This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0356
A21-0357

In the Matter of the Welfare of the Children of:
C. J. N., D. S. H. (A21-0356),
and E. J. G., II (A21-0357), Parents.

Filed August 23, 2021
Affirmed
Smith, Tracy M., Judge

Douglas County District Court
File Nos. 21-JV-20-886, 21-JV-20-888

Matthew P. Franzese, Wheaton, Minnesota (for appellant-mother C.J.N.)

Chad Larson, Douglas County Attorney, Daniel Lee, Assistant County Attorney, Alexandria, Minnesota (for respondent Douglas County)

Thomas J. Nolan, Jr., Nolan Law Offices, Minneapolis, Minnesota (for respondent guardian ad litem Mary Peterson)

Robert M. Levasseur, Alexandria, Minnesota (for respondent-child P.C.N.)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Halbrooks, Judge.[*]

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

On appeal from the termination of her parental rights (TPR) to her two children, appellant-mother argues that the record does not support the district court's determinations that (1) respondent Douglas County provided reasonable efforts to reunify the family, (2) a statutory basis exists that warrants TPR, and (3) TPR is in the children's best interests. We affirm.

FACTS

This case involves the termination of parental rights to mother's two minor sons. This child-protection case began in August 2019, when the older son, P.C.N., was 13 years old and the younger son, P.D.N., was 7 years old. At that time, the children were removed from mother's care on an emergency basis. The children thereafter were adjudicated in need of protection or services (CHIPS) within the meaning of Minn. Stat. § 260C.007, subd. 6(4) (2020), and legal custody of the children was transferred to Douglas County. The children have remained together in court-ordered out-of-home placement since their removal in September 2019. The county petitioned for TPR for both children in June 2020.

In January 2021, the district court held a bench trial on the TPR petitions. At that time, the children had been in out-of-home placement for 483 days. At the trial, the county presented testimony from the Douglas County Social Services (DCSS) case manager, the DCSS child protection supervisor, the family and community services director from the facility where supervised visits took place, the instructor from the younger son's cognitive-therapy program, the psychologist who conducted the children's initial therapy, the

parenting and attachment assessor who conducted mother's assessment, the dialectical behavior therapy (DBT) therapist who saw mother when she was referred for DBT, one of the foster parents, and the guardian ad litem. The children, their older half-sister, mother, and mother's boyfriend also testified at the hearing.

Reason the CHIPS Action Was Initiated

In August 2019, the county received a welfare report concerning the children's supervision as well as physical and verbal abuse that mother committed against the older son. The report alleged that mother tried to run the older son over with an all-terrain vehicle (ATV) and that mother often left the children home alone for days at a time. The county met with the children the day after receiving the report, and the children confirmed the allegations that the older son was chased by mother on the ATV and that they were frequently staying by themselves at the home without an adult or supervision. A petition for emergency protective care (EPC) was filed and granted, and the county obtained custody of the children. A CHIPS petition was filed soon thereafter.

Placement Suitability

The case manager created an out-of-home placement plan for mother in August 2019. The out-of-home placement plan recommended that mother accomplish or show five things for the children to return home: (1) "complete a Chemical Use Assessment and follow any and all recommendations of that assessment"; (2) "cooperate with random drug testing"; (3) "complete a psychological evaluation/assessment, with an anger management component"; (4) "cooperate with intensive in home therapy"; and (5) "maintain regular contact with the children."

The county offered mother services, including providing a diagnostic assessment; scheduling supervised visits at a family services facility and unsupervised visits in the community; coordinating home visits; coordinating random drug testing; transporting the children to dental, medical, vision, and therapy appointments; scheduling a parenting and attachment assessment; and attempting to schedule family therapy services. Mother complied with most of her case plan. She completed the random drug testing, the diagnostic assessment, and the parenting and attachment assessment.

Mother completed the diagnostic assessment in November 2019. However, no further treatment was recommended for mother because the diagnostic assessment concluded that she "does not meet diagnostic criteria for any mental health diagnosis and insurance will not pay for the therapy she requests."

In March 2020, the case manager emailed mother, requesting that mother sign a release of information to start family therapy with Lutheran Social Service (LSS) and informing mother that the county was coordinating with a parenting and attachment assessor to schedule an assessment for mother. Mother responded that she did not want to move forward with LSS because she had a prior bad experience with them. The case manager researched other family-therapy providers but could not find any without long waitlists. She reached out again to mother and explained that she thought it was prudent to start with LSS. The case manager never received a reply or a signed release of information from mother.

