STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1032

In the Matter of the Welfare of the Child of: M. A. G. and S. C. G., Parents.

Filed November 13, 2018
Reilly, Judge
Affirmed

Chisago County District Court
File No. 13-JV-17-149

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Considered and decided by Schellhas, Presiding Judge; Cleary, Chief Judge; and Reilly, Judge.

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

REILLY, Judge

Appellant Chisago County Health and Human Services (the county) challenges the district court's denial of its petition to terminate respondent-mother's parental rights. Because the district court did not abuse its discretion in concluding that the county did not prove a statutory basis by clear and convincing evidence, we affirm.

FACTS

This case involves one child, J.D.G., born in December 2010 to respondent-mother, M.A.G., and father, S.C.G.[1] On May 4, 2016, the county received a report regarding the welfare of J.D.G. after local law enforcement arrested M.A.G. in connection with a burglary and conducted a search warrant at M.A.G.'s residence. During the execution of the search warrant, officers found J.D.G. left in the care of his maternal uncle, T.G., an individual recognized by local law enforcement to have diminished mental capacity. The overall living conditions were poor: the home was extremely messy, food in the kitchen was left out in various stages of decomposition, and the building was structurally unsafe. Officers discovered methamphetamine and drug paraphernalia in the bedroom which M.A.G. shared with J.D.G. Based upon this report, the county filed a CHIPS petition alleging J.D.G. to be in need of protective services.

On June 13, 2016, M.A.G. admitted that J.D.G. needed protective services and an out-of-home placement plan was filed. The out-of-home-placement plan required that M.A.G. complete a chemical dependency assessment and comply with its recommendations, complete a mental health assessment and comply with its recommendations, comply with random drug testing, report use of any prescribed medications or changes thereof, complete a parenting education course, locate appropriate housing for herself and her child, find employment, and complete a domestic violence assessment and/or participate in domestic violence education services.

[1] Because S.C.G. voluntarily terminated his parental rights in December 2017, he is not a part of this appeal.

Since June 2016, J.D.G. has been placed with non-relative foster care providers, S.M. and C.M. The foster parents reported that when J.D.G. first arrived, J.D.G. had tantrums multiple times a day—lasting between 30 to 45 minutes—where he threw himself on the floor, hit his head against the wall, or hit, kicked, and scratched himself or others. At that time, J.D.G. was diagnosed with post-traumatic stress disorder (PTSD) and provisionally diagnosed with autism.

Shortly after the county removed J.D.G. from M.A.G.'s care, supervised telephone calls between the two began. J.D.G.'s foster mother, S.M., testified that during these telephone conversations, which lasted 5 to 10 minutes, J.D.G. told M.A.G. that "he loved her and missed her." M.A.G. missed some of the scheduled telephone calls because "she lost her phone" or "her phone wasn't working." If J.D.G. knew about a missed telephone call with M.A.G., J.D.G. had a "meltdown" or "sulk[ed] for a while afterwards and ask[ed] to be left alone or sit in his room."

On May 31, 2016, M.A.G. pleaded guilty to felony aiding and abetting burglary and was sentenced on July 28 to 180 days in jail. Due to M.A.G.'s custody status, the telephone calls between M.A.G. and J.D.G. stopped until the county social worker purchased a phone card for M.A.G. to use from the jail. In September 2016, approximately two weeks after the supervised telephone calls resumed, M.A.G. requested to stop the telephone calls with J.D.G. due to her concerns that J.D.G. could hear other inmates in the background. Shortly after M.A.G.'s release from jail in October 2016, supervised telephone calls resumed.

In January and February of 2017, M.A.G. received both a chemical dependency (CD) assessment and mental health assessment through Canvas Health which

recommended out-patient treatment. The county was concerned about Canvas Health's out-patient recommendations because prior CD and mental health assessments had recommended in-patient treatment.[2] As a result of M.A.G.'s progress on her case plan, beginning in February 2017, M.A.G. and J.D.G. had weekly two-hour supervised in-person visitations. According to S.M., J.D.G. "was always really excited to have the visits," he "really enjoyed seeing [M.A.G.]" and "enjoyed spending time with her."

