STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0333

In the Matter of the Welfare of the Children of: R. A. D. and B. R. G. Parents.

Filed November 8, 2021
Affirmed
Connolly, Judge

Itasca County District Court
File No. 31-JV-20-1052

Ross Trooien, Grand Rapids, Minnesota (for appellant R.A.D.)

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Kim Allen, Grand Rapids, Minnesota (Guardian ad Litem)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant-mother challenges the termination of her parental rights (TPR), arguing that the district court abused its discretion by admitting certain exhibits under the business-records exception to the hearsay rule, respondent-county failed to make reasonable efforts to reunite the family, and termination is not in the child's best interests. We affirm.

FACTS

Appellant R.A.D. (mother) has three children, a son, J.G., born in December 2002, and two daughters, N.D., born in February 2004, and A.D., born in July 2010.[1] Only A.D. is the subject of this TPR proceeding.

Mother has been involved with respondent Itasca County Health and Human Services (county) since 2013. In 2017, N.D. and A.D. were removed from her home and a child-protection proceeding was initiated. All three of mother's children were found to be and adjudicated children in need of protection or services (CHIPS) due to mother's inability to parent the children, her mental health, and her chemical dependency. A case plan was then developed, and the children were eventually returned to mother's care.

Mother continued to struggle with parenting her children, and by October 2019, mother voluntarily placed J.G. with foster parents in Grand Rapids (Grand Rapids foster parents). A month later, mother voluntarily placed N.D. with the Grand Rapids foster parents. And about the same time, mother engaged in respite services, wherein A.D. spent alternate weekends with her siblings at their foster home in Grand Rapids.

In February 2020, N.D.'s voluntary placement ended, and she returned to her mother's home. Respite services related to A.D. ended at the same time, but J.G. remained with the Grand Rapids foster parents. Shortly thereafter, in March 2020, mother sent a text message to a county social worker, stating: "I want to sign over my girls to the County and relinquish my parental rights. Can I come into the office tomorrow to sign the papers?"

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[1] N.D. and A.D.'s father, B.G., voluntarily terminated his parental rights to his children on October 26, 2020, and is not a party to this appeal.

Mother added: "I don't have the mental or emotional fortitude to be a parent anymore. They deserve better than I've got left in me."

In April 2020, permanency proceedings were initiated to transfer physical and legal custody of A.D. and N.D. to the Grand Rapids foster parents. An informal parenting-time schedule was then arranged between mother and the Grand Rapids foster parents wherein A.D. would continue to have visitation with mother. But this arrangement fell through when mother was inconsistent with her visitation and A.D. began exhibiting uncharacteristically disrespectful behavior upon her return to the foster home after spending time with mother.

On June 23, 2020, the county filed a petition to terminate mother's parental rights to A.D. The petition alleged that mother neglected her parental duties, is palpably unfit to be a party to the parent and child relationship, and that reasonable efforts have not corrected the conditions leading to the child's out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5) (2020). Mother later voluntarily agreed to permanently transfer her custodial rights to N.D. to the Grand Rapids foster parents.

In July 2020, the Grand Rapids foster parents informed the county that they were no longer a permanency option for A.D. At about the same time, mother filed a petition requesting that A.D. be transferred to relatives who lived in the state of Washington. But when that option fell through, the county placed A.D. with relatives in Brainerd (Brainerd foster parents).

Prior to the TPR trial, mother moved to exclude exhibits from the county that detailed the chronology of the county's involvement with mother and her children (the

challenged exhibits), arguing that they did not satisfy the business-records exception to the hearsay rule. *See* Minn. R. Evid. 802-05 (addressing a district court's general ability to admit hearsay evidence in proceedings in that court). The district court concluded that the challenged exhibits were admissible because they are "business records within the meaning of [rule 803], as they are products of a child protection investigation of the [county], created and maintained pursuant to that statutory obligation."

