STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0002

In the Matter of the Welfare of the Child of:
B. M. M. and K. J. D., Parents.

Filed June 29, 2020
Affirmed
Bratvold, Judge

Pine County District Court
File No. 58-JV-19-125

Anne M. Carlson, Anne M. Carlson Law Office, PLLC, St. Paul, Minnesota (for appellant mother B.M.M.)

Michael Keith Pepin, Pine Springs, Minnesota (for respondent father K.J.D.)

Reese Frederickson, Pine County Attorney, Sydney Silko, Assistant County Attorney, Pine City, Minnesota (for respondent Pine County Health and Human Services)

Jim Clune, Pine City, Minnesota (guardian ad litem)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Bjorkman, Judge.

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

BRATVOLD, Judge

Appellant B.M.M. (mother) challenges the district court's order terminating her parental rights and raises six issues, arguing that the district court erred by determining (1) facts in this termination proceeding based on an earlier child-in-need-of-protection-or-services (CHIPS) case in a different county; (2) clear and

convincing evidence established that mother had neglected her parental duties; (3) clear and convincing evidence established that mother was palpably unfit to parent and the county's reasonable efforts had failed to correct conditions that led to out-of-home placement; (4) respondent Pine County Health and Human Services (Pine County) was not statutorily required to make reasonable efforts towards reunification; (5) "expiration of [permanency] timelines is a sufficient basis to terminate parental rights"; and (6) termination of mother's parental rights was in the child's best interests.

We conclude that the district court did not abuse its discretion in taking judicial notice of the prior CHIPS proceedings, and that the record supports the district court's determination that mother neglected her parental duties; therefore, we do not consider the third issue, which involves two alternative grounds for termination. While the district court erred in its termination order when it stated that Pine County was not statutorily required to provide reasonable reunification efforts, the error was harmless because the district court also determined that the county's reunification efforts were reasonable. We reject mother's contention that the district court found "expiration of the [permanency] timelines" was a "sufficient basis" for termination. Finally, we conclude that the district court did not abuse its discretion in determining that termination was in the best interests of the child. Thus, we affirm.

FACTS

Mother and respondent K.J.D. (father)[1] have one child, M.M.D. (child), born in June 2015. Father and mother executed a recognition of parentage. Todd County began a CHIPS case involving mother and the child in 2016. Pine County filed an expedited petition to terminate parental rights (TPR) on September 30, 2019. These facts summarize the district court's order and the evidence presented at a two-day TPR trial.

Todd County Case

In early February 2016, Washington County Child Protection reported to Todd County that mother, father, and the child were homeless, living in their vehicle, selling drugs, and that father had abused mother. A Todd County social worker investigated the report and spoke with mother, who admitted to using methamphetamine. Todd County and mother prepared and signed a case plan (first case plan) requiring that mother cooperate with random urine testing, attend public health and parenting education, cooperate with well-child checkups, and obtain mental-health services. Todd County closed the case.

On August 1, Todd County deputies conducted a welfare check based on reports that the one-year-old child was in mother's uncle's care while mother was on a "meth binge." Deputies found the child supervised by a nine-year old and 13-year old, in a "cluttered, small camper with no space to walk, that was dirty with garbage and dirt and did not have a bath, shower, or enough beds." Todd County removed the child on a 72-hour law-enforcement hold.

[1] Father did not appeal the district court's termination order, and his rights are not at issue in this appeal.

A Todd County social worker, Kali Pesta, spoke with mother, who said she was "searching for a home" and it was "hard to have [the child] with when she had to do things." (Alteration in district court's order). On August 3, Todd County filed a CHIPS petition and placed the child in non-relative foster care. The child tested positive for methamphetamine. Mother admitted to the petition allegations, the district court adjudicated the child CHIPS, and the district court ordered mother to comply with a case plan.

Todd County and mother prepared and signed another case plan (second case plan), requiring mother to complete a chemical-use assessment, an adult mental-health assessment, and a parental-capacity assessment, and follow all recommendations. The second case plan also required mother to obtain appropriate housing, find employment, work towards a general-equivalency degree (GED), cooperate with urine testing, and ensure the child attends medical, therapeutic, and education appointments.

At the TPR trial, Pesta testified that mother's progress on her case plan was "minimal" at first because she was "inconsistent," did not follow through, and failed to show up for several urine tests. Pesta described mother as "mostly . . . cordial" but not always "forthcoming with information or truthful with information," and she was concerned for mother's safety when she did not hear from her for a long time.

In October 2016, mother completed a parenting-capacity evaluation, which recommended that she engage in individual therapy to address adult-attachment issues and unresolved grief, complete parenting education, attend chemical-dependency treatment, attend anger management, complete her GED, find employment, find safe and stable housing, and work on her case plan.

