STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1589

In the Matter of the Welfare of the Children of:
S.L.B. and W.A.H., Parents.

Filed March 4, 2008
Reversed
Johnson, Judge

Otter Tail County District Court
File Nos. 56-JV-07-14, 56-JV-07-15, 56-JV-07-16, 56-JV-07-17

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Considered and decided by Lansing, Presiding Judge; Ross, Judge; and Johnson, Judge.

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

JOHNSON, Judge

S.L.B. is a single mother with three children, twins born in December 2004 and an infant born in June 2007. In April 2007, the Otter Tail County Department of Human Services filed a petition to terminate her parental rights to the twins. After a three-day trial, the district court granted the county's petition. S.L.B.'s appeal presents the question whether the county's evidence was sufficient to prove, by clear and convincing evidence,

any of three statutory bases for termination, namely, that S.L.B. failed to satisfy the duties of the parent-child relationship, failed to correct the conditions leading to an out-of-home placement, or is a palpably unfit parent. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5) (2006). We conclude that the evidence does not support the district court's findings of fact and conclusions of law and, therefore, reverse.

FACTS

In December 2004, when she was 22 years old, S.L.B. gave birth, prematurely, to twins, S.A.H. and A.R.H. The twins have a mild form of special needs in that their development has been moderately delayed, A.R.H. more so than S.A.H. In 2005 and 2006, the twins began receiving in-home, early-childhood educational assistance from the county.

S.L.B. has a history of mental illness. As a teenager, she was diagnosed with bipolar disorder. In mid-August 2006, she experienced overwhelming stress because of the deaths of both of her grandmothers, her break-up with a boyfriend, D.J., and her receipt of notice that she would be evicted from her apartment on September 15, 2006. On August 17, 2006, S.L.B. sought assistance at a mental health clinic and was admitted to a residential program. She reported depression and a resulting inability to care for the twins. Before visiting the mental health clinic, S.L.B. went to the county's social services department and asked county personnel to take care of the twins, who were 20 months old at that time.

On the same day, apparently while S.L.B. was at the mental health clinic, county child-protection specialists went to S.L.B.'s apartment. The county was responding to a

report, received the previous day, suggesting that the twins might be suffering "maltreatment." Stephanie Johnson, S.L.B.'s assigned case worker, obtained a key to the apartment from one of S.L.B.'s acquaintances. When county personnel entered the apartment, they found it to be messy and unsanitary. Garbage overflowed from a wastebasket and was strewn across the floor, along with dirty diapers, newspapers, and dirty laundry. Moldy food was in the kitchen. A cat litter box, full of cat feces, was under a crib. A foul odor was detectable both inside and outside the apartment.

Both children were examined by physicians in August 2006. There was no evidence of any health problems arising from the home environment. The physician noted that the children did not need to be seen again until their two-year check-up examinations.

On August 21, 2006, while S.L.B. remained in in-patient treatment, the county petitioned the district court to adjudicate the twins as children in need of protection (CHIPS) pursuant to Minn. Stat. § 260C.007, subd. 6(8), (9) (2006). The next day, at an emergency protective-care hearing, the district court determined that the twins would remain in out-of-home placement pending a hearing. At an August 30, 2006, hearing, S.L.B. admitted the allegations in the petition concerning the twins' CHIPS status. The twins have remained in foster care ever since.

The county developed an out-of-home placement plan (OHPP), which was signed by S.L.B. and county personnel on September 15, 2006. Among other provisions, it required S.L.B. to "secure housing and maintain housing in minimal acceptable standards." After being evicted on September 15, 2006, S.L.B. and her boyfriend, D.J.,

moved into a female friend's one-bedroom apartment, which the friend rarely used. In October 2006, S.L.B. became eligible for financial assistance with housing through a program called Shelter Care. In January 2007, after she and D.J. broke up, S.L.B. rented a one bedroom apartment for herself through the program.

Meanwhile, in early October 2006, S.L.B. learned that she was pregnant. She initially stopped taking medications that had been prescribed for her psychological condition. After a doctor's appointment on October 16, 2006, S.L.B. resumed taking her medications. A psychologist conducted a parental-capacity evaluation of S.L.B. in late October 2006 and diagnosed her as Bipolar Type II.

