STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1808

In the Matter of the Welfare of the Child of:
F. M. and M. D. G., Parents.

Filed April 27, 2020
Affirmed
Bjorkman, Judge

Renville County District Court
File No. 65-JV-19-74

Jeremy Blackwelder, Holmstrom & Kvam, PLLP, Granite Falls, Minnesota (for appellant mother M.D.G.)

Curt Reese, Olivia, Minnesota (for respondent father F.M.)

David Torgelson, Renville County Attorney, Olivia, Minnesota (for respondent Renville County Human Services)

Tami Nielsen, New London, Minnesota (guardian ad litem)

Considered and decided by Slieter, Presiding Judge; Bjorkman, Judge; and Jesson, Judge.

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

BJORKMAN, Judge

Appellant-mother challenges the termination of her parental rights to one child, arguing that the district court abused its discretion by concluding that termination is

warranted because respondent-county's reasonable efforts failed to correct the conditions that led to the child's out-of-home placement. We affirm.

FACTS

D.M. was born in July 2016 to appellant M.D.G. and father F.M. Mother has a long history of chemical use and involvement with child protection. She no longer has custody of nine children born in Texas while she was subject to child-protection proceedings in that state. Father also has a lengthy history of substance abuse and domestic abuse against mother.

The child came to the attention of respondent Renville County Human Services (the county) in February 2018 upon a report of domestic abuse. Father was arrested for trying to strangle mother, who told a child-protection investigator that she intended to return to Texas. On June 7, the child was removed from parents' home following a warranted search that revealed methamphetamine, drug paraphernalia, and firearms. At a pretrial hearing, both parents admitted that the child was in need of protection or services (CHIPS). The district court adjudicated the child CHIPS and placed him with his paternal grandmother. The county developed an out-of-home placement plan that required mother to address her chemical and mental-health issues, obtain employment and housing, meet the family's basic needs, and gain parenting skills. Mother signed the plan and the district court approved it on August 9.

In the ensuing months, the county offered mother numerous services. She was assessed and offered chemical-dependency treatment, but did not complete programs she began in August 2018 and January 2019. Among other things, the county offered the

family assistance with transportation and finances; arranged visitation with the child; referred mother for mental-health care, including access to a psychiatrist and medication management; and assigned a community-support technician (CST) worker. The child was evaluated and found to have special needs, including speech delays for which he receives occupational therapy and has an individualized education plan (IEP).

Beginning in January 2019, the county worked with parents' extended family to build relationships, and mother and father were given longer unsupervised visitation with the child. The child had a successful home visit in April that culminated in his return to parents subject to the county's protective supervision. But the child's return was short-lived.

In June, the county received a report of substance use and possible domestic abuse between parents. The county had been unable to arrange drop-in visits for four weeks and received reports that mother had been dismissed from her job for absenteeism, and the child was not attending preschool, where his therapy sessions took place. The county went to parents' home on June 28; for an hour nobody answered the door. When law-enforcement officers arrived, the parents opened the door and agreed to take drug tests. Both tested positive for methamphetamine and amphetamine. The county allowed the child to remain in the home, but put a safety plan in place that required parents to stay in contact and mother to attend her mental-health appointments and medications checks.

On July 2, a CST worker dropped the child off after preschool and asked parents to provide urine samples. They later admitted their samples were "fake"; actual urine samples tested positive for controlled substances. The county returned the child to paternal

grandmother. The district court formalized this placement in an emergency protective-care order issued after parents attempted to remove the child. During the remainder of July and the first two weeks of August, the county arranged for weekly visits and random drop-ins with parents. On every occasion, chemical testing was positive for controlled substances or parents admitted to chemical use.

The county petitioned to terminate the parental rights of both parents on July 29. On August 29, mother began inpatient chemical-dependency treatment, which she completed. The treatment facility recommended intensive outpatient treatment and six to 18 months of sober living. Mother's chosen sober-living arrangement did not allow the child to live with her.

In the last few weeks of August, supervised visits between parents and the child were unsuccessful. According to the social worker, the child did not want to be close to parents, cried inconsolably "for a lot of those visits," and regressed in his behaviors following the visits. The guardian ad litem reported that parents were not taking the child to "school, speech or occupational therapy." According to the paternal grandmother, the child became aggressive with other children and was biting upon being returned from parents' care.