The next month, police arrested mother and the state charged her with first-degree possession of controlled substances. Mother was released, attended therapy, and completed a chemical-use assessment that recommended inpatient treatment. Mother disagreed with the recommendation and completed a second chemical-use assessment, which also recommended inpatient treatment.

On December 12, mother entered inpatient treatment at Recovering Hope in Mora. While there, mother participated in therapy and parenting education, worked on her GED, and stabilized her mental health. Pesta transported the child to the treatment facility one to two times per week for visits with mother. Pesta testified that mother tested positive for controlled substances roughly five to ten times during 2016, but did not test positive after she began inpatient treatment.

On January 10, 2017, the Todd County District Court granted a six-month extension of the permanency timelines. The child had her first overnight visit with mother for two nights in early February and, by mid-February, began a trial home visit with mother at the treatment facility. Pesta testified that it "took a long time to get [mother] in a place where it would be safe for [child] to have a trial home visit," and agreed the treatment facility was "a controlled environment with professionals." Pesta testified that "[t]ransporting [child] back and forth to visit [mother] was hard on the child," as seen in the child's behavior, such as the child "pinching herself, kicking others," and "having a hard time."

Around this time, Todd County updated mother's second case plan (third case plan) to add that mother must show she can meet the child's needs and keep the child safe, complete a chemical-dependency treatment program and follow aftercare

recommendations, establish a healthy support system, and have no contact with father unless they complete couples' therapy or contact is court-ordered. In March, mother obtained a part-time job and purchased a car. The inpatient treatment program successfully discharged mother on July 11, 2017.

On July 25, the district court returned custody of the child to mother under Todd County supervision. In total, the child was in court-ordered out-of-home placement from August 4, 2016, to July 25, 2017, totaling 355 days. At this point, the child had been in mother's care while under supervision from February to July 2017.

Pesta had referred mother for housing, and Todd County paid mother's first month's rent and damage deposit on an apartment. Mother lived in this apartment for the next 14 months with the child. Mother also began working full-time. Pesta advised mother to sign up for Medical Assistance, Early Childhood Family Education, and outpatient therapy to "strengthen the relationship between Mother and the child" and to "help develop a support system." Pesta was concerned that mother's "family support system wasn't as strong" and "seemed to center around [father] and [father]'s family."

In late September, mother told Pesta that she lost her job because a background check showed her conviction for first-degree possession of controlled substances. Mother continued to live in the apartment and her drug testing remained negative. On October 27, 2017, the court closed mother's CHIPS file.[2]

[2] At the TPR trial, Pesta testified that when Todd County closed mother's file, her "mental health was kind of declining," but that mother "was going to be able to do it or she wasn't," and "there was nothing that [Pesta] hadn't already offered her or that she didn't have access to on her own to be able to utilize."

Pine County Case

In September 2018, mother and child moved to Hinckley to live with mother's uncle.[3] On December 6, 2018, Anoka County reported to Pine County that, a few days before, father had been "hallucinating and out of control" and had locked himself and the child in the house while mother was outside. Pine County opened a family assessment and assigned social worker Adriane Wimmer. Mother told Wimmer that she was on probation, had been sober for two years, and that the child did not have unsupervised contact with father.

Roughly three weeks later, on December 24, an individual called Pine County and reported that mother and her boyfriend, B.M., had left the child in the caller's care. According to the caller, mother and her boyfriend were "acting erratically, bumping into walls, and appeared to be under the influence." Eventually, the child's paternal grandparents picked her up. Mother and B.M. had been arrested for mail theft.

On December 26, Wimmer called mother and left a voicemail. Mother did not return the call until January 10, 2019; she told Wimmer that she was "hanging out with the wrong people at the wrong time." Mother stated she was not using drugs and was meeting with her probation officer regularly. In February, mother told Wimmer that the child had started school and was "enjoying it." Wimmer and mother discussed potential employment options, voluntary services available to mother, and agreed to close the family assessment.

[3] This is not the same uncle involved in events leading to the Todd County CHIPS case.

In late March, Hennepin County Child Protective Services received a report that the child was residing with relatives, with mother sometimes taking the child for a short time and then returning her. Mother left the child with father for three days, and upon her return to mother, the child "cried frequently, was dysregulated, and seemed guarded around men." Hennepin County opened a family assessment. Mother told a Hennepin County social worker that "she had been sober since completing inpatient treatment and was attending AA meetings." Hennepin County closed the assessment in May.

On June 23, 2019, Pine County deputies were called to a domestic incident between mother and father. The child, then four years old, "was crying and upset." Mother told deputies that father had been "slapping her across the face and 'smothering' her because he was angry about mother having recent contact with her ex-boyfriend," and that "he had abused her several times." Police arrested father for felony domestic assault by strangulation, but later the state dismissed the charges. At the TPR trial, mother testified that she told the prosecution that she "didn't want to testify" because she was "terrified" of father and had witnessed him "stab his best friend" in the past.