While the twins were in foster care, S.L.B. had supervised visitation three times per week. In February 2007, the county prepared a revised OHPP. The second OHPP addressed the same issues as the first OHPP but with more detail. In addition, the second OHPP imposed a new requirement that S.L.B. "consistently and effectively manage her budget." On February 16, 2007, the district court extended the permanency deadlines by 45 days.

On April 5, 2007, the county filed its petition to terminate S.L.B.'s parental rights to the twins, as well as the parental rights of the biological father, W.A.H. The county alleged that S.L.B. had neglected her parental duties and that reasonable efforts had failed to correct conditions leading to the children's foster placement. On May 31, 2007, the county amended its petition to add an allegation of palpable unfitness. At the same time, a third OHPP was adopted; it was similar to the second but included requirements that would apply if S.L.B. were reunited with the children.

On June 8, 2007, S.L.B. gave birth to her third child. By court order, custody of that child was transferred to the county, where the child has remained. S.L.B.'s parental rights to the third child are not part of this appeal.

Beginning on June 19, 2007, the matter was tried to the court for three consecutive days. W.A.H. did not appear. At the conclusion of the trial, the district court requested proposed findings of fact, conclusions of law, and orders from the parties. S.L.B.'s trial counsel did not respond to the request. The county filed its written argument and proposed findings, conclusions, and order on July 9, 2007. On July 20, 2007, the district court issued its decision terminating parental rights to the twins on all three bases alleged in the county's amended petition. S.L.B. appeals.

D E C I S I O N

I. Termination of Parental Rights

S.L.B. argues that the county's evidence was insufficient to support the district court's findings and the judgment. 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.*, __ N.W.2d. __, __, 2008 WL 397702 at *4 (Minn. Feb. 14, 2008). We give "considerable deference to the district court's decision to terminate parental rights," but we also "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *Id.* A district court's termination of parental rights should be affirmed if "at least one statutory ground for

termination is supported by clear and convincing evidence and termination is in the best interests of the child." *Id.* at 7-8.

A district court must make "clear and specific findings." *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980). In this case, the district court's findings are general and conclusory. Our review of the findings also is guided by the fact, which the county conceded at oral argument, that the district court adopted the county's proposed findings of fact verbatim. The verbatim adoption of a party's proposed findings is disfavored. *In re Children of T.A.A.*, 702 N.W.2d 703, 707 n.2 (Minn. 2005) (stating "the district court's findings should reflect the court's independent assessment of the evidence and this is best accomplished by the district court exercising its own skill and judgment in drafting its findings"). When reviewing a verbatim adoption of proposed findings, this court must conduct a "careful and searching review of the record" to determine whether the findings are adequately supported. *Dukes v. State*, 621 N.W.2d 246, 258-59 (Minn. 2001).

A. Neglect of Parental Duties

S.L.B. first argues that the district court erred in terminating her parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2) (2006), which provides that parental rights may be involuntarily terminated if the parent

> has 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 . . . .

In its conclusion with respect to subdivision 1(b)(2), the district court stated that it considered the services offered to S.L.B. and that, "[d]espite the reasonable efforts of [the county, S.L.B.] has failed to demonstrate that she can provide for the necessary day-to-day needs of her children." The court also referred to the children's special needs and the corresponding "heightened importance" of "consistency and structure."

The district court's findings with respect to subdivision 1(b)(2) do not "address the statutory criteria." *S.E.P.*, 2008 WL 397702 at *4. Subdivision 1(b)(2) requires an inquiry into whether, at some time in the past, a parent "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(2). Although evidence of the services offered to S.L.B. is relevant to whether reasonable efforts were made to reunite the family, those findings are not dispositive on the issue whether the county proved a violation of subdivision 1(b)(2).

Furthermore, in stating that S.L.B. "has failed to demonstrate that she can provide for the necessary day-to-day needs of her children," the district court apparently placed the burden of proof on S.L.B. The party petitioning to terminate parental rights has the burden to prove the existence of grounds for termination in the trial court by clear and convincing evidence, *In re Welfare of Solomon*, 291 N.W.2d 364, 367-68 (Minn. 1980), and that burden is "subject to the presumption that a natural parent is a fit and suitable person to be entrusted with the care of a child," *Chosa*, 290 N.W.2d at 769.

