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**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0999**

In the Matter of the Welfare of the Children of:
B. L. A. and V. L. A., Parents.

**Filed December 15, 2014
Affirmed
Harten, Judge*
Concurring specially, Smith, Judge
Dissenting, Ross, Judge**

Waseca County District Court
File No. 81-JV-14-83

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Considered and decided by Ross, Presiding Judge; Smith, Judge; and Harten,
Judge.

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

UNPUBLISHED OPINION

HARTEN, Judge

The parties, parents of three children, challenge the termination of their parental rights. Because clear and convincing evidence supports the findings on which the district court's conclusion that three separate grounds for termination exist and that termination is in the children's best interests, we affirm.

FACTS

Appellant B. (mother) and appellant V. (father) have three children: their son, R., born on 8 January 2010, is almost five; their daughter A., born on 8 October 2010, just turned four; and their daughter, K., born on 11 December 2011, is just three.

Respondent Waseca County Human Services (WCHS) first became involved with appellants in March 2013 when a child-protection worker went to their house because of a report that the children, then three, two, and one, were left locked in a room. In April, WCHS filed a CHIPS petition on the children. In May, after a report that A. had fallen from a second-story window, the child-protection worker again went to the house. During this visit, B. became violent and attempted to spit at the child-protection worker and the police officer who was with her. When the children were removed from their parents and the home, they showed no emotion. They have now been in foster care for 18 months.

In June 2013, appellants admitted the CHIPS petition because facts showed that the children's behavior, condition, or environment were dangerous to them. Over the next few months, the district court issued comprehensive orders to appellants. A June

2013 order directed them: (1) to have at least three supervised visits weekly; (2) to complete a parenting evaluation and follow its recommendations; (3) to participate in parenting education; (4) to cooperate with respondent and the children's guardian ad litem (GAL) by signing releases and allowing unannounced home visits; (5) to attend to the children's school needs and medical needs, including occupational therapy and physical therapy; (6) to not use or possess any mood-altering chemicals, drugs, or drug paraphernalia, including alcohol, except as prescribed by a doctor; (7) to submit to random urinalysis testing (UA); and (8) to participate in a case-planning conference. In September 2013, the district court added requirements that appellants: (1) meet with a parenting education professional and follow all recommendations; (2) establish and maintain a clean, safe, and adequate living environment; (3) enter and complete couples' therapy; and (4) enter and complete Family Based Services including the "Love and Logic" curriculum. Finally, the district court ordered individual therapy for V., to deal with stress, frustration, and anger, and for B., to deal with self-esteem, self-worth, and dependent characteristics; B. was also ordered to complete chemical-dependency treatment and anger-management and stress-management programs.

In January 2014, when the children had been in foster care for seven months and their return to appellants was not feasible, WCHS filed a petition to terminate appellants' parental rights. At the trial in April-May 2014, the district court heard testimony from appellants, the children's maternal grandparents and uncle, and 19 professionals who had worked with or observed the children.

Based largely on this testimony, the district court made 332 findings that supported its conclusions that appellants met four statutory grounds for termination of parental rights: (1) they had neglected and, for the foreseeable future, would continue to neglect their parental duties; (2) they were palpably unfit to be parties to the parent-child relationship; (3) WCHS had made reasonable efforts to reunite appellants and their children; and (4) most significantly, termination of appellants' parental rights was in their children's best interests.

Appellants challenge these conclusions.

D E C I S I O N

“[Appellate courts] review the termination of parental rights to determine whether the district court’s findings address the statutory criteria and whether the district court’s findings are supported by substantial evidence and are not clearly erroneous. We give considerable deference to the district court’s decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing. We affirm the district court’s termination of parental rights 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.

In re Welfare of Children of S.E.P., 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted). Conflicts between the rights of the child and the rights of the parents are resolved in favor of the child. Minn. Stat. § 260C.301, subd. 7 (2012).

1. Neglect of Parental Duties

A district court may terminate parental rights if it finds

that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to 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, if the parent is physically and financially able

Minn. Stat. § 260C.301, subd. 1 (b)(2) (2012).

The district court found that appellants were not able to provide for the children's physical, mental, and emotional health, and the testimony of many witnesses supports these findings. The child-protection worker testified that, when B. was asked to bring lunch for a visit with the children, B. responded with a message, "I will not bring any food. I don't have any. What part of this doesn't compute with your tiny brain." Yet, when B. was asked about the incident, she denied that it happened, saying, "[i]n all honesty, I would never refuse to feed my children."

