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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-224**

In the Matter of the Welfare  
of the Children of:  
A. M. S. and W. M. S., Parents

**Filed July 20, 2012  
Affirmed  
Collins, Judge\***

Olmsted County District Court  
File No. 55-JV-10-7519

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Considered and decided by Larkin, Presiding Judge; Kalitowski, Judge; and  
Collins, Judge.

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

## UNPUBLISHED OPINION

**COLLINS**, Judge

On appeal from the district court's decision to terminate her parental rights, appellant-mother A.M.S. contends that the district court erred by finding that she is palpably unfit to be a party to the parent-and-child relationship and that reasonable efforts failed to correct the conditions that led to her children being placed outside of her home. Because there is ample record support for the district court's findings, and the findings support the district court's decision to terminate mother's parental rights, we affirm.

### FACTS

Mother has had eight children. Her first child died in infancy, and five children were the subjects of child-protection proceedings in Wabasha County in 2003, which resulted in voluntary termination of mother's parental rights to those five children. The current proceedings involve mother's youngest daughter K.M.S., age nine, and youngest son A.S., age eight.

In March 2008, mother reported to emergency-room staff her belief that in February 2008 K.M.S. and A.M. may have been sexually abused by their father, a convicted sex offender. Respondent Olmsted County investigated and determined that K.M.S. had been sexually abused; the investigation was inconclusive as to A.M. A county social worker provided case-management services to mother from May 2008 through June 2009. The county identified several child-protection concerns during that period, including mother's difficulty meeting the children's basic needs for housing, clothing, transportation, and food; an episode of domestic violence in which the children

witnessed mother's boyfriend physically abuse her to the extent of needing medical treatment at an emergency room; and the conditions of the residences where the family lived. Also, until April 2009, mother failed to follow the county's recommendations that she seek therapy for the children. In June 2009, although most of the child-protection concerns had not been resolved, Olmsted County closed its file after mother moved to Dodge County.

In September 2010, mother again came to Olmsted County's attention when it was reported that she had left the children in her sister's care while mother worked for a traveling carnival. Mother had failed to enroll the children in school or provide authorization to permit her sister to access medical care for the children. The county investigated and identified additional child-protection concerns: (1) mother and the children had been homeless and sleeping on the couch at the home of a friend; (2) mother was abusing alcohol and drugs; (3) mother left the children with others for approximately one month and refused to disclose to the county the identities of the children's caregivers during that time; (4) mother left the children with caregivers whose parental rights had previously been terminated; and (5) one home where the children stayed was infested with lice. After meeting with mother in late September and early October and determining that (a) mother continued to lack stable housing; (b) the children were not enrolled in school; and (c) mother planned to remove the children from the state in an apparent effort to evade county inquiries into the children's well-being, county social workers decided to initiate emergency protective-care proceedings.

On October 7, 2010, the county filed a child-in-need-of-protection-or-services (CHIPS) petition, on behalf of K.M.S. and A.S. The district court placed the children in emergency protective care and transferred interim custody of the children to the county. On February 7, 2011, mother and the children's father, who was then incarcerated in Wisconsin, admitted that the children were in need of protection or services because the children were without necessary food, clothing, shelter, education, or other required care for the children's physical or mental health or morals, because the children's parents were unable to provide that care. Mother also admitted that (a) she has a bipolar disorder; (b) during summer 2010, she stopped taking her prescription medication; and, (c) as a result of her unmanaged, deteriorating mental health, by fall 2010, the family lacked independent housing, their living situation was not appropriate or adequate, the children had not registered for and were not attending school, and mother was unable to provide for their care. The district court found the children to be in need of protection and services, pursuant to Minn. Stat. § 260C.007, subd. 6(3) (2010).