In urging affirmance with respect to subdivision 1(b)(2), the county argues, first, that S.L.B. "failed over time to maintain her home in a safe condition for her children"

and, second, "failed to have sufficient moneys to pay necessary bills, such as rent and electricity." We will consider the evidence relevant to the county's arguments.

The district court's findings concerning S.L.B.'s home focused almost exclusively on the conditions that existed on August 17, 2006, after S.L.B. had voluntarily removed her children and herself from the home to seek treatment for her mental health. There is no dispute that the apartment presented an intolerable environment on that day. S.L.B. admitted as much at trial. In light of the garbage that had accumulated and the mold that had grown on leftover food, the intolerable condition likely had existed for several preceding days as well. But there is no evidence in the record that S.L.B.'s home was in the same or similar condition either before or after mid-August 2006. One county employee, Jessica Raguse, who provided educational services to the children in 2005 and 2006, testified that the apartment sometimes was "immaculate" and sometimes "very unorganized." Another county employee, Laura Pearson, a public health nurse who provided services to S.L.B. in early 2006 pursuant to a "client-driven" pilot project, testified that most often the home "was quite cluttered" and that on two or three occasions, the home had the odor of garbage and dirty diapers. When Pearson commented on it, S.L.B. cleaned the apartment so that it was "quite clean" on Pearson's next visit.

The district court made findings concerning the condition of S.L.B.'s apartment on later dates, when the twins were not living there. Even if that evidence were deemed relevant to the statutory criteria, it does not support the district court's determination. The district court found that the apartment was in poor condition in mid-September 2006,

just before S.L.B.'s eviction from her first apartment on September 15, 2006. That finding demonstrates that S.L.B. had failed to prepare for her eviction, not that she had failed to maintain a home suitable for occupation by children. The district court also found that on May 30, 2007, S.L.B.'s apartment was an unacceptable location for visitation. S.L.B. was scheduled to have visitation in a public park that day, but it was raining. Johnson suggested that the visitation be moved to S.L.B.'s apartment, even though S.L.B. was not expecting to have supervision at her home. Johnson testified that there was dirty laundry lying on the floor, dirty dishes and papers on the kitchen counter, and used wrappers and other debris on the floor. She also testified that a large stereo speaker was precariously perched on a piece of furniture, which presented a risk of injury to the twins. Johnson did not testify that the home was unsanitary or unsafe except for the stereo speaker, which presumably could have been moved. There are no obvious health risks arising from dirty laundry on the floor or papers on the kitchen counter, and Johnson's description of the dirty dishes is lacking in specifics. The conditions on May 30, 2007, as described by Johnson, were far less serious than those that existed on August 17, 2006.

Because the evidentiary record shows that conditions were intolerable only in mid-August 2006, there is insufficient evidence for a finding that S.L.B. "continuously" or "repeatedly" neglected to comply with her parental duties with respect to shelter. Minn. Stat. § 260C.301, subd. 1(b)(2). This single instance, which did not result in any adverse consequences for the children, such as illness or injury, was not a "substantial[]" neglect of parental duties. *Id*.

The county's alternative rationale for granting the county's petition with respect to subdivision 1(b)(2), S.L.B.'s failure to manage her money, is inapplicable for two reasons. First, a finding of neglect under subdivision 1(b)(2) may be made only if the parent has failed to do what she is "financially able" to do. Minn. Stat. § 260C.301, subd. 1(b)(2). "[M]ere poverty" is "seldom, if ever," a sufficient ground for termination. *In re Welfare of K.P.C.*, 366 N.W.2d 711, 714 (Minn. App. 1985). Second, there is no evidence connecting S.L.B.'s poor budgeting skills with the alleged neglect, which means that the finding does not "address the statutory criteria." *S.E.P.*, 2008 WL 397702 at *4. The record reveals that S.L.B. had financial difficulties, but there is no nexus between those financial difficulties and any failure by her to "provid[e] the child[ren] with necessary food, clothing, shelter, education, and other care and control." Minn. Stat. § 260C.301, subd. 1(b)(2). There was no finding that the uncleanliness of the home on August 17, 2006, was due to lack of money rather than S.L.B.'s mental health crisis.