The child-protection worker also testified that, when she asked B. about locking the children in their room, B. said she put them in the room for a nap and left them, whether they were sleeping or not, because "It's Mommy time. An hour a day is Mommy time. . . . I deserve that as a mother. . . . I deserve an hour without someone saying I lock my kids in the room." The child-protection worker told B. that leaving the children in the room was a fire hazard because they could not get out, since a mattress on the floor was pushed in front of the door. B. said the oldest child had broken the bed frame and asked if she should remove the mattress and have the children sleep on the floor. B. also told the child-protection worker, "I can't leave the room for one second, I

have to, if I'm going outside to have a cigarette . . . I have to put them somewhere [i.e., in their room] because I can't trust them.”

The child-protection worker further testified that, when she returned to the house because of a report that A. had fallen from a second-story window, B. became violent and attempted to spit at the child-protection worker and the police officer who was with her.

The children's foster mother testified that “when [the children] first came to us there was no speech, really the only sounds that they made were if they were sad they would cry.” R. was then three, and A. was two; a speech pathologist testified that a typical three-year-old can say 500 words, while a typical two-year-old says 200. K., who the pathologist testified differed from most children her age because she said no words, did not point to items, and did not combine vowels and consonants, should have received weekly in-home speech services beginning in January 2013, but appellants said they could arrange only two sessions a month for her, which the speech pathologist said impeded her progress.

In addition to speech services, the children require special-education services, and appellants neglected to provide these. A special-education teacher contacted the family about providing the services R. needed in September 2012, but appellants did not actually get R. to school until 26 November 2012, and he was absent 20 times from then until May 2013, when he was removed from appellants' home. A. was not referred for an assessment until after her removal from the home; while in foster care, she and R. have attended school regularly and have received services. K. now receives services regularly at home.

Appellants argue that, because they made some improvements in their parenting skills, terminating their rights was an abuse of the district court's discretion. The district court noted that "[appellants] have made modest improvements in their parenting abilities" but added that

these modest improvements . . . are woefully inadequate to demonstrate that [they] could have their children return home and be appropriately parented 24 hours a day. . . . The very young ages of the children, all of whom have significant developmental needs, would again place the children in an environment that would be exceedingly stressful for [appellants], and emotionally and physically risky for the children. Neither parent has demonstrated that their level of parenting and self-control has improved sufficiently to ensure that the past problems would not occur again.

The district court also observed that there was no evidence that (1) the lack of supervision underlying A.'s fall had been addressed; (2) B.'s volatile behaviors were under control; (3) appellants would now be able to manage, schedule, and follow through with the services the children need when they could not do so before the children were removed from the home; or (4) appellants had gained the necessary skills to provide the children with the care, services, and consistency that several professionals testified they need.

The finding that appellants have neglected and will continue to neglect their parental duties is supported by clear and convincing evidence.

2. Appellants' Palpable Unfitness for the Parent-Child Relationship

Parental rights may be terminated when an individual is

palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child . . . determined by the court to be of a duration or nature that renders the parent unable, for the

reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4) (2012). The district court found that “[t]here has been a consistent pattern of [appellants] not cooperating with authorities or abiding by court orders” based on its findings that: (1) B. was “uncooperative and confrontational” when social workers, law enforcement officers, and the GAL came to the home before and at the time the children were removed; (2) appellants refused to cooperate with or engage in a court-ordered process the day the children were removed; (3) appellants decided on their own to discontinue visitations with their children because B. felt the director of the visitation program was unfair to her; (4) B. had failed to enter or complete chemical dependency treatment; (5) V. had failed to engage in therapy, cancelling or not showing up for appointments; and (6) both appellants had failed to timely sign releases for information.

The district court also observed that, because the children are all under eight years old, the time for permanency is six months. *See* Minn. Stat. § 260C.301, subd. 1(b)(5)(i) (2012). Although appellants knew this and were given an additional six months to complete the court-ordered services and programs necessary for the children to return home and to become able to meet the children’s extensive special needs, the district court found that “[appellants] have not displayed the sense of urgency and commitment that would be expected of parents who will do whatever is necessary to meet the needs of their children.”

