This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).

STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2191

In the Matter of the Welfare of the Children of:
S. L. D. and G. D., Parents.

Filed May 16, 2011
Affirmed
Bjorkman, Judge

Anoka County District Court
File No. 02-JV-10-1348

Sheridan Hawley, Hawley Law & Mediation, Coon Rapids, Minnesota (for appellant S.L.D.)

Anthony C. Palumbo, Anoka County Attorney, Catherine McPherson, Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County)

Erin Hunter, Becker, Minnesota (guardian ad litem)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant mother challenges the termination of her parental rights to two children, arguing that (1) there is insufficient evidence to support the three statutory bases for termination and (2) the district court failed to adequately address the children's best interests. We affirm.

FACTS

Appellant S.L.D. is the mother of E.J.M.D., born October 2003, and E.M.D., born February 2005.[1] The children were living with mother on September 10, 2008, when police executed a search warrant at her residence. Police made a controlled buy of methamphetamine from mother, discovered additional methamphetamine in the home, and found a loaded handgun above the refrigerator. The children were placed in emergency foster care, and Anoka County Social Services (the county) initiated a child-protection proceeding. The district court adjudicated the children in need of protection or services (CHIPS) and ordered their continued out-of-home placement.

The county developed a case plan in consultation with mother. Under the case plan, mother agreed to: (1) complete a chemical-dependency evaluation and follow all recommendations; (2) comply with the Enhanced Treatment Program; (3) complete a psychological evaluation; (4) attend, participate in, and complete individual therapy; (5) regularly attend Alcoholics Anonymous and Narcotics Anonymous meetings and provide proof of attendance; (6) abstain from all mood-altering, nonprescribed chemicals, including alcohol; (7) not expose her children to drugs, drug paraphernalia, drug use, or to people who are under the influence of any mood-altering chemicals; (8) demonstrate her sobriety by submitting to random chemical testing; and (9) self-report any relapses

[1] Mother transferred sole physical and legal custody of three other children to their biological father prior to the trial of this case. This appeal, therefore, does not concern mother's parental rights to those children. This appeal also does not concern the parental rights of E.J.M.D. and E.M.D.'s biological father, which were terminated by default.

within 24 hours. The district court approved the case plan and ordered mother to comply with it.[2]

Mother demonstrated progress under the case plan in the first year. She submitted to a chemical-dependency assessment in October 2008, which recommended outpatient treatment. The recommendation was changed to inpatient treatment after mother twice failed to appear for her intake session and admitted recent methamphetamine use. Mother entered treatment at Riverplace in December 2008 and was successfully discharged from the program the following February. The discharge report recommended that she undergo a mental-health evaluation and participate in individual therapy. Mother complied with the recommendations, and received a prescription for Adderall to address her diagnosed bipolar disorder, depression, anxiety, and attention deficit hyperactivity disorder. Mother completed Riverplace's aftercare program in July 2009. During treatment and aftercare, mother's chemical tests were consistently negative, prompting the social worker to reduce the testing frequency. Based on mother's demonstrated success under the case plan, the county recommended and the district court ordered the children returned to her care in June 2009.

Mother relapsed in late 2009. Chemical testing came back elevated for amphetamine in November and positive for methamphetamine in December. Mother also missed multiple chemical tests in December. She denied using methamphetamine, stating that someone must have put it in her coffee. The district court warned mother that

[2] Mother was convicted of a controlled-substance offense and child endangerment based on the September 10 search of her home. Compliance with the CHIPS case plan is one of her probation conditions.

the children would be removed in the event of additional missed or positive chemical tests. An updated chemical-dependency evaluation recommended that mother complete outpatient treatment. She did not begin treatment at that time, however, because her insurance provider deemed her unamenable based on her refusal to admit her use of methamphetamine.

Mother's noncompliance with the case plan continued into 2010. She failed to submit to chemical testing on multiple occasions and tested positive for methamphetamine in April. The district court again warned mother of the consequences of her conduct, stating that "her continued use demonstrates that she does not want her children." An updated chemical-dependency evaluation recommended treatment, which mother began at Riverplace on June 23. Riverplace soon discharged mother after multiple chemical tests came back positive for amphetamine and methamphetamine. Also in June, the county learned that mother was permitting a known methamphetamine addict to live with her and the children in violation of the case plan and the social worker's instruction that mother prevent him from having contact with the children. Because of mother's relapses and other case-plan violations, the children were removed from mother's home and placed in relative foster care.