Mother and the county agreed to out-of-home placement plans for the children. The children were to remain in the county's custody while the county continued reunification efforts and searched for alternative permanency options with relatives. The plans identified tasks for mother to complete related to the safety, permanency, and well-being needs of the children. Mother's tasks for the children's safety required her to refrain from any drug and alcohol use, maintain sobriety, submit urine samples for testing as directed, create and follow a budget, and identify safe caregivers for the children. Mother's tasks for permanency included obtaining and maintaining stable housing,

resolving outstanding legal requirements, identifying caregivers for the children in the case that reunification is not possible, demonstrating her independence by arranging for her own transportation to parenting times and appointments, and openly and honestly communicating with the county. Mother's tasks for the children's well-being required mother to attend all of the children's medical, dental, mental health, and school meetings and appointments, attend all scheduled parenting time, sign required medical releases for herself and the children, use her medication as prescribed, and complete necessary follow-up care. The district court found that the plans were reasonable to rehabilitate mother in an attempt to reunify her with the children. The district court also found that the county had made reasonable efforts to prevent the out-of-home placement of the children.

Mother continued to exhibit behaviors that concerned county child-protection workers, including (a) she tested positive for drugs on one occasion in October 2010 and for alcohol once in November 2010; (b) during supervised parenting time in November 2010, she brought the children to the home of a man who had sexually abused her older daughter; and, (c) she missed two visits with the children in November, once because she was incarcerated in Wisconsin and once due to lack of transportation. The county ultimately restricted mother to supervised visitation with the children because of her inappropriate language, conversational topics, and behavior during visits.

Mother also engaged in criminal activity during the pendency of the CHIPS proceedings. She was charged with terroristic threats in fall 2010 for threatening statements she made to her sister regarding the September 2010 report of child-protection

concerns. She was convicted and sentenced for driving after revocation of her driver's license and was subsequently charged and incarcerated for failing to report to jail to serve the sentence. Twice in December 2010, she illegally sold prescription narcotics.

On April 7, 2011, the county petitioned the district court to terminate the parental rights of mother to K.M.S. and A.S.<sup>1</sup> The petition alleged that mother is palpably unfit to be a party to the parent-and-child relationship, Minn. Stat. § 260C.301, subd. 1(b)(4) (2010), and reasonable efforts had failed to correct the conditions leading to the children's placement, Minn. Stat. § 260C.301, subd. 1(b)(5) (2010).

A trial was held during November 14 to 17, 2011. The county presented the testimony of the children's guardians ad litem, special educator, and foster parent regarding the children's behavior, development, and education under mother's care and in foster care. The family's county social worker, a parent educator who worked with mother during the CHIPS proceedings, and a psychological and parenting evaluator who prepared an assessment of mother in February 2011 also testified in support of the petition. Mother testified, and her psychiatrist, a close friend, and a county social worker testified on her behalf.

On January 20, 2012, the district court ordered termination of mother's parental rights to the children under Minn. Stat. § 260C.301, subd. 1(b)(4)-(5). With respect to Minn. Stat. § 260C.301, subd. 1(b)(4), the district court found that mother is palpably unfit to be a party to a parent-and-child relationship because of a consistent pattern of

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<sup>1</sup> The county also petitioned to terminate the parental rights of the children's father and, on September 23, 2011, the district court did so. The termination of father's parental rights is not challenged in this appeal.

specific conduct and specific conditions that the district court determined to be of a duration and nature that renders mother unable to care appropriately for the children, including mother's demonstrated inability to manage her mental health, chronic history of inability to care and provide for her children, and chronic neglect of all of her children. As to Minn. Stat. § 260C.301, subd. 1(b)(5), the district court found that there is clear-and-convincing evidence that the county's reasonable efforts had failed to correct the conditions that led to the children's out-of-home placement, and the district court presumed, pursuant to Minn. Stat. § 260.301, subd. 1(b)(5)(i)-(iv), that such efforts had failed and presumed, pursuant to Minn. Stat. § 260.301, subd. 1(b)(5)(iii), that the conditions have not been corrected because mother had not substantially complied with the reasonable case plans. The district court found that termination of parental rights is in the children's best interests. This appeal followed.

## **DECISION**

The district court terminated mother's parental rights to the children based on its finding that she is palpably unfit to be a party to the parent-and-child relationship, Minn. Stat. § 260C.301, subd. 1(b)(4), and because clear-and-convincing evidence established that the county's reasonable efforts had failed to correct the conditions leading to the children's out-of-home placement, Minn. Stat. § 260C.301, subd. 1(b)(5). Mother challenges each basis for termination.