Extensive testimony supports these findings. The program coordinator at a supervised visitation center testified that: (1) the first scheduled visit of appellants and the children was cancelled by B.; (2) the next visit ended early because B. took a chair, faced it into a corner, refused to acknowledge anyone, and yelled “[g]et out” to the children; (3) appellants did not bring the required items, such as diapers and wipes, to the visits; (4) in July 2013, appellants deliberately did not appear for three consecutive visits for which the children were brought to the visitation center; (5) when visitation was resumed at this visitation center in January 2014, B. again cancelled the first visit; and (6) on subsequent visits, both parents improved in interacting with the children.

A clinical and alcohol/drug counselor testified that she evaluated both appellants. As to B., she testified that: (1) B.’s interaction with the children was “chaotic” because she could not engage them in activities; (2) there was constant fighting, hitting, and kicking; (3) B. told R. to push A. out of a chair R. wanted to use; (4) the children’s interactions with B. were dysfunctional; and (5) the major concerns for B.’s parenting ability were her documented chemical use,¹ her practice of confining and locking up the children, and the lack of bond and attachment between her and the children. As to V., the counselor testified that his parent-child interaction was also “chaotic” because he could not control or engage the children or manage their behavior.

Appellants’ patterns of conduct in failing to cooperate with professionals and to learn to manage and deal with their children and see that they are provided with the

¹ Two children tested positive for marijuana at birth, and one was born with fetal alcohol syndrome. V. testified that he could not understand this, because neither he nor B. uses alcohol and it is not present in their home.

professional services they need indicate appellants' palpable unfitness for the parent and child relationship. The finding that they are palpably unfit is supported by clear and convincing evidence.

3. Efforts of WCHS to Reunite the Family

Parental rights may be terminated if "reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the [children's out-of-home] placement." Minn. Stat. § 260C.301, subd. 1(b)(5) (2012). It is presumed that reasonable efforts have failed for a child under eight if "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 case plan." *Id.* at (i). The parties' children, now almost five, just four, and just three, have been out of the home for 18 months, and there is no indication that they will be able to return in the foreseeable future. Appellants' contact with the children has been intermittent and their compliance with the case plan has been minimal.

Appellants' argument on this point is based on the assumption that the three children were removed from their home for one reason only: A.'s fall from the window. But WCHS had been involved with the family months before her fall; there were many areas of concern with the parties' parenting, and the professionals who worked with the children testified that all three of them have significant developmental problems that were not being effectively treated while they were in appellants' home. Appellants have not overcome the presumption that services have failed to correct the problems that led to their children's out-of-home placement.

4. Best Interests of the Children

Appellants argue that termination of their parental rights is not in the children's best interests in light of "the lack of consideration given to the significant improvements made by the parties." But rewarding the parties for having made some improvements is not a valid reason for returning their children to them: conflicts between the rights of the child and the rights of the parents are resolved in favor of the child. Minn. Stat. § 260C.301, subd. 7. While appellants may have made some improvements, their visitations with their children are still supervised, and no evidence shows that they are ready now or will be ready in the foreseeable future to parent their children and provide for their needs on a full-time basis.

The district court's findings that termination of the parties' parental rights is in their children's best interests, that appellants have neglected their parental duties, that appellants are palpably unfit to engage in the parent-child relationship, and that appellants have failed to rebut the presumption that WCHS's reasonable efforts to reunite the family have failed are supported by clear and convincing evidence.

Affirmed.

SMITH, Judge (concurring specially)

I specially concur. In my opinion, the dissent incorrectly states the issues in this case and does not accurately portray the record.

First, the dissent opines that the children's removal (placement outside the home) was not justified. The premise upon which the dissent is based is inaccurate because the district court properly found by clear and convincing evidence, and using the criteria in Minn. Stat. § 260C.007, subd. 6 (2012), that the children were in need of protection or services (CHIPS). This determination was not challenged on appeal nor was it briefed by the parties. An appellate court does not revisit issues neither challenged nor raised on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“[An appellate] court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it.” (quotation omitted)). The time for any appeal of the CHIPS finding has long since elapsed. The children were found to be in need of protection or services on May 8, 2013 and were placed outside the home. The issue on appeal is solely whether parental rights were properly terminated, not whether the out-of-home placement was justified (although it is my opinion and that of the district court that they were properly placed outside the home). Further, I believe that, if the county had not acted as it did, the public would be asking why those responsible for the children's welfare had not done something to address the conditions that led to the out-of-home placement.

