STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0742
A20-0743

In re the Matter of the Welfare of the Child of:
L. A. M. and N. J. K., Parents (A20-0742),

In re the Matter of the Welfare of the Child of:
L. A. M. and C. M.-N., Parents (A20-0743).

Filed November 2, 2020
Affirmed
Cleary, Judge[*]

Otter Tail County District Court
File Nos. 56-JV-19-954; 56-JV-19-955

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Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Cleary, Judge.

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

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

CLEARY, Judge

In these consolidated appeals from the denial of a private petition for termination of parental rights and an order denying the posttrial motion of appellant N.J.K. (father), father argues that the district court erred in finding that respondent L.A.M. (mother) did not abandon the children, did not fail to fulfill parental duties, and was not palpably unfit to be a party to the parent-child relationship. Mother challenges the district court's finding that she failed to pay child support without cause. Father further argues that the district court misunderstood the best-interests-of-the-child standard, misapplied that standard to the facts of this case, and mischaracterized expert testimony. We affirm.

FACTS

This is an unusual appeal, in that it arises from a private petition to involuntarily terminate parental rights. We note at the outset that this appeal does not involve a child protection matter; rather, it addresses only termination of mother's parental rights. There is a long history of custody disputes between the parties, beginning almost a decade ago.

Early History

Mother is the biological mother of S.M.M., now eleven years old, and M.J.K.-M., now nine years old. Father is the biological father of M.J.K.-M. C.M.-N. is the biological father of S.M.M. Father and mother met in June 2009, approximately six months after S.M.M. was born. They were not married but lived together from April 2010 until July 2011, during which time M.J.K.-M. was born.

After father and mother separated in 2011, the children resided with mother in South Dakota. At first, mother had temporary custody and father had parenting time every other weekend. But during this time, mother was in an abusive relationship, had unstable housing, and used methamphetamines and other drugs. In February 2012, mother was arrested for drug possession, whereupon father moved for emergency custody of the children. Mother did not appear at the subsequent hearing, and the court awarded father sole temporary legal and physical custody of both children. The court granted mother supervised parenting time once per week for five hours, and granted the children's maternal grandparents' visitation rights one weekend per month, so long as they did not allow mother to contact the children. Mother did not exercise her visitation rights until five months later, but did maintain irregular phone contact. Mother's parenting time was further reduced in September 2012, but the district court provided that mother could petition for increased visitation if she (1) completed a chemical dependency evaluation; (2) completed a psychological evaluation; and (3) remained law abiding.

Between 2012 and February 2014, mother visited the children only seven times. During this time, mother was in a relationship with J.H.Y., Jr. (J.H.Y.), with whom she had another child. She and J.H.Y. used methamphetamines regularly. She did not follow through on the court-ordered conditions to increase parenting time, failed to consistently exercise parenting time, and sought phone contact with the children only sporadically. When mother and J.H.Y. split up, J.H.Y. was granted custody of their child.

After additional motions by both parties to modify custody and parenting time, the district court found on July 13, 2016 that restricting mother's contact with S.M.M. and M.J.K.-M. was in their best interest. The district court found that mother's inconsistent parenting time and phone calls, as well as mother's mental and chemical health, emotionally harmed the children. The district court prohibited mother's phone contact with the children and also ordered mother to follow through with certain conditions to reinstate parenting time: (1) undergo a chemical dependency evaluation and follow any resulting recommendations; (2) undergo a psychological evaluation and follow any resulting recommendations; (3) notify father and the children's therapists of evaluation results; (4) sign a release so that father and therapists could obtain her records; and (5) remain law abiding.

Mother's Current Circumstances

Mother's circumstances appear to have changed for the better after the district court's July 2016 order. Mother saw a therapist, Dr. Mark Bontreger, on July 29, 2016, two weeks after the district court's July 2016 order re-imposing the conditions for increasing parenting time. The district court found that mother visited Dr. Bontreger approximately six times from July 29, 2016 to November 1, 2017. Mother testified credibly at trial that she was able to work through her history of drug use, abusive relationships, and custody issues with Dr. Bontreger, and that she took steps to improve herself following her sessions with him.[1] After several visits, Dr. Bontreger said that she

[1] The district court found mother's testimony credible, with the exception of several discrepancies in her self-reporting to Dr. Bontreger. In addition, the district court also

could see him on an as-needed basis, rather than for regular, scheduled appointments. Dr. Bontreger recommended that mother avoid all mood-altering chemicals, and the district court found that she substantially complied with this recommendation. Mother also testified credibly at trial that she had not used methamphetamine since early 2016, though she continued to consume alcohol sporadically in limited amounts. After clarification early in the proceedings at issue here that she should also abstain from alcohol, she testified that she had done so.