But M.A.G. had some trouble attending the visits. In February and March of 2017, M.A.G. attended most of the visits, and "maybe missed one" each month. In April 2017, the visits were lengthened to three hours; however, M.A.G. missed more visits than the prior months. In May 2017, M.A.G. appeared for only one visit with J.D.G., and since she arrived 45 minutes late to that visit, it had to be cancelled. The county spoke with M.A.G. about the importance of visitation consistency and warned that if M.A.G. missed another scheduled visit, her visits with J.D.G. could be cancelled.

On May 9, 2017, the county filed a petition to terminate M.A.G.'s parental rights (TPR) based upon neglect of parental duties, palpable unfitness, and inability to correct

[2] During the course of this case, M.A.G. received multiple CD and mental health assessments. While in custody, M.A.G. completed a CD assessment which recommended M.A.G. complete a dual-diagnosis residential treatment program to simultaneously address her chemical dependency and mental health issues. While serving her sentence, she was denied a furlough to enter a dual-diagnosis treatment program. In October 2016, after M.A.G.'s release from jail, M.A.G. completed a second CD assessment which recommended, among other things, that M.A.G. complete a "residential based or similar treatment program." Then in November 2016, M.A.G. completed a mental health assessment which recommended dual-diagnosis inpatient treatment for the following diagnoses: (1) bipolar II disorder; (2) generalized anxiety disorder, (3) attention-deficit hyperactivity disorder, (4) obsessive-compulsive disorder; and (5) other psychoactive substance dependence.

conditions which led to placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5) (2016). Trial was not held until almost one year later on April 17, 2018, and May 1-2, 2018.

In June 2017, M.A.G. successfully completed her CD treatment program. At that time, J.D.G.'s GAL reported that the supervised visits between M.A.G. and J.D.G. were "mostly consistent," though M.A.G. did miss a few visits due to "transportation issues and back pain." In July 2017, M.A.G. missed two more visits with J.D.G. If J.D.G. knew that visits were scheduled but missed, "he would ask repeatedly why they were being missed." S.M. stopped telling J.D.G. about visits with M.A.G. until they got into the car "just in case [they] weren't going to have a visit" so that he did not get upset.

In August 2017, J.D.G.'s therapist, wrote a letter expressing her concerns regarding the consistency of visits between M.A.G. and J.D.G. in light of his work to "process through past trauma and the uncertainties of his future," and made the following recommendation:

> [I]t is my clinical recommendation that [J.D.G.] need[s] consistent, structured, and supportive parenting, including follow-through. When this does not occur, it is detrimental to his mental and emotional health and overall well-being and functioning. If parental relationships, including parental visits, are not consistent, structured, and supportive, it is my clinical recommendation that they be suspended at this time.

Based upon the August 2017 recommendation from J.D.G.'s therapist, the county suspended M.A.G.'s visitation. After visitation was suspended, J.D.G. started exhibiting sexually inappropriate behaviors in the bathroom at school, "showing his privates to the

other kids" and "peeping into the stalls," which raised red-flags regarding potential sexual abuse.

While living with his foster parents, J.D.G. received therapy around once a week and, in addition, a skills worker met J.D.G. at home every Tuesday. In the summer of 2017, J.D.G. completed a new diagnostic assessment which ruled out autism because of his progress. J.D.G.'s GAL reported that J.D.G. "continues to thrive in the current non-relative placement" and asked "if [his] current foster parents can adopt him."

Although M.A.G.'s first mental health treatment program discharged M.A.G. because she "was unable to stay within attendance guidelines," in September 2017, M.A.G. entered a second mental health treatment program through Nystrom & Associates. M.A.G. successfully completed the Nystrom mental health treatment program on September 21, 2017. Nystrom recommended that M.A.G. continue to see a therapist and a psychiatrist. M.A.G. followed through with regard to seeing a therapist, but had not seen a psychiatrist as of the termination hearing.

At a hearing before the district court in September 2017, M.A.G.'s attorney addressed the suspension of visitation and requested that visits be reinstated. M.A.G.'s attorney reasoned that "visitation and seeing how visits are going and that bond is an important component to looking at whether or not reunification is possible." The district court expressed concern, but left the decision regarding visitation to the county based upon consultation with J.D.G.'s GAL and therapist. The district court found that "the county continues to make reasonable efforts."

