STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0857

In re the Matter of the Welfare of the Child of:
R. V. M., Parent.

Filed December 9, 2019
Affirmed
Bjorkman, Judge

Clay County District Court
File No. 14-JV-19-839

Timothy H. Dodd, Detroit Lakes, Minnesota (for appellant R.V.M.)

Brian J. Melton, Clay County Attorney, Anthony J. Weigel, Assistant County Attorney, Moorhead, Minnesota (for respondent Clay County Social Services)

Laurie Christianson, Moorhead, Minnesota (guardian ad litem)

Considered and decided by Reilly, Presiding Judge; Bjorkman, Judge; and Cochran, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant challenges the termination of her parental rights to one child, arguing that termination was inappropriate because respondent-county did not make reasonable reunification efforts and she actively engaged in her case plan. Because the district court did not abuse its discretion by determining that the county's reasonable efforts did not correct the conditions requiring the out-of-home placement, we affirm.

FACTS

Appellant-mother R.V.M. gave birth to T.B.M. in 2015.[1] Both the child and mother tested positive for opioids. During the next two years, respondent Clay County Social Services (county) received reports that mother had threatened another adult with a knife in the child's presence, and engaged in drug-seeking behaviors. The county was unable to locate mother or verify the reports. Mother was also convicted of driving under the influence of a controlled substance. In April 2018, the county learned that mother was using drugs, and neglecting and possibly harming the child. The county was again unable to locate mother.

On April 23, 2018, Moorhead police responded to a report of a child locked in a car. When officers arrived at the scene, mother was acting erratically; the officers believed she was under the influence of a controlled substance. When officers unlocked the car, mother did not immediately go to the child. In the commotion, mother struck the child in the face. The child was placed into temporary protective care and mother was taken to a hospital where she tested positive for cocaine, opiates, and marijuana. A search of the car revealed two syringes that field-tested positive for heroin.

On April 30, mother admitted the child was in need of protection or services (CHIPS). The county developed a case plan that focused on her long-standing mental-

[1] T.B.M.'s biological father is not identified or involved in this appeal.

health and chemical-dependency issues.[2] Mother signed the plan, which also addressed her ability to parent and history of non-cooperation with the county, and the district court approved it. The plan required mother to demonstrate long-term stability by undergoing mental-health treatment and maintaining contact with service providers, participating in services directed toward the child,[3] visiting the child regularly, following chemical-dependency recommendations, completing random testing for chemicals, being honest and accurate with service providers, and completing a parenting-capacity evaluation and following its recommendations.

To implement the plan, the county offered mother a myriad of services. Mother completed a chemical-health assessment in May, which diagnosed her with opioid-, marijuana-, and stimulant-use disorders. The county directed her to three different chemical-dependency treatment programs between June and August, two of which were residential. And the county assigned a mental-health case manager and a mental-health services worker, offered supervised visitation with the child, provided independent-living services, including transportation, and coordinated these "wraparound" services.

Despite receiving these services, mother continued to use controlled substances, generally refused treatment, and minimized her mental-health issues. She tested positive

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[2] Beginning in 2009, mother was involved with child-protection services in the State of Washington regarding three other children who were physically abused. Mother's parental rights to two of those children were terminated, either voluntarily or involuntarily.

[3] After she was placed in foster care, the child was diagnosed with deprivation/ maltreatment disorder, delayed speech, and severe emotional disturbance. And the child has demonstrated "sexually suggestive behaviors." The child receives numerous services to address these issues.

for cocaine and other drugs three times in May, and missed multiple requested tests thereafter. Although mother completed out-patient treatment at Prairie St. John in December, staff noted that she missed 10 of 17 treatment sessions from August 29 through October. And testing revealed that she continued to use cocaine, opioids, and marijuana while she participated in the Prairie St. John program. Mother refused chemical testing after September; refusals are considered positive tests.

Clinical psychologist Lori Shaleen conducted a parental-capacity evaluation that had a prominent mental-health component. The evaluation took longer than expected due to mother's delays. Dr. Shaleen's December 31 report diagnosed mother with severe substance-abuse disorder, borderline personality disorder, and possible bipolar disorder, schizophrenia, or schizoaffective disorder. The report recommends that mother participate in treatment and have further testing. But, as with other recommended services, mother was reluctant to do either. She did not even agree to take prescribed medications until three months before trial.

In March 2019, the county petitioned to terminate mother's parental rights. The trial took place in May, during which both mother's case worker and the guardian ad litem testified that termination of mother's parental rights is in the child's best interests. The district court found clear and convincing evidence supporting four statutory grounds for termination: (1) mother refused or neglected to comply with the duties of the parent-child relationship, (2) mother is palpably unfit to parent the child, (3) reasonable county efforts failed to correct the conditions that led to the out-of-home placement, and (4) the child was neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2018).

The district court also determined that termination of mother's parental rights is in the child's best interests.[4] Mother appeals.

