decision to terminate parental rights, this court reviews "the district court's findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). "Parental rights are terminated only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). "The child's best interests, however, remain the paramount consideration in every termination case." *Id.*

Generally, the petitioner must establish by clear and convincing evidence that a statutory ground exists for terminating parental rights. *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). But TPR cases involving Indian children, as defined in ICWA or MIFPA, involve a heightened evidentiary standard and require proof beyond a reasonable doubt.⁵ See 25 U.S.C. § 1912(f) (2018); Minn. Stat. § 260.771, subd. 6 (2020). In addition,

⁵ The youngest child is not an Indian child. The district court's order states that the determination was made at the Emergency Protective Care hearing that ICWA would apply to the youngest child, and during trial mother's attorney suggested that this determination was made "just due to family dynamics." Documentation submitted by the White Earth

petitioners must prove that “active efforts,” not just reasonable efforts, have been made to reunify the family. 25 U.S.C. § 1912(d) (2018); Minn. Stat. § 260.762, subd. 3 (2020).

We address both of mother’s arguments in turn below.

A. Statutory Ground for Termination

On appeal, we will affirm a district court’s termination of parental rights if at least one statutory ground for termination is supported by the record. *In re Welfare of Child. of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). Here, the district court determined that the county proved three statutory grounds for termination beyond a reasonable doubt: mother was palpably unfit to parent, reasonable efforts failed to correct the conditions that led to out-of-home placement, and the children were neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(4), (5), (8).

Mother does not separately address each ground, but generally asserts that the district court erred because it ignored “substantial evidence that [mother] was engaged in and making significant progress on her case plan.” On appeal, however, we must analyze mother’s claims in the context of the specific statutory grounds for termination. Because it appears most closely aligned with mother’s challenge, we will turn first to an analysis of the second statutory ground found by the district court—that reasonable efforts failed to correct the conditions that led to out-of-home placement.

Nation and testimony from the qualified-expert witness indicate that ICWA does not apply to the youngest child, but neither party challenged the district court’s determination. The district court’s application of ICWA to the youngest child thus appears to be in error, but the error appears to be harmless because ICWA requires a heightened standard of proof for termination of parental rights.

A district court may terminate parental rights if “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.” Minn. Stat. § 260C.301, subd. 1(b)(5). Mother argues that the district court “did not properly terminate” her parental rights because she “actively participated in and substantially complied with the court ordered case plan.” We are not persuaded.

The children were placed out of home following mother’s arrest for driving while impaired and the resulting concerns over her methamphetamine use. The primary goal of the case plan was for mother to address her methamphetamine addiction. To facilitate this goal, the plan required mother to obtain a chemical-use assessment and follow all recommendations, submit to drug testing, and cooperate with the county social worker. The evidence supports the district court’s conclusion that mother failed to satisfy these basic plan requirements in a timely manner and thus failed to correct the conditions that caused the children to be placed out of home.

Mother completed a chemical-use assessment in July 2020, but objected to the recommendation that she attend inpatient treatment. Despite her long history of methamphetamine addiction, treatment and relapses, she wanted outpatient treatment. The county permitted her to get a second opinion, but she waited over two months to schedule it. She seeks to explain this delay by arguing that she was at a “stalemate” with the county because she did not wish to use the social worker as the source of collateral input for the assessment. Mother acknowledged at the TPR trial, however, that “the process requires collateral input from the agency.”

After the second chemical-use assessment similarly recommended inpatient treatment, mother finally attended an intake meeting on October 27, 2020, three months after her children were first removed from her care. The treatment center determined that mother was not a candidate for inpatient treatment based on mother's self-report that she last used methamphetamine in August 2020 and the fact that the drug test administered on the date of the intake meeting was negative. But mother's allegation that she last used methamphetamine in August 2020 ignores a positive test for methamphetamine from earlier in October. Mother claimed that the positive result was caused by a medication she was taking, but the toxicology lab informed the social worker that the result was not due to medication. At the TPR trial mother again claimed that the positive result was caused by medication, but the district court found that mother's testimony was not credible. Moreover, despite testing negative at the October 27 intake meeting, mother tested positive for methamphetamine on November 12 when the visitation center required mother to submit to a drug test after mother missed four consecutive visits with her children without providing notice.

Mother did not begin outpatient treatment until December 15, 2020, almost six months after her children were removed. Mother lays the blame for her late start in treatment on the county's actions in declining her initial request for outpatient treatment. The court-approved case plan, however, required mother to complete a chemical-use assessment and "follow all recommendations." Mother had not one, but two assessments and both recommended inpatient treatment. Moreover, the district court specifically noted in its order that mother had been employed as a child-protection social worker with

Hubbard County for ten years and was familiar with how to access treatment. Mother thus could have started outpatient treatment on her own if she thought this was the best option for her, particularly when getting her addiction under control was the single most significant part of her case plan. Instead, mother delayed the start of *any* treatment for months. The court commented that mother

has special knowledge and insight into services available to parents in child protection matters and how to access those services that other parents in child protection matters do not have. . . . Despite this awareness [mother] has failed to use her knowledge to better herself and has continued to suffer from chronic chemical dependency and neglect her mental health which negatively impacts the Children and their safety.

Mother claims that, despite the late start, she was complying with the case plan because she had “substantially completed” treatment by the time of trial. This assertion, however, is not supported by the record. A letter from a counselor at the outpatient treatment center states that mother had attended only seven of 27 sessions as of January 26, 2021, the day before the start of the trial. Mother missed some treatment sessions due to medical issues, which absences were excused. Nevertheless, completing fewer than a third of the required number of sessions over a seven-month period cannot be characterized as “substantial completion.”