Our review of the district court's decision to terminate parental rights is limited to determining whether the district court's findings address the statutory criteria and whether they 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). We will not disturb the district court's decision to terminate parental rights if there is clear-and-convincing evidence establishing at least one of the grounds for termination of parental rights set forth in Minn. Stat. § 260C.301, subd. 1(b) (2010), and if termination of parental rights is in the child's best interests. Minn. Stat. § 260C.301, subd. 7 (2010); *S.E.P.*, 744 N.W.2d at 385. Accordingly, we review the district court's findings of the underlying facts for clear error but review its determination of whether a particular statutory basis for involuntarily terminating parental rights exist for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). In doing so, we closely evaluate the sufficiency of the evidence, taking into account that it is the district court that assesses the credibility of witnesses. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

## I.

A district court may terminate parental rights to a child if the district court finds that the parent is palpably unfit to be a party to the parent-and-child relationship. Minn. Stat. § 260C.301, subd. 1(b)(4). A parent is palpably unfit to be a party to the parent-and-child relationship if a “pattern of specific conduct” or “specific conditions” make the parent “unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental or emotional needs of the child.” *Id.* Proof of such specific, “permanently detrimental” patterns or conditions must be established over a period of time. *In re Welfare of B.C.*, 356 N.W.2d 328, 332 (Minn. App. 1984).

Here, the district court found that mother (a) has an extensive history of untreated mental-health concerns and has consistently demonstrated an inability to manage her mental health, including noncompliance with prescribed medication; (b) has consistently maintained an unstable lifestyle for herself and the children, including a history of unstable housing, illicit chemical use, and educational neglect; (c) lacks capacity to provide for the basic needs of the children, resulting in their chronic neglect; and (d) has past child-protection involvement. The district court found that clear-and-convincing evidence established that these conditions result in mother's inability to provide for her children for the reasonably foreseeable future. Based on these findings, the district court concluded that mother is palpably unfit to be a party to the parent-and-child relationship.

The district court's findings are supported by substantial evidence. The record contains extensive testimony, psychological assessments, and parenting evaluations addressing (a) mother's significant mental-health history and current mental-health concerns; (b) mother's past and present challenges in providing for the children's needs; (c) mother's child-protection history; and (d) the family's itinerant lifestyle throughout the children's lifetimes. Testimony established that the children exhibited significant behavioral and psychological problems and academic delays that were substantially improved once they were placed in foster care. The record contains a psychological evaluation and parenting assessment of mother completed in February 2011 and the testimony of the evaluating psychologist concluding that mother has chronic mental-health and chemical-dependency conditions that cause her to lack adequate capacity to parent the children. The record also shows that mother's rights to her five older children

were previously voluntarily terminated. The parenting evaluator, parenting educator, and mother's social worker all expressed concerns about mother's ability to provide for K.M.S. and A.S., as well as ongoing child-protection concerns. Moreover, mother concedes that, as part of the CHIPS proceeding, she admitted that the children lacked necessary food, clothing, shelter, education or other required care for the children's physical and mental health or morals because she was unable to provide that care, and that she lacked a stable living environment that affected her ability to provide for the children's housing and educational needs.

Mother argues that the district court clearly erred by finding she had not provided stable housing and would be unable to do so if the children were returned to her care. We disagree. Mother contends that the record establishes that she lived in one residence between 2004 and 2007, and that social workers observed that she had stable and appropriate housing. Indeed, one social worker who worked with the family from November 2007 to June 2009 testified that she visited mother in her home many times and had no child-protection concerns at that time. But, according to the record, mother lived at three locations between 2004 and 2007, and the family lived at no less than twelve locations between 2004 and 2010. At most of these locations, mother and the children temporarily resided with mother's romantic partners or acquaintances, and occasionally with family members. Mother asserts that she owns a trailer home in Wisconsin where she she had resided and where she proposes to reside with the children once they are reunited. But the district court found that mother's claim to own the trailer home was not credible, and found that the residence plan is not sufficiently stable to meet

the children's needs, particularly in light of the fact that mother moved from that home to reside temporarily in numerous other places with the children and has a history of frequently moving. *See L.A.F.*, 554 N.W.2d at 326 (stating that district court is primary judge of credibility).