D E C I S I O N

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 Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). In assessing the statutory grounds for 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*. We will affirm if a 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 child's best interests. *In re Welfare of Children of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018).

I. The district court did not clearly err in finding that the county made reasonable efforts to reunify mother and the child.

After a child is placed out of home, the county must make "reasonable efforts" to reunite the family. Minn. Stat. § 260.012(a) (2018). The particular services constituting reasonable efforts "depend[] on the problem presented." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008) (quotation omitted); *see In re Welfare of Child of*

[4] Mother does not challenge the best-interests determination on appeal.

J.K.T., 814 N.W.2d 76, 88 (Minn. App. 2012) ("The county's efforts must be aimed at alleviating the conditions that gave rise to out-of-home placement, and they must conform to the problems presented."). In determining whether a county's efforts were reasonable, the district court considers whether the services offered were "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Minn. Stat. § 260.012(h) (2018).

Mother does not dispute the district court's findings regarding the nature and extent of the services the county offered to her. And she does not argue the services provided were inappropriate. Rather, she contends the county's efforts were not reasonable because they did not include one particular type of mental-health treatment—dialectical behavior therapy (DBT). We are not persuaded. Mother cites no legal support for her contention that failure to provide one of a number of recommended services constitutes failure to make reasonable efforts. And the record belies her assertion that the county "barely considered" her mental-health concerns.

Mother's mental-health issues were identified from the outset of the CHIPS proceeding. At her request, mother participated in outpatient treatment at Prairie St. John, a program that treats both mental-health and substance-abuse disorders. Program staff "attempted to refer [mother] for psychiatric services and therapy" but mother told them "she would be able to cope and manage with the skills she learned during her [chemical-dependency] treatment," and she "did not follow through with psychiatric medications."

The county also attempted to address mother's mental-health concerns through therapy and medications and by assigning specific professionals to monitor her mental health and extensive services. Mother's case manager testified that mother was specifically referred for mental-health treatment in April 2018 and was assigned a mental-health case worker at that time. But the case manager explained that mother refused to meet with individual therapists or take prescribed medications. Likewise, Dr. Shaleen testified that mother "consistently refused medications" and maintained "that she wanted individual therapy but never . . . follow[ed] through with it." Dr. Shaleen explained that therapy would not be an appropriate treatment modality until mother completed testing to determine whether she had schizophrenia or schizoaffective disorder, which require medication. Mother did not begin taking prescribed mental-health medications until three months before trial. And at trial, mother only acknowledged having depression and anxiety.

On this record, we discern no clear error in the district court's finding that the various services offered to mother, including mental-health services, were reasonable. Indeed, the extensive services were tailored to mother's unique circumstances. We also note that because mother did not stop using controlled substances, such use alone prevented her from safely parenting the child, and any deficiency in her mental-health programming would have made no difference. *See In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 657 (Minn. App. 2018) (rejecting a parent's argument that the county's mental-health efforts were not reasonable when "[t]he focus of the county's efforts was, for obvious reasons, mother's profound and recurring chemical dependency" and "[t]he county's

efforts were interrupted by mother's repeated relapses and failures to submit to drug testing").

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

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). To assess this ground, the district court considers the parent's compliance with the court-ordered case plan. *Id.*

Mother argues that the district court failed to recognize that she was actively engaged and had made significant progress in her case plan, and that termination of her parental rights was premature. She asserts that she successfully completed chemical-dependency treatment and was fully engaged in supervised visitation, even though she acknowledges being "criticized for the manner in which she interacted with the Child during visits."[5] The record shows otherwise.

While mother may have gone through the motions of attending chemical-dependency treatment, she has not demonstrated sobriety or even a reduction in her chemical use. A staff member of one of the treatment facilities indicated mother was only "passively involved in treatment." And mother did not progress to unsupervised visitation

[5] During visitation observed by Dr. Shaleen on November 7, 2018, mother often ignored the child, failed to attend to the child's needs, and rejected the child's attempts to engage with her.

during the more than 12 months this young child was out of home. She was unable to do so because she refused to demonstrate sobriety, minimized and refused treatment for her mental illness, and was not otherwise prepared to parent the child. Indeed, during May 2019, the month during which the trial took place, mother fell asleep during a supervised visit, exhibited "bizarre behavior," and again refused chemical testing. Mother testified that she is making progress and always participated in chemical testing when asked. But the district court did not credit this testimony, instead relying on the testimony of others who tried to work with mother, to find that she lacks insight on her chemical-dependency and mental-health issues, was deceitful about her chemical use, and rejected help with parenting skills.[6] It is not this court's role to second-guess the district court's credibility determinations. *Benson v. Webb*, 356 N.W.2d 352, 356 (Minn. App. 1984).

On this record, the district court did not abuse its discretion by determining that the county's reasonable efforts failed to correct the conditions that led to the child's out-of-home placement.[7]

Affirmed.

[6] When confronted with her positive drug screenings at Prairie St. John, mother suggested that they were for another person who had her identical name.

[7] 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 three grounds the district court found here.