After the children were removed, mother began attending Alcoholics Anonymous meetings daily, but chemical tests continued to come back positive. She blamed the amphetamine-positive tests on a one-time abuse of her Adderall prescription. Mother also had two unauthorized unsupervised visits with the children while they were visiting their grandmother. The children were told to lie about these visits.

On August 4, the county filed a termination-of-parental-rights (TPR) petition, alleging three statutory grounds: neglect of parental duties, palpable unfitness to parent, and failure of reasonable efforts to remedy the conditions that caused the out-of-home placement. The children were placed in nonrelative foster care shortly thereafter.

While the TPR proceeding was pending, mother was found in violation of her probation because of her drug use and failure to complete chemical-dependency treatment. She was sentenced to serve 180 days, with a furlough after 60 days to permit her to attend chemical-dependency treatment. While mother was incarcerated, the social worker discovered that a registered sex offender on supervised release was regularly visiting her. Mother indicated that he is her boyfriend, that she knew of his conviction, but that she believes he is "a good man who is allowed to have contact with his own children." Less than one week before the TPR trial, mother began inpatient treatment at Rebecca's Residence.

The TPR trial took place on October 27, 2010. The district court heard testimony from mother, the social worker, the children's guardian ad litem (GAL), mother's probation officer, mother's therapist, mother's brother, the children's nonrelative foster mother, and several friends and a sponsor of mother. Mother's therapist opined that mother has not been successfully treated for her mental-health issues. The social worker testified that the program director at Rebecca's Residence believes mother is not committed to her sobriety because she was more focused on the TPR trial than her treatment needs and continued to claim that someone put methamphetamine in her coffee in December 2009. And both the social worker and the GAL opined that termination of

mother's parental rights is in the children's best interests. The district court concluded that the county proved all three statutory grounds for termination and that termination is in the children's best interests. This appeal follows.

D E C I S I O N

"[P]arental rights may be terminated only for grave and weighty reasons." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). "We 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." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). A finding is clearly erroneous when it is either manifestly contrary to the weight of the evidence or it is not reasonably supported by the evidence as a whole. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008). We give the district court's decision considerable deference, but "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *S.E.P.*, 744 N.W.2d at 385; *see also In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) (noting that district court is in a "superior position to assess the credibility of witnesses").

I. Clear and convincing evidence supports the three statutory bases for termination.

"Termination of parental rights will be affirmed as long as at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). Mother argues that the district court's findings with respect to each

termination ground lack support in the record. We address each statutory ground for termination in turn.

A. Palpable unfitness to parent

A district court may terminate the rights of a parent who is "palpably unfit to be a party to the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(4) (2010). A parent is palpably unfit when the evidence shows either "a consistent pattern of specific conduct before the child" or "specific conditions directly relating to the parent and child relationship," which the court determines are "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." *Id.* A parent's inability to meet the child's needs at the time of the trial or in the reasonably foreseeable future justifies termination. *In re Child of P.T.*, 657 N.W.2d 577, 591 (Minn. App. 2003), *review denied* (Minn. Apr. 15, 2003).

The record amply establishes that mother is a methamphetamine addict whose addiction interferes with her ability to safely and consistently care for the children. Mother admits her addiction, and the record is replete with evidence of her treatment failures and relapses after periods of sobriety. Mother has repeatedly used methamphetamine while the children were in her care even though she acknowledges it is dangerous. She also permitted another methamphetamine addict to live in the home with the children. In addition to the danger occasioned by the use of drugs in the home, the record shows mother's drug use has affected her ability to meet the children's physical

and other needs. The record reveals many school absences, outbreaks of head lice, and weight loss each time the children were in mother's care.