Mother also argues that the district court's finding that her unmanaged mental health was a condition that led to the children's out-of-home placement is clearly erroneous. We disagree. The record shows that (a) mother has had an extensive psychiatric history, including diagnoses of depression, post-traumatic stress disorder, reactive attachment disorder, bipolar disorder, borderline personality disorder, and cannabis and alcohol abuse; (b) mother was hospitalized for suicide attempts in 2006 and 2007; (c) mother periodically disregarded her treating psychiatrists' advice; and (d) stressors related to unstable housing, the children's behavior, and her financial condition and lack of steady employment contributed to mother's mental-health problems. Mother's psychiatrist observed a decline in her mental health beginning in April 2010.

Mother contends that the record lacks evidence to support the district court's findings regarding the 2003 termination of her parental rights to her other five children, arguing that no witness with direct knowledge of the 2003 proceedings testified. We disagree. The record before us includes the orders terminating mother's parental rights to those children and the testimony of the Wabasha County guardian ad litem for the five children regarding the child-protection concerns in those proceedings. This evidence

clearly supports the district court's findings regarding the 2003 termination-of-parental-rights proceedings.

We also find no merit in mother's contention that the county's decision to close her child-protection file in June 2009 establishes that the county "had no child protection concerns" for the children at that time. The record shows that the county had ongoing concerns about mother's ability to adequately care for the children at that time, but it acted pursuant to a policy requiring it to close a file within thirty days after the subject moves from the county.

The record contains substantial evidence supporting the district court's findings regarding mother's history of untreated mental-health conditions, unstable lifestyle, continuing inability to provide for the basic needs of the children or to effectively parent the children, and history of child-protection concerns. And the district court's findings address the statutory criteria: that a "pattern of specific conduct" or "specific conditions" render A.M.S. "unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental or emotional needs of the child." *See* Minn. Stat. § 260C.301, subd. 1(b)(4). Accordingly, the district court's finding that mother is palpably unfit to be a party to the parent-and-child relationship is not clearly erroneous.

Because the record demonstrates mother's continuing inability to care for the children's physical, mental, and emotional needs, the district court did not abuse its discretion in terminating mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(4).

## II.

Mother also challenges the district court's decision to terminate her parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5). This law allows the district court to terminate a party's parental rights if, "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." *Id.* A presumption of failure of reasonable efforts arises if (1) the child has resided in court-ordered out-of-home placement for a cumulative period of 12 months within the preceding 22 months, or the child is under age eight and has resided in court-ordered out-of-home placement for six months; (2) the court has approved an out-of-home placement plan; (3) the conditions leading to the out-of-home placement have not been corrected, which is presumptively shown by a parent's failure to "substantially compl[y] with the court's orders and a reasonable case plan;" and (4) the county made reasonable efforts to rehabilitate the parent and reunite the family. *Id.*, (i)-(iv).

The district court found that the county's reasonable efforts had failed to correct the conditions leading to the children's out-of-home placement. In addition, the district court presumed that the county's reasonable efforts had failed because (1) the court approved reasonable out-of-home placement plans; (2) the conditions leading to the out-of-home placement have not been corrected, and mother had not substantially complied with the court-approved case plans, giving rise to a presumption that the conditions were not corrected; and (3) the county made reasonable efforts to rehabilitate the parents and reunite mother with the children. *See id.*

Mother challenges the district court's findings that the conditions leading to the children's out-of-home placement have not been corrected and that mother has not substantially complied with the plans. Mother does not challenge the district court's findings that the plans were reasonable or that the county made reasonable efforts to reunite mother with the children.

The district court found that the conditions that led to the children's out-of-home placement, detailed in part I above, remained unresolved despite services provided by the county and parenting professionals. In particular, the district court found that (a) mother had not maintained consistent, stable housing; (b) had not created a realistic budget demonstrating an ability provide for the children's basic needs; (c) had not cooperated with the county; (d) does not fully understand the nature and negative impact of her chemical dependency and mental health on the children; and (e) has not fully addressed her chemical- dependency and mental-health conditions.