In October 2017, J.D.G.'s therapist wrote a letter to the court continuing her recommendation of no contact between M.A.G. and J.D.G.:

> I have observed and received reports from both his school and his foster parents, his mental health symptoms increase and his overall functioning decreases exponentially . . . when [J.D.G.]'s mother would be inconsistent both in her attendance at visits, as well as in her behaviors during the visits. They appeared to be more detrimental to [J.D.G.] than they were beneficial for attachment. Since [J.D.G.] has ceased contact with his mother in August, his ability to process the trauma he has experienced in the past has increased markedly . . . It is my recommendation that at this time it is best for [J.D.G.]'s mental health to continue to have no contact with his mother.

At the October review hearing, the district court determined that contact between M.A.G. and J.D.G. shall be "arranged through and [as] deemed appropriate by [the county], the [GAL], and the child's therapist."

In January 2018, J.D.G. disclosed that his maternal uncle, T.G., touched him "on his penis and on his butt" and T.G. exposed himself to J.D.G. A county investigator investigated the sexual assault allegations. During that investigation she scheduled a time to meet M.A.G., but M.A.G. did not show up. When the investigator and M.A.G. finally met, M.A.G. cooperated with the investigation. At the conclusion of the investigation determinations were made against T.G. for sexual abuse and against M.A.G. based on failure to protect J.D.G. and failure to provide adequate supervision.

Again, in January 2018, J.D.G.'s therapist wrote to continue her recommendation that there be no contact with J.D.G.'s biological family. On February 1, 2018, the district court judge presided over a review hearing. The district court's order stated that M.A.G.'s attorney "requested at least therapeutic visitation between the mother and child at a

minimum." The court ordered that M.A.G. "shall be entitled to reasonable therapeutic contact with the child as approved by the therapist and arranged through the [county]." According to J.D.G.'s therapist, since J.D.G. disclosed the sexual abuse, he had a lot of anger toward his biological mother, and he needed to "heal some of that anger prior to introducing [M.A.G.] back into his life." Despite M.A.G.'s continued efforts to work on compliance with her case plan, visits were not resumed.

At trial, J.D.G.'s therapist testified that based upon M.A.G.'s engagement in sessions, the fact that J.D.G. identified M.A.G. as "not a safe person," and that he has been in foster care for almost two years, M.A.G. "could not provide the safety, stability and consistency that [J.D.G.] needs." The county's case manager testified that she filed the TPR petition due to lack of consistency and lack of follow through of the case plan by M.A.G. At the time of trial, M.A.G. had complied with most of her case plan and there were no ongoing concerns about domestic violence and chemical dependency; however, the case manager remained concerned that M.A.G. would not follow through in the future with her mental health issues. J.D.G.'s GAL testified that it is clear that J.D.G. and M.A.G. love one another, but she was concerned that the progress M.A.G. has made is not on her own initiative and recommended termination of M.A.G.'s parental rights. M.A.G. testified that she will support J.D.G. and is committed to addressing her mental health issues.

At the conclusion of trial, the district court found that M.A.G. had "substantially complied with her case plan, engaged in services and has worked to correct the conditions that led to the out-of-home placement of the child." The district court dismissed the termination petition, finding that the county did not prove by clear and convincing evidence

that reasonable efforts have failed to correct the conditions leading to the out-of-home placement, that M.A.G. substantially, continuously, or repeatedly refused to comply with the duties imposed upon her from the parent/child relationship, or that M.A.G. is palpably unfit.

The county now appeals.

D E C I S I O N

"There 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). For this reason, courts must exercise "great caution" in termination-of-parental-rights cases. *Id.* (quotation omitted). We review a district court's determination on a termination-of-parental-rights petition 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.*, 744 N.W.2d 381, 385 (Minn. 2008). "Considerable 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 Children of B.M.*, 845 N.W.2d 558, 563 (Minn. App. 2014) (quotation omitted).