At trial, the social worker testified that mother never asked the county to return A.D. to mother's care, only that A.D. be returned to mother so that mother could bring A.D. to Washington for placement with a relative. The social worker also testified that, whenever A.D. returned to her foster home after having visitation with mother, A.D.'s "behaviors escalated," such that "she would not listen to the foster parents; . . . she wouldn't do chores; . . . she would be mean towards their animals"; and would be "rude" to her siblings. And the social worker described how mother consistently made "last-minute changes" to her parenting-time schedule with A.D. while A.D. was in Grand Rapids, which caused the parenting-time schedule with the Grand Rapids foster parents to fail.

The social worker testified that A.D.'s placement with the Brainerd foster parents has gone well; that the foster parents are "consistent with parenting," have "good boundaries," and that A.D. is doing well in school. The social worker also opined that mother currently does not have the ability to provide A.D. with adequate "food, clothing, shelter, education, [and] other care necessary for her physical, mental or emotional health and development." But the social worker acknowledged that it was important for A.D. to maintain a relationship with her mother "as long as it's a healthy relationship."

The guardian ad litem (GAL) opined that termination of mother's parental rights was in A.D.'s best interest because it was important for A.D. to have a "stable" and "consistent home, one where [mother is] not going to leave . . . when things get tough." According to the GAL, she has never heard mother express a desire to be A.D.'s full-time caregiver, and stated that she believes that A.D. "needs to be in a home that is . . . hers, that is one hundred percent for her . . . best interests." The GAL further testified that when she sees A.D. "at her foster home, she is happy."

Mother testified on the first day of trial, November 9, 2020, that she did not have stable housing and that she was currently living in her "little mini-camper." Mother also admitted that she had been offered "[m]any, many, many services, many, many, many times," but claimed that they were not "helpful." According to mother, she was then unable to be the primary, full-time provider for her children, but she stated that it would be "harmful" for A.D. not to have contact with her. And when asked if it was in A.D.'s "best interests to be placed with a caregiver who can provide [the] full-time emotional [and] mental . . . care of a primary caregiver," mother responded, "[a]bsolutely, that's why I voluntarily asked for help from the county." But mother later testified that "I don't need any help from the County. I need the County to get out of my life." Finally, mother testified that in March 2020, she did not receive a rule 25 or any recommendations, and she admitted arguing with the foster parents.

On the second day of trial, December 23, 2020, mother testified that she was employed and was currently renting a room from a friend, which was a home where she could reside with A.D. Mother also testified that the county had not provided any services

for her since March, other than a home for her children, and claimed that A.D. "being voluntarily placed was a mistake." According to mother, she had a "very strong bond" with A.D., and that the two were "very, very close." Although mother testified that, after the recent passing of her mother, her "support group" was gone and she did not have any "family to reach out to," she claimed that she was now capable of parenting A.D. full time.

The district court determined that the county "has made reasonable efforts to return [A.D.] to her mother prior to the petition for permanency," and that clear and convincing evidence had been presented showing that mother "has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent and child relationship." The district court also determined that clear and convincing evidence was presented showing that "reasonable efforts have failed to correct the conditions leading to the child's placement." And the district court determined that, although both mother and A.D. have expressed a desire to preserve the parent-child relationship, the "competing interest of the child is to have a stable and nurturing home, where consistency is a norm and can be provided and is being provided, [A.D.'s] mental health needs are being met and can be met and made a priority." Thus, the district court concluded that it was in A.D.'s best interests that mother's parental rights be terminated.

Mother moved for amended findings or, in the alternative, a new trial, challenging the admission of the exhibits. Mother also argued that the county "did not satisfy by clear and convincing evidence a statutory ground for termination of [mother's] parental rights, and did not prove that termination of parental rights is in the child's best interests." The district court denied the motion. Mother appeals.

DECISION

I.