Mother's housing and relationships also appear more stable. She has lived with B.S. since early 2017, and they have a child together. B.S. credibly testified that mother had not used controlled substances during their relationship, that she attended therapy and had no extreme mood swings, and that she provided adequate care for the couple's child. Mother stays home to care for that child, but hopes to go to work when the child reaches school-age.

The Children's Situation

Meanwhile, both S.M.M. and M.J.K.-M. have lived with father since 2012. The children have a good relationship with father. He provides a stable home for them, and they are generally doing well academically and socially. However, both children have emotional and psychological issues stemming from mother's absence and sporadic contact. For example, Deena McMahon, MSW, LICSW (Ms. McMahon) testified that S.M.M. feels she needs to please everyone, and she feels it is her fault if grownups are sad. Ms.

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noted that it had presided over past disputes between the parties, and that mother's markedly changed appearance and demeanor supported mother's credibility.

McMahon testified that M.J.K.-M. tends to bottle up her feelings and have explosive tantrums, attributable to internalizing her feelings about mother.[2] S.M.M. on two instances told friends and teachers that her mother had died, after which father took her to see a child psychologist. S.M.M.'s statements about her mother may stem from her need to explain mother's absence. Ms. McMahon testified extensively to the harmful effects of mother's absence and inconsistency on the children.

Despite mother's absence, both children have professed a desire to see mother.[3] They have asked to write to mother. When the guardian ad litem, Amy Twedt (Ms. Twedt), visited the children, they had numerous questions about mother. Both children expressed desire to spend time with mother, though S.M.M. told the district court that starting with phone calls would be best given mother's history of inconsistency. Both Ms. McMahon and Ms. Twedt stated that the children should retain at least some contact with mother. Additionally, the children see their maternal grandparents for visitation approximately one weekend each month. Both would like to continue these visits. Both children would also like to maintain contact with their half-siblings through mother, which contact Ms. McMahon also supported.

[2] We note that Ms. McMahon also testified that father said he rarely talked about mother with the children, and rarely talked about the children's feelings regarding the issues with mother.

[3] Ms. McMahon noted that S.M.M. said she would want a relationship with mother only when she is 18 and if mother was more consistent, but then went on to state that both children desired a relationship with mother, with the children even suggesting alternating weeks with mother and father.

Father's significant other, S.H., has lived with father and the children since summer of 2019. Both children have a close relationship with S.H. and see her as a mother figure. Father and S.H. intend to get married, and both father and S.H. hope to adopt S.M.M.; however, at the time of trial, the district court found it lacked assurances that marriage and adoption would indeed occur.

Procedural History of this Appeal

Mother filed a motion to modify custody on February 26, 2019, seeking a gradual increase in parenting time. Father filed a response to mother's motion, but we note that on the same day, he filed the private petition for involuntary termination of parental rights, seeking to terminate both mother's and C.M.-N.'s parental rights. The district court held trial on October 15-16, 2019, November 12, 2019, December 18, 2019, and March 12, 2020. At trial, the district court received testimony from father, mother, both of mother's parents (the children's maternal grandparents), J.H.Y., B.S., M.H.[4], Ms. McMahon, and Ms. Twedt. Ms. McMahon qualified as an expert in child trauma, abandonment, adoption, child development, and attachment. We note that the district court judge in this case has presided over family law disputes between these parties for the past decade and was therefore well-positioned to understand mother's progress and assess the credibility of those testifying at trial.

The district court denied father's petition to terminate mother's rights, but granted father's petition as to C.M.-N.'s rights in light of C.M.-N.'s voluntary termination petition.