Pine County opened a second assessment. Wimmer again worked with mother. Mother told Wimmer that she was "couch-hopping," and that the child lived with a relative under a delegation of parental authority (DOPA), executed June 24, 2019, the day after the domestic incident with father. Wimmer closed the assessment.

Mother lost her job in August 2019 and later testified that "it was hard to be homeless and have a job and get to work." At about the same time, mother ended the DOPA

and began caring for the child. Mother later testified that, at this point, she had been sober for two years, but her boyfriend B.M. introduced her to heroin, and she relapsed.

On September 10, 2019, police officers responded to a discount store in Pine City on a report of a male "shoot[ing] heroin" in the parking lot. Police officers found B.M., mother, and the child in a vehicle along with 11 hypodermic needles close to the child. Some needles contained visible residue and all needles were unsecured. The child was "crying and yelling that she 'did not want mom to go to jail.'" The child also asked an officer if he was there when "daddy hit mommy." Mother told officers she had used heroin that day and promised she would call her probation officer to begin treatment. Police arrested mother and B.M. Mother tested positive for heroin and fentanyl and was charged with child endangerment.

Pine County opened an investigation and Wimmer visited mother in jail two days after the discount-store incident. Mother stated that she had been using drugs for two or three weeks, had been homeless until she moved in with her uncle on September 1, was not employed, and had not enrolled the child in preschool or an early childhood program.

Pine County filed an expedited petition to terminate parental rights on September 30, 2019. Mother was the sole custodial parent. The petition alleged, in part, that termination of mother's parental rights was necessary because mother had "substantially, continuously, or repeatedly refused or neglected to comply with her parental duties" under Minn. Stat. § 260C.301, subd. 1(b)(2) (2018), that mother is "palpably unfit" to be a parent under Minn. Stat. § 260C.301, subd. 1(b)(4) (2018), and that "reasonable

efforts" had "failed to correct the conditions leading to the child's [out-of-home] placement" under Minn. Stat. § 260C.301, subd. 1(b)(5) (2018).[4]

On the same day, the district court ordered the child into emergency protective care and appointed a guardian ad litem (GAL). Mother voluntarily enrolled herself in inpatient treatment at Recovering Hope. Also on the same day, Pine County moved to be relieved of its duty to provide reunification efforts under Minn. Stat. § 260.012(a)(7) (2018), arguing that providing reunification services was futile given that the child had been in out-of-home placement for 355 days. Mother objected and asked the district court to extend the permanency timelines under Minn. Stat. § 260C.503, subd. 3(b)(2) (2018). Two days later, Pine County assigned Lori Danielson as mother's case manager.

After the October 14 admit-deny hearing, the district court issued a written order (admit-deny hearing order) in which it determined that "the Petition establishes a prima facie case for an expedited permanency proceeding." But the district court also stated it "will require the Agency to offer a case plan and put forth reasonable efforts towards reunification pending trial on the expedited petition." The district court found that the child had been in court-ordered out-of-home placement for 355 days from August 2016 to July 2017 in the Todd County case.

On October 29, the Pine County case manager and mother signed a case plan (fourth case plan), requiring mother to complete inpatient treatment, follow aftercare instructions,

[4] In November 2019, Pine County filed an amended expedited petition that removed the allegation that termination was appropriate based on a parent's failure financially to support a child under Minn. Stat. § 260C.301, subd. 1(b)(3).

and have negative drug tests. It also required mother to complete a diagnostic assessment and follow the recommendations, have regular visits with the child, engage in the child's therapy and schooling, find safe housing, and provide the financial means to support her and the child's needs. In its appellate brief, Pine County concedes that the case plan was not "ordered by the court."

TPR trial and decision

On the first day of trial, November 26, 2019, the parties stipulated to the admission of 55 exhibits, mother objected to another exhibit, and the district court received 56 exhibits from the county.[5] Mother offered, and the district court received, three progress notes by mother's drug counselor intern at Recovery Hope (exhibits 102, 103, and 104). The court heard testimony from Todd County social worker Pesta, mother, Pine County social worker Wimmer, Pine County case manager Danielson, and the GAL. Mother offered her own testimony and testimony from her therapist at Recovery Hope and her drug counselor intern.