“The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child.” Minn. Stat. § 260C.001, subd. 2 (2012). In this

case, the parents moved the three children from Blue Earth County to Waseca County following reports made concerning the welfare of the children. In Blue Earth County, there had been four child-protection reports filed between 2010 and 2012. Two assessments resulted in open child-protection cases. Blue Earth County attempted to provide services to the parents to improve their parenting abilities. The reports alleged that the mother was “acting very strange and making some odd and concerning comments to staff.” The reports also included possible prenatal exposure to marijuana as well as the youngest child testing positive for marijuana at birth. Blue Earth County Social Services (BECSS) considered the family to be at “a ‘high’ risk level.” A report dated November 23, 2011, from a mandated reporter raised concerns that the mother, while pregnant with her third child, expressed having trouble caring for “her kids at home,” had trouble lifting them, and changing the diapers on the two-year-old child and the one-year-old child. The mother also revealed that the children were left primarily in their crib and were fed there. The mother tested positive for marijuana at that time.

One week later, another report to BECSS noted that the children were dirty and were taken to a care provider with bottles of curdled milk. It was also reported that the children were left in the same diaper all day. The family was referred for mandatory services through BECSS. Two months later, the mother admitted to BECSS social workers that she continued to use marijuana.

In March 2012, mandated reporters went to the parents’ home. Garbage was found on the floor, and it was reported that the mother had fed the new baby with milk that had a “film” on its surface. Child-protection workers returned a few days later to

find a note indicating that the mother refused to meet with the social workers in her home any longer. A BECSS worker informed the mother that, if she would not cooperate, a CHIPS petition would be filed.

BECSS received another report in June 2012 that “there were garbage bags of dirty, smelly diapers” left at the top of the stairs in the parents’ home. During an unannounced visit in July 2012, a BECSS worker found bags of dirty diapers with exposed feces lying at the top of the stairs. The worker returned the following day with law enforcement, and the mother reported that the family was in the process of moving to Janesville in Waseca County. The BECSS worker observed cat vomit and feces in the bathtub during that visit. The family moved to Janesville in August 2012. This information was available to Waseca County Social Services (WCSS) at the time they filed their CHIPS petition.

I refer to these facts in the record because they were available to the district court at the time of the children’s removal and demonstrate that the reasons for the out-of-home placement were not an individual dirty diaper, a simple fall from a second story or a single incident of shutting special-needs children in a dark room. The district court found that WCSS had met its heavy burden for taking custody of the children under Minn. Stat. §§ 260C.175, .178 (2012). These facts show why the district court made such a determination.

Second, the district court conducted a trial that lasted nine days and thoroughly analyzed the testimony in comprehensive and well-reasoned findings of fact and conclusions of law (which the dissent accurately acknowledges). In the 332 findings of

fact, the district court detailed the ways the parents had not corrected the conditions that led to the placement of these three children, who are all special-needs children under the age of eight. The district court made specific findings that support the conclusion that the termination of parental rights was required on three statutory bases: (1) failure to comply with parental duties, (2) palpable unfitness to parent, and (3) failure to correct conditions leading to the children's placement following reasonable efforts under the direction of the district court. Again, the premise of the dissent opines that the children should not have been placed outside the home. But this issue is not before us on appeal. Because the children were placed outside the home in accordance with the provisions of Chapter 260C (the CHIPS determination not challenged by appellants), the only basis for reversal is whether all three of the statutory bases as found by the district court are unsupported by the record. Only one statutory ground is required to support the termination of parental rights. Minn. Stat. § 260C.317, subd. 1 (2012). It is my strong opinion that overwhelming evidence supports the district court's decision.

The termination of parental rights as determined by the district court is in the best interests of the children here and will afford the children the opportunity for full development and growth.

ROSS, Judge (dissenting)

I must dissent. Although the district court impressively analyzed this case, I respectfully disagree with the majority's holding that the state has established any of the statutory bases for termination of parental rights. I would reverse.

The material facts are not disputed. The only three stated circumstances that led the county to take these three young children from their parents did not, in my view, support the initial removal and out-of-home placement. And more important, nothing that followed justifies the state's permanent severing of the natural parent-child relationship.

