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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1038, A18-1041

In the Matter of the Welfare of the Children of:
A. R. H., R. W. G., and M. L. R., Parents.

Filed November 13, 2018
Affirmed
Hooten, Judge

Chisago County District Court
File No. 13-JV-17-136

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

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

HOOTEN, Judge

In an appeal from the termination of their parental rights, appellants argue that the district court abused its discretion in finding that statutory grounds were met and that termination was in the best interests of the children. We affirm.

FACTS

Minor children, L.G. and T.R., are the subject of this appeal. Appellant-mother, A.R.H., and appellant-father, M.L.R., are the parents of T.R., born in 2016. A.R.H. and R.W.G. are the parents of L.G., born in 2011. R.W.G. has not appealed the termination of his parental rights.

A.R.H. began using methamphetamine as a teenager. During her pregnancy with T.R., she used amphetamines and methamphetamine. On March 23 and 24 of 2016, just prior to T.R.'s birth, A.R.H. tested positive for amphetamines and methamphetamine. When T.R. was born, he was not medically stable, was not breathing well, and tested positive for amphetamines. After the county filed a petition for emergency protective care at the end of March of 2016, the district court ordered that L.G. and T.R. were to be placed outside of the home. In April of 2017, the county filed an initial petition to terminate both appellants' parental rights (TPR petition), and in October of that same year the county amended the petition. Late in 2017, the district court issued an order granting the TPR petition.

In reviewing that decision, this court reversed and remanded the order on the grounds that the facts supporting the district court's decision were not set forth with particularity. *In re Welfare of Children of A.R.H., R.W.G., and M.L.R.*, No. A17-1946 (Minn. App. May 16, 2018) (order op.). On remand, the district court issued a new order, granting the TPR petition on the grounds that both A.R.H. and M.L.R.: (1) "substantially, continuously, and repeatedly neglected to comply with the duties" imposed by the parent-child relationship under Minn. Stat. § 260C.301, subd. 1(b)(2) (2016); (2) are "palpably

unfit to be a party to the parent and child relationship" under Minn. Stat. § 260C.301, subd. 1(b)(4) (2016); and (3) that reasonable efforts by the county have failed to correct the conditions leading to the out-of-home placement under Minn. Stat. § 260C.301, subd. 1(b)(5) (2016). After finding that these statutory grounds were satisfied, the district court analyzed the best interests of the children, and found that they are best served by terminating appellants' parental rights. A.R.H. and M.L.R. each filed a separate appeal, and this court consolidated those appeals.

DECISION

Under Minnesota law, courts presume "that a natural parent is a fit and suitable person to be entrusted with the care of a child," *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980), and "custody of their children should not be taken from them but for grave and weighty reasons," *In re Welfare of P.J.K.*, 369 N.W.2d 286, 290 (Minn. 1985) (quotation omitted). But "the law secures parents' right to custody only so long as they shall promptly recognize and discharge their corresponding obligations." *In re P.J.K.*, 369 N.W.2d at 290 (quotation omitted). Therefore, a district court may only involuntarily terminate parental rights if at least one statutory basis exists and it finds that termination is in the best interests of the child. Minn. Stat. § 260C.301, subds. 1(b), 7 (2016). If a statutory basis exists, "the best interests of the child must be the paramount consideration." *Id.*, subd. 7.

"[Appellate courts] affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made

reasonable efforts to reunite the family." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted). Appellate courts exercise "great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). But, "[c]onsiderable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

I. The district court did not abuse its discretion in determining that reasonable efforts failed to correct the conditions leading to the children's placement.

A statutory basis to terminate parental rights exists under Minn. Stat. § 260C.301, subd. 1(b)(5), 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." The statute creates a presumption that reasonable efforts have failed on a showing that: (1) the children have lived outside the parent's home, by court order, for at least "a cumulative period of 12 months within the preceding 22 months"; (2) "the court has approved the out-of-home placement plan"; (3) the conditions which led to "placement have not been corrected"; and (4) "reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family." *Id.*

A.R.H. challenges only the district court's finding that reasonable efforts were made to reunite the family.[1] First, she argues that respondent unreasonably delayed visitation

[1] M.L.R. does not challenge this statutory ground for terminating his parental rights, but did contest whether termination of his parental rights was in the best interests of his child. And because a single statutory ground is sufficient to uphold the district court's

with L.G. She relies on her therapist's testimony that the separation from L.G. triggers her drug use and is traumatic for her. Second, A.R.H. argues that because she did not rely on respondent's referrals for either her therapy or her housing, the district court's finding that respondent made appropriate referrals was erroneous.

A.R.H.'s first argument is contradicted by the record. A.R.H. claims that the delay in visitation with L.G. was "unjustified." But A.R.H.'s case manager testified that her cooperation was "minimal" and that she would not answer or return her calls or speak with her. The case manager further testified that A.R.H. failed to maintain consistent contact and was unwilling to sign, or would redact, the requested releases that would allow her to communicate with A.R.H.'s providers. The case manager also testified that the visits with L.G. were suspended because A.R.H. missed visits with no warning, and that after consulting with L.G.'s therapist, they determined that it was more harmful to L.G. to set up for a visit and have her mother not show up than to not have the visit at all. Finally, the district court expressly found that the case manager was credible, and was in a "reliable position to address the child protection history" in this case. We therefore reject appellant's first argument.