Mother testified that she began using alcohol and marijuana when she was 16 years old. When she was 18 years old, her mother passed away and she "tried meth for the first time." Mother testified that she has also tried cocaine, and used heroin "every day until [she] got arrested" in September 2019. Mother testified about her five-year "on again/off

[5] Father did not appear, and Pine County moved the district court to find father in default. *See* Minn. R. Juv. Prot. P. 18. The district court discharged father's court-appointed attorney, but reserved its determination on default until after Pine County presented its evidence. In its termination order, the district court terminated father's parental rights by default.

again" relationship with father, stating that he hit her "numerous times," and admitted that the child witnessed the June 2019 domestic assault. Mother also testified that she has paid father's bail. Mother testified that she was in a romantic relationship with B.M. for roughly nine months, but has not spoken to him since the discount-store arrest. Mother testified that B.M. uses illegal drugs and was not a good influence on her or her daughter, but denied that B.M. had ever hit her. Mother testified that she has "codependency issues" and is "addressing those in treatment." Mother also testified that she expected to complete her inpatient program on January 9, 2020.

Mother's therapist at Recovery Hope testified that she began working with mother in December 2016 during mother's first inpatient treatment, and kept doing so in September 2019. She testified that mother has been diagnosed with "[m]ajor depressive disorder, generalized anxiety disorder, and PTSD." She also testified that mother is "very attentive" and "very involved" with the child, and agreed that mother is "trying to improve her parenting ability." Mother's therapist testified that mother needs to increase her "positive support system," work on "addressing her trauma," and improve her "self-worth." The therapist testified that mother is currently in "eye movement desensitization reprocessing" (EMDR) therapy. While mother's therapist does not provide EMDR, she regularly communicates with the treating EMDR therapist. She testified that EMDR therapy is aimed at individuals like mother, who are diagnosed with PTSD, and that mother had completed four sessions. She testified that mother is working on "most to all" of her past trauma and that, compared to her first treatment, mother "seems much more motivated

and insightful, and she brings issues to the session without me having to pull them from her." She also testified that mother's prognosis was "really good."

A Recovery Hope drug counselor intern testified that she counsels mother on her sobriety and her treatment plan. She testified that mother's treatment plan goals are to abstain from mood-altering chemicals, address health concerns, become educated about the effects of chemicals on mental health, articulate "a desire to change" and follow through on behaviors that show that desire, and develop "relapse prevention skills" and a "sober support network." She testified that mother is "motivated" and "compliant" and is "taking necessary steps to build a support system and find a healthy recovery environment."

On December 27, 2019, the district court issued written findings of fact, conclusions of law, and order terminating mother's parental rights (termination order) in which the district court made 135 findings of fact and four conclusions of law spanning 33 pages. Most of the relevant testimony is summarized above.

In its termination order, the district court credited Danielson's testimony that mother had "maintained consistent contact with the child throughout the Pine County case" because mother's uncle picks her up from treatment and brings her to his home for visits with the child four to five times a week.

The district court also found the GAL's testimony "credible and instructive." The GAL testified he was concerned about mother's "ability to maintain stability in the future." The GAL testified about the child's needs for "a stable, safe, healthy, drug-free, and violence-free home." The GAL also testified that he'd "like to see more time for [mother] and her child," but that he was unsure if that "is able to happen now because of the

timelines." Finally, the GAL testified that his "position is a termination is needed at this time."

The district court determined that Pine County showed by clear and convincing evidence that mother "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent-child relationship," that mother was "palpably unfit" to be a party to the parent and child relationship, and that Todd County's efforts "failed to correct the conditions leading to the child's [out-of-home] placement." The district court also determined Pine County's reunification efforts were reasonable and that termination was "in [the] child's best interests."

Mother appeals.

D E C I S I O N

When reviewing a decision to terminate parental rights, we review the district court's factual findings for clear error, but "we review its determination of whether a particular statutory basis for involuntarily terminating parental rights 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 either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of S.R.K.*, 911 N.W.2d 821, 830 (Minn. 2018) (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).

A "natural parent" is presumed to be "a fit and suitable person to be entrusted with the care of a child." *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980). Parental rights are terminated only for "grave and weighty reasons." *In re Welfare of Children of B.M.*, 845 N.W.2d 558, 563 (Minn. App. 2014) (quotation omitted). This court will affirm an involuntary termination if "at least one statutory ground for termination is supported by clear and convincing evidence," the county makes reasonable efforts to reunite the parent and child, 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). The standard of proof for proceedings for termination of parental rights is "clear and convincing evidence." Minn. R. Juv. Prot. P. 58.03, subd. 2(a) (articulating standard of proof for non-Indian-child termination-of-parental-rights matter); *see also In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001) (stating appellate courts "study the record carefully to determine whether the evidence is clear and convincing").[6]

I. The district court did not abuse its discretion by taking judicial notice of the Todd County CHIPS case.

Mother argues that the district court erred when it terminated her parental rights based "on the facts of the Todd County petition because the Todd County district court had previously terminated jurisdiction over those facts." Before the TPR trial, Pine County moved for the district court to take judicial notice of the Todd County CHIPS case. This court reviews a district court's decision to take judicial notice for abuse of discretion.

