STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0948

In the Matter of the
Welfare of the Children of:
S. L. K., M. J. M. and M. A. D., Parents.

Filed October 22, 2012
Affirmed
Klaphake, Judge[*]

Washington County District Court
File No. 82-JV-12-43

Megan Hunt, Hunt Law Office, Stillwater, Minnesota (for appellant S.L.K.)

Patricia A. Zenner, Zenner Law Office, Stillwater, Minnesota (for respondent M.J.M.)

M.A.D., Bayport, Minnesota (pro se respondent)

Peter J. Orput, Washington County Attorney, Richard D. Allen, Assistant County Attorney, Stillwater, Minnesota (for respondent Washington County)

Cynthia Lee, Stillwater, Minnesota (guardian ad litem)

Considered and decided by Kirk, Presiding Judge; Rodenberg, Judge; and Klaphake, Judge.

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

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

KLAPHAKE, Judge

Appellant S.L.K. challenges the termination of her parental rights to her three children: D.L.K., born on November 18, 2004; A.G.D., born on July 29, 2006; and M.J.D., born on September 8, 2008.[1] The district court terminated parental rights on four statutory grounds: failure to comply with parental duties, palpable unfitness, failure of reasonable county efforts to correct the conditions that led to out-of-home placement, and children remaining neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2010). Appellant challenges these statutory grounds, the finding that the county made reasonable efforts toward reunification, and the finding that termination is in the children's best interests. Because we conclude that the district court did not err by finding that appellant is palpably unfit to parent her children, the county made reasonable efforts, and termination is in the children's best interests, we affirm.

D E C I S I O N

We 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 if termination is in the children's best interests. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). "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

[1] The district court also terminated the parental rights of M.J.M., the father of D.L.K., and M.A.D., the father of A.G.D. and M.J.D. Neither father is party to this appeal.

determine whether it was clear and convincing." *In re Welfare of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted).

Palpable Unfitness

A district court may terminate parental rights if the parent is "palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(4). Further, the conduct or conditions must 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." *Id.*; *see T.R.*, 750 N.W.2d at 663.

Appellant has a longstanding methamphetamine addiction, substantial mental-health issues, and a history of domestic violence in her home. She worked with the county to address some of these issues, including completing a chemical-dependency treatment program in 2008 while pregnant with M.J.D. But by July 2010, she had a methamphetamine relapse. And, in November 2010, appellant's neighbor found the children outside in 20-degree weather, unsupervised and lacking appropriate clothing. The children were removed from appellant's home, and she agreed to a reunification case plan that required her to complete a chemical-health assessment and treatment, abstain from all non-prescription mood-altering chemicals, submit to random chemical testing, complete a psychological evaluation and treatment, and complete domestic-violence services. Appellant also pleaded guilty to gross misdemeanor child endangerment and was placed on probation with conditions that largely mirrored her case plan.

Appellant's prolonged methamphetamine addiction supports the district court's determination that she is palpably unfit to parent as shown by: (1) her continued use of methamphetamine throughout her children's out-of-home placement; (2) her unsuccessful discharge from chemical-dependency programs in January and June 2011 for continued drug usage and poor attendance; (3) her incarceration in September and November for probation violations; (4) her rejection of the county's recommendation that she move to a sober-living facility; and (5) her relapses into drug use even after completion of chemical dependency treatment. After appellant again tested positive for methamphetamine use in February 2012, the district court executed her sentence. And in March 2012, a parenting assessor considered this history and determined that appellant's "substance abuse behaviors have resulted in the diminished capacity to parent her children in a safe manner."

Appellant's mental health also continues to present a barrier to her ability to safely and appropriately care for her children. *See T.R.*, 760 N.W.2d at 661-62 (stating that mental illness that leads to conduct "likely to be detrimental to the child" renders a parent palpably unfit). Appellant has been diagnosed with recurrent, severe depressive disorder and borderline personality disorder with dependent, depressive, and negativistic personality traits and features. The psychologist who examined appellant in February 2011 opined that these major mental-health disorders threaten appellant's ability to maintain her sobriety and parent her children adequately. Appellant failed to follow through on recommendations for individual psychotherapy and dialectical behavioral therapy, despite opportunities to do so, and continued in early 2012 to show limited

insight into her own mental-health issues and how they negatively impact her ability to meet her children's needs.

Further, unaddressed domestic violence also interferes with the safety and stability of appellant's home. *See In re Children of T.A.A.*, 702 N.W.2d 703, 708-09 (Minn. 2005) (holding that parental failure to protect children from abuse demonstrates palpable unfitness). Appellant acknowledged that M.A.D. has a history of abusive behavior towards her and her children, including hitting, kicking, and choking her in front of the children. The record indicates that all three children have been traumatized by the abuse. But appellant has not taken any significant steps to address this threat to her children's safety and stability and maintains that M.A.D. is her "best friend" and she will not stay away from him.