For these reasons, we conclude that the county did not prove, by clear and convincing evidence, the facts necessary to terminate S.L.B.'s parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2).

B. Failure to Correct Conditions Leading to Placement

S.L.B. next argues that the district court erred by terminating her parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5), which provides that parental rights may be involuntarily terminated 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."

In determining whether reasonable efforts have "failed to correct the conditions leading to the child's placement," *id.*, it is appropriate to consider the specific requirements contained in an OHPP. *S.E.P.*, 2008 WL 397702 at *4-5. If a parent has "not substantially complied with . . . a reasonable case plan," it is presumed that the parent has failed to correct the conditions leading to the child's placement. Minn. Stat. § 260C.301, subd. 1(b)(5)(iii).

In this case, the two conditions that led to the children's placement in foster care were S.L.B.'s mental health crisis and the messy and unsanitary condition of her home, both of which were discovered on August 17, 2006. The first OHPP was focused on improving these two issues. The second OHPP also addressed those two issues but with more detailed requirements. In addition, the second OHPP also imposed requirements concerning S.L.B.'s budgeting and money management skills that were not part of the first OHPP.

The district court's conclusion with respect to subdivision 1(b)(5) was based on its finding that S.L.B. "did not comply with the requirements of the Out-of-Home Placement Plan to the extent that supports the return of her children to her custody." More specifically, the district court found that S.L.B. (1) "failed to demonstrate an ability to implement and apply the parenting skills presented to her," (2) "failed to demonstrate that she can consistently maintain her home in a condition that is safe for her children," and (3) "failed to demonstrate that she can manage her budget in a manner that would provide for the needs of her children."

With respect to the first factual basis of the district court's conclusion pursuant to subdivision 1(b)(5), the first OHPP required S.L.B. to do two things to improve her parenting skills: first, "participate in a parental capacity evaluation through Lakeland Mental Health Center and follow all recommendations" arising from the evaluation and, second, participate in counseling sessions with a family resource worker and "follow all recommendations."

First, S.L.B. did undergo an evaluation by a licensed psychologist at Lakeland, Dr. Kathleen Schara, in October 2006. At that time, Dr. Schara concluded that reunification was a realistic goal. At trial, Dr. Schara had no specific knowledge of any failure by S.L.B. to abide by her OHPP. Judy Dinsmore, a therapist at Lakeland, testified that S.L.B. willingly attended all counseling sessions with her. Dinsmore did not testify to any failure by S.L.B. to follow any of her recommendations, other than a "lack of follow-through" in securing a larger apartment. Dinsmore also testified that she did not possess any knowledge about S.L.B.'s actual parenting abilities. Second, Jeanne Mercer, the family-resource worker who met with S.L.B. and S.L.B.'s relatives, testified that S.L.B. performed the tasks required by Mercer's case plan. Mercer did not identify any way in which S.L.B. failed to follow her recommendations. Thus, the record fails to provide evidence to support the district court's finding that S.L.B. failed to abide by the requirement of the OHPPs concerning the improvement of her parenting skills.

With respect to the second factual basis of the district court's conclusion to subdivision 1(b)(5), the first OHPP required S.L.B. to "secure housing and maintain housing in minimum acceptable standards." The county sought to prove that S.L.B.

failed to select an appropriate apartment because, in September 2006, she moved into a female friend's one-bedroom apartment, which, the county contends, would have been inappropriate for S.L.B. and her twins, and because, in January 2007, she leased an apartment for her family that has only one bedroom. S.L.B.'s selection of apartments does not violate her OHPP. She decided to lease a one-bedroom apartment, which was cheaper than a two-bedroom apartment, because of the advice of Dana McClaflin, a county employee who was assigned to help S.L.B. with housing issues. McClaflin's advice conflicted with the opinion of Johnson, who believed that S.L.B. should rent a two-bedroom apartment. Johnson also believed that the one-bedroom apartment was unsuitable because it was on an upper floor, which required S.L.B. and her children to walk up a flight of stairs. This evidence does not support a conclusion that S.L.B. violated the OHPP by failing to "secure housing and maintain housing in minimum acceptable standards."