[6] The Minnesota Rules of Juvenile Protection Procedure were amended effective September 1, 2019. *See Order Promulgating Amendments to the Rules of Juvenile Protection Procedure*, No. ADM10-8041 (Minn. Aug. 30, 2019).

Fed. Home Loan Mortg. Corp. v. Mitchell, 862 N.W.2d 67, 71 (Minn. App. 2015) ("A district court's decision whether to take judicial notice of proffered facts is an evidentiary ruling that we review only for abuse of discretion."), *review denied* (Minn. June 30, 2015).

The Minnesota Rules of Juvenile Protection Procedure permit district courts to take judicial notice of previous child protection proceedings. Minn. R. Juv. Prot. P. 3.02, subd. 3, provides that the district court "upon its own motion or the motion of any party or the county attorney, may take judicial notice only of findings of fact and court orders in the juvenile protection court file and in any other proceeding in any other court file involving the child or the child's parent." This court has recognized that a district court may take judicial notice of "court records and files from prior adjudicative proceedings." *See In re Welfare of D.J.N.*, 568 N.W.2d 170, 174 (Minn. App. 1997).

Mother relies on *In re Welfare of White*, 363 N.W.2d 79, 80 (Minn. App. 1985), to argue that a district court cannot base "its termination orders on incidents that occurred under a previous petition where jurisdiction had been terminated." In *White*, we stated that the district court "should not have considered the facts involved" in a prior neglect and dependency proceeding, in which the district court terminated its jurisdiction roughly seven years earlier. *Id.* at 80-81.

This TPR decision is unlike the one reviewed in *White*. While the district court considered the time the child had spent out of home in the Todd County CHIPS case, it did not base its termination decision on specific events or facts from the CHIPS case, as in *White*. *Id.* In analyzing the statutory grounds for termination and the child's best interests, the district court focused on the child's current situation, relied on mother's conduct after

the Todd County case closed, and specifically determined that mother's current drug use is interfering with her ability to parent and care for the child. The district court did not abuse its discretion by taking judicial notice of the Todd County case.

II. The district court did not abuse its discretion by determining that mother neglected her parental duties.

To satisfy the statutory basis that mother neglected her parental duties, Pine County must show by clear and convincing evidence "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." Minn. Stat. § 260C.301, subd. 1(b)(2). Parental duties include, but are not limited to, "providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development." *Id.* Parental duties also include a duty to "protect and care for the child." *J.R.B.*, 805 N.W.2d at 902 (quotation omitted). We have held that the statutory standard for parental neglect is satisfied when a parent's continued substance abuse has caused repeated failures to perform parental duties. *See In re Welfare of the Child of A.M.C.*, 920 N.W.2d 648, 655 (Minn. App. 2018).

Mother begins by arguing that the district court did not make the necessary findings to support its determination that she repeatedly neglected to perform parental duties. We disagree. The district court made findings about mother's failure to keep the child safe by exposing the child to criminal activity including drug use, drug paraphernalia, and domestic violence, and mother's failure to arrange the child's therapy or preschool, mother's inability to maintain stable housing, and mother's drug use. These findings are supported

by record evidence. The child has witnessed domestic violence between mother and father. Law enforcement most recently found the child in a vehicle that contained used heroin needles and where mother's ex-boyfriend had recently used heroin. At the time of her September arrest, mother had not enrolled the child in preschool, was homeless, unemployed, and had been using heroin daily for two or three weeks.

Mother, more specifically, argues that the district court made four clearly erroneous factual findings. We consider each claim in turn.

First, mother challenges finding 85, which states, in part, "Mother continues to engage in unhealthy relationships that involve domestic abuse and criminal behavior." Mother argues the finding "does not relate to conditions that existed at the time of the trial." We disagree. Record evidence shows that mother's relationships with father and B.M. ended within five months of the TPR trial, and both relationships involved criminal behavior, including, but not limited to, drug use. Mother's relationship with father also included domestic violence; she testified that father had hit her "numerous times" and that the child had been present during the domestic assault in June 2019. Mother's relationship with father ended on June 23, 2019, and mother testified that she had not spoken with father until she saw him on Halloween, less than a month before the TPR trial. Mother testified that she had not spoken to B.M. since the discount-store incident, and testified that he was not a good influence on her or the child, and that he introduced mother to heroin. Mother also testified that she has "codependency issues," and is "addressing those in treatment." Mother's pattern of unhealthy relationships have exposed the child to domestic abuse, drug use, and other criminal behavior.