Removal Was Not Justified

According to the record and acknowledged by the county's attorney at oral argument, three specific recent circumstances led county officials to remove the children from their parents in the first place. This removal set in motion the proceedings that led to termination. In my view, none of the circumstances justifies the removal. First, a social worker noticed that one of the children had a diaper full of urine (a diaper that the mother soon changed). Second, the social worker saw the mother follow her practice and put two of the children into a bedroom with a closed door during their intended naptime. And third, the parents decided not to take an apparently uninjured child to the emergency room after the child fell from a window. The children were properly clothed. They were fed. They were sheltered. The observing police officer noticed that the house was clean and appeared safe. There were no reports or indicia of physical abuse. There was no substantiated medical neglect. But the attending social worker deemed those three

grounds sufficient to pull the children from their parents and begin the case that led to termination.

I recognize that the social worker was aware at the time of removal that this family had previously received parenting services in a different county two years before and the concerns leading to those services were genuine. But those were no longer the circumstances. And I look first at the three stated grounds for removal because the termination depends substantially on them specifically. This is because one of the justifications for terminating parental rights here is the parents' alleged failure to correct the conditions that caused the removal. I will then turn to the stated statutory bases for the post-removal decision to terminate parental rights.

The Supposedly "Locked" Room "Hazard"

The majority repeatedly refers to a report that the children had been left in a "locked room." Let's be clear on the facts. Although the room was *reported* to be a "locked room," neither the officer nor the social worker ever checked the door, and the record informs us that they watched the mother open the door simply by pushing it and releasing it from its snug fit in the jamb. No evidence indicates that the door was ever locked, and no finding states that the door was even lockable, let alone locked. The bedroom door was simply closed, and the mother opened the door without any substantial difficulty.

The door-closure concern is trivial. The majority says this became an issue because the social worker theorized that having the two children in the closed room presented a "fire hazard." The theory has no apparent basis in fact. The children were

toddlers, and toddlers generally take naps. The majority accurately clarifies that their time in the room (about one hour daily) was described as *both* naptime and “mommy time.” Although the social worker was troubled by the “mommy time” remark, parents have been putting their children in naptime enclosures (and enjoying respite “mommy time”) probably since the invention of the latchable door, and certainly since the advent of the crib, the playpen, and the portable gate. A social worker’s dubbing of this common occurrence as a “fire hazard” does not make it a hazard. Nothing in the record validates the concern. Isn’t it commonly known that parents place infants and toddlers in rooms or cribs or playpens from which they cannot escape without a parent’s help? Except for one reference to the mother’s occasionally using part of this naptime to step outside to smoke (a move consistent with a reasonable parent’s concern about exposing children to tobacco smoke), the record nowhere suggests that these parents ever left the home during naptime. There was no finding (and no evidence that could support a finding) that the mother could not immediately remove the children during any real emergency. That a crib mattress was on the floor making it difficult to open the door adds nothing. The mattress was the children’s naptime bed, and the mother could (and did) open the door despite its positioning.

The social worker, the district court, and the majority do not say why this naptime practice is a “hazard” or unreasonable or otherwise justified removing the children from their parents.

The Full Diaper

The same social worker who construed the closed naptime door as a hazard also carefully noted a single full diaper, and the district court's termination order detailed the observation. The toddler's diaper, the social worker observed, looked to be heavy with urine. It needed changing. The mother changed the diaper. Even calling this circumstance petty grossly exaggerates its significance. That a mother tasked with continually caring for three preschool children failed for some period of minutes to change one of their wet diapers is so obviously inconsequential that it is the alarmed reporting of it in this child-protection case, not the fact of it, that is truly alarming. But it somehow factored into the forced removal of these children from their parent's care. And that, to me, is perplexing.

Decision Not to Hospitalize

The final stated reason is the only serious one, in my view, but it too falls short of justifying the removal. The social worker was troubled that neither parent took two-and-a-half-year-old A.A. to the emergency room after she fell from a window. Children take falls, and sometimes frightening falls, like this one. It is certain that the state has a legitimate child-protection concern if a parent is responsible for a fall or unresponsive to resulting injuries. But neither of these was the case here.