Mother asserts that she substantially complied with the tasks of the out-of-home placement plans, specifically arguing that the record establishes that she has maintained sobriety, is able to provide stable housing in Wisconsin, has addressed the legal issues that are within her control to resolve, and maintained open and honest communication with the county, including releasing all requested information. To mother's credit, the record shows some improvement in the conditions that led to the children's out-of-home placement. Mother resolved several outstanding criminal matters and began to address her chemical-dependency condition, completing chemical-dependency treatment and testing negative for substance use on 12 out of 14 tests. She also completed a parenting

assessment, submitted a budget, identified the home in Wisconsin as a permanent residence, and attended a significant number of the scheduled visits with the children and the children's appointments. But mother's social worker expressed doubt that mother could continue to manage her mental health adequately, citing occasions when she failed to use medication as prescribed and failed to seek individual therapy; (b) expressed concerns about mother's residence plan and budget because the home in Wisconsin is not in mother's name and the budget largely relies on help from the person with whom she proposed to reside, supplementing government assistance; and (c) testified that she was concerned that mother would be unable to keep to the budget. The record reflects that the county obtained court-ordered releases of mother's medical and psychological information because mother generally refused to provide authorizations. In sum, the social worker testified that she believed that mother exhibited limited compliance with the assigned tasks.

The testimony and reports of the parent educator, parent evaluator, and social worker demonstrate that mother missed several scheduled parenting visits and regularly engaged in inappropriate conversations and behavior around the children. Mother argues that it was impossible for her to demonstrate effective parenting under the restrictive supervised-visitation conditions demanded by the county. But the district court found, and the record supports, that mother was restricted to supervised visitation with the children because she exhibited inappropriate language, conversational topics, and behavior during visits. Accordingly, there is substantial record support for the district

court's finding that mother failed to substantially complete the tasks of the out-of-home placement plans and failed to correct the conditions leading to the placements.

Mother also challenges the district court's finding that, even if mother substantially completed all of the tasks of the out-of-home placement plans, the evidence nonetheless establishes that she cannot properly parent the children. This conclusion is supported by the testimony and reporting of the parenting educator, the parenting evaluator, and the case worker, all of whom expressed serious concerns about mother's ability to effectively parent the children. Indeed, the parenting evaluator recommended termination of mother's parental rights to K.M.S. and A.S. Moreover, the children's special education instructor and foster parent testified that the children exhibited substantial behavioral and academic improvement when they were removed from mother's care and placed in foster care, and they showed significant regression following a visit or contact from mother. The record also demonstrates that mother continues to exhibit an inability to meet the children's basic needs, and that she has made no significant changes to her lifestyle since 2002. The record contains (a) the parenting and psychological evaluator's conclusion that mother continues to lack insight into her chemical-dependency condition; (b) the discharge report from a chemical-treatment program that mother completed, which notes that mother "has poor recognition and understanding of relapse and recidivism issues and displays moderately high vulnerability for further substance use or mental health problems" and that mother "has few coping skills and rarely applies them"; and (c) significant testimony regarding mother's history of chemical abuse and unmanaged mental-health condition.

Mother argues that the district court erred by finding that she had not corrected her mental-health condition because the district court found that, at the time of trial, mother was effectively managing her mental health. We disagree. The district court's findings reflect that it duly considered mother's progress in managing her mental-health condition in light of her long history of failing to manage her mental health. Moreover, the district court observed that the results of mother's unmanaged mental-health condition—her failure to provide for the children's basic needs and safety—have not been corrected and mother exhibited mental-health improvement only after the children were removed from her care. These findings are supported by the record, which contains substantial and undisputed evidence of mother's historical inability to manage her mental health and the impact of her untreated mental-health condition on her ability to provide for her children.

Mother challenges the district court's reliance on the expert testimony of the parenting educator and the parenting evaluator, arguing that their testimony was based on allegations in the CHIPS petition. We disagree. The record shows that the parenting educator formed her opinions over five months of observing mother during visits with the children and based on mother's own statements. And the parenting evaluator interviewed mother, conducted psychological testing, observed the interaction between mother and the children, and reviewed county case records. Additionally, the district court received documentary evidence, including extensive reporting and assessment, supporting these witnesses' opinions. Thus, the district court did not erroneously rely on unproven allegations in the CHIPS petition.

Substantial evidence in the record demonstrates that the county's reasonable efforts to correct the conditions leading to the children's placement outside the home failed to correct the conditions leading to the children's out-of-home placement. Accordingly, the district court did not abuse its discretion in terminating mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5).

**Affirmed.**