[4] M.H. is J.H.Y.'s current significant other.

Father moved for amended findings of fact, conclusions of law, and/or a new trial, which the district court granted in part and denied in part, with its ultimate determination remaining the same. Father's appeal follows.

D E C I S I O N

A child's natural parent is presumed to be fit and suitable to be entrusted with the care of the child. *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). Parental rights are terminated only for "grave and weighty reasons" and "when the evidence clearly mandates such a result." *In re Welfare of Children of B.M.*, 845 N.W.2d 558, 563 (Minn. 2014) (citation omitted); *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. App. 1996). The district court may terminate parental rights if "[1] a statutory ground for termination is supported by clear and convincing evidence, [2] termination is in the best interests of the child, and [3] the county has made reasonable efforts to reunite the family."[5] *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 662 (Minn. App. 2018).

In reviewing the district court's order on a termination petition, we review the factual findings for clear error and the determination whether a statutory basis is present 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). A finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn.

[5] Here, the district court determined in pretrial proceedings that, because no child was alleged to be in need of protection in this proceeding, the requirement that the social service agency make reasonable reunification efforts did not apply.

2008) (quotation omitted). "The district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law." *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (quotation omitted). We defer to the district court's "determinations of witness credibility and the weight to be given to the evidence." *In re Welfare of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007).

We first address the statutory grounds for termination alleged by father, concluding that the district court did not err in its analysis of each alleged ground. We then turn to whether the district court erred in analyzing the best interests of the children, concluding that it did not. Finally, we address father's argument that the district court mischaracterized Ms. McMahon's report and testimony, concluding that it did not. We therefore affirm.

I. The district court did not abuse its discretion in its determinations on each statutory ground for termination alleged by father.

There are nine statutory grounds for termination, set forth in Minn. Stat. § 260C.301, subd. 1(b) (2018). The burden of proving a statutory ground by clear and convincing evidence is on the petitioner. Minn. R. Juv. Prot. P. 58.03, subd. 2(a); *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980). In termination cases, the petitioner must show that the conditions justifying termination exist at the time of trial and will continue for an indeterminate period of time. *Id.* at 769. The petitioner must prove at least one statutory ground for termination in order to succeed on its claim. *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). In this case, father alleges that mother abandoned the children, failed to fulfill her parental duties, is palpably unfit to be

a party to the parent-child relationship, and failed to pay child support without good cause. The district court found that father proved mother failed to pay child support without good cause, which mother challenges on appeal, but it found that father failed to prove the other grounds. We affirm the district court's decision on each ground.

A. Mother did not abandon the children under Minn. Stat. § 260C.301, subd. 1(b)(1).

Father asserts that, in light of mother's history of inconsistency in maintaining contact with the children and her delay in complying with parenting-time conditions, mother has abandoned the children. We disagree.

The district court may terminate parental rights if the parent has abandoned the child. Minn. Stat. § 260C.301, subd. 1(b)(1). Abandonment may be established in the absence of a presumption of abandonment if the parent "has actually deserted the child *and* has an intention to forsake the duties of parenthood." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004) (emphasis added) (quotation omitted). Whether abandonment is intentional, and not due only to misfortune and misconduct, is an important factor favoring termination. *In re Welfare of Staat*, 178 N.W.2d 709, 713 (Minn. 1970). Sporadic visitation history alone cannot support termination. *In re Welfare of Solomon*, 291 N.W.2d 364, 368 (Minn. 1980); *see also In re Welfare of J.K. and K.W.*, 374 N.W.2d 463, 467 (Minn. App. 1985) (noting that father's "prior abandonment" had been "terminated by his vigorous defense of his parental rights"), *review denied* (Minn. Nov. 25, 1985). The evidence relating to termination must address conditions existing at the time of the hearing. *Chosa*, 290 N.W.2d at 769. Father relies on *R.W.*, comparing mother to

the father in that case, who failed to contact or ask about his children while incarcerated, failed to respond to a child-in-need-of-protection-or-services (CHIPS) petition, and did not assist the children's mother in regaining custody of the children from foster care. 678 N.W.2d at 56.