While appellant argues that the district court erred in finding her unable to care appropriately for her children even though she was sober at the time of trial, had attended multiple treatment programs in jail, and planned to maintain her sobriety by entering a sober-living facility upon her release from custody shortly after trial, appellant presented no evidence that she was admitted to the sober-living facility that was central to her argument. Moreover, a district court can consider the projected permanency of a parent's inability to care appropriately for her children only by viewing current conditions in light of the history and patterns of the parent's conduct. *See In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996).

The pattern of appellant's conduct throughout her children's out-of-home placement indicates that she is not capable of maintaining sobriety except when in

custody, has not managed her mental health issues, and refuses to acknowledge the dangers associated with a continued relationship with M.A.D. We conclude that the district court did not err by finding appellant palpably unfit to parent her children. Because this statutory ground supports termination of appellant's parental rights, we need not address the other statutory factors relied upon by the district court. *See* Minn. Stat. § 260C.301, subd. 1(b) (requiring "one" statutory basis for termination of parental rights); *T.R.*, 750 N.W.2d at 661 (same).

Reasonable Efforts

Before parental rights may be terminated, the county must make reasonable efforts to reunite the children with the parent. Minn. Stat. § 260C.301, subd. 8(1); *S.Z.*, 547 N.W.2d at 892. Clear and convincing evidence must support a finding that the county made reasonable efforts. *T.A.A .*, 702 N.W.2d at 708.

"Reasonable efforts" means "the exercise of due diligence by the [county] to use culturally appropriate and available services to meet the needs of the child[ren] and the child[ren]'s family." Minn. Stat. § 260.012(f) (2010). In determining whether reasonable efforts have been made, the district court must consider whether the services 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) (2010). Whether the county's services constitute "reasonable efforts" depends on the nature of the problem presented, the duration of the county's involvement, and the quality of the county's effort. *In re Welfare of H.K.*, 455 N.W.2d

529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). But services outlined in a court-ordered case plan are "presumptively reasonable." *S.E.P.*, 744 N.W.2d at 388.

Appellant challenges the district court's finding that the county made reasonable efforts to reunify her with her children. But she agreed to the county's reunification case plan and concedes that the county made reasonable efforts to reunify the family during significant portions of her children's out-of-home placement. Indeed, the record indicates that the county made consistent efforts throughout the pendency of the children's out-of-home placement to help appellant find appropriate chemical-dependency, mental-health, and domestic-violence programming and to provide appellant with the necessary transportation and other support to take advantage of those services.

Appellant asserts, however, that the district court erred by failing to credit her claim that a social worker unreasonably refused to permit her to make up a missed chemical test in June 2011, which resulted in her discharge from treatment and a probation violation, undermined her recovery efforts, and expedited the termination process. These allegations are either directly or implicitly rejected by the district court's factual findings and a record that shows a pattern of conduct on the part of appellant that led to termination of her parental rights, despite any claimed deficiencies in the county social worker's actions. On this record, we conclude that the district court did not err by finding that the county provided reasonable efforts towards reunifying appellant with her children.

Finally, appellant complains that the sober-living facility that the county recommended made numerous demands of her before it would admit her in December

2011, which in turn allegedly delayed her admission and led to her relapse. Appellant contends that the demands amounted to an improper "test to see what her level of motivation was." *See In re Welfare of J.H.D.*, 416 N.W.2d 194, 198 (Minn. App. 1987) ("Efforts to help parents generally are closely scrutinized, because public agencies may transform the assistance into a test to demonstrate parental failure."), *review denied* (Minn. Feb. 12, 1988). While a social services agency charged with providing reasonable efforts to reunify a parent with her children may not "test" a parent to demonstrate her inability to meet the agency's expectations, appellant does not identify any authority prohibiting the agency's treatment partners from demanding that applicants demonstrate their fitness for the treatment program. Moreover, the record indicates that the county went to great lengths to support appellant in meeting the facility's demands.

We conclude that the record contains clear and convincing evidence supporting the district court's finding that the county made reasonable efforts to assist appellant in addressing her numerous barriers to safe and stable parenting and to reunify appellant with her children.

Children's Best Interests

Even if a statutory ground for termination exists, "a child's best interests may preclude terminating parental rights." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009) (quotation omitted). Analyzing the best interests of a child requires balancing three factors: (1) the child's interest in preserving a parent-child relationship, (2) the parent's interest in preserving that relationship, and (3) any competing interest of the child. *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's preferences." *Id.* "Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7 (2010).

Appellant contends that the district court's best-interests determination is flawed because it did not reference the balancing test discussed in *R.T.B.* and failed to make findings specifically addressed to the three best-interests factors. But while the district court did not expressly reference *R.T.B.* or the three-factor balancing test, its analysis thoroughly weighed all three factors. Overall, the record contains clear and convincing evidence that the children's need for a permanent, safe, and stable home, which appellant cannot foreseeably provide, outweighs the interests of appellant and her children in maintaining their parent-child relationship. We conclude that the district court did not err by finding that termination of appellant's parental rights is in her children's best interests.

Affirmed.