At the October termination hearing, the district court heard testimony and received other evidence from six witnesses, including the parents, paternal grandmother, the county child-protection social worker and case manager, and the guardian ad litem. At that time, the child had been out of the home for more than 400 days. The guardian ad litem testified that termination of parental rights is in the child's best interests, and the county workers'

testimony was consistent with that conclusion. Mother testified that she loves the child "[v]ery much," but acknowledged her lengthy chemical-abuse history. The district court granted the petition, finding clear and convincing evidence that reasonable efforts by the county failed to correct the conditions that led to the child's out-of-home placement under Minn. Stat. § 260C.301, subd. 1(b)(5) (2018). And the court determined that termination is in the child's best interests. Mother appeals.[1]

D E C I S I O N

A district court may terminate a parent's rights to a child if "following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). "Reasonable efforts" consist of those "relevant to the safety and protection of the child," "adequate to meet the needs of the child and family," "culturally appropriate," "available and accessible," "consistent and timely," and "realistic under the circumstances." Minn. Stat. § 260.012(h) (2018). 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).

On appeal, we review the district court's factual findings for clear error. *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 654 (Minn. App. 2018). But we afford discretion on the question whether clear and convincing evidence supports a statutory

[1] Father does not challenge the termination of his parental rights.

ground for termination. *Id.* We will affirm a district court's decision to terminate parental rights when at least one statutory termination ground is supported by clear and convincing evidence, the county has made reasonable efforts to reunite the family, and termination is in the child's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

Mother does not challenge the district court's finding that termination of her parental rights is in the child's best interests. Rather, she argues that the district court abused its discretion by finding that termination is warranted based on the failure of reasonable efforts by the county to address the conditions that prompted the child's removal from the home. She essentially argues that (1) the county's efforts were not reasonable because it did not update the 2018 case plan; (2) the county's efforts were not reasonable because they did not include employment assistance, help in regaining her driver's license, or mental-health treatment; and (3) she complied with her case plan. None of these arguments persuade us to reverse.[2]

First, mother did not challenge the county's failure to update her case plan in the district court. We generally do not consider issues not presented to or considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." (quotation omitted)).

[2] Mother also argues that two statutory presumptions for termination under Minn. Stat. § 260C.301, subd. 1(b)(5), do not apply. The district court did not rely on any presumption in reaching its termination decision. Accordingly, we do not address this argument.

Mother points to authority requiring counties to develop a case plan. Minn. Stat. § 260C.212, subd. 1(a) (2018); Minn. R. Juv. Prot. P. 26.02, subd. 1. But she cites no authority that obligates counties to update a case plan, and has not shown prejudice resulting from the county's failure to do so. As more fully described below, the county consistently met its responsibilities under the case plan by offering mother a range of appropriate services throughout the pendency of the CHIPS and permanency proceedings. *See In re Welfare of Children of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008) (rejecting claim based on a procedural defect when a parent in termination-of-parental-rights case "failed to demonstrate prejudice" and any error was harmless).

Second, the record supports the district court's finding that the county made reasonable efforts to correct the problems that led to the child's out-of-home placement. Mother's chemical abuse and domestic abuse between the parents prompted the child's removal from the home. The 2018 case plan identified five areas of concern that mother needed to address before the child could return home: "Chemical Health," "Mental Health," "Basic Needs/Housing," "Employment," and "Parenting Skills." The plan specified services the county would provide in those areas, including chemical and mental-health assessments and treatment, and the county provided them. Contrary to mother's assertion, the county placed her in the care of a psychiatrist for medication management. But she refused to participate in recommended mental-health therapy, telling her social worker that "[s]he felt that those needs were being met" through her chemical-dependency treatment. Mother points to the county's purported failure to offer employment services, but the record demonstrates that she was unable to maintain employment while using drugs.

And the fact the county may not have offered mother a particular service (such as helping mother regain her driver's license) does not make its overall efforts unreasonable. *See In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996) (stating that the "nature of the services which constitute 'reasonable efforts' depends on the problem presented").

Third, the record defeats mother's argument that she complied with the case plan. Mother began outpatient chemical-dependency treatment in August 2018 but left without completing the program. She did not pursue treatment again until January 2019, and was discharged after four weeks. She finally began inpatient treatment on August 29, which she successfully completed the day of the October termination trial. At that time, she was scheduled for six to 18 months of required aftercare. And the sober-living facility she selected does not allow the child to live with her. In short, despite more than 17 months of county involvement and support, and myriad chemical dependency, mental health, and other services, mother had not demonstrated a sustained period of sobriety—the most important condition that required correction. On this record, we conclude that the district court's findings of fact are not clearly erroneous. *See S.E.P.*, 744 N.W.2d at 386 (affirming termination of a parent's rights when substantial evidence supported the district court's determination that the parent failed to comply with explicit provisions of the placement plan).

We acknowledge mother's love for the child and her expressed willingness to continue her substance-abuse treatment and become a capable parent. But mother's timeline is uncertain. This young child's unique challenges and need for permanency are

not. We discern no abuse of discretion by the district court in terminating mother's parental rights.

Affirmed.