Here, the district court found that mother sought to maintain contact through phone calls and letters but was restricted by both court order and father in doing so. Unlike the father in *R.W.*, she consistently inquired about the children through her parents. And she pursued compliance with the parenting-time conditions just two weeks after the court's July 2016 order restricting her parenting time, by meeting with a counselor and abstaining from controlled substances. Mother filed a motion to modify custody before father filed the termination petition, evidencing the clear intent to *not* desert the children. There is ample evidence in the record about mother's past failures, which the district court acknowledged. But the relevant conditions are those at the time of trial. *Chosa*, 290 N.W.2d at 769. And, following *J.K. and K.W.*, this court has determined that past failure does not outweigh present conduct. 374 N.W.2d at 467. Therefore, we conclude that the district court did not abuse its discretion in determining that father failed to prove by clear and convincing evidence that mother abandoned the children.

B. Mother has not substantially, continuously, or repeatedly refused or neglected to comply with parental duties under Minn. Stat. § 260C.301, subd. 1(b)(2).

Father asserts that mother has neglected to perform her parental duties by being absent from the children's lives and failing to comply with some of the court-ordered conditions to restore parenting time. We disagree.

The district court may terminate a parent's rights 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." Minn. Stat. § 260C.301, subd. 1(b)(2). Such duties may include providing food, clothing, shelter, education, and other care and control necessary for healthy child development. *Id.* "The district court must determine that, at the time of termination, the parent is not presently able and willing to assume her responsibilities and that the condition will continue for the reasonably foreseeable future." *A.M.C.*, 920 N.W.2d at 655. Failure to comply with a court-ordered case plan is evidence of neglect of parental duties. *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003). In *Simon*, the parent did not undergo the court-ordered psychological evaluation or parenting evaluation, nor did he offer evidence of improved parenting skills or knowledge. *Id.* Father relies on *In re Welfare of J.D.L.*, 522 N.W.2d 364, 367 (Minn. App. 1994), where even though the father in that case recently accepted the child into his life, he consistently failed to show up in the past, had never been sole provider for the child for more than two hours at a time, failed to make changes in parenting skills, and failed to support the child, spending money on cars, alcohol, and girlfriends instead.

While father presents much evidence about mother's past, the district court found that mother's present circumstances did not support termination on this ground. Mother did not have custody of the children and was prohibited from having contact with them beginning in 2016, which prevented her from exercising parental duties. Unlike the parent in *Simon*, mother substantially complied with court-ordered conditions for reinstating

parenting time. The district court found credible mother's testimony regarding her compliance with the court-ordered conditions and therapist recommendations as mother understood them.[6] Unlike the parent in *J.D.L.*, the district court found that mother was the primary caretaker for her youngest child, demonstrating adequate ability to provide for that child. Further unlike the parent in *J.D.L.*, mother has shown approximately three years of changed, stable behavior and improved parenting skills. 522 N.W.2d at 369 (noting that parent failed to make recognizable improvements in parenting skills in 1.5 years). The district court acknowledged mother's history of substance abuse and parenting time inconsistencies that rendered her ability and willingness to fulfill parental duties questionable in the past but emphasized that it must consider mother's present willingness and ability to undertake parenting responsibilities. *A.M.C.*, 920 N.W.2d at 655. We therefore conclude that the district court did not abuse its discretion in determining that father failed to establish by clear and convincing evidence that Mother refused or neglected to comply with her parental duties.

[6] For example, the district court's July 2016 order required mother to notify father of her chemical and psychological evaluations. Mother did not do so, but thought that father would receive the records during court proceedings on her motion to modify custody. Additionally, the order required mother to comply with the recommendations of her counselor. Mother complied as to controlled substances, but continued drinking alcohol occasionally. She testified that she did not think that alcohol was included in the mood-altering substances from which she was to abstain. She testified that she stopped drinking alcohol after her consumption became an issue at trial.

C. Mother is not palpably unfit to be party to the parent-child relationship under Minn. Stat. § 260C.301, subd.1(b)(4).

Father contends that mother is palpably unfit to be a parent because her absence, resulting from her substance abuse, mental health, and other choices, has caused ongoing and permanent emotional harm to the children. We disagree.

The district court may terminate parental rights on this basis if it finds

> 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.