Mother challenges this finding, in part, because "Mother's relationship choices [were] not cited as a concern in any of the case plans offered to Mother." Mother is correct that her fourth case plan does not explicitly refer to unhealthy relationships. But the district court's finding focused on the hazards to which mother's relationships have exposed her and the child, and which a parent is duty-bound to protect her child from experiencing. And mother's fourth case plan included the condition that she complete and follow the recommendations of a diagnostic assessment. Danielson testified that a diagnostic assessment would include domestic-abuse concerns. Thus, the district court's finding is amply supported by record evidence.

Second, mother contests finding 86, in which the district court found that mother decided to end her DOPA to her relative "despite [mother] being ill-prepared to care for the child." Mother argues this finding is clearly erroneous because no record evidence proves that her relative was willing and able to continue to care for the child. Mother's argument fails to recognize that the district court is not criticizing ending the DOPA to that particular relative, but it is concerned that mother then brought the child into mother's unstable and dangerous lifestyle. Mother testified that she ended the DOPA because her relative could no longer care for child. Even so, the record shows that, when the DOPA ended, mother was homeless, unemployed, and had relapsed to heroin use. Thus, this finding is based on record evidence and not clearly erroneous.

Third, mother challenges finding 88, which states "when the Todd County file closed and Mother was no longer under court supervision, she again began a relationship with Father despite Father's failure to complete anger management or participate in

couples' counseling as recommended by Todd County's case plan." Mother argues that "the record does not establish that Mother's relationship with Father has a causal link to Mother's failure to provide the child with anything." We disagree. The record shows that the child was present during domestic abuse by father against mother in June 2019. Because mother's relationship with father has exposed the child to domestic abuse, the district court's finding is supported by record evidence.

Lastly, mother contests finding 89, which states that mother's "history indicates she is unable to sustain sobriety and a stable home environment on her own," that mother "may eventually be able to maintain sobriety, work through her trauma history, find employment, secure stable housing and develop a support network," but that mother "will not be able to do those things within the foreseeable future." Mother argues this finding goes against the record, but we disagree. Record evidence shows that mother has received long-term inpatient treatment twice in three years and she lacked stable housing or employment at the time of her September 2019 arrest. It is true that mother lived in her own apartment for 14 months, and received minimal social services during this time. But both Pine County and Hennepin County social services became briefly involved on separate occasions after the Todd County CHIPs case closed. Considering the child's short four-year life span and mother's inability to maintain employment, housing, and sobriety during most of the child's life, finding 89 is not clearly erroneous.

III. Palpable unfitness and failure to correct conditions

Mother also contests the district court's determinations that Pine County showed by clear and convincing evidence that mother is palpably unfit to parent under Minn. Stat.

§ 260C.301, subd. 1(b)(4), and that Todd County's reasonable efforts failed to correct the conditions that supported the petition under Minn. Stat. § 260C.301, subd. 1(b)(5).

Because Pine County has proved by clear and convincing evidence that mother has repeatedly neglected her parental duties, we need not decide whether the district court abused its discretion when it determined that Pine County proved two other statutory bases supporting termination. To be clear, we do not consider mother's argument that the district court erred in applying the statutory presumption that reasonable reunification efforts had failed to correct conditions leading to out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5)(i)-(iv) (providing presumption may apply if four elements are present). We are troubled that the district court's analysis appears to have entertained the presumption that even though the first and second elements were not present, but we do not consider the issue in detail because Pine County proved another statutory ground for termination by clear and convincing evidence. *See S.E.P.*, 744 N.W.2d at 385 ("We affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child.").

IV. The district court erred when it stated that Pine County was not statutorily required to make reasonable efforts towards reunification but the error was harmless.

Mother argues that the district court erred in stating that Pine County was not statutorily required to provide reasonable reunification efforts and mother and the county entered into a "voluntary case plan," disputing findings of fact 61 and 78. Pine County argues that the district court did not err, but if it did, any error is harmless because the

district court "specifically addressed the statutory requirements and reasonableness of [Pine] county's reunification efforts."

A county must make reasonable efforts to reunify the family. *See* Minn. Stat. § 260.012(a) (2018). A county may be relieved of its obligation to provide reasonable reunification efforts if the district court determines that the county has shown a prima face showing that one of seven conditions exist; one of these conditions is futility. *See* Minn. Stat. § 260.012(a)(1)-(7); *see also In re Children of T.R.*, 750 N.W.2d 656, 666 (Minn. 2008) (stating a county must provide services until the district court determines "that reasonable efforts at reunification are no longer required").

To be reasonable, a county's reunification efforts must be (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." *See* Minn. Stat. § 260.012(h) (2018). "Whether the county has met its duty of reasonable efforts requires consideration of the length of the time the county was involved and the quality of effort given." *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990).

