

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0204**

In the Matter of the Welfare of the Child of:
J. P. K. and R. L. C., Parents.

**Filed July 17, 2017
Affirmed
Jesson, Judge**

Renville County District Court
File No. 65-JV-16-93

Jeremy Blackwelder, Holmstrom & Kvam, PLLP, Granite Falls, Minnesota (for appellant R.L.C.)

Curtis Reese, Olivia, Minnesota (attorney for father J.P.K.)

David Torgelson, Renville County Attorney, Laurence Stratton, Assistant County Attorney, Olivia, Minnesota (for respondent)

Jan Tonn, Wood Lake, Minnesota (guardian ad litem)

Considered and decided by Bratvold, Presiding Judge; Jesson, Judge; and Randall,
Judge.*

UNPUBLISHED OPINION

JESSON, Judge

Appellant-mother contends that the district court's decision to terminate her parental rights is not supported by clear and convincing evidence and is not in the child's

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

best interests. She asserts that Renville County Human Services failed to make reasonable efforts to reunify her family and that, because she was sober at the time of trial, the district court erred in concluding that reasonable efforts had failed to correct the conditions leading to her child's placement in foster care. Because the district court's factual findings are well supported by the record and its legal conclusions contain no errors of law, we affirm.

FACTS

Mother gave birth to B.C.-K., the child who is the subject of these proceedings, in 2012. Mother and the child's biological father, J.P.K.,¹ rented separate apartment units across the hallway from each other in the same apartment building. The child lived primarily with mother, who was unemployed but received Social Security disability payments. Before these proceedings, respondent Renville County Human Services was familiar with the family due to previous reports of drug use and domestic abuse. The family was receptive to services during that time.

On March 15, 2016, while under mother's supervision, the child received a cut on his head. According to mother, the child had jumped off the bed and hit a bike trailer leaning against a wall. Mother alerted father, who called an ambulance. While responding to the call, local police suspected that mother and father were under the influence of a controlled substance. As a result, officers placed the child on a 72-hour hold. After completing an initial interview with the parents, Renville County requested an emergency protective hearing for the child. A court-ordered hair-follicle analysis of the child showed

¹ The district court's order also terminated father's parental rights to the child. Father did not appeal.

the presence of a high level of methamphetamine in the child's body. In light of the parents' suspected drug use and the child's injury, the district court found the child to be in need of protection or services. Custody was transferred to the county, and the child was placed in foster care.

After this determination, a Renville County social worker met with the parents to create a case plan. As part of mother's case plan, she agreed to follow certain recommendations, which included completing a chemical-dependency evaluation, a psychological evaluation, and a medical check-up. In addition, mother was required to maintain stable housing and attend parenting classes. Later in March, mother was evicted from her apartment because of complaints about her dogs. Mother completed a chemical-dependency evaluation, which recommended that she receive inpatient treatment.

On April 7, 2016, mother entered chemical-dependency treatment at Wellcome Manor, where she remained for 70 days. At the facility, mother received a full medical examination and general chemical-dependency therapy. She also attended parenting classes. Staff members tried to assist her in finding post-treatment housing, and Renville County helped facilitate child visitations with mother. But on June 16, 2016, mother left the facility without completing treatment. According to mother, she left in part because staff would not allow the child to stay with her.

Over a week later, mother met with her social worker and admitted to drinking one liter of alcohol every day since leaving treatment. She explained that she wanted to reenter treatment, and Renville County made referrals to different facilities. Project Turnabout in Granite Falls had an opening, but mother said she needed time to find someone to care for

her dogs. She agreed that she would enter treatment the following day. But mother never entered Project Turnabout.

Two weeks later, in mid-July, Renville County told mother that Project Turnabout still had an opening for her at the facility. The county also arranged for a volunteer to drive mother to the facility for treatment, but mother failed to show up for the ride. Mother failed to enter treatment two more times in late July and early August despite Renville County's efforts.

After she left Wellcome Manor, mother was essentially homeless, living in a park or in a motel on a temporary basis. In mid-August, she was hospitalized for three weeks after suffering from brain aneurysms. After her release, Renville County directed its referral efforts to chemical-dependency facilities that focused on mental health issues.

In early September 2016, Barbara Carlson, a licensed professional clinical counselor, prepared a parental capacity assessment of mother. According to the assessment, mother struggled with heroin abuse for several years when she previously lived in California, and she lacked skills to cope with anger and stress. On a drug diagnostic test, mother's scores "indicate [that] she has drug use that is out of control. Very serious drug-related problems and a high probability of relapse are indicated." Carlson diagnosed mother with severe alcohol, stimulant, and cannabis use disorders. Carlson also made recommendations that were similar to Renville County's case plan for mother.