We review the factual findings for clear error and the statutory basis for abuse of discretion. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 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 Welfare of Children of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012) (quotation omitted). We will not set aside factual

findings unless "review of the entire record leaves us with a definite and firm conviction that a mistake has been made." *In re Welfare of D.T.J.*, 554 N.W.2d 104, 107 (Minn. App. 1996) (quotation omitted).

The burden of proof is on the petitioner and "is subject to the presumption that a natural parent is a fit and suitable person to be entrusted with the care of a child." *In re Welfare of the Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. Jan. 17, 2012). The evidence relating to the termination must address the conditions that exist at the time of trial. *Id.* For a district court to terminate parental rights, at least one statutory ground for termination must be supported by clear and convincing evidence, and termination must also be in the child's best interests. *B.M.*, 845 N.W.2d at 562-63. Here, the county sought to terminate M.A.G.'s parental rights under three different statutory bases.

I.

1. Failure to Correct the Conditions Leading to the Child's Placement

The county sought to terminate M.A.G.'s parental rights arguing that "reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). Reasonable efforts are presumed to have failed if four criteria exist: "(i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months"; "(ii) the court has approved an out-of-home placement plan"; "(iii) conditions leading to the out-of-home placement have not been corrected"; and "(iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite

the family." *Id.* (i)-(iv). The parties do not dispute that the child resided outside of the home for more than 12 months before trial or that the district court approved an out-of-home placement plan. The parties do dispute whether the county provided reasonable efforts and whether M.A.G. corrected the conditions leading to foster care.

Reasonable Efforts

During a termination of parental rights proceeding, the district court must determine whether a county made reasonable efforts to reunite the parent with their child. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008). Reasonable efforts are "services that go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Mar. 28, 2007). In order to determine whether efforts were reasonable, the district court must determine whether the services offered were: "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Minn. Stat. § 260.012(h) (2016). "Whether the county has met its duty of reasonable efforts requires consideration of the length of time the county was involved and the quality of the effort given." *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990).

We conclude, based on our review of the record, that the district court's finding that the county did not make reasonable efforts is supported by the requisite substantial evidence and is not clearly erroneous. The district court found that "the county's effort fell short" when the county stopped supervised visitation between M.A.G. and J.D.G. because

of M.A.G.'s "lack of compliance with [her] case plan and because of the child's excitement after visiting his mother." The district court made the following factual findings:

> The court is highly critical and surprised that the County did not reinstate supervised visitation/calls even after [M.A.G.] progressed with compliance with her case plan. The parties testified that [J.D.G.] was excited to see his mother during visitations. The parties testified that [M.A.G.] would send a message if she was to miss a visit and would reschedule. [M.A.G.]'s visitation should not have been suspended as the circumstances were not compelling enough. The suspension of visitation was not relevant to the safety and protection of the child, as the visitations were supervised, and did not meet the needs of the family. The County's efforts of suspending visitations/phone calls were not aimed at alleviating the conditions that gave rise to out-of-home-placement or conforming to the problems presented. Although the Court commends the County for providing various services to [M.A.G.], the Court finds that the County's efforts to reunite [M.A.G.] and [J.D.G.] were not reasonable.

(quotation and citations omitted). The prolonged suspension is particularly unreasonable because the county is asserting that M.A.G.'s inconsistency requires termination of her parental rights, but has not allowed M.A.G. to demonstrate an ability to parent J.D.G. through visitation. At the time of trial, visitation had been suspended for approximately eight months. We are not concluding that the child's mental health should not be a factor in suspension of visitation; however, we agree with the district court's determination that the circumstances in this case "were not compelling enough."

Failure to Correct Conditions

The conditions that led to J.D.G.'s out-of-home placement were substance use and exposure of J.D.G. to drug use and drug paraphernalia. At the time of trial, M.A.G. had successfully completed CD treatment. According to the county case manager, M.A.G. has

complied with most of her case plan, there are no ongoing concerns about chemical dependency, and she believes M.A.G. will maintain sobriety. Therefore, the record supports the district court's finding that M.A.G. corrected the substance abuse concerns.