Pine County moved the district court to relieve it of reasonable efforts before the admit-deny hearing. In doing so, the county cited Minn. Stat. § 260.012(a)(7), and argued that "the provision of services or further services for the purposes of reunification is futile and therefore unreasonable under the circumstances," because the child had been in out-of-home placement for approximately one year. Mother opposed and sought an extension of the permanency timelines, relying on Minn. Stat. § 260C.503, subd 3(b)(2),

which allows a district court to extend timelines for six months when it is in the best interests of the child.[7]

In its admit-deny hearing order, the district court recognized the child had accumulated 355 days in court-ordered out-of-home placement over the past several years and granted the county's motion to expedite the permanency proceeding. But the district court did not find futility or relieve the county of its duty to provide reasonable reunification efforts. Rather, the district court's order explicitly required Pine County "to offer a case plan and put forth reasonable efforts towards reunification pending trial on the expedited petition."

In its termination order, however, the district court determined in finding 78, "The services offered by Pine County [] were not statutorily required but were ordered by this

[7] In her brief to this court, mother does not challenge the district court's decision to deny her extension request but argues that the district court's decision to expedite the proceedings was erroneous. It is true that the district court failed to identify the grounds for expediting and, in its order, appears to have confused the 12-month timeline for permanency with the 22-month out-of-home timeline for the first element of futility. *See* Minn. Stat. § 260C.503, subds. 1(a), 3(b)(2) (2018) (providing permanency proceedings must start "not later than 12 months after child is placed in foster care" and time is calculated within past five years); Minn. Stat. § 260C.301, subd. 1(b)(5)(i) (providing reasonable efforts may be presumed to have failed if, among other things, child has been in out-of-home placement for 12 months cumulatively within last 22 months). Even if we assume error, mother does not articulate how this error affected the termination decision or entitled her to relief. For that reason, we do not consider this argument. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) (stating that, to obtain relief on appeal, an appellant must show both error by the district court and prejudice to the appellant arising from that error); *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 171 (Minn. App. 2005) (applying *Midway* in an appeal of a termination-of-parental-rights case); *D.J.N.*, 568 N.W.2d at 175-76 (stating that, although "[i]t was a mistake for the trial court . . . to take judicial notice of the entire [previous juvenile-protection] files," because that appellant failed to show prejudice, there was no reversible error.).

Court." A similar statement is reflected in finding 61. We agree with mother that the district court erred in stating that the county was not "statutorily required" to provide services. Under section 260.012(a), the county must provide services unless relieved by the district court. The district court never relieved Pine County of its obligation to provide reasonable reunification efforts for this family. And the fact that the child was in out-of-home placement for approximately one year does not, by itself, excuse the county's obligation to provide reasonable reunification efforts.

We reject the county's argument that this court should imply or infer a finding of futility here. During the TPR trial, the district court made comments suggesting that it denied the county's motion to be relieved of reasonable efforts. Perhaps even more importantly, case manager Danielson testified that the district court had denied Pine County's motion to be relieved of reasonable efforts, and that the county was, in fact, required to provide reasonable reunification efforts. When asked about the motion, Danielson responded, "My understanding is that the Court did not—did not order that at that time." Danielson testified that the district court ordered the county to create an out-of-home placement plan. Danielson also testified that because mother was undergoing inpatient treatment "many of [mother's] needs were already being met by that facility."

Although the district court's termination order erroneously stated that Pine County was not statutorily required to make reasonable efforts, it still identified the services provided by Pine County and determined the county's efforts satisfied the statutory requirements of reasonableness under section 260.012(h). The district court recognized that

from the end of September until the TPR trial in late November, Pine County provided case-management services and a case plan, coordinated foster-case placement, arranged visitation, provided gas cards, coordinated family therapy, completed the child's medical-assistance paperwork, did a relative search, and communicated with many individuals including mother's inpatient treatment center, relatives, the child's therapist, and the GAL.[8]

In sum, although the district court erred in its termination order when it stated that Pine County was not statutorily required to provide reunification efforts, this error did not prejudice mother because the district court also determined that Pine County provided reasonable reunification efforts. *See In re Welfare of Children of D.F.*, 752 N.W.2d 88, 97-98 (Minn. App. 2008) (recognizing that a termination of parental rights will not be reversed for a harmless error).

V. The district court did not err in its discussion of the permanency timelines.

Minn. Stat. § 260C.503, subd. 1 (2018) provides that the district court "shall commence proceedings to determine the permanent status of a child by holding the admit-deny hearing required under section 260C.507 not later than 12 months after the

[8] We are not persuaded by mother's argument that the district court erred in its reasonable-efforts determination because the county failed to provide a trial home visit. While it is true that Pine County refused to allow mother a trial home visit while she was receiving inpatient treatment, Pine County allowed extended visitation between mother and child. They were together about four to five times each week for several hours at a time.

child is placed in foster care." [9] The 12 months is calculated by totaling all time within the past five years that the child has been placed in foster care. Minn. Stat. § 260C.503, subd. 3(b)(2). Time spent on trial home visits counts towards the 12-month calculation. *Id.*, subd. 3(a).