The record informs us without contradiction that the parents here saw the child approaching an open second-floor window, and, panicked, they rushed to prevent the child's fall. Unsuccessful, they saw the child fall from the window "several feet" down to a mid-floor rooftop, and then she tumbled several feet more to the ground. The parents hurried to the child and immediately examined her for any injuries. They saw only a

minor scrape. Within minutes the child was up and running around with no apparent significant injury from the fall. The parents then considered and discussed taking the child to the hospital, but, seeing no injury, they decided instead to monitor the child. They did so through the next day. They never saw any indication of any injury, and no evidence in the record suggests that any injury or sign of injury ever existed. Even after the social worker removed the children to the state's care, no medical evidence in the record indicates that the child suffered any injury from the fall.

I do not see any legal justification for removing children under these circumstances. I recognize that “neither rights of religion nor rights of parenthood are beyond limitation.” *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S. Ct. 438, 442 (1944). But our child-protection scheme exists in a legal system that presumes “that natural bonds of affection lead parents to act in the best interests of their children.” *Parham v. J.R.*, 442 U.S. 584, 602, 99 S. Ct. 2493, 2504 (1979). And although “parents cannot always have absolute and unreviewable discretion to decide whether to [seek specific medical care for their children],” they “retain plenary authority to seek such care for their children, subject to a physician’s independent examination and medical judgment.” *Id.* at 604, 99 S. Ct. at 2505. Many parents would have been more precautionary and taken the child for a professional examination to verify their own observations. But the county, the district court’s order, and the majority’s opinion cite no authority calling into question the reasonableness of the exercise of parental discretion here. During oral argument, counsel for the county insisted that no observable injury was necessary to mandate a hospital visit because the fall “might” have caused internal

bleeding. But there was no evidence supporting this speculation. I do not believe the state has the statutory authority to remove a child because a social worker questions parental judgment about a purely hypothetical, rather than real, injury.

First Statutory Basis for Termination Not Met: Uncorrected Conditions

I disagree with the majority's opinion on the first ground stated for termination. Because the county removed the children to out-of-home placement based on circumstances that would not justify termination of parental rights, I have no difficulty deeming unsupported the termination under Minnesota Statutes section 260C.301, subdivision 1(b)(5), which is the failure to correct the conditions leading to the children's out-of-home placement. The court based its termination decision on the county's claim that the parents failed to satisfy their case plan. But it is only "presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the . . . parents have not substantially complied with the court's orders and a reasonable case plan." Minn. Stat. § 260C.301, subd. 1(b)(5)(iii) (2012). More important, I believe that the notion that termination can rest on a finding that "conditions leading to the out-of-home placement have not been corrected," *id.*, necessarily requires that the "conditions leading to [the] child's out-of-home placement" were so significant that they *needed to be* corrected to avoid termination. That is, under the most logical reading of the statute, unless the conditions that led to the out-of-home placement would reasonably support termination if those conditions persist, the failure to correct those conditions cannot form a legitimate ground on which the state can terminate parental rights. Since the county's specific reasons for removing the children here are certainly not of this grave and weighty

nature, I dissent from the majority's conclusion that termination can properly rest on the parents' failure to correct the conditions that led to the removal.

Second Statutory Basis for Termination Not Met: Refuse or Neglect Care

I also disagree with the majority's holding that the parents "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon" them by the parent-child relationship "if the parent is physically and financially able" to provide the requisite care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2) (2012). The majority first indicates that it affirms the district court's finding that "appellants were *not able* to provide" the requisite care. This is legal error. The statute concerns a parent's *refusal* or *neglectful* failure to provide care, not the parent's *inability* to provide care. *Id.* The statute expressly excepts care that is not provided because of physical or financial inability. *Id.* This obvious legal error would be enough to draw my dissent.

But the majority adds to the error by identifying a series of relatively minor concerns that do not justify terminating parental rights. The termination statute focuses only on serious parental-duty failures that are "substantial[], continuous[], or repeated[]." *Id.* It identifies a parents' refusal or neglect to meet basic and important *needs*: "necessary food, clothing, shelter, [and] education" as well as "care and control necessary for the child's physical, mental, or emotional health and development." *Id.* The majority affirms the termination decision by pointing to parental or personal failings that are outside this statutory framework.

