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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0245**

In the Matter of the Welfare of the Children of:
R.A.B. and J.R.S., Parents.

**Filed July 8, 2013
Affirmed
Bjorkman, Judge**

Stearns County District Court
File Nos. 73-JV-12-9317, 73-JV-12-9317

Cathleen Gabriel, Annandale, Minnesota (for appellant R.A.B.)

Janelle P. Kendall, Stearns County Attorney, Gayle A. Borchert, Assistant County Attorney, St. Cloud, Minnesota (for respondent Stearns County)

Thomas Nolan, Minneapolis, Minnesota (for guardian ad litem)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and
Rodenberg, Judge.

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

BJORKMAN, Judge

Appellant-mother R.A.B. challenges the termination of her parental rights to C.J.S. and R.M.B., arguing that the evidence does not support the district court's determinations that the county proved a statutory ground for termination and that termination is in her children's best interests. We affirm.

FACTS

In April 2011, two-month-old C.J.S. was removed from mother's home and placed in foster care after a verbal and physical altercation between mother and father J.R.S.¹ Stearns County Human Services (the county) filed a child-in-need-of-protection-or-services (CHIPS) petition. The district court adjudicated C.J.S. in need of protection or services and continued his out-of-home placement. The county implemented a case plan focusing on father's chemical dependency, both parents' mental health, and father's history of domestic violence toward mother. The district court approved the case plan and ordered both parents to comply with it.

R.M.B. was born in March 2012 and remained in mother's custody. Two months later, the county returned C.J.S. to mother's custody. But father continued to test positive for illegal drugs, and mother repeatedly failed to protect herself and the children from his drug use and violence. In September, the county removed the children from mother's home and filed CHIPS petitions. The district court adjudicated the children in need of protection or services and continued their out-of-home placement.

On October 5, the county petitioned to terminate mother's parental rights to both children. The county alleged three statutory grounds for termination: failure to comply with parental duties, palpable unfitness, and failure of reasonable efforts to correct the conditions that led to the children's out-of-home placement.

¹ The district court terminated the parental rights of father J.R.S. to both children. Those terminations are not at issue in this appeal.

Mother admitted the third statutory ground asserted in the termination-of-parental-rights (TPR) petitions on November 5. Specifically, mother admitted that father's continued drug use and domestic violence pose a risk to the children's safety; that the county provided her "a number of services" to help her deal with those issues; and that because she continues to expose herself and the children to father's drug use and domestic violence, the circumstances that led to their out-of-home placement have not been corrected. Mother also presented evidence that she was accepted into and prepared to actively participate in a domestic-violence program (the Starfish Program). The district court found that reasonable efforts failed to correct the conditions requiring the children's out-of-home placement but that staying termination serves the children's best interests, provided mother (1) successfully completes the 19-month Starfish Program; (2) avoids all contact with father, including written, phone, and face-to-face contact, even while he is incarcerated; and (3) obtains an order for protection (OFP) against father prohibiting his contact with mother and the children.

On November 15, the county moved to revoke the stay based on mother's contact with father. Mother admitted that she failed to comply with this stay condition but declared that she had since severed all connections to father, had a "new plan for [her] life," and was "begging for one last chance." The district court continued the stay, finding that mother's "relationship addiction" impedes her ability to comply with the court's conditions but that she had "taken ownership" of that issue and had made strides toward compliance that suggested she could ultimately be reunified with her children.

The district court again ordered mother to comply with the November 5 conditions and warned her that any further violations would result in termination.

Mother reluctantly obtained an OFP against father on November 30. But she otherwise refused to meet the requirements of the Starfish Program or cooperate with the county social worker. The Starfish Program discharged mother on December 10.

On December 13, the county again moved to revoke the stay and terminate mother's parental rights. Mother admitted that she violated the stay conditions by being unsuccessfully discharged from the Starfish Program and having contact with father during the pendency of the motion. But she argued that the court should not revoke the stay because she had found two domestic-violence programs that would better meet her treatment needs. The district court revoked the stay and ordered termination of mother's parental rights, incorporating its November 5 findings as to the statutory ground for termination and finding that further delay to accommodate mother's treatment request would be contrary to the children's best interests. Mother moved for amended findings. The district court denied the motion but attached a memorandum further explaining its best-interests determination, emphasizing the children's urgent need for permanency and mother's failure to avail herself of numerous treatment opportunities, and finding clear and convincing evidence to establish the three termination grounds alleged in the petitions. This appeal follows.

DECISION

Parental 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). Termination

requires clear and convincing evidence that (1) the county has made reasonable efforts to reunite the family, (2) there is a statutory ground for termination, and (3) termination is in the child's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). On appeal, we review the district court's findings "to determine whether they address the statutory criteria and are not clearly erroneous, in light of the clear-and-convincing standard of proof." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012) (citation omitted). We review the court's determination that the statutory requirements for termination have been established for an abuse of discretion. *See In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900-01 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). We will affirm as long as at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the children's best interests. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

I. The district court did not abuse its discretion by determining that clear and convincing evidence establishes a statutory ground for termination.