Mother argues that the district court failed to recognize that she will be able to parent in the foreseeable future because the court mistakenly focused on the time the child had been in out-of-home placement and its "analysis was limited to the time period prior to removal with no consideration for the evidence Mother presented or her compliance with the case plan." Mother specifically cites finding 135, which found that the legislature had "passed laws related to permanency timelines for circumstances such as this."

We disagree with mother's characterization of the district court's termination decision as relying on the expiration of the permanency timelines to conclude that termination was appropriate. In its termination order, the district court found that "[i]t is undisputed Mother is making progress on the case plan," and has completed a diagnostic assessment. The district court summarized the testimony from mother's therapist and drug-counselor intern at Recovery Hope, and found that mother "has not tested positive for controlled substances since entering treatment," is in therapy, and has "reached the phase of treatment where she is permitted community passes." The district court also recognized

[9] The legislature amended Minn. Stat. § 260C.503, subd. 1, in 2019. 2019 Minn. Laws 1st Spec. Sess. ch. 9, art. 1, § 33. The 2018 version of the statute was in effect at the time of the district court's order terminating mother's parental rights. The amendment does not change the substance of the applicable subdivision; it only adds another subsection and renumbers the subdivision paragraphs.

that mother is expected to complete her inpatient treatment program in January 2020, but found that she has not established housing or employment.

The district court determined that mother's neglect of her parental duties "will continue for a prolonged, indeterminate period" because, although mother "may be able to temporarily correct the conditions" in the termination petition when she is "in a controlled environment with numerous supports and court-ordered intervention," her "history indicates she is unable to sustain sobriety and a stable home environment." Thus, the district court did not improperly rely on the child's extended stay in out-of-home placement to determine grounds for termination. Rather, it considered mother's past and present neglect of her parental duties and her inability to parent the child before finding that mother would be unable to parent in the foreseeable future.

VI. The district court did not abuse it discretion in determining that the child's best interests support termination of mother's parental rights.

Once a district court determines that the county has proved at least one statutory ground for termination, it must consider whether termination is in the child's best interests. *See* Minn. Stat. § 260C.301, subds. 1(b), 7 (2018); *In re Welfare of the Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009) ("[T]he district court must consider the child's best interests and explain why termination is in the best interests of the child."). The district court must consider (1) the child's interest in preserving the parent-child relationship, (2) the parent's interest in preserving the relationship, and (3) "any competing interests of the child." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012). "Competing interests include health considerations, a stable environment, and the child's

preference." *Id.* Ultimately, "the best interests of the child must be the paramount consideration." Minn. Stat § 260C.301, subd. 7. "Because the best-interests analysis involves credibility determinations and is generally not susceptible to an appellate court's global review of a record, we give considerable deference to the district court's findings." *J.K.T.*, 814 N.W.2d at 92 (quotation omitted).

Mother argues that the district court "identifies the correct factors," but fails to explain "how the child's interests are served by a termination." We disagree. The district court thoroughly discussed the best-interest factors, and how the child's best interests were served by termination. The district court acknowledged that mother and child "both have an interest in maintaining their relationship," but that "the child's need for stability and safety" outweighed those interests. The district court considered competing interests when it found that the child "was not up to date on her immunizations or routine medical checkups" when she was removed by the county, and that mother cannot "provide safety, stability and security long-term." *See J.K.T.*, 814 N.W.2d at 92 (stating competing interests include "health considerations, a stable environment, and the child's preference"). The district court considered the child's instability, discussing the 429 days the child had been in out-of-home placement, mother's "chaotic and unstable lifestyle," and mother's chemical abuse and how it had affected her ability to parent the child. Lastly, the district court was concerned that the "child is traumatized by removal from her mother and placement out of home," and that the child "is at risk of ongoing trauma and endangerment."

The district court's analysis correctly focused on the child's interest in her relationship with the mother and the competing interests of the child. While the district court did not as thoroughly discuss mother's interest in her relationship with the child, the district court determined that mother has an interest in maintaining the relationship and that the child's safety outweighed mother's interest.

Mother also argues that the district court made no findings to support "the implied premise that following a TPR, the child's life will be more stable and that there will be a permanent placement for this child in a drug-free, violence-free home." It is true that Pine County had not located a permanent placement for the child at the time of the TPR trial. But the statute requires that the district court evaluate the child's interests in preserving the parent-child relationship as well as the child's competing interests. *See* Minn. Stat. § 260C.301, subd. 7. And here, the district court determined that the child's best interests were served by terminating mother's parental rights. The district court's analysis of the best-interest factors was not an abuse of discretion.

Affirmed.