As stated above, the record contains only brief references to the condition of S.L.B.'s home after the children were placed in foster care. The evidence concerning the condition of her apartment on May 30, 2007, does not reflect intolerable living conditions, such as those that existed in mid-August 2006. Thus, the district court's finding concerning S.L.B.'s failure to maintain a home consistent with the OHPP is not supported by the evidentiary record.

With respect to the third factual basis of the district court's conclusion pursuant to subdivision 1(b)(5), the first OHPP did not contain any requirements concerning budgeting or money-management issues. Not until the second OHPP, which was adopted

in mid-February 2007, was S.L.B. required to "consistently and effectively manage her budget." More specifically, she was required to complete a monthly income worksheet and place "all receipts" in an envelope for Johnson's review.

In *S.E.P.*, the supreme court stated that a court-approved case plan "carries with it an imprimatur of reasonableness." 2008 WL 397702 at *7. A reviewing court may not "flatly refuse to consider a violation" of a case plan with a "problematic provision." *Id.* The propriety of a requirement in a case plan, however, may be relevant to the ultimate question whether a parent has failed to correct conditions that caused an out-of-home placement. *Id.* at *7 n.3. When a case plan "imposes requirements having questionable relevance to the conditions leading to a child's out-of-home placement," a "less-deferential analysis" "may be appropriate." *Id.* at *7 n.2.

The requirements in S.L.B.'s second and third OHPPs concerning budgeting are not directly relevant to the conditions that led to the placement of the twins in foster care, which were S.L.B.'s acute mental health condition and the messy and unsanitary conditions in her home. The county did not identify poor budgeting or poor money management among the conditions that led to the children's out-of-home placement, and the issue was not mentioned in the first OHPP, which was finalized in mid-September 2006. Requirements concerning budgeting were not inserted into an OHPP until February 2007. Any violations by S.L.B. of the budgeting-related requirements in the second or third OHPP cannot support a finding that reasonable efforts have failed to correct the conditions leading to out-of-home placement. *See S.E.P.*, 2008 WL 397702 at *7 nn. 2, 3.

The district court did not find that S.L.B. failed to correct her mental health condition. S.L.B. testified at trial that she was taking her medications and was feeling much better, and there was no other evidence to contradict her testimony.

For these reasons, we conclude that the county did not prove, by clear and convincing evidence, the facts necessary to terminate S.L.B.'s parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5).[1]

C. Palpable Unfitness

S.L.B. last argues that the district court erred in terminating her parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4), which provides that parental rights may be terminated 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 either of which are determined by the court to 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.

The district court stated that its conclusion with respect to subdivision 1(b)(4) was based on (1) S.L.B.'s "cognitive functioning," (2) S.L.B.'s failure "to demonstrate that

[1] Even though the twins were in foster care for more than six months at the time of trial, the statutory presumption that reasonable efforts have failed to correct the conditions leading to placement does *not* apply because of the exception for a parent who, first, "maintain[s] regular contact with the child" and, second, "compl[ies] with the out-of-home placement plan." Minn. Stat. § 260C.301, subd. 1(b)(5)(i). Johnson testified that S.L.B. attended every visitation that was scheduled except for one when S.A.H. was ill. And as stated above, S.L.B. was complying with her OHPPs. The district court properly did not apply the statutory presumption of Minn. Stat. § 260C.301, subd. 1(b)(5)(i).

she can adequately meet her own needs despite frequent contact by either the Case Manager or the Family Resource Worker to assist her in completing necessary tasks," (3) the prospect that "stressors in the life of [S.L.B.] would likely negatively impact her ability to appropriately parent her children," (4) S.L.B.'s "difficulty understanding parenting concepts," and (5) S.L.B.'s failure to "obtain housing appropriate for herself and her children" and failure to "maintain her residence in a condition safe for children." The district court also noted "the undisputed evidence that [S.L.B.] loves and feels deeply for her children."