The county contends that "even if the parent eliminates the factual bases that existed at the time of the child's removal, if a new factual basis arises after removal, the condition cannot be corrected until that new factual basis also has been eliminated." *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 323 (Minn. App. 2015), *review denied* (Minn. July 21, 2015). The county argues that the conditions leading to the out-of-home placement have not been rehabilitated because M.A.G. is not employed, has not consistently engaged with her mental health providers, and has not developed the ability to care for J.D.G.'s mental health needs.

However, at the time of trial, M.A.G. had obtained her driver's license and was working with the RISE agency in order to obtain employment. The county argues that M.A.G.'s attendance with the RISE agency was not adequate, but even if M.A.G.'s attendance was questionable, lack of employment does not rise to "grave" conditions to terminate M.A.G.'s parental rights. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990) ("Parental rights are terminated only for grave and weighty reasons."). The county case worker testified that lack of employment was not a basis for terminating parental rights. Additionally, at the time of trial, M.A.G. was working with a therapist at Family Based Therapy Associates. That therapist wrote a letter which stated that M.A.G. had maintained consistency and followed through with her scheduled appointments, had provided valid reasons for cancellation or missed appointments, and was working on skills

to improve communication, consistency, and daily routine. M.A.G. testified that she has a good relationship with her therapist and her adult mental health worker.

It is not M.A.G.'s burden to prove that she can meet J.D.G.'s needs, rather, it is the county's burden to prove, by clear and convincing evidence, that even with the county's provision of reasonable efforts, M.A.G. could not correct the conditions that led to out-of-home placement. Given the prolonged suspension of visitation in this case, the county is asking this court to speculate, and extrapolate from M.A.G.'s attendance issues, that M.A.G. is ill-equipped to care for J.D.G.'s mental health needs. However, we will not set aside factual findings unless review of the entire record leaves us with a "definite and firm conviction that a mistake has been made." *D.T.J.*, 554 N.W.2d at 107 (quotation omitted).

Because evidence exists in the record showing that M.A.G. made substantial steps to address concerns regarding her CD and mental health issues, the district court did not abuse its discretion in concluding that the county did not prove by clear and convincing evidence that she failed to correct the conditions leading to the out-of-home placement.

2. Failure to Comply with the Duties Imposed by the Parent and Child Relationship

The county sought to terminate M.A.G.'s rights arguing that:

> 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 . . . other care and control necessary for the child's physical, mental, or emotional health and development . . . and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable.

Minn. Stat. § 260C.301, subd. 1(b)(2). This statutory basis also requires that the county make reasonable efforts. Because we have already determined that the district court did not err in its determination that the county did not make reasonable efforts in this case, and it is undisputed that the efforts necessary to assist M.A.G. fulfill her parental duties are the same efforts necessary to correct the conditions leading to the out-of-home placement, this court is not required to continue its analysis. However, in the interests of completeness, we will address this statutory basis. *See* Minn. R. Civ. App. P. 103.04 (stating that appellate courts may address matters in the interests of justice).

To terminate parental rights under this statutory basis the district court must find that "at the time of termination, the parent is not presently able and willing to assume [their] responsibilities and that the parent's neglect of these duties will continue for a prolonged, indeterminate period." *J.K.T.*, 814 N.W.2d at 90 (quotation omitted). Here, the district court found that the county did not prove that M.A.G. substantially, continuously, or repeatedly failed to comply with the duties imposed upon her because M.A.G. "has substantially complied with her court-ordered case plan and is presently able to assume the responsibilities of caring for [J.D.G.]."

The county argues that the district court's finding that M.A.G. was in substantial compliance with her case plan is incomplete because "it failed to address when M.A.G. began complying, the extent of her compliance, and how long she had maintained compliance before trial." The county cites *In re Welfare of D.C.*, to assert that minimal cooperation by a parent shortly before trial is not enough to avoid termination of parental rights. 415 N.W.2d 915, 918 (Minn. App. 1987). Unlike the facts presented in *D.C.*,