Mother challenges the district court's decision to admit the challenged exhibits. This court applies an abuse-of-discretion standard of review to evidentiary rulings in a trial regarding termination of parental rights. *In re Child of Simon*, 662 N.W.2d 155, 160 (Minn. App. 2003). Upon an improper evidentiary ruling, a new trial will be granted only if the complaining party shows prejudice. *Id.*

As the district court found, the challenged exhibits are hearsay. *See* Minn. R. Evid. 801(c) (defining hearsay). Hearsay is not admissible as evidence unless it falls under a hearsay exception. Minn. R. Evid. 802. One exception is the business-records exception. Minn. R. Evid. 803(6). Business records are presumed to be reliable because (1) the regularity of the records produces habits of precision in the record keeper, (2) the records are regularly checked, (3) employees are motivated to make accurate records because the businesses that employ them function in reliance on these records, and (4) employees are required to be accurate and risk embarrassment or dismissal if they fail. *In re Welfare of L.Z.*, 396 N.W.2d 214, 220 (Minn. 1986).

Business records are admissible under the business-records exception if the custodian or another qualified witness can testify that the records were (1) made by a person with personal knowledge of the matters recorded and a business duty to report accurately or from information transmitted by a person with such knowledge, (2) made at or near the time of the recorded event, (3) kept in the course of a regularly conducted business activity, and (4) made as part of the regular practice of that business activity. Minn. R. Evid. 803(6).

The custodian of the record need not testify, but the witness laying foundation must be sufficiently familiar with how the business creates and maintains its records to address the requisite factors. *See Simon*, 662 N.W.2d at 160-61 (holding that a therapist's evaluation letters were inadmissible under the business-records exception because the witness, a social worker, was unfamiliar with the therapist's method for compiling records).

Mother argues that the district court abused its discretion by admitting the exhibits because "[n]o custodian or witness provided any testimony" on the admissibility requirements of rule 803(6). But mother's counsel conceded at oral argument that she cannot show prejudice by the district court's admission of the challenged exhibits. Error without prejudice does not warrant reversal. *See Kroning v. State Farm Auto Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997); *see also Simon*, 662 N.W.2d at 160 (requiring showing of prejudice caused by the district court's evidentiary ruling). Accordingly, assuming, without deciding, that the district court abused its discretion by admitting the challenged exhibits, we conclude that mother is not entitled to a new trial.

II.

Next, mother challenges the district court's termination of her parental rights, arguing that the record does not support the district court's determination that the county made reasonable efforts to reunify the family. On appeal from a district court's decision to terminate parental rights, this court reviews "the district court's findings of the underlying or basic facts 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), *rev. denied* (Minn. Jan. 6, 2012). "We give considerable deference to the district court's decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted).

Termination of parental rights requires clear and convincing evidence that "reasonable efforts were made to reunite the parent with the child." *In re Welfare of A.M.C.*, 920 N.W.2d 648, 655 (Minn. App. 2018). Whether reasonable efforts were made turns on "the length of the time the [agency] was involved and the quality of effort given." *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *rev. denied* (Minn. July 6, 1990). In evaluating whether the efforts were reasonable, a district court must consider whether services 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) (2020). Whether the county made reasonable efforts is a factual finding that this court reviews for clear error. *See S.E.P.*, 744 N.W.2d at 387.

Here, the district court found that since 2017, mother was offered a myriad of services. This finding is supported by the record. The record reflects that mother has struggled with alcohol dependency, and testimony provided at trial demonstrates that the county has offered treatment services such as inpatient and outpatient treatment and urine analysis. Moreover, mother admitted that, since 2013, the county has offered her "[m]any, many services, many, many, many times." As mother acknowledged at trial, these services included: family therapy; in-home services; cognitive behavioral therapy (CBT);

dialectical behavior therapy (DBT); a parenting capacity assessment; assistance with transportation, phone access, housing, and utilities; medication management services; and assistance with chemical dependency such as inpatient treatment, outpatient treatment, offering of urine analysis, and drug testing.