Mother relies on *T.R.* for the proposition that evidence of her "substance or alcohol use alone" is not enough to establish palpable unfitness. *See T.R.*, 750 N.W.2d at 663. This argument is unavailing. *T.R.* involved a father whose parental rights were terminated because he tested positive on multiple occasions for marijuana and alcohol use in violation of his case plan. The supreme court reversed the termination, holding that "substance or alcohol use alone" does not render a parent palpably unfit absent evidence that "the parent's substance or alcohol use is of a nature and duration that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the child's ongoing needs." *Id.* Here, the factual basis for the palpable-unfitness determination goes far beyond simple drug use. Mother has been using methamphetamine since before the children were born, and her addiction to methamphetamine has not been successfully treated. She admits using methamphetamine while her children were living with her, and her drug use has demonstrably affected her children's well-being. Because the record comports with the standard set forth in *T.R.*, we conclude that the district court did not err in determining that mother is palpably unfit to parent.

B. Failure to comply with parental duties

Parental rights may be terminated if a "parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship," but only if "reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or

reasonable efforts would be futile and therefore unreasonable." Minn. Stat. § 260C.301, subd. 1(b)(2) (2010). Noncompliance with parental duties includes, but is not limited to, failure to provide a child with necessary food, clothing, shelter, education, or other care and control necessary for the child's physical, mental, or emotional health and development. *Id.*; *see also P.T.*, 657 N.W.2d at 583 (recognizing parental duty "to protect and care for the child" (quotation omitted)).

Mother challenges the district court's determination that she failed to comply with her parental duties, arguing that the district court "did not delineate which of the children's needs have not been met by [mother]." We are not persuaded. The district court plainly found that mother failed to meet her children's needs for a safe and stable home. And the record supports this finding. Despite acknowledging that she cannot safely parent her children while using methamphetamine, mother has continued to use while the children were in her custody. She has repeatedly relapsed following treatment and has not demonstrated that she is committed to sobriety. *See In re Welfare of Maas*, 355 N.W.2d 480, 483 (Minn. App. 1984) (holding that a parent's minimal improvement is not enough to overcome the conclusion that the parent's past problems make her "future performance as a parent uncertain"). She also exposed her children to a confirmed methamphetamine addict and started a relationship with a convicted sex-offender in the belief that it would be safe for the children to have contact with him. This pattern of conduct demonstrates mother's refusal or neglect to comply with her parental duty to provide her children a safe and stable home.

Mother asserts that these failures should not be held against her because the district court did not find that she is physically and financially able to meet her children's needs. *See* Minn. Stat. § 260C.301, subd. 1(b)(2) (providing that parental rights may not be terminated based on refusal or neglect of parental duties unless the parent is "physically and financially able" to comply). We disagree. There is no evidence that mother lacks the physical ability or financial wherewithal to provide her children a safe and stable home. The district court found, and the record reflects, that mother made her home unsafe and unstable by failing to take advantage of numerous treatment opportunities and by repeatedly exposing her children to unsafe situations and people. In short, mother's failure to meet her children's needs is attributable to her untreated mental illness and chemical dependency, not to any physical or financial impediments. Because the record amply supports the district court's findings and establishes that the county provided mother numerous services to address the barriers to her parenting, we conclude that the district court did not err in determining that mother has failed to comply with her duty to provide her children a safe and stable home.

C. Failure to correct conditions leading to out-of-home placement

A district court also may terminate parental rights upon a finding that reasonable efforts have failed to correct the conditions that resulted in the out-of-home placement of the children. Minn. Stat. § 260C.301, subd. 1(b)(5) (2010). "Reasonable efforts" is defined as "the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services" to meet the specific needs of the child and the child's family in order to reunify the family. Minn. Stat. § 260.012(f)(2) (2010); *see*

also In re Welfare of M.A., 408 N.W.2d 227, 235-36 (Minn. App. 1987) (describing minimum reasonable-efforts requirements), *review denied* (Minn. Sept. 18, 1987). Whether a county has made reasonable efforts depends on the nature of the problem and the duration and quality of the county's involvement and efforts. *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996); *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990); *see also* Minn. Stat. § 260.012(h) (2010) (listing considerations).

Reasonable efforts are presumed to have failed upon a showing that (1) a child under the age of eight has been in court-ordered out-of-home placement for six months, "unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan," (2) the district court has approved the out-of-home placement plan, (3) conditions leading to the out-of-home placement have not been corrected, which may be presumed if the parent has failed to comply with the district court's orders and a reasonable case plan, and (4) the responsible social services agency has made reasonable efforts to rehabilitate the parent and reunite the family. Minn. Stat. § 260C.301, subd. 1(b)(5).

