**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-69**

In the Matter of the Welfare of the Children of:
A. C. , A. F. L., I. M. and S. D.-H., Parents.

**Filed June 13, 2011**
**Affirmed**
**Klaphake, Judge**

Lyon County District Court
File No. 42-JV-10-80

Nicole Glee Thompson, Eskens Gibson & Behm, Chtd., Mankato, Minnesota (for appellant mother I.M.)

Richard R. Maes, Lyon County Attorney, Nicole A. Springstead, Assistant County Attorney, Marshall, Minnesota (for respondent Southwest Health and Human Services-Lyon County Office)

Sara Larson, Marshall, Minnesota (guardian ad litem)

Considered and decided by Toussaint, Presiding Judge; Klaphake, Judge; and Connolly, Judge.

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

**KLAPHAKE**, Judge

Appellant Itzamara Mata challenges the district court's decision to terminate her parental rights to her three children, A.L., A.N.C., and J.D.[1] She challenges the four

[1] The parental rights of the children's fathers, A.C., A.F.L., and S.D.-H., were also terminated by the same district court order; the fathers do not challenge the district court's termination decision.

statutory bases applied by the district court in terminating her parental rights, including neglect of parental duties, palpable unfitness, failure to correct the conditions that led to the children's out-of-home placement, and children neglected and in foster care. Appellant also claims that the district court denied her due process rights by refusing to grant her motion for a new hearing because she was not present at the termination hearing. Because appellant has refused or neglected to comply with her parental duties and because appellant's due process rights were vindicated in the termination proceedings, we affirm.

## D E C I S I O N

*Statutory Basis for Termination of Parental Rights*

This court reviews a termination of parental rights decision "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). Findings are clearly erroneous if they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *N. States Power Co. v. Lyon Food Prod., Inc.*, 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). The reviewing court will defer to the district court's termination decision if at least one statutory ground for termination is proved by clear and convincing evidence and the termination is in the children's best interests. *In re Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008).

Minn. Stat. § 260C.301, subd. 1(b)(2) (2010) provides for termination of parental rights if a parent

> 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, and either 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.

Appellant claims that the evidence was insufficient to show that she failed to meet her parental duties. To the contrary, the evidence strongly demonstrates that appellant did not supply her children with food, clothing, shelter, or other care, including meeting their special or medical needs. The children were taken from the home of appellant's mother in March 2010, where appellant left them beginning in January 2010; the children had dwindling and then almost no contact with appellant during the intervening months.[2] At the time of the children's removal from the home, appellant's mother was admittedly unable to care for the children, and appellant could not be located to inform her of their removal. Thereafter, appellant took only limited steps to keep in contact with her children and attempted only on one or two occasions to provide the children with food during supervised visitation, which was eventually discontinued because appellant failed to keep her visitation appointments or was significantly late for appointments. The record shows that appellant could not provide for her own shelter or that of her children,

[2] Two of the children had been in voluntary out-of-home placement in Oklahoma from July 20, 2009 to November 20, 2009, when appellant regained custody with the understanding that the family would be residing with appellant's mother in Minnesota.

possibly due to documented drug use and job changes, and she had at least seven temporary residences during the pendency of the CHIPS proceedings.

Further, the district court's findings, which find ample support in the record, enumerate the reasonable services offered to appellant and her children; it is also clear from the district court's findings and the record that she did not avail herself of the services offered. *See In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990) (defining "reasonable efforts" to depend on the nature of the problem presented and the quality of the social services offered), *review denied* (Minn. July 6, 1990). Respondent Southwest Health and Human Services (SWHHS)[3] offered appellant and her children a variety of services throughout the proceedings. The termination petition lists 29 services offered to the family, including case management; mental health services for A.L.; transportation for appellant and the children; medical appointments for the children; medication management and individual therapy for A.L. and A.N.C.; "CTSS" services for A.L.; clothing, presents, and car seats for the children; supervised visitation; referrals to Workforce Center, Western Community Action, New Horizon's Crisis Center for parenting; drug testing for appellant; food and gas; medical assistance for the children; and family group decision making. Appellant was provided access to many services, but she repeatedly failed to take advantage of the services offered, or use them to improve her parenting ability.

[3] SWHHS was formerly known as "LLMHS" or Lincoln, Lyon and Murray Human Services.

Because the record fully supports the district court's decision to terminate appellant's parental rights for refusal or neglect to comply with parental duties, we do not individually address the other statutory bases for termination found by the district court. *See Children of T.R.*, 750 N.W.2d at 661.

*Due Process Claim*

Appellant argues that the district court violated her due process rights by erroneously denying her motion for a new hearing under Minn. R. Juv. Prot. P. 45.04(h) (permitting a "new trial" in juvenile proceedings, among other reasons, when "required in the interests of justice"). In the context of a termination hearing involving a parent who fails to appear, "[t]he amount of process due varies with the circumstances of the case." *In re Welfare of H.G.B.*, 306 N.W.2d 821, 825 (Minn. 1981); *see In re Welfare of A.Y.-J.*, 558 N.W.2d 757, 759 (Minn. App. 1997) (stating that due process does not require the physical presence of a parent at a termination proceeding), *review denied* (Minn. Apr. 15, 1997). In reviewing this type of due process claim, "[i]t is well settled that where the trial court has jurisdiction of the offense and of the defendant a judgment will be held void for want of due process only where the circumstances surrounding the trial are such as to make it a sham and a pretense rather than a real judicial proceeding." *In re Welfare of Children of Coats*, 633 N.W.2d 505, 512 (Minn. 2001) (quotation omitted).

Here, the record shows that appellant received ample notice of the hearing and an opportunity to be heard, but simply failed to appear. Her history of minimal contact with her family, her attorneys, county representatives, and her children demonstrates that despite the best efforts of all involved in this case, she resisted or rejected their efforts to

make contact with and offer assistance to her. Appellant did not attend the prehearing conference, but she specifically acknowledged to her social worker that she had received notice of the date and time of the termination hearing and that she had entered this information into her computer. Further, although the district court referred to the termination hearing as a "default"-type proceeding, the court decided the case on the merits and found that four statutory bases supported termination of appellant's parental rights. The court terminated appellant's parental rights after receiving documentary evidence and hearing testimony from the social worker and guardian ad litem; the court personally examined these two witnesses. As such, the circumstances of the termination hearing do not show that it was a sham or mere pretense. In *Coats*, the supreme court similarly rejected a parent's due process claim that was premised on the parent's failure to be present at a termination hearing or to have counsel present to represent her, stating:

> Coats' parental rights were not terminated because of a mere technical violation on her part; her rights were terminated because, despite many opportunities and much offered assistance, she refused to correct the conditions that required her children to be placed out of her home. Coats knew when the petition for termination of parental rights was filed in August 1999 that failure to cooperate with the case plan, including visiting her children and getting her drug and alcohol abuse under control, would result in a termination of her parental rights. As it was, Coats failed to show during the entire course of the case plan that she could provide a safe and adequate home for her children.

*Coats*, 633 N.W.2d at 512. We reject appellant's due process claim and therefore conclude that the district court did not err by denying appellant's motion for a new trial in the interests of justice.[4]

**Affirmed.**

[4] We also note that appellant did not offer any facts to challenge the merits of the district court's termination decision, which would form a basis for us to grant a new hearing in the interests of justice.