Mother entered treatment in New Ulm on September 20, but she was arrested two days later. The criminal complaint charged mother with terroristic threats in relation to these proceedings and alleged that she threatened to obtain a firearm and "shoot up the

courtroom.” Mother remained in jail from September 22 until she entered a treatment facility, Tapestry, on November 1. She completed inpatient treatment at Tapestry in early December, shortly before trial.²

After mother’s arrest, Renville County filed a petition to terminate her parental rights on September 27, 2016. On October 19, the district court relieved Renville County of providing reasonable efforts to reunify mother and child. The district court held a trial on the termination petition in December. At trial, the district court heard testimony from Renville County social workers, the child’s foster mother, the child’s therapists, a drug counselor from Tapestry, the parental capacity evaluator, the guardian ad litem, and mother.

After trial, the district court found that Renville County had made reasonable efforts to reunite mother and child. But mother, the court found, had failed to utilize these services to correct the conditions that led to the child’s out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5) (2016). The district court therefore ordered termination of her parental rights on the basis that reasonable efforts had failed to correct those conditions. *See id.* To reach this conclusion, the district court relied upon a statutory presumption that reasonable efforts had failed because mother was diagnosed as chemically dependent, she was required to participate in appropriate treatment, she failed two or more times to complete treatment, and she continued to abuse chemicals. *See id.*

² The first stage of Tapestry’s treatment program consisted of inpatient care in a group setting. Following successful completion of the first stage, mother was scheduled to receive outpatient or intensive outpatient treatment while at a halfway house.

Although mother had completed inpatient treatment, the district court explained that “it will take many more months of sobriety by mother while living in the community before it can be demonstrated that she can safely provide for her child.” Finally, the district court determined that termination was in the child’s best interests. Mother appeals.

D E C I S I O N

Mother argues that Renville County failed to provide reasonable efforts to reunify mother and the child after she received an updated parental capacity assessment. She also contends that the district court’s decision to terminate her parental rights based on the failure of those efforts to correct conditions was not supported by clear and convincing evidence. She further asserts that termination of her rights was not in the child’s best interests.

The district court may terminate parental rights to a child “only for grave and weighty reasons.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (quotation omitted). We review the district court’s order terminating parental rights to determine whether at least one statutory ground for termination is supported by clear and convincing evidence and whether termination is in the best interests of the child. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). In doing so, we review the district court’s findings of fact for clear error. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). This court reviews the district court’s best-interests determination for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

I. Renville County made reasonable efforts to reunify mother and child.

In termination proceedings, the district court must make specific findings that the responsible social services agency provided culturally appropriate and reasonable services to meet the needs of the family or that reasonable efforts were not required. Minn. Stat. § 260.012(f) (2016); Minn. Stat. § 260C.301, subd. 8 (2016). The district court must consider whether the services were aimed toward alleviating the conditions that caused the out-of-home placement of the child. *See In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996) (stating that the reasonableness of the efforts depends on the problems presented). To do so, the district court must consider a variety of factors, such as whether the services were: relevant, adequate, culturally appropriate, available and accessible, consistent and timely, and realistic. *See* Minn. Stat. § 260.012(h) (2016). The district court may relieve the county of reasonable efforts if “the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances.” Minn. Stat. § 260.012(a)(7) (2016).

Here, the district court found that Renville County had provided reasonable efforts to reunify mother and child. Renville County prioritized addressing the condition that led to the CHIPS petition by having mother complete chemical-dependency treatment. Renville County made repeated attempts to have mother enter and complete treatment. In addition to treatment, Renville County’s reunification efforts included helping mother with: housing referral services, in-home parenting education, counseling/therapy, transportation, and medical/dental insurance. The district court found that, despite Renville

County's efforts, mother failed to utilize these services to the extent necessary to provide for successful reunification.

Mother argues that Renville County's efforts to reunify were unreasonable because the county failed to provide services that were recommended in her parental capacity assessment. We disagree. The recommendations in the assessment came less than one month before the termination petition was filed. More fundamentally, the recommendations in the assessment were similar to mother's case plan. As a social worker testified, the recommendations in the parental capacity assessment "were very similar to what . . . my initial recommendations were. It's just that [those recommendations] were broken down a little bit more, like more specific on what they should focus on in therapy." Renville County acknowledged that it did not provide a few services recommended by the parental capacity assessment, including budgeting classes, couples counseling, trauma therapy, and stress- and anger-management classes. But Renville County's first priority among services was chemical-dependency treatment. "We needed sobriety to be able to start other services," the social worker testified. Services such as couples counseling and budgeting classes were secondary to, and dependent upon, successful treatment. And mother failed to complete any chemical-dependency treatment until after the district court relieved the county of its obligation to provide reunification services.