Mother does not dispute that the children, who are both under the age of eight, had been in court-ordered out-of-home placement for approximately 13 months by the time of trial, during which time she consistently failed to comply with the case plan. Nor does she dispute that the district court approved an out-of-home placement plan. But she asserts that the presumption does not apply because the other two factors are not met. We disagree and address each factor in turn.

Mother first challenges the district court's finding that she failed to correct the conditions that led to the children's out-of-home placement, arguing that she "successfully completed treatment and demonstrated a commitment to sobriety that has not been present in her life before." We disagree. The record reflects that mother has not addressed her chemical dependency—the principal reason for her children's removal from the family home. Mother has struggled in treatment, and her few periods of sobriety have been effectively undermined by her repeated relapses. After more than one year of receiving services, mother used methamphetamine in June 2010 and ecstasy in July 2010, mere months before the TPR trial. She also abused her prescription medication. And in the days preceding trial, her treatment provider questioned her commitment to sobriety. The record amply supports the district court's finding that mother has not corrected the primary condition leading to the children's out-of-home placement.

Mother next challenges the district court's finding that the county made reasonable efforts to rehabilitate her and reunify the family, arguing that the county failed to help alleviate the stressful situation—"parenting five children alone"—that led her to use drugs. We are not persuaded. The county made numerous efforts to address mother's mental health and chemical dependency, provided family therapy, and scheduled regular home visits by the social worker and GAL. Many of the services provided to mother, including individual therapy and dialectical behavior therapy, were designed to help her manage stress. Because these efforts comport with the court-ordered case plan, they are presumptively reasonable. *See S.E.P.*, 744 N.W.2d at 388 (holding that a case plan

approved by the district court is presumptively reasonable and requiring a parent who believes a case plan to be unreasonable to request to have the plan changed). Mother's repeated failures to take advantage of those services defeat her argument that the county's services were inadequate to help her manage the stress of raising children without resorting to drugs. This record supports the district court's finding that the county made reasonable efforts to rehabilitate mother and reunite her with her children. Accordingly, we conclude that the district court did not err in determining that reasonable efforts have failed to correct the conditions that led to the children's out-of-home placement.

II. The district court adequately addressed the children's best interests.

In a TPR proceeding, "the best interests of the child[ren] must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2010). The district court must consider the children's best interests and address those interests in its findings of fact and conclusions of law. *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). The court must balance the children's interests in preserving the parent and child relationship, the parent's interest in preserving the parent and child relationship, and any competing interests of the children. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child[ren]'s preferences." *R.T.B.*, 492 N.W.2d at 4.

The district court expressly found that termination is in the children's best interests because the children need a permanent, safe, stable, and drug-free home, which mother has not provided and is demonstrably unable to provide in the foreseeable future because

of her methamphetamine addiction. The district court primarily relied on the testimony of the social worker and the GAL, who both opined that termination is in the children's best interests. Those opinions, which the district court credited, and the substantial evidence of mother's failure, despite nearly two years of services, to address the chemical dependency that directly and indirectly endangers her children, provide substantial support for the conclusion that termination is in the children's best interests.

Mother argues that the district court's best-interests determination is flawed because it relies on an erroneous finding that she failed to successfully complete treatment and failed to consider the loss to the children of their relationship with their half-siblings. We disagree. As to the first argument, we discern no error in the finding that mother has not successfully completed treatment. Although mother completed all elements of her treatment program at Riverplace in the first half of 2009, she failed to comply with the most fundamental aftercare requirement—abstinence from mood-altering substances. At the time of trial, mother was required to complete additional chemical-dependency treatment and maintain sobriety, neither of which she had done. The record supports the district court's finding that mother has not successfully completed treatment.

Second, the district court's termination decision does not necessarily impair the children's relationship with their half-siblings. Because mother voluntarily transferred custody of her other children to their biological father, E.J.M.D. and E.M.D. would not have been living with their half-siblings even if they had been returned to mother. And

nothing in the record indicates that the children will be deprived of contact with their half-siblings in the future.

Although we acknowledge mother's desire to parent these young children, their need for permanency is great. The district court's clear conclusion that the children have an immediate need for a permanent, stable, safe, and drug-free home, which mother cannot foreseeably provide, adequately addresses the best interests of the children and has substantial record support.

Affirmed.