1. Cognitive Functioning. The district court's findings recite the testimony of Dr. Schara, who evaluated S.L.B. in October 2006. Based on Dr. Schara's testimony, the district court found that S.L.B. is "at the low end of the low average range with a full-scale I.Q. between 76 and 84." Dr. Schara testified that she administered two different tests to S.L.B., one of which resulted in a score "at the high end of the low average range" and the other with a score "at the low end of the low average range." Dr. Schara also testified that S.L.B.'s IQ score "lies between 76 and 84," which Dr. Schara indicated straddles the line dividing "low average" from the lower category of "borderline." Because 80 is the lowest score in the "low average" category, the evidence would support a finding that S.L.B.'s IQ is between 80 and 84. In all of our prior published cases that mention the IQ of a parent whose rights were terminated for general unfitness, the parent's IQ score was significantly lower than S.L.B.'s. *See In re Welfare of N.C.K.*, 411 N.W.2d 577, 578-79 (Minn. App. 1987) (mother had IQ of 69); *In re Welfare of K.M.T.*,

390 N.W.2d 371, 372 (Minn. App. 1986) (mother had IQ of 62); *In re Welfare of T.M.D.*, 374 N.W.2d 206, 207 (Minn. App. 1985) (mother had IQ of 70).

In most cases, a decision to terminate parental rights is not based merely on a parent's degree of intelligence. Rather, "'the actual conduct of the parent is to be evaluated to determine his or her fitness to maintain the parental relationship with the child in question so as to not be detrimental to the child.'" *In re Welfare of S.Z.*, 547 N.W.2d 866, 892 (Minn. 1996) (quoting *In re Welfare of Kidd*, 261 N.W.2d 833, 835 (Minn. 1978)). Dr. Schara testified that persons with S.L.B.'s level of intelligence generally are "very concrete in their thought processes," have "difficulty being very insightful," and "may need to have training that goes slow, a lot of repetition, more skills-based." Dr. Schara also testified that S.L.B.'s "global assessment of functioning" (GAF) score was 60. A GAF score of 60 indicates "some difficulty" or "moderate difficulty" in social or occupational functioning. *Diagnostic & Statistical Manual of Mental Disorders* 34 (4th ed., Am. Psychiatric Ass'n 2000).

When Dr. Schara evaluated S.L.B. in October 2006, she concluded that reunification was a "realistic goal." At trial in June 2007, however, Dr. Schara stated that she was "concerned" about reunification. The change in her view was based on her general understanding that S.L.B. had not adhered to the OHPPs. But Dr. Schara did not know which provisions of the OHPPs that S.L.B. had failed to follow and admitted that she lacked first-hand knowledge of that issue. Dr. Schara also testified that she observed one of S.L.B.'s visitations through a one-way mirror and described it as "pretty positive." She testified that S.L.B. "was appropriately concerned about the children's safety. She

was stimulating them verbally, . . . chattering with them. She was physically affectionate and verbally affectionate. She . . . paid attention to both of the children."

2. Difficulty Meeting Own Needs. The district court found that S.L.B. "failed to demonstrate that she can adequately meet her own needs." This finding appears to be based on the testimony of Johnson and Dinsmore, who expressed concerns about S.L.B.'s budgeting skills, her maintenance of her home, and other issues. In fact, the record reveals that S.L.B. had several problems in the period of time between August 2006 and June 2007. For example, in addition to being evicted, she had troubles with transportation. Among other things, she was fined $200 for not having automobile insurance, she lost her driver's license, and her car was out of service after the engine caught fire.

Johnson also testified that she was concerned about S.L.B.'s ability to meet her needs because S.L.B. "demonstrated no response to Ms. Johnson's recommendations for permanency. [S.L.B.'s] flat affect led Ms. Johnson to be concerned about the welfare of" S.L.B. This finding refers to the day in March 2006 when Johnson informed S.L.B. that the county intended to petition for the termination of her parental rights. Johnson testified that S.L.B. had "[n]o reaction" but was "very quiet" and said that "she needed to leave." In light of the circumstances, S.L.B.'s response to Johnson's delivery of bad news does not appear unreasonable.

3. Negative Impact of Possible Future Stressors. The district court found that "stressors in the life of [S.L.B.] would likely negatively impact her ability to appropriately parent her children." This finding is based on the testimony of Dr. Schara.

The district court also found, based on Dr. Schara's testimony, that, because of S.L.B.'s introversion, she "may be more likely to withdraw from her children." Dr. Schara also testified that S.L.B. "has the capacity to be an adequate parent when things are stable."