Minn. Stat. § 260C.301, subd. 1(b)(4). Neither mental health issues nor substance abuse alone will permit termination of parental rights. *T.R.*, 750 N.W.2d at 661. Instead, the district court must consider the parent's actual conduct and whether there is a causal connection between that conduct and the parent's inability to fulfill her duties. *Id.* at 661-62. If the pattern of conduct existing at the time of the hearing appears to be long-term and permanently detrimental to the welfare of the child, the parent's rights should be terminated. *Id.*

Here, the district court again acknowledged mother's troubled past, but determined that mother's present sobriety, stable mental health, and adequate care of her youngest child showed that her past behaviors would not continue. The record supports this determination. Mother's situation has become more stable. She has stopped using controlled substances. Her mental health has improved with therapy. She can care for her youngest child and B.S.'s non-joint children. Even if mother's past actions have an

ongoing or permanent effect on the children, caselaw requires a pattern of conduct existing at the time of the hearing in order to terminate parental rights on this ground. *T.R.*, 750 N.W.2d at 661. The record reveals no such current pattern. Accordingly, the district court determined concerns about mother's ability to care for the children were not concerns that clearly exist in the present or will extend into the reasonably foreseeable future. Therefore, we conclude that the district court did not abuse its discretion in determining that father failed to prove by clear and convincing evidence that mother was palpably unfit.

D. Mother has failed to provide child support without good cause under Minn. Stat. § 260C.301, subd. 1(b)(3).

Though mother acknowledges that she failed to pay court-ordered child support, she argues that the district court abused its discretion in determining that her failure was without good cause. Mother failed to file a notice of related appeal, as is required to raise this issue, under Minn. R. Civ. App. P. 103.02, subd. 2. As a result, her argument is not properly before this court, and we need not address it. *Id.*, 103.02, subd. 2, 104.01, subd. 4, 106; *City of Ramsey v. Holmberg*, 548 N.W.2d 302, 305 (Minn. App. 1996), *review denied* (Minn. Aug. 6, 1996). However, we may exercise our discretion to review additional issues when "the interest of justice may require," and we do so here. Minn. R. Civ. App. P. 103.04.

Termination may be warranted if the parent has continuously failed to contribute financial support to the child without good cause. Minn. Stat. § 260C.301, subd. 1(b)(3). The test is whether the parent is presently willing and able to pay child support. *In re M.G.*,

375 N.W.2d 588, 591 (Minn. App. 1985). Evidence of spending on other unnecessary items provides evidence in favor of termination. *See J.D.L.*, 522 N.W.2d at 367-68.

Here, the district court ordered mother to pay child support beginning in 2014. Mother paid child support regularly, though not in full, only from February 2017 to 2018. She currently owes father $34,030.84 in child support, on top of owing child support to J.H.Y. The district court found that mother was not employed, had no disability preventing employment, and that, though capable of working, she intended to stay home to care for her youngest child. It therefore determined that father proved by clear and convincing evidence that mother failed to provide financial support without good cause.

The district court's determination is supported in the record. Mother put money towards renovating the house she shares with B.S., instead of contributing child support. She worked sporadically, but had no physical disability impeding employment. She testified that she would not return to work, despite the physical capacity to do so, until her youngest child was in school. We acknowledge that the record also contains evidence contrary to the district court's conclusion. Mother currently cares for her youngest child and B.S.'s non-joint children as a stay-at-home mom. B.S. testified that he and mother would not be able to afford childcare if mother did obtain work. Further, mother does not have a driver's license because of her present failure to pay child support. But because the district court's decision is supported in the record, we conclude that the district court did not clearly err in finding that mother could work, and it did not abuse its discretion in determining that mother failed to contribute child support without good cause.

II. The district court did not abuse its discretion in its analysis of the best-interests-of-the-children standard.

Although the existence of one statutory ground for termination is necessary for termination of parental rights, it is not sufficient to justify termination. The district court may terminate a parent's rights if at least one statutory ground is met *and* termination is in the best interests of the child. *W.L.P.*, 678 N.W.2d at 709. Therefore, we turn next to the district court's determination that terminating mother's parental rights was not in the best interests of the children. Father argues that the district court (1) misunderstood the best-interests-of-the-child standard, and (2) failed to accord the proper weight to the best interests of the children. We address each contention in turn.