Mother further asserts that Renville County failed to provide her with a working cell phone, which contributed to mother's failure to complete her case plan. We reject this claim as well. While Renville County acknowledged that mother's lack of a phone hampered her progress on the case plan, social workers were able to remain in contact with

mother and provide services. Social workers visited mother while she was in treatment at Wellcome Manor. They were also able to contact mother on father's cell phone. And mother had the ability to purchase a phone based on her monthly income from Social Security disability, but did not do so.

Moreover, Renville County's alleged failure to provide mother with a phone card did not prevent her from completing chemical-dependency treatment. Renville County found openings in treatment centers and provided transportation. As the district court explained, mother failed to utilize these services. And mother fails to point to a single instance when Renville County's failure to communicate prevented mother from completing her case plan. On this record, we conclude that clear and convincing evidence supports the district court's finding that Renville County made reasonable efforts to reunify mother and child.

II. Clear and convincing evidence supports the district court's decision to terminate mother's parental rights to the child.

Having determined that Renville County provided reasonable efforts to reunite mother and child, we review the district court's decision to terminate mother's parental rights for clear and convincing evidence. *See T.R.*, 750 N.W.2d at 661.

Generally, the district court may terminate parental rights if "reasonable efforts under the direction of the court, have failed to correct conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). And upon a showing of five factors, the district court may presume that reasonable efforts have failed:

- (A) the parent has been diagnosed as chemically dependent by a professional certified to make the diagnosis;

- (B) the parent has been required by a case plan to participate in a chemical dependency treatment program;
- (C) the treatment programs offered to the parent were culturally, linguistically, and clinically appropriate;
- (D) the parent has either failed two or more times to successfully complete a treatment program or has refused at two or more separate meetings with a caseworker to participate in a treatment program; and
- (E) the parent continues to abuse chemicals.

Id., subd. 1(b)(5)(iv).

The district court found that mother was diagnosed as chemically dependent, required to participate in treatment, failed to complete appropriate treatment on more than two occasions, and continued to abuse chemicals. The district court noted that, while mother did ultimately complete the first stage of a treatment program, “[t]his was, however, after months and several failed treatment programs.” This delay, according to the district court, “combined with a significant chemical dependency history and continued chemical use after her child was taken from her home, indicates to the court a lack of current desire to remain chemical free.” Applying the statutory presumption, the district court found that Renville County had demonstrated by clear and convincing evidence that reasonable efforts had failed to correct conditions leading to the out-of-home placement of the child. *See* Minn. Stat. § 260C.301, subd. 1(b)(5).

Mother argues that the statutory presumption does not apply in this case because she was sober in the four months before trial. And the district court acknowledged, in its findings, “the court has no evidentiary reason to doubt this fact.” Therefore, mother contends, the district court clearly erred by finding that she continued to abuse chemicals

at the time of the trial. The presumption that her reasonable efforts failed, she argues, is therefore inapplicable.

We disagree. The district court's finding that mother continued to abuse chemicals is supported by the evidence. Most of the four months before trial when mother asserts she was sober were spent in the hospital (August 9 to August 29); in a failed treatment effort (September 20 to September 22); in jail (September 22 to October 31); and in a treatment program at the time of trial (November 1 to December 7). In short, her sobriety largely occurred in very controlled environments.

And as the district court explained, this brief sobriety did not "outweigh evidence indicating her extensive history of chemical abuse, nor does it negate the fact that it took eight months after her child was removed to complete a treatment program."³ An expert, whom the district court found credible, opined that mother must demonstrate many additional months of sobriety while living in the community before being able to safely care for her child. Mother's sobriety immediately preceding trial was not "living in the community." Given this expert testimony, mother's extensive substance abuse history, and the circumstances under which mother remained chemical free, the district court's finding

³ The evidence supports the district court's finding that mother's longstanding chemical-dependency issues would continue for an indeterminate period of time. When mother departed Wellcome Manor after 70 days of treatment, she immediately relapsed. Over a period of five months, from March to August 2016, mother submitted to random drug testing to ensure her sobriety. Of the 12 tests, two results were at mother's request, when she tested negative. Two other results constituted refusals, but mother admitted to chemical use. And she tested positive for chemicals on the remaining eight tests.

that mother “continued to abuse chemicals” is supported by the record. The statutory presumption that reasonable efforts failed applies here.