M.A.G.'s compliance was not limited to the few weeks leading up to trial because M.A.G. had demonstrated successful completion of CD treatment approximately ten months prior to trial, prolonged sobriety, and had been working with mental health professionals for approximately six months leading up to trial. The county further argues that M.A.G.'s substantial compliance is not supported by the record because she "did not begin to comply with major components of her case plan until well after the TPR petition was filed, and after the child had been in foster care for well over a year." However, the evidence relating to the termination must address the conditions that existed at the time of trial. *B.M.*, 845 N.W.2d at 564. In its order, the district court determined the following:

> (1) M.A.G. addressed domestic violence concerns by creating a safety plan;
> (2) M.A.G. addressed mental health concerns by completing various mental health assessments and attending individual therapy;
> (3) M.A.G. completed a parenting class;
> (4) M.A.G. has completed various Rule 25 assessments and has completed various treatments at Canvas Health and Nystrom and Associates, and
> (5) M.A.G. has been working with the RISE agency to obtain employment.

The district court further stated that M.A.G.'s mental health case manager has no concerns about M.A.G.'s completion or engagement in her programs and services, and the county case worker has no concerns about M.A.G.'s sobriety or domestic violence. There are sufficient facts in the record to support the determination that M.A.G. has substantially complied with her case plan.

Second, the county argues that regardless of M.A.G.'s compliance with her case plan, the record does not support a finding that M.A.G. can assume responsibility for caring

for J.D.G. "The critical issue is not whether the parent formally complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child." *J.K.T.*, 814 N.W.2d at 89. While the district court determined that it had concerns about whether M.A.G. "will ever be able to demonstrate that she has the capability to parent her child," having a great concern about whether a parent will successfully parent in the future is not necessarily proof by clear and convincing evidence that the parent is unable at present to assume the responsibilities of caring for a child.

The county asserts that the district court erred in its finding that M.A.G. "is presently able to assume the responsibilities of caring for [J.D.G.]" because it failed to address barriers to reunification, including J.D.G.'s special needs and M.A.G.'s failure to demonstrate insight into J.D.G.'s specific needs. We reject this argument for two reasons. First, M.A.G.'s insight into J.D.G.'s specific needs would have been further explored through the county's reasonable efforts to reunite the family. The county, however, failed to make those efforts. Therefore, we decline to rule that the district court should have held M.A.G.'s alleged inadequacies on these points against her. Second, given the county's failure to make reasonable efforts to reunite the family, and the fact that this failure is fatal to the district court's ability to terminate parental rights under this provision of the statute, the county is functionally arguing that the district court erred or abused its discretion by not including in its order a significant amount of dictum. Thus, even if the district court was required to consider these matters, we would decline to rule that the district court's failure to address these matters was fatal to the district court's decision.

3. Palpable Unfitness

The county sought to terminate M.A.G.'s parental rights arguing that:

> a 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.

Minn. Stat. § 260C.301, subd. 1(b)(4). The county argues that the district court erred in determining that the county failed to present sufficient evidence that M.A.G. is palpably unfit to parent *this child*, reasoning that the district court did not analyze whether M.A.G. is able to care for a child who has been diagnosed with PTSD. The county cites *In re Welfare of D.D.K.*, where this court made a distinction between ability to parent an average child and ability to parent a special needs child. 376 N.W.2d 717, 721 (Minn. App. 1985). Though we agree that J.D.G. has special needs due to his PTSD diagnosis, this case is otherwise distinguishable from *D.D.K.* In *D.D.K.*, this court affirmed the trial court's determination that the mother was unable to parent a "special needs child," because the mother "failed to complete either parenting classes or individual counseling" and discontinued visitation. *Id.* Here, however, the district court found that M.A.G. has "maintained her sobriety" and "is aware of her mental health issues and is working on those issues."

The county also argues that M.A.G. is "unable to demonstrate an ability to be consistent and reliable, particularly when it comes to the child's needs such as visitation

and engaging with his therapist." The record establishes that J.D.G. is in need of continued consistent services and that his mental health and behavioral struggles have improved. The visitation was suspended, wrongly in the district court's determination, preventing M.A.G. from demonstrating an ability to be consistent and reliable. During the twenty-two months of out-of-home placement, supervised visits were facilitated for approximately five months. Therefore, the district court did not abuse its discretion by ultimately concluding that the county did not prove by clear and convincing evidence that M.A.G. was palpably unfit.