A. Even if the district court misunderstood the proper best-interests standard, father did not show that the error prejudiced him.

Father contends that the district court did not understand the proper best-interests standard until the final day of trial, arguing that the district court operated under the child custody best-interests standard in Minn. Stat. § 518.17 (2018) rather than the termination best-interests standard in Minn. Stat. § 260C.511 (2018). Father argues that this, by itself, constitutes reversible error. We disagree.

While the record provides some support for father's contention, the trial here included both a termination issue, which section 260C.511 governs, and a custody issue, which section 518.17 governs. This explains some references to section 518.17 in the record. Additionally, both standards require the district court to analyze "all relevant factors" and are therefore not limited to the specific requirements in each statute. Minn. Stat. §§ 518.17, 260C.511. And, in its order denying father's petition, the district court

analyzed the proper best-interests standard from section 260C.511. Finally, father fails to allege that any error resulted in prejudice; instead, father's primary contentions relate to the district court's *application* of the best-interests standard. For these reasons, father has failed to show the prejudice necessary to obtain relief on appeal. *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) ("[E]rror without prejudice is not ground for reversal.").

B. The district court did not abuse its discretion in applying the best-interests standard.

Father argues that the district court misapplied the best-interests standard to the facts of this case. He also appears to argue that the district court's findings and conclusions with regard to the best-interests standard were insufficient. We disagree with both arguments.

We review the district court's best-interests analysis for an abuse of discretion, *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 669 (Minn. App. 2020), and defer to the district court's "determinations of witness credibility and the weight to be given to the evidence." *T.D.*, 731 N.W.2d at 555. Even if a statutory basis for termination exists, a district court cannot terminate parental rights unless it is in the best interests of the child. *J.R.B.*, 805 N.W.2d at 905. In analyzing the best interests of the child for termination of parental rights purposes, the district court must consider "all relevant factors," including the "relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact." Minn. Stat. § 260C.511. "[T]he court must balance (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." Minn. R. Juv. Prot. P. 58.04(c)(2)(ii); *In re*

Welfare of R.T.B., 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests [of the child] include such things as a stable environment, health considerations and the child's preferences." *J.R.B.*, 805 N.W.2d at 905 (quotation omitted). When the interests of the parent and those of the child compete, the child's interests are paramount. Minn. Stat. § 260C.301, subd. 7 (2018).

Here, though the district court did not specifically analyze in succession the three factors listed in Minn. R. Juv. Prot. P. 58.04(c)(2)(ii), the record supports its determination that it was not in the children's best interests to terminate mother's parental rights. First, the children's stated desire to see mother demonstrates their interest in preserving the parent-child relationship. Minn. R. Juv. Prot. P. 58.04(c)(2)(ii)(1). The children also have an interest in maintaining relationships with their younger half-siblings through mother, as well as with their maternal grandparents. Ms. McMahon and Ms. Twedt also testified that the children should maintain a relationship with mother.

Second, mother's progress in sobriety, mental-health treatment, obtaining stable housing and familial support, adequately caring for her youngest child, intent to seek employment, and filing a motion to increase her parenting time in the future all evidence her interest in preserving her relationship with her children. Minn. R. Juv. Prot. P. 58.04(c)(2)(ii)(2).

Third, the district court appears to conclude that any apparently competing interests of the children do not warrant termination of mother's parental rights. As we understand his argument, father alleges several competing interests: the children's need for a stable

environment, their need for permanency, their need for financial support, and their need to manage emotional and behavioral issues resulting from mother's absence.

As to the need for a stable environment, the district court noted that father provided a stable home and nurturing care for the children. Mother's retention of parental rights does not change the fact that father has sole legal and physical custody of the children. The children will remain in father's stable custody and care, and he will continue to hold the sole responsibility regarding day-to-day and important life decisions for the children. We note that mother's pending motion to modify child custody seeks a gradual increase in parenting time, and not a substantial change in the children's day-to-day environment. Mother's continued parental rights do not appear to compete with the children's interest in a stable environment.