But even if it did not, mother’s significant history of chemical abuse, her lack of demonstrated independent sobriety, and the absence of suitable housing for a child demonstrate that mother’s efforts failed to correct conditions warranting termination. In light of the evidence, setting aside the district court’s application of the statutory presumption, clear and convincing evidence supports a conclusion that mother’s reasonable efforts have failed to correct the conditions leading to the child’s out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5).

III. The child’s best interests support termination.

Even if a statutory ground for termination exists, the district court must still find that termination of parental rights is in the best interests of the child. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). The district court must explain its rationale “for concluding why the termination is in the best interests of the children.” *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003). In determining the child’s best interests, the district court must find and analyze: (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 interests of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). “Competing interests include such things as a stable environment, health considerations, and the child’s preferences.” *R.T.B.*, 492 N.W.2d at 4. Because this analysis requires credibility determinations, this court gives “considerable deference to the district court’s findings.” *J.K.T.*, 814 N.W.2d at 92. In

doing so, we review a district court's best-interests findings for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

Mother argues that the district court failed to address the best-interests factors for child custody proceedings. *See* Minn. Stat. § 518.17, subd. 1 (2016). But consideration of these factors is not dispositive or required in the termination context. *See In re Welfare of M.J.L.*, 582 N.W.2d 585, 589 (Minn. App. 1998) (stating that the factors in section 518.17 are “not the exclusive means to determine what is in a child’s best interests”). Instead, Minnesota Rule of Juvenile Protection 39.05, which specifically applies to termination proceedings, requires that the district court analyze the child’s interest in preserving the parent-child relationship, the parent’s interest in preserving that relationship, and any competing interests of the child. *See In re Welfare of Child of A.H.*, 879 N.W.2d 1, 6 (Minn. App. 2016) (concluding in a juvenile-protection appeal that the district court did not err by applying best-interests standards of juvenile-protection statute rather than those of the parenting-time statute).⁴

Mother also contends that there was insufficient evidence in the record to conclude that termination of her parental rights was in the child’s best interests. She asserts that her interests weigh against termination. But in termination proceedings, the child’s competing interests are paramount. Minn. Stat. § 260C.301, subd. 7 (2016). And the district court

⁴ We note that the district court did not separately analyze the three factors under Minnesota Rule of Juvenile Protection 39.05, subdivision 3(b)(3), in its termination order. But we will not reverse when the findings demonstrate that the district court “carefully sought to determine the best interests of the child.” *In re Welfare of M.J.L.*, 582 N.W.2d 585, 589 (Minn. App. 1998).

was not persuaded when mother testified that she was presently capable of meeting the needs of the child and that she wanted to live a life of sobriety.

The district court, in analyzing the child's best interests by considering the child's medical needs, developmental needs, history, and past experiences, found that the child's best interests supported termination of mother's parental rights. In order for the child to move forward, the district court explained that the child needed stability, but during the course of these proceedings, mother was essentially homeless. Before she entered treatment at Wellcome Manor, mother was evicted from her apartment. After she left Wellcome Manor, mother lived in a park or a motel on a temporary basis until she reentered treatment a second time. At trial, mother explained that she did not have a place to live because she was focusing on completing treatment. She testified that she was considering halfway house options in Duluth, but acknowledged that housing was yet unconfirmed and that there was no guarantee that the child would be allowed to stay with mother.

Moreover, there is no record of mother's ability to care for or meet the needs of the child. While she testified that she attended parenting classes and tried to enroll the child in preschool prior to the CHIPS proceeding, mother's visitations with the child were sporadic. There were some visits while mother was at Wellcome Manor, but few since that time. According to the child's therapist, missed telephone visits resulted in the child becoming disheartened about visits with mother. And in the few months preceding trial, mother did not have any visits with the child. In weighing competing interests, the district court found that mother was unable to provide for the needs of the child.

The district court's decision was also supported by the evidence about the child after he entered foster care. The child's psychologist diagnosed the child with post-traumatic stress disorder, which was an unusual diagnosis for a three-year-old child. The psychologist explained that the child needed stability, predictability, a safe home, and individual therapy to see progress. As the child's foster mother testified, the child initially suffered from night terrors and had issues with boundaries and inappropriate behavior. The child was also aggressive toward other children. But with a stable and structured environment, the child learned to regulate his violent and aggressive behavior and play with other children. Finally, the guardian ad litem testified that, in light of mother's failure to follow through on her case plan, the child would regress if custody was returned to mother. The district court found testimony from these witnesses credible. In light of all of the evidence, the district court concluded that the child's best interests supported termination of mother's parental rights. We agree.

Affirmed.