For example, the majority points to mother's uncivil behavior toward *the social workers* who had taken her children from her. The majority does not explain why this

“volatile” behavior toward outsiders has any bearing on whether she “refused or neglected” to provide necessary care for *her children*. The majority also highlights how the children’s speech improved substantially from the time they arrived in the foster parent’s home. But there was no medical or other evidence establishing that the children’s original speech difficulties resulted from any “substantial[], continuous[], or repeated[]” refusal or neglect by the parents. The majority points to the speech specialist’s stated preference to meet with the children four times monthly to improve their communication and to the parents’ statement that “they could arrange only two sessions a month” with the specialist. The majority does not explain how a parental decision to facilitate two-times-a-month speech sessions for their child rather than four-times-a-month speech sessions establishes that the parents “refused or neglected” to provide necessary care for their children. The majority also points to the nap-room supposed “fire hazard” concern, which I have already characterized as both factually groundless and statutorily insignificant. The majority additionally points to the fact that one of the children (all of whom were younger than kindergarten age) “was absent 20 times” from school. The parents (not the state) have the right to determine the educational plan for their children of any age. *See Pierce v. Society of Sisters*, 268 U.S. 510, 535, 45 S. Ct. 571, 573 (1925) (“The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”). The majority fails to cite any statute or caselaw supporting its implied premise that a parent of three preschool-age children must get her two-year-old to school every day. The child was five years younger than the state’s

compulsory school age of seven, *see* Minn. Stat. § 120A.22, subd. 5 (2012), and the mother arranged for the child to attend preschool occasionally. In my view, a parent’s decision to send her toddler to preschool on only a limited basis is certainly not a termination-justifying refusal or neglect of necessary care.

The majority has not indicated the basis of its implied holding that these parents refused or neglected to provide for the children’s “*necessary* food, clothing, shelter, [and] education.” I acknowledge that a purported educational expert might prefer that children attend school sooner than what is required by law, and I am sure that many parents would have made different choices—better choices—in caring for their children. But perfect parenting is not the standard. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 379 (Minn. 1990) (observing that “few children would be reared by natural parents if model parents were the standard” in termination cases). I am convinced that this record fails to exhibit the kind of grave and weighty failures that justify termination for chronic refusal or neglect to provide parental care.

Third Statutory Basis for Termination Not Met: Palpably Unfit to Parent

The majority accurately observes that the district court may terminate rights of a parent who has exhibited “a constant pattern of specific conduct before the child” that is of such a “duration or nature that renders the parent unable . . . to care appropriately for the ongoing physical, mental, or emotional needs of the child.” *See* Minn. Stat. § 260C.301, subd. 1(b)(4). But the majority never identifies the parents’ “specific conduct” that meets this standard here. Indeed, the majority expressly quotes and then affirms the district court’s finding that “[t]here has been a consistent pattern of . . . *not*

cooperating with authorities or abiding by court orders.” Failing to “cooperate with authorities” is not the sort of “specific conduct before the child” that the statute contemplates unless the failure to cooperate concerns a duty required by the parent-child relationship. The cooperation failures observed by the district court and repeated by the majority are not, in my view, of this significant sort.

The majority (again) relies on the district court’s finding that one of the parents was confrontational with social workers and with others who came to her home to remove the children. I am unaware of any authority holding that the duties inherent in the natural parent-child relationship require a mother to be nonconfrontational and cooperative with those who seek to remove her children from her for any reason, let alone those minor reasons relied on for removal here. The majority also lists other conflicts between mother and county workers related to the mother’s view that she was not being treated fairly. These similarly suggest an inability to get along with officials, but they do not include any “specific conduct” that indicates palpable unfitness to parent children. The other failures noted by the district court and highlighted by the majority (the failure to complete chemical dependency treatment or therapy and the “fail[ure] to timely sign releases for information”) are the kind of trivial failures whose significance to the parent-child relationship has not been demonstrated and is not apparent.

The district court also found and the majority highlights that the parents lacked “urgency and commitment” in attempting to “complete the court-ordered services and programs” directed by the county officials who created the case plan. Although that case plan was not provided in the record on appeal, the parties represented at oral argument

that it included *nineteen* different services and programs. Neither the district court nor the majority have indicated how failing to be urgent and committed to completing all nineteen (or any of them in particular) equates to “a constant pattern of specific conduct before the child” necessary to terminate parental rights under this subdivision. The district court supports this finding with several instances in which the parents had failed to visit or had engaged in various interactive failures during the visits. But the statutory focus is not on the conditions that existed before the termination proceedings began, and the majority accurately recognizes that, after the identified failures, “on subsequent visits, both parents improved in interacting with the children.” The record informs us that the frequency and consistency in their visits also improved substantially. Focus on the earlier failures is error.