This finding by the district court appears to be based on a concern that S.L.B.'s mental illness will interfere with her ability to fulfill her parental duties. "Mental illness, in and of itself, is not sufficient basis for the termination of parental rights." *S.Z.*, 547 N.W.2d at 892. If, however, the mental illness or other mental or emotional disability precludes the parent from providing proper parental care, the statutory requirement for termination has been met. *In re Welfare of J.J.B.*, 390 N.W .2d 274, 281 (Minn. 1986). In August 2006, S.L.B. voluntarily admitted herself to a mental health facility when she experienced a mental health crisis. She did so after placing her children in the care of the county's social services personnel. The evidence demonstrates that S.L.B. is able to assess her own welfare regarding her mental health and to guard against an adverse impact on her children.

On two other occasions, S.L.B. indicated to Johnson that she was experiencing psychological difficulties. In one telephone call, she said she was "going nuts." In another, she called Johnson to say she was feeling "schizo" and "paranoid." There is no evidence of any negative consequences regarding her or the children with respect to either of these incidents.

4. Difficulty Understanding Parenting Concepts. The district court made several findings that adopted the testimony of the county's witnesses, who had numerous criticisms of S.L.B.'s parenting skills.

The district court found that S.L.B. "has not consistently demonstrated an ability to adequately parent her children." The evidence does not support this finding. Jan Gudmondson, a case aide who supervised five visits, testified about numerical ratings she made after each of the five visitations she supervised. Although S.L.B. usually received the highest score, a "3" on a three-point scale, Gudmondson gave her the middle score of only "2" on a few aspects of her parenting. For example, on May 2, 2007, S.L.B. received a "2" for being inconsistent in the frequency with which she said "good job" to the children. Gudmondson testified that S.L.B. said it "sometimes" but not often enough. Gudmondson gave S.L.B. a "2" for inconsistency in discipline because although she sometimes was "calm," at other times she was "yelling at them and kind of shouting commands." Gudmondson also gave S.L.B. a "2" because, even though S.L.B. gave the twins "hugs and kisses" when putting them in their car seats, that type of "affection hadn't been displayed any time else during the visit." On cross-examination, Gudmondson conceded that a score of "2" means "acceptable" or "ok."

The district court found that S.L.B. had "difficulty focusing on the needs of both children during visitation" because when she "focused on one child, the other child was frequently left unattended and without proper supervision." This finding is based on the testimony of Johnson, Gudmondson, and Jan Johnsen, a family resource worker at a private non-profit agency. Johnsen testified that S.L.B. did not spend enough "lap time" with the children but, rather, did a lot of "arm chair parenting." Similarly, Johnson testified that during one visitation, the twins were in their highchairs for 75 percent of the visitation time, primarily because S.L.B. was preparing their meals. Johnson also

testified that, during visitations, S.L.B. typically joined one child in playing with a toy or held another child in her lap but that "[i]t was very hard for her to do both." Johnson further testified that, when at a playground, S.L.B. would play for brief periods of time with one child on a playground structure while the other child played alone. Gudmondson found fault with S.L.B.'s response one day when S.A.H. suddenly ran toward a lake. Gudmondson testified that S.L.B. ignored A.R.H. while running after S.A.H. She testified that S.L.B. should have picked up A.R.H. before running after S.A.H. These criticisms do not indicate inadequate parenting.

The district court found that S.L.B. "often interacted with her children by use of negative comments." This finding was based on Johnsen's testimony that S.L.B. "made negative comments rather than being positive with them," but Johnsen did not elaborate on what S.L.B. said. There was testimony from witnesses that S.L.B. sometimes raised her voice. For example, Gudmondson testified that S.L.B. "screamed" at S.A.H. when the child ran toward the lake, even though there was a risk that S.A.H. might fall into the lake and drown. Gudmondson testified that, after catching S.A.H., S.L.B. told him that she might "paddle [his] butt." Johnson testified that S.L.B. sometimes referred to her children with the term "schmuck." Although the common usage of that term is pejorative, there is no evidence that the children, then two years old, understood it to be negative.