Mother argues that the county failed to provide reasonable efforts because she "did not have an ongoing social worker from October 2020 through the conclusion of the trial on December 23, 2020, efforts were not provided to help her with her case plan, and the case plan was never updated as required." But the district court found that "[s]ince March 2020, Mother did not engage in any significant services for reunification," and that she no longer wants "to involve herself with any further services with [the county.]" These findings are supported by the record. Mother testified that she does not "need any help from the County," and that she "need[s] the County to get out of my life." She also acknowledged choosing not to continue services with a county employee because she believed the county employee had made the "wrong diagnosis" of her. As addressed above, the county offered a multitude of services, but, after asking the county to take her children in March 2020, mother simply did not take advantage of the services required or attempt to comply with the case plan.

Moreover, the record reflects that a case plan was originally signed and approved by mother. But in March 2020, she notified the county that she no longer wanted to parent the children. Instead, mother wanted only *visitation* with A.D. As the district court found, it was only at the second day of trial that mother indicated a desire to parent A.D. Although mother now claims she wants to parent A.D., she failed to engage in the many services

offered by the county throughout the proceedings. Therefore, the district court did not clearly err in finding that reasonable efforts were provided by the county.

III.

Mother challenges the district court's determination that termination of her parental rights was in the child's best interests. "Parental rights are terminated only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). "The child's best interests, however, remain the paramount consideration in every termination case." *Id.* To determine the best interests of a child in a TPR case, the court must consider: "(1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child," such as a stable environment, and health concerns. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); *see* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) (requiring district courts to consider these factors when addressing whether to terminate parental rights). We apply an abuse-of-discretion standard of review to the district court's determination that termination of parental rights is in the child's best interest. *J.R.B.*, 805 N.W.2d at 905.

Mother argues that the evidence in the record does not support the district court's best-interests determination because the "social worker had very little insight to provide input" on the best-interest issue; the GAL "had her mind made up supporting a termination of parental rights," and "barely interacted" with mother or the child; and there were "no safety concerns" justifying an out-of-home placement at the outset of this case. Mother also points out that the child wished to have ongoing contact or to be placed with her mother, and that the child's siblings did not support termination of mother's parental rights.

Mother's arguments are unpersuasive. This court gives "[c]onsiderable deference" to the district court's decision to terminate parental rights "because the district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). The district court here specifically found the child's older sister's testimony that A.D. was not happy to be not credible, and instead found that there "was no hint of [unhappiness] exhibited by [A.D.] during her testimony." We defer to those credibility findings. *See id.*

Moreover, in determining that it was in A.D.'s best interests that mother's parental rights be terminated, the district court focused on the child's need for permanency and "consistency." As the district court found, the child has "been in out of home placement for over 500 days" and the record reflects that the child has acted out as a result of spending time between mother's home and the foster parents' home. For example, the social worker testified that when A.D. would return to her foster home after having visitation with mother, A.D.'s "behaviors escalated," such that "she would not listen to the foster parents; . . . she wouldn't do chores; . . . she would be mean towards their animals"; and would be "rude" to her siblings. In addition, the record also reflects that mother has struggled to provide adequate housing for the child, recently living out of her van. And the GAL testified that she believes that it is "in the best interest of [A.D.] to have a stable home, a consistent home, one where she's not going to leave, one that when things get tough and there's struggles . . . that she doesn't ever have to leave again." The child's need for a stable environment supports the district court's determination that termination of mother's parental rights is in the child's best interest. *See R.T.B.*, 492 N.W.2d at 4 (stating that an

important consideration in making a best-interests consideration is the child's need for a stable environment).

Additionally, the record reflects that mother suffers from mental illness and alcohol dependency, neither of which has been adequately treated. And the GAL testified that she believes that it is in the child's best interests to terminate mother's parental rights. Although mother has stated her interest in continuing to have a relationship with A.D., the child's interest in having a stable caregiver who can devote the time and effort required to meet the child's needs outweighs mother's interest in preserving the relationship. *See In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 668 (Minn. App. 2012) (stating that, in every termination proceeding, the child's best interests must be given paramount consideration). Therefore, on this record, the district court did not abuse its discretion in determining that termination of mother's parental rights is in the child's best interests.

Affirmed.