Appellant's second argument also fails under our standard of review. Because we review factual findings for clear error, we will not reverse a finding when there is substantial support for it in the record. *See S.E.P.*, 744 N.W.2d at 385; *see also Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000) ("That the record might support

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determination, we need not address appellants' challenge to the district court's determination that the statutory grounds of palpable unfitness or parental neglect were met.

findings other than those made by the trial court does not show that the court's findings are defective."). Here, regardless of whether A.R.H.'s self-referrals could support the opposite finding, the district court's determination that respondent made reasonable efforts to reunify A.R.H. with her children is supported by the record. The case manager testified about her training and experience. She testified about providing referrals to chemical-dependency and mental-health services, coordinating with service providers, providing transportation for parental visits, and paying for a storage unit for A.R.H.'s belongings while she was in treatment. A.R.H. provides no legal authority and points to no factual circumstances that would lend credence to her argument that this support is somehow inadequate. We therefore reject A.R.H's second argument and affirm the district court's determination that the criteria in Minn. Stat. § 260C.301, subd. 1(b)(5) are met.

II. The district court did not abuse its discretion in concluding that terminating A.R.H. and M.L.R.'s parental rights was in the best interests of the children.

Both A.R.H. and M.L.R. argue that the district court abused its discretion in finding that terminating their parental rights was in the best interests of the children. District courts must consider three factors in analyzing the best interests of children in these circumstances: "(1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child 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); *see also* Minn. R. Juv. P. 39.05, subd. 3 (b)(3) (requiring consideration of the same factors). "[D]etermination of a child's best interests 'is generally not susceptible to an appellate court's global review of a record,' and . . . 'an appellate court's combing through the record

to determine best interests is inappropriate because it involves credibility determinations.'" *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quoting *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003)).

A.R.H. argues that the district court erred: first, in weighing the best-interests factors; and second, in allowing hearsay testimony under what she calls "the effect on listener" exception. M.L.R. argues that the district court abused its discretion by failing to analyze the best-interests factors regarding his relationship with T.R.

In support of her argument that the district court erred in weighing the best-interests factors, A.R.H. makes four assignments of error in the district court's analysis. She argues that the court erred by failing to: (a) give sufficient weight to the family therapist's testimony; (b) give sufficient weight to A.R.H.'s interest in continuing the relationship; (c) properly discount the parenting assessor's testimony that there was not a strong bond; and (d) give sufficient weight to A.R.H.'s therapist's testimony about the existence of a bond between A.R.H. and L.G.

Under our standard of review, all of these assignments of error fail as a matter of law. *See Tanghe*, 672 N.W.2d at 625 (noting that "'much must be left to the discretion of the trial court' in applying a best-interests analysis") (quoting *Maxfield v. Maxfield*, 452 N.W.2d 219, 223 (Minn. 1990)). A.R.H. does not argue that the district court's analysis is unsupported by the record. Instead, she essentially argues that the record would have supported the district court had it come to the opposite conclusion. But even if A.R.H. were correct, we review for an abuse of discretion. Therefore, even if appellant were correct on this point that would not be grounds to reverse the district court's decision. This

court does not conduct a "global review of a record" because weighing the testimony of witnesses requires making credibility determinations, which this court is not equipped to do. *Id.* The district court made credibility determinations, weighed the proper factors, and came to a reasonable conclusion regarding A.R.H.'s relationship with her children. We therefore reject A.R.H's argument that the district court abused its discretion in its weighing of the best-interests factors.

A.R.H.'s second argument is that the district court erred by allowing L.G.'s paternal grandmother to testify about L.G.'s threat of self-harm. She argues that the district court admitted the statement for its effect on the listener (making it not hearsay by definition), but then relied on the statement as substantive evidence (rendering the statement hearsay). *See* Minn. R. Evid. 801 (c) (defining hearsay as a statement "offered in evidence to prove the truth of the matter asserted"). But while the statement was objected to at trial, appellant did not file a post-trial motion to reconsider the ruling on this testimony or a post-trial motion for a new trial assigning the admission of this testimony as error. And those are required steps to properly bring an issue before this court. *See Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986) ("[T]he general rule [is] that matters such as trial procedure, evidentiary rulings and jury instructions are subject to appellate review only if there has been a motion for a new trial in which such matters have been assigned as error."). We therefore reject appellant's second argument as not being properly before the court.[2]

[2] Furthermore, while admitting the statement for its substance might have been error, the district court did not rely on the statement substantively and so A.R.H. cannot establish prejudice from any error—as she would have to do in order to merit reversal. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored). The district court never refers to the

M.L.R. argues that the district court did not make sufficient findings to support its conclusion that terminating his parental rights was in the best interests of the child. He argues that the "only findings regarding the child or M.L.R.'s interest in preserving the parent-child relationship was that his visits were inconsistent." But the district court also credited the guardian ad litem's testimony that terminating parental rights was in the best interests of the children due to the length of time that they have been out of the home, noting specifically M.L.R.'s inability to parent T.R. because of his involvement in criminal matters. And, as the statute requires, the district court also considered the interests of M.L.R. and T.R. in maintaining the father-child relationship. While the district court's analysis may have been brief, it is not deficient. The district court, by weighing the facts and considering the statutory factors, did not abuse its discretion in concluding that termination of the parental rights of both A.R.H. and M.L.R. was in the minor children's best interest.

Affirmed.

statement regarding self-harm in its "reasonable-efforts" analysis. Even if this argument were properly before this court, we would still reject appellant's second argument on the grounds that if there were an error in admitting the statement, A.R.H. could not establish prejudice.