The majority highlights the fact that the preschool children occasionally hit or fight each other and that the mother does not respond well to manage their “chaotic” interaction. Again, this is not good parenting, but it hardly suggests any specific termination-justifying constant and serious failure.

The majority also emphasizes that two of the children tested positive for marijuana at birth. But this is of little relevance here. First, to justify termination the county had the duty to prove that “conditions existing at the time of the hearing” justify termination. *In re Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). The children’s birth occurred at least two years before the termination proceeding. And second, no current drug or alcohol use can establish palpable unfitness without “a causal connection between that substance use and the parent’s inability to care for the child.” *Id.* at 622. Nothing in the record here

establishes that either parent had substance use issues at the time of the proceeding, let alone any current drug use that is either “before the child” or that causes any extant parental deficiency.

Concurring Opinion

The concurring opinion argues that two things make this dissenting opinion errant. I comment briefly on both.

The concurring opinion first asserts that this opinion “incorrectly states the issues.” It insists that a challenge to the reasons justifying the removal “was not challenged on appeal nor was it briefed by the parties.” This is only partially accurate. It is misleading because it misses the point: as I have discussed, it is because the conditions for removal would not support a decision to terminate parental rights that, I maintain, the failure to correct those conditions cannot itself support termination on the specified statutory-*termination* ground that the parents have failed to correct the conditions leading to the removal. The district court terminated parental rights in part specifically because the parents failed to correct the conditions leading to the removal and out-of-home placement, and the parties indeed extensively briefed that statutory basis for termination. I have stated the express reasons the county gave for the removal, and, again, I have explained why I believe those conditions are not weighty enough to terminate parental rights under the statute that allows for termination only when conditions are not corrected.

The concurring opinion next asserts that this opinion “does not accurately portray the record” because it does not include as reasons for the removal the various pre-

removal allegations about the parents and their home. The problem with the assertion is that the concurring opinion outlines (and relies on) the conditions that had been the focus of a *different* proceeding in a *different* county. As even the attorney for the county in this case acknowledged during oral argument, removal here was based only on the three allegations I have outlined. It is not our place to add to the reasons for removal. The concurring opinion attempts to add to the three stated reasons for removal by pointing to circumstances that had allegedly existed in Blue Earth County where the family lived previously, not in the parties' home at the time of removal. For example, it describes the former home's unclean environment, including the mother's failure to remove filthy diapers from the home, and it also refers to a report about the children being left in their crib for a lengthy period, the mother's marijuana use during pregnancy, and the mother's attempt to feed the children with stale milk. But these added concerns were not the reasons that the county's attorney expressly stated were the reasons for the removal, and, more important, the record supports the county's acknowledgment. In contrast to the previous conditions, the responding officer in this case expressly reported that the new home was clean and safe, not unclean and unsafe as was apparently the situation in the prior home. There was simply no report or apparent pre-removal evidence in this case that these parents had not corrected those *previous* conditions. As for the concurring opinion's reference to the mother's drug use while pregnant, again, the youngest child was born about two years before the removal, and the county could not (and did not) assert that it based removal on the previous drug use.

The concurrence speculates that “the public would be asking why those responsible for the children’s welfare had not done something” if the social worker had not removed the children. Whether or not this is so, public sentiment is certainly not the standard of our review or a ground to affirm a termination decision. The district court is bound by statute to terminate parental rights only if a specific statutory ground exists, and we are bound to reverse a termination decision if the state failed to support one of the stated statutory grounds with clear and convincing evidence.

Conclusion

The district court’s analysis is exceptionally thorough and well reasoned. It is a model of detail and care, and it exhibits exemplary concern for the children here. But it fails, in my view, to demonstrate that termination is justified. The statute does not give the state the authority to terminate the parental rights for the parental deficiencies apparent here even though model parents would lack those deficiencies and we know that the children have special needs. Despite the district court’s well-reasoned and legitimate misgivings about the demonstrated parental quality in this case, the evidence of deficient parenting simply does not meet the exacting statutory standard for termination.