Parental rights may be terminated if, following a 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) (2012). A presumption that reasonable efforts have failed arises if (1) the child is under age eight and has resided in court-ordered out-of-home placement for six months; (2) the court 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.* This presumption applies here.

It is undisputed that both children are under the age of three and have spent almost all of their young lives in court-ordered out-of-home placement.² It is also undisputed that the district court approved a series of case plans aimed at assisting mother in protecting herself and the children from father’s illegal drug use and domestic violence. And the record is replete with evidence, including mother’s admission, that mother repeatedly violated those case plans by failing to comply with programming and by seeking out or acquiescing in contact with father despite her knowledge of the danger he poses to her and the children.

Mother challenges the district court’s finding that the county made reasonable efforts to assist her, arguing that the Starfish Program was insufficient to meet her needs but that she can succeed with “another chance at treatment.” We are not persuaded. The record reflects that the county, before filing the TPR petitions, spent more than 18 months working with mother, while her children were in and out of the home, to help her address her dependence on father and protect herself and the children from him. Even after those efforts proved unsuccessful, the district court gave mother additional opportunities to

² While mother does not dispute the timing aspect of the statutory presumption, we are mindful that R.M.B. had been in court-ordered out-of-home placement for less than four months when the district court terminated mother’s parental rights. We nonetheless agree that the presumption applies with respect to R.M.B. because she was removed from mother’s home for the same reasons C.J.S. had spent, by that time, more than 16 months in court-ordered out-of-home placement.

pursue treatment, first when it stayed termination of her parental rights in early November 2012 so she could participate in the Starfish Program and again when it continued the stay in late November based on her declarations that she was committed to treatment. And the county continued to provide transportation and maintain frequent contact with mother to facilitate her treatment, terminating those supportive services only when she was discharged from the Starfish Program. The district court did not clearly err by finding these rehabilitative efforts reasonable.

On this record, we conclude the district court did not abuse its discretion by finding clear and convincing evidence demonstrates that the county's reasonable efforts have failed to correct the conditions that led to the children's out-of-home placement.³

II. The district court did not abuse its discretion by determining that clear and convincing evidence establishes termination is in the children's best interests.

The "paramount consideration" in all TPR proceedings is the best interests of the child. Minn. Stat. § 260C.301, subd. 7 (2012). Analyzing the best interests of the child requires balancing the child's interest in preserving a parent-child relationship, the

³ Mother challenges the sufficiency of the evidence to establish all three of the termination grounds alleged in the petitions. But we read the district court's termination decision to be based on failure of reasonable efforts. Mother admitted only that ground, the district court's November 5 findings addressed only failure of reasonable efforts, and its decision revoking the stay simply incorporated the November 5 findings without articulating any new findings as to the grounds for termination. In its memorandum denying mother's motion for amended findings, the district court summarily stated that clear and convincing evidence established all three alleged termination grounds. But once again the court discussed only failure of reasonable efforts. Moreover, our conclusion that the record supports the district court's failure-of-reasonable-efforts determination obviates the need to address other termination grounds. See *In re Children of T.A.A.*, 702 N.W.2d 703, 708 & n.3 (Minn. 2005) (declining to address additional grounds for termination because record established palpable unfitness and "[o]nly one ground must be proven for termination to be ordered").

parent's interest in preserving that relationship, and 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.

Mother challenges the district court's determination that terminating her parental rights is in the children's best interests, arguing that her children are young enough that continuing reunification efforts would better serve their interests. We disagree. The fact that the children are very young elevates the importance of securing a permanent placement. *See id.*, subd. 1(b)(5)(i) (establishing shorter permanency timeline for children under eight). And continuing corrective measures to preserve the parent-child relationship is in the children's best interests only if it is reasonably foreseeable that the measures will reunite the family. *See* Minn. Stat. § 260C.001, subd. 3(2) (2012) (stating goal of "a safe and permanent placement" outside the family home "if placement with the parents is not reasonably foreseeable").

The great weight of the evidence here supports the district court's finding that reunification is not reasonably foreseeable. Mother repeatedly professed commitment to treatment and, when faced with revocation of the stayed TPR, detailed the treatment efforts she planned to take. But her actions speak louder than her words. Even after receiving the reprieve she sought during the first revocation hearing, she continued to initiate or accept contact from father despite the threat he poses to the children. The district court carefully considered mother's pattern of behavior, the extensive period of

time a new treatment program would take even if she “took her rehabilitation seriously,” and the children’s great need for permanency and determined that mother’s timeline is too long and uncertain for her young children to wait. *See In re Welfare of J.J.B.*, 390 N.W.2d 274, 279 (Minn. 1986) (emphasizing the importance of stability and permanency to a child’s development). Based on our careful review of the record, we conclude the district court did not abuse its discretion by determining that clear and convincing evidence demonstrates termination is in the children’s best interests.

Affirmed.