Father also contends that failing to terminate mother's rights delays permanency for both children. *S.Z.*, 547 N.W.2d at 893. Father and S.H. hope to adopt S.M.M., and S.H. hopes to adopt M.J.K.-M. But mother's parental rights impede adoption of both children, arguably delaying formation of permanent parental relationships. The district court noted that Ms. McMahon recommended termination in part for this reason. However, both children appear to already have a strong parental bond with father. Father treats S.M.M. as his own child despite the fact that she is not his biological child. Additionally, the district court lacked assurances that father and S.H. would adopt S.M.M., and that S.H. would adopt M.J.K.-M., partly because father and S.H. had not yet married.[7] The permanency of

[7] Father previously had another cohabiting girlfriend who abruptly left the family, which may have played into the district court's reasoning here.

adoption was not guaranteed. And mother's present circumstances appear to offer greater stability and permanency than historically was the case. Therefore, on this record, while the children have an interest in permanency, it is not clear that mother's continued parental rights compete with that interest.

With regard to the children's competing interest in financial support, father alleges that mother's failure to provide child support is not in the children's best interest. The district court considered mother's failure to pay child support in its analysis of the statutory grounds for termination under section 260C.301, subd. 1(b)(3). Father has not alleged detriment to the children, past, present, or future, attributable to mother's failure to pay child support. Their material needs appear to be met through father and father's family's efforts. While child support payments from mother may lighten father's burden of providing for the children, father points to no evidence that mother's failure to pay child support has harmed the children. Therefore, it does not appear that mother's parental rights compete with the children's interest in financial support or impair their material well-being.

Father finally contends that contact with mother will jeopardize the children's emotional and psychological well-being. Ms. McMahon testified extensively about the emotional and psychological detriment mother's past absence caused both children. The district court acknowledged father's concerns, but it was persuaded that, because of mother's present positive progress, her inconsistencies were not likely to continue. The district court determined that therapy with mother could help the children process the emotional ramifications of mother's absence. It also noted that Ms. McMahon did not advocate for mother's contact to be completely cut off, despite Ms. McMahon's urging that

termination was proper. Mother's retention of parental rights here also does not compete with the children's interests in emotional and psychological well-being, especially where the district court found that therapy with mother may actually help the children deal with the emotional damage of the past.

Father also contends that the district court's findings as to the best interests of the children were insufficient. In determining whether termination is in a child's best interests, the district court must "explain its rationale in its findings and conclusions." *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). But best-interests findings need not "go into great detail." *See W.L.P.*, 678 N.W.2d at 711. In *In re Welfare of M.M.*, the supreme court found the district court's findings insufficient because the district court merely recited testimony without assessing credibility, made no specific findings about the parent's past or present ability to fulfill parental responsibilities, and summarily concluded that it was in the child's best interest to be placed with social services. 452 N.W.2d 236, 239 (Minn. 1990).

Here, in all its discussion, we again note that the district court did not specifically address or make findings on the three factors outlined in Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). However, it did specifically address the children's relationship with mother and "other important persons," such as S.H., the children's maternal grandparents, and the children's half-siblings, as required under section 260C.511. And, unlike in *M.M.*, the district court made credibility findings, analyzed testimony, made findings regarding mother's present capacity to fulfill parenting responsibilities, and made general findings with regard to the best interests of the children. Further, its findings and conclusions touch

on each factor of the best-interests standard, even though it does not explicitly organize its discussion according to the three factors found in Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). While the district court's analysis could be clearer, we conclude that it is nevertheless sufficient.

In sum, the district court's best-interests findings are supported in the record. Father is correct that the district court did not clearly articulate its application of the best-interests standard as set out in Minnesota Statutes section 260C.511 and Minn. R. Juv. Prot. 58.04(c)(2)(ii). However, the lack of clarity does not rise to the level of an abuse of discretion in the district court's ultimate conclusion that it was not in the best interests of the children to terminate mother's parental rights.

III. The district court did not clearly err in its findings of fact regarding the report and testimony of the expert, Ms. McMahon.

