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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0854**

In the Matter of the Welfare of the Children of:
K. K. H. and J. C. B., Parents.

**Filed October 28, 2019
Affirmed
Bjorkman, Judge**

Nicollet County District Court
File No. 52-JV-18-156

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Considered and decided by Bjorkman, Presiding Judge; Cochran, Judge; and Smith,
John, Judge.*

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the termination of her parental rights to her two youngest
children, arguing that the district court (1) abused its discretion by finding that respondent

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

county proved statutory grounds for termination, (2) erred by finding that the county made reasonable efforts toward reunification, and (3) abused its discretion by finding that it is in the children's best interests to terminate her parental rights. We affirm.

FACTS

Appellant-mother and respondent-father have twin girls, born in April 2017. At the time of the twins' birth, mother's son with another man was eight years old.¹ Father, whom mother identified as her fiancé, was on intensive supervised release for a 2013 conviction of second-degree criminal sexual conduct involving the 12-year-old daughter of his then-girlfriend.

When the twins were one week old, respondent Nicollet County Health and Human Services (the county) filed a petition alleging that they were children in need of protection or services (CHIPS) based on concerns about mother's severe postpartum depression, including her statements about "having visions of throwing [one of them] across the room," and father's status as a registered sex offender. The twins were briefly placed in emergency foster care but returned to mother upon her agreement to a safety plan, which required her to reside with an adult family member and prohibited her from having unsupervised contact with the twins or from allowing father to have any contact with them. Mother also admitted that (1) she has significant mental-health issues that she must address to parent the twins effectively, (2) she needs parenting education to parent them effectively, and (3) father is a registered sex offender who is prohibited from having contact with children without court

¹ Mother's parental rights to her son are not at issue here.

approval and presents a risk to the twins. Based on those admissions, the district court adjudicated the twins CHIPS and ordered mother to continue the safety plan.

Mother repeatedly had unsupervised contact with the twins and permitted father to have contact with them. Consequently, in June, the district court ordered the twins' removal from mother's home and placement in foster care. The county established a case plan that required mother to (1) ensure that father not "have any contact with the children" and not allow him into her home; (2) have someone with her on a 24-hour basis for support; (3) allow child-protection workers to do random visits at her home; (4) continue individual therapy "on a schedule recommended by her therapist" and comply with her therapist's recommendations; and (5) meet with the county workers and follow their recommendations. Mother signed the case plan, and the district court approved it.

In August, father was terminated from sex-offender treatment and returned to prison for violating his supervised release.² While in prison, he delayed and then was terminated from sex-offender treatment. Because father cannot return to supervised release without treatment, he may be incarcerated until January 2026, when his sentence expires.

Meanwhile, mother made some progress on the case plan. She continued to attend individual therapy and participated in a parenting evaluation. She obtained a driver's license and a job. And she claimed she was no longer in a relationship with father. By the end of 2017, the district court determined that mother's progress was sufficient to justify

² Father's violations also included being convicted of disorderly conduct based on a harassing and threatening phone call to a child-protection worker and maintaining a forbidden Facebook account under an alias and with mother's assistance.

unsupervised visitation with the twins and extension of the permanency deadline, despite lingering concerns that mother would “resume” her relationship with father upon his release from custody.

By mid-2018, it was apparent that mother had misled the county and the district court and was committed to continuing a relationship with father. Mother called and emailed him regularly and denied his guilt, maintaining that he was “set up by the system.” She focused almost exclusively on him during her individual therapy sessions, rather than addressing her own mental-health concerns. The district court identified mother’s failure to “recognize that her duty to protect her children requires that she end her relationship with the children’s father” as the principal barrier to returning the twins to her custody, and ordered the county to file a permanency petition.

In August 2018, the county filed a petition to terminate mother’s parental rights to the twins.³ While the petition was pending, mother stopped attending therapy, even though her therapist advised that weekly sessions continued to be medically necessary.

After a two-day trial in April 2019, the district court terminated mother’s parental rights, determining that mother neglected her parental duties, she is palpably unfit to parent, the county’s reasonable efforts to reunify the family have failed to correct the conditions leading to the twins’ out-of-home placement, and termination is in the twins’ best interests. Mother appeals.

³ The county also sought, and the district court ultimately ordered, termination of father’s parental rights. Father’s parental rights are not at issue in this appeal.

DECISION

On appeal from an order terminating parental rights, we consider whether the district court's findings address the statutory termination criteria and are supported by substantial evidence. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). We will affirm a district court's termination of parental rights when "at least one" statutory ground for termination is supported by clear and convincing evidence, the county has made reasonable efforts to reunite the family, and termination is in the children's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

I. The district court did not abuse its discretion by determining that the county's reasonable efforts failed to correct the conditions requiring the twins' out-of-home placement.

In assessing the statutory grounds for involuntary termination, we review findings of "underlying or basic facts" for clear error. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). But the district court has discretion in determining whether there is clear and convincing evidence of a particular ground for termination; we will not disturb that determination absent an abuse of discretion. *Id.*

The district court determined that the county proved three statutory grounds for termination—failure of reasonable efforts, neglect of parental duties, and palpable unfitness. Mother challenges each of those grounds and argues that the county's reunification efforts were insufficient. We turn first to the question of reasonable efforts.

When children are placed out of the home, the county must make "reasonable efforts" to reunite the family. Minn. Stat. § 260.012(a) (2018). The nature of the services

that constitute reasonable efforts “depends on the problem presented.” *In re Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008) (quotation omitted). In determining whether the county made reasonable efforts, a district court considers whether the county offered services that 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 court must also consider “the length of time the county was involved and the quality of effort given.” *J.K.T.*, 814 N.W.2d at 88 (quotation omitted).