The district court also found that S.L.B. was not sufficiently sensitive to the children's "cues." This finding was based on Johnsen's testimony concerning an incident at a park when S.L.B. encouraged S.A.H. to go down a large slide that Johnsen thought

the boy "wasn't ready for." When the boy began to cry, S.L.B. at first insisted that he follow through and go down the slide. Johnsen questioned S.L.B.'s judgment and faulted her for not "reading a cue." But S.L.B. did eventually take the boy backwards down the ladder, apparently without any coaching by Johnsen.

The district court also found that the twins had "special needs." But the court's findings do not describe the extent of the children's condition or the impact on S.L.B.'s parental duties. Raguse testified that A.R.H. has a "developmental delay" that is not "significant" and that her needs are greater than those of S.A.H. The district court found that S.L.B. "did not consistently provide the routine and schedule the children needed." This finding was based on Raguse's testimony that the children sometimes were in their cribs, or S.L.B. and the children were not yet dressed, in the late morning or early afternoon. She also testified that S.L.B. sometimes would feed the twins at different times.

5. Housing. The district court found that S.L.B. "did not consistently maintain her residence in a condition safe for children" and "did not obtain housing appropriate for herself and her children." As stated above, although S.L.B.'s home was in an intolerable condition for a short period in mid-August 2006, the evidence concerning its condition at other times was significantly weaker such that the evidence as a whole does not support the district court's finding on this issue.

6. Summary. To carry its burden of proving that S.L.B. is "palpably unfit," the county "must prove a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and

that are permanently detrimental to the welfare of the child." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 377 (Minn. 1990). The county's burden of proof is "onerous." *Id.* at 376. The evidentiary record in this case can be distinguished from prior cases upholding the termination of parental rights on unfitness grounds. For example, in *S.Z.*, the father had been involuntarily committed due to chronic schizophrenia, had "engaged in grossly disturbed behavior and posed a substantial likelihood of causing physical harm to himself and others," had a long-term history of substance abuse, was unable to stop drinking, and stated at the district court hearing that he did not intend to take his psychotropic medications. 547 N.W.2d at 893-94. In *In re Welfare of S.R.A.*, 527 N.W.2d 835 (Minn. App. 1995), the father abused alcohol and cocaine, had little contact with the child for three years, and was accused of sexual abuse of the child. *Id.* at 836-37. And in *In re Welfare of J.D.L.*, 522 N.W.2d 364 (Minn. App. 1994), the father used marijuana and LSD, hosted frequent parties while the child was present, frequently engaged in violent behavior at home, and rarely bore any responsibility for caring for the child. *Id.* at 365-66.

In sum, we have "closely inquire[d] into the sufficiency of the evidence to determine whether it was clear and convincing" on each of the three statutory bases of termination. *S.E.P.*, 2008 WL 397702 at *4. Because the district court's findings are a verbatim recitation of the county's proposed findings, we have undertaken a "careful and searching review of the record" to determine whether the findings are adequately supported. *Dukes*, 621 N.W.2d at 258-59. We have conducted our review mindful of both the appropriate deference to the district court's findings and that "[t]here is perhaps

no more grave matter that comes before the court than the termination of a parent's relationship with a child." *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). The totality of the evidence concerning S.L.B.'s ability to parent the twins, in the light most favorable to the county, reveals that she is not a model parent. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 379 (Minn. 1990). But the evidence does not support a determination that she is palpably unfit to remain a parent to the twins. The evidence does not indicate that the children are in danger or that S.L.B. is "unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child[ren]." Minn. Stat. § 260C.301, subd. 1(b)(4).

For these reasons, we conclude that the county did not prove, by clear and convincing evidence, the facts necessary to terminate S.L.B.'s parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4).

II. Effectiveness of Counsel

S.L.B. also argues that she was deprived of the effective assistance of counsel, to which she is entitled by Minn. Stat. § 260C.163, subd. 3(a) (2006), and Minn. R. Juv. Prot. P. 25.01. She did not raise this issue in the district court in a motion pursuant to Minn. R. Juv. Prot. 45 or 46 or by any other procedure. Regardless, because we reverse the termination of S.L.B.'s parental rights, her ineffectiveness argument is moot.

Reversed.