II.

Since the district court did not err in its determination that the county did not prove a statutory basis by clear and convincing evidence, we need not proceed in our analysis. However, because "the best interests of the child must be the paramount consideration" in a termination case, we will briefly address the district court's best-interest analysis. Minn. Stat. § 260C.001, subd. 2(a) (2016).

Analyzing the best interests of a child requires a balancing of the child's interest in preserving a parent-child relationship, the parent's interest in preserving that relationship, and any competing interest of the child. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); *see* Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). "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. We review the district court's determination that termination is in the best interests of the child for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

The county argues that the district court failed to conduct a sufficient best-interest analysis because it did not properly address valid competing interests, including: (1) the child's competing interest in developing a parent/child relationship with a safe, stable and reliable caregiver; (2) the child's competing interest in receiving regular mental health services; and (3) the child's competing interest in achieving a permanent placement at the earliest possible time. While we agree that the competing interests raised by the county could have been considered by the district court, "[e]ven if the record might support findings different from those made by the court, this does not show that the court's findings are defective." *In re Welfare of Child of J.L.L.*, 801 N.W.2d 405, 414 (Minn. App. 2011). The district court found: (1) "[J.D.G.] loves his mother and his mother loves him"; (2) J.D.G. "appears to have an interest in maintaining a relationship with his mother; (3) M.A.G. "appears to love her son and wants to be reunited with him"; and (4) that "[t]he competing interest in this matter might be [M.A.G.'s] mental health which [she] is actively working on as she is in counseling." The district court found that it is in the best interests of J.D.G. that reunification between J.D.G. and M.A.G. be a "slow process" that "should progress based upon therapeutic recommendations and J.D.G.'s response." From our review of the record, we conclude that the district court made credibility determinations, properly weighed facts in evidence, and reasonably came to its conclusion regarding J.D.G.'s best interests.

III.

While we affirm the district court's order, we are concerned that the TPR trial and order in this case occurred well outside the permanency timelines provided by rule and

statute. *See* Minn. Stat. §§ 260C.503, .507, .509 (2016) (providing an admit/deny hearing must occur by 12 months after the children are removed from home and TPR trial must commence 60 days after admit/deny hearing); *accord* Minn. R. Juv. Prot. P. 4.03, subd. 3(c), 33.05, subd. 2, 34.02, subd. 1(b), 39.02. We recognize that the matter was continued many times due to failed service on the father and the county's investigation into the sexual-abuse allegations.[3] However, at this point, J.D.G. has languished over two years in the limbo of out-of-home placement and deserves permanency in his life. Cases like this demonstrate why courts must be aware of these deadlines and follow them.

In addition, the district court expressed concern that M.A.G. did not identify the "red flags of leaving [J.D.G.] alone with [T.G.] even though she was warned by her mother about [T.G.'s] interaction with children." We share the district court's concern, and support its decision to order that T.G. have no contact with J.D.G.

Further, we note that the district court expressed its concern about whether M.A.G. would "ever" be able to successfully parent J.D.G. Given this concern, as well as the length of time J.D.G. has been in an out-of-home placement where he is thriving with foster parents who want to provide a permanent family for him, if any red flags develop in the future the county may want to consider the possible propriety of filing another permanency

[3] We are troubled with the decision to continue this case on the eve of the January 2018 trial date. The TPR filed May 9, 2017—eight months before the January 2018 trial date—alleged that M.A.G. had "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed" by the parent-child relationship. Assuming the county believed that sufficient evidence supporting a TPR petition existed in May 2017, we are puzzled why additional allegations which presumably point to "neglect" of "duties imposed upon the parent" resulted in a required further continuance of an already delayed case.

petition, and, if another petition is proper, to do so expeditiously. If a petition is filed, we caution the district court to actively and continuously oversee this case until J.D.G. is in a permanent home.

Because the district court did not abuse its discretion when it determined that the statutory bases put forth by the county during trial were not proven by clear and convincing evidence, and the county did not make reasonable efforts for reunification of M.A.G. and J.D.G., we affirm.

Affirmed.