Mother disputes that the county made reasonable reunification efforts. But she does not identify any error in the district court’s findings regarding the county’s efforts or any deficiency in the county’s efforts. Rather, she contends the district court failed to “recognize [her] significant progress.” We are not persuaded. Neither mother’s apparent progress early in the case plan, nor her overall failure to comply with the case plan, renders the county’s efforts unreasonable. The county made focused and persistent efforts to address the safety and stability concerns that led to the twins’ out-of-home placement by supporting mother’s mental health and parenting abilities and educating her about the danger father poses to her children. We discern no error in the district court’s finding that those efforts were reasonable.

We therefore turn to the court’s determination that those efforts ultimately failed. A district court may terminate parental rights if the county presents clear and convincing evidence “that 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) (2018). In assessing this ground, the court considers the parent’s compliance with the court-ordered case plan. *Id.*

Mother contends that she substantially complied with her court-ordered case plan. She focuses principally on her ongoing relationship with father, arguing that her refusal to end the relationship cannot be considered a violation because the case plan did not require her to do so. This argument is unavailing. While the plan did not expressly require her to end the relationship, it did require her to protect the twins from the negative influence of the untreated sex offender who is their father by preventing any contact with him. And the district court repeatedly advised mother during court hearings that her ongoing relationship with father was a grave concern and that “her duty to protect her children requires that she end [the] relationship.” Mother not only continued her relationship with father but refused to acknowledge the danger he poses to young children, including the twins. And she thwarted the county’s efforts to address that mindset by repeated dishonesty with her therapist and county workers.

To justify her refusal to cut her ties to father, mother argues that his conviction does not necessarily mean he presents a danger to his own children, and, even if it did, his current incarceration “reduces his risk” to them. We disagree. Minnesota law recognizes that father’s conviction of second-degree criminal sexual conduct poses a risk to his children; it is a sufficient statutory basis to justify terminating his parental rights. Minn. Stat. § 260C.301, subd. 1(b)(9) (2018) (permitting termination of parental rights when the parent has been convicted of a crime requiring sex-offender registration). And the district court squarely rejected mother’s contention that father’s incarceration reduces his risk to the

twins, finding that father “has demonstrated the ability to reach outside the prison walls to harm others.” The record amply supports this finding. In September 2017, father violated his ex-wife’s order for protection to manipulate his housing placement in prison. And in February 2019, he sent a six-page sexual and threatening letter to the mother of his cellmate’s victim. Father also manipulates mother, and her commitment to father has materially impaired her ability to care and provide for her children. The record demonstrates that she talks to father on the phone instead of getting ready for work, making her late for work “which complicates her ability to maintain gainful employment.” And she uses her limited resources, sells her personal belongings, and donates plasma (from shortly after the twins’ birth through trial) to support father and maintain contact with him, while neglecting rent, utility bills, and transportation for herself and her children. By prioritizing father over her children, mother violated the letter and spirit of her case plan.

Mother next argues that she substantially complied with her case plan because she attended therapy throughout the CHIPS proceeding, interrupting her sessions only between September 2018, after the county petitioned to terminate her parental rights, and March 2019, just before trial. But this approximately six-month suspension of treatment that mother knew was integral to the return of her children represents substantial noncompliance with the case plan. Moreover, the record supports the district court’s finding that even when mother was in therapy, she was not compliant because she did not meaningfully engage with the therapist. *See J.K.T.*, 814 N.W.2d at 89 (recognizing that a parent’s “formal compliance” with elements of a case plan does not necessarily mean she is substantively addressing the issues that make her unable to properly care for the child).

Instead, mother used the sessions to discuss her concern that the legal system has wronged father. As a result, the county's efforts to help mother address her persistent mental-health problems have failed.

Finally, mother contends that the circumstances that prompted the children's removal from her home—her severe postpartum depression and father's presence—no longer exist. We decline to view the precipitating circumstances so narrowly. As noted above, the CHIPS adjudication was based on mother's admissions that she has significant mental-health issues that must be consistently addressed or she will be unable to effectively parent the twins. And mother admitted father presents a risk to the children. Despite the county's myriad services and an extension of the permanency deadline for these young children, at the time of trial mother had not made substantial progress toward correcting the admitted circumstances leading to the twins' 22-month placement.

In sum, mother refuses to acknowledge the risk father poses to the twins (and her son), consistently prioritizes her ongoing relationship with father over her children, and has not addressed her mental health to afford her children a safe and stable home. On this record, the district court did not abuse its discretion by determining that reasonable efforts have failed to address the safety concerns that led to the twins' out-of-home placement.⁴

⁴ Because the existence of one statutory ground is sufficient to support termination, *S.E.P.*, 744 N.W.2d at 385, we need not address the other two grounds the district court found here. But we observe that the substantial evidence of mother's failure to address her own mental health and to remove father's dangerous influence from her children's lives amply support the district court's determination that mother has neglected her parental duties and is palpably unfit to parent. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4) (2018).

II. The district court did not abuse its discretion by determining that it is in the children's best interests to terminate mother's parental rights.

We review a district court's determination that termination is in the children's best interests for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

Mother contends that it is in the twins' best interests to remain in her care because of her "diligence and love" for them. She also reiterates her arguments minimizing the risk father poses to the twins while incarcerated. These arguments are unavailing in light of the significant evidence indicating mother's persistent choice to prioritize her relationship with an untreated sex offender who, despite his imprisonment, remains a dangerous and destabilizing influence on mother and her children. Because the district court expressly considered the statutory best-interests factors and the record overwhelmingly supports the district court's finding that mother's overarching commitment to father is unlikely to change in the foreseeable future, the court did not abuse its discretion by determining that termination of mother's parental rights is in the twins' best interests.

Affirmed.