Father finally argues that the district court failed to consider and mischaracterized Ms. McMahon's report and testimony, resulting in findings of fact that were not supported in the record. We disagree. We review the district court's findings of fact for clear error. *J.R.B.*, 805 N.W.2d at 901. "That the record might support findings other than those made by the [district] court does not show that the [district] court's findings are defective." *In re Welfare of Child of T.C.M.*, 758 N.W.2d 340, 345 (Minn. App. 2008). And we defer to the district court's "determinations of witness credibility and the weight to be given to the evidence." *T.D.*, 731 N.W.2d at 555.

First, father argues that the district court "admit[ted] that it has not considered the expert testimony" of Ms. McMahon because the district court stated that it intended to

analyze Ms. McMahon's testimony in the family law file. Father takes the district court's statement out of context. The district court's statement was in regard to Ms. McMahon's testimony specifically about individual counseling and play therapy. The district court found that testimony more relevant to mother's pending petition to modify custody, and therefore stated it would analyze that testimony more closely in the custody proceeding. Nevertheless, the district court did discuss Ms. McMahon's therapy recommendations briefly in its order. Additionally, the district court went on to discuss Ms. McMahon's other testimony extensively in its order denying termination as well as in the amended order. Further, the district court also commented that much of Ms. McMahon's testimony centered on her qualifications as an expert. But the court found it more appropriate to rely on Ms. McMahon's statements that were specifically related to this particular case. Father's contention that the district court generally failed to consider Ms. McMahon's testimony is unfounded.

Second, father contends that the district court did not give adequate weight to Ms. McMahon's ultimate recommendation that mother's parental rights be terminated. However, father fails to acknowledge that the district court found Ms. McMahon's report and testimony not wholly neutral. This is because Ms. McMahon focused primarily on the children's attachment with father and did not address their attachment with mother; she did not speak with mother for her assessment; she did not speak to the girls alone, rather only in the presence of father and S.H.; she was hired by father; and she relied on information provided by father and his attorneys, none more recent than 2016. Further, the district court found Ms. McMahon's understanding of the consequences of termination

proceedings somewhat suspect, given that she was not troubled that father would have complete control over the children's contact with mother if mother's parental rights were terminated. Contrary to father's assertions, the district court acknowledged Ms. McMahon's concerns and ultimate recommendation, but found them of limited weight.

Third, father disputes the district court's finding that "mother is in the best position to answer" questions about her absence, and that "individualized and integrated therapy with mother" could help the children. When questioned by the court, Ms. McMahon stated that the children and mother should engage in separate therapy. However, the district court explained its finding: Ms. McMahon's response to the question whether it would be important for the children to have some contact with mother was that the children "need to come to terms with their past," and that she hoped that process would take place in a "carefully and thoughtfully managed" "therapeutic process and setting and not just family visit setting." Further, Ms. McMahon later appears to affirm that therapy together with mother would benefit the children, but only when and if they were ready. The district court's finding is supported in the record and was not clearly erroneous.

Finally, father argues that the district court misstated Ms. McMahon's report as it recounted the children's reactions to the question of whether they trusted their mother, and that the district court failed to address the ramifications of the error. Upon father's petition for amended findings, the district court corrected its findings without further discussion. [8]

[8] Originally, the district court said that S.M.M. responded affirmatively to the question of whether she trusted mother, and that M.J.K.-M. did not answer. The amended version of the district court's recitation of this exchange states:

While the district court's potential misreading of Ms. McMahon's report did bolster its ultimate conclusion that termination was not in the best interest of the children, the record also shows that both children desire a relationship with their mother, even if they do not fully trust her. Further, as discussed above, the district court found that Ms. McMahon's report and testimony were of limited weight. Therefore, any error did not prejudice father. *See Loth*, 35 N.W.2d at 546. In sum, the district court did not abuse its discretion in its ultimate decision denying fathers petition to terminate mother's parental rights.

Affirmed.

In her report, Ms. McMahon stated "when asked if she trusts her mother, [S.M.M.] quipped, 'Duh. Really?' she then became tearful" and "When asked if she trusts her mother, [M.J.K.-M.] did not answer but began to cry." Ms. McMahon further testified to the following: "I asked both [children], 'Do you trust your mom?' They both started to cry. [S.M.M.] said, 'Duh' and just cried."