Mother’s argument that she substantially complied with her case plan also ignores the fact that she refused to participate in random drug testing by the county for nearly four months and only resumed drug testing in December 2020. Her refusal to cooperate with drug testing prevented the county from monitoring mother’s methamphetamine use—the primary reason the children were removed from her care.

Mother's excuse for her refusal to submit to county drug testing is that she believed the county was tampering with or influencing her drug test results. She had had a number of positive tests before she stopped submitting to the drug tests. The district court noted that mother presented no evidence to support her claims of tampering and interference and discounted them as not credible.

Finally, mother's claim that she fully complied with the case plan for visitation with her children is also contrary to the record. Mother missed four straight visitations in November 2020 and one in December without notifying the visitation center. And while mother did complete a parenting-capacity assessment, she became so angry and hostile when the evaluator tried to go over the evaluation that the meeting had to end.

In sum, mother fails to show that the district court clearly erred in finding that mother had not substantially complied with her case plan. Mother, in fact, had not fully satisfied any of the treatment and programming requirements in the case plan by the time of trial. And the very same concerns about the children's safety and well-being that existed at the start of the current case were still present at the time of trial. Indeed, except for mother, everyone who testified at the trial—the social workers, the GAL, the parent capacity evaluator, and the qualified-expert witness for the White Earth Nation—agreed that mother's parental rights should be terminated.

On this record, we conclude that the district court did not abuse its discretion in determining that reasonable efforts failed to correct the conditions that led to out-of-home placement. Because the record supports this statutory ground for termination, we need not

address the district court's determinations that mother was palpably unfit to parent and that the children are neglected and in foster care.

B. Active Efforts

Mother's second argument is that the record fails to support the district court's conclusion that the county engaged in "active efforts" to reunify the family. In support of her argument, mother claims that the county unilaterally imposed the case plan on her without her engagement, "demanded inpatient treatment when [she] felt it was unnecessary," did not provide her with the opportunity to wear a drug patch to monitor her sobriety rather than require drug testing, and did not provide her adequate time to complete the recommendations of the parenting-capacity assessment because the evaluator did not go over the requirements of the assessment until three weeks before trial.

The district court may not make a permanent-placement decision about the child "unless the court finds that the local social services agency made active efforts . . . for purposes of . . . permanency," including "findings regarding whether . . . the local social services agency made appropriate and meaningful services available to the family based upon that family's specific needs." Minn. Stat. § 260.762, subd. 3 (2020); *see* 25 U.S.C. § 1912(d). Under Minnesota law, "active efforts" means

a rigorous and concerted level of effort that is ongoing throughout the involvement of the local social services agency to continuously involve the Indian child's tribe and that uses the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe to preserve the Indian child's family and prevent placement of an Indian child and, if placement occurs, to return the Indian child to the child's family at the earliest possible time. Active efforts sets a higher standard than reasonable efforts to preserve the family, prevent

breakup of the family, and reunify the family, according to section 260.762.

Minn. Stat. § 260.755, subd. 1a; *see also* 25 C.F.R. § 23.2 (2020) (defining “active efforts” under ICWA).

As to mother’s argument about the development of the case plan, the record supports that mother was in fact present and participated in the meeting with the social worker and a representative of the White Earth Nation when the plan was developed. At the end of that meeting, mother requested time to speak with her attorney before signing the plan, which request was granted. The county then followed up with her several times to see if she had consulted with her attorney and was ready to sign the plan, but mother avoided a clear answer. The plan was eventually approved by the court with no objections to the plan ever being made by mother. Thus, mother participated in the development of the proposed case plan, was given the opportunity to consult her attorney, and could have raised objections to the plan when the plan was pending before the court for approval, but chose not to do that.

Mother’s contention that the county failed to make “active efforts” by demanding inpatient treatment also conflicts with the record. As noted above, the case plan did not state that mother was required to attend inpatient treatment, it stated only that mother was to complete a chemical-use assessment and follow all recommendations. Mother has a long and documented history of methamphetamine addiction, including relapses following treatment. It was not unreasonable for the county to require her to complete a chemical-use assessment, rather than abiding by mother’s own assessment of her treatment needs.

Moreover, the recommendation for inpatient treatment was not an arbitrary dictate of the county, but the recommendation of two independent assessors.

Concerning mother's argument that she was being denied the opportunity to wear a drug patch instead of drug testing, the social worker testified at the TPR trial that the county did not currently have the ability to offer that service. It was therefore not unreasonable for the county to instead require mother to submit to drug testing, despite mother's preference for wearing a drug patch to monitor her sobriety.

Finally, the record shows that the short time mother had between receipt of the recommendations from the parenting-capacity assessment and the TPR trial was the result of mother's failure to timely obtain the assessment. Mother did not complete the clinical interviews for the parenting-capacity assessment until October and, when the evaluator met with mother to go over the evaluation, mother became so angry that the evaluator had to end the meeting early. This court has held that if a parent "has refused to participate in the proceeding in a timely fashion and has placed unreasonable restrictions on [her] receipt of appropriate services offered by the petitioner, the parent cannot successfully assert that the petitioner has failed to make . . . active efforts" to reunify the family. *In re Welfare of Child. of J.B.*, 698 N.W.2d 160, 163 (Minn. App. 2005).

The county made appropriate and meaningful services available to mother, but she failed to timely access those services and cooperate with the county and other providers to achieve the goals of the case plan. On this record, we discern no abuse of discretion in the district court's determination that the county made active efforts to reunify the family.

Affirmed.