In the meantime, the parenting and attachment assessment was performed. The parenting and attachment assessor observed mother with the children for several hours over

a period of two days. The parenting and attachment assessor's report recommended that reunification efforts cease immediately, concluding that mother "does not demonstrate healthy, safe boundaries or positive attachment formations" with the younger child and that any further contact with mother would be harmful to the children.

In May 2020, the county moved to cease reunification efforts. The district court granted the county's motion. The county then petitioned for TPR, and the trial was held.

The district court granted the TPR petitions. It found that the county made reasonable efforts to reunify the family. It further found that four statutory bases for termination existed: that mother failed to satisfy the duties of the parent-child relationship, that mother is a palpably unfit parent, that reasonable efforts had failed to correct the conditions that led to the children's out-of-home placement, and that the children are neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4)-(5), (8) (2020). The district court also determined that termination of mother's parental rights was in the best interests of the children.

Mother appeals.

DECISION

On appeal from an order terminating parental rights, we consider whether the district court's findings address the statutory termination criteria and have substantial evidentiary support. *See In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We give considerable deference to a district court's TPR decision. *Id.* We review findings of "underlying or basic facts" for clear error. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012). In doing so, we defer to

the district court's credibility determinations. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 90 (Minn. App. 2012). But we will not disturb a district court's decision whether clear and convincing evidence supports a particular ground for termination, absent an abuse of discretion. *J.R.B.*, 805 N.W.2d at 899, 901. We will affirm the decision to terminate parental rights when at least one statutory termination ground is supported by clear and convincing evidence, the county made reasonable efforts to reunite the family, and termination is in the child's best interests. *See S.E.P.*, 744 N.W.2d at 385.

I. The county made reasonable efforts to reunite mother with the children.

Mother challenges the district court's determination that the county made reasonable efforts toward reunification of the family. She contends that the county failed to offer her services that would help her accept responsibility for her children's removal from the home and that that failure renders the overall efforts unreasonable.

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 the responsible social services agency made reasonable efforts 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), *review 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). The district court must make

"individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family." Minn. Stat. § 260C.301, subd. 8(1) (2020). Whether the county made reasonable efforts is a factual finding that we review for clear error. *See S.E.P.*, 744 N.W.2d at 387.

Mother argues that the county failed to make reasonable efforts toward reunification because it did not provide her with the services necessary for her to accept her role in the children's removal from the home. Although accepting her own responsibility in the children's removal from the home was not a component of her case plan, mother argues that the county and the guardian ad litem "acted as though it were the most important part of it." She argues that, if that were the case and accepting responsibility was a component of her case plan, then the county was required "to offer all necessary services to [mother] in order to allow [her] to complete the case plan" and that the county failed to do so.

Mother compares this case to *In re Welfare of M.D.O.*, 462 N.W.2d 370 (Minn. 1990). In *M.D.O.*, the county concluded that the mother, who had been convicted of the second-degree murder of her adopted daughter, could not be sufficiently rehabilitated to care for a second child, born after the adopted daughter's death, because she refused to admit guilt in the daughter's death. 462 N.W.2d at 371, 377. The supreme court reversed the termination of the mother's parental rights, concluding that the county failed to provide reasonable services to help the mother admit her guilt. *Id.* at 371. In doing so, the supreme court determined that "[t]he county's expectations seem especially daunting considering the county's admitted failure to provide services, counseling or assistance to aid [the mother] in coming to grips with her conduct." *Id.* at 377. For example, the county never

told the mother what programs would be appropriate for her, it never contacted the leaders of the therapy programs she joined, and the social worker only observed one visit between the mother and the second child. *Id.* Mother argues that her situation "is exactly the same as the mother in *M.D.O.*" because she refuses to admit that she attempted to run the older son over with an ATV and the county failed to provide her with services, counseling, or assistance to help her "come to grips with her alleged conduct."

But, here, the county did provide mother with services, counseling, and assistance to help her recognize her role in the children's removal. The county provided mother with a diagnostic assessment, a family therapy option, and a DBT therapy referral. As to the diagnostic assessment and the DBT therapy, further services were not provided to mother because she did not report any mental health concerns and so the assessors were unable to recommend further services. Still, mother argues that if the county had concerns about the validity of mother's diagnostic assessment, it should have recommended that mother undergo a full psychological evaluation. While a full psychological evaluation certainly could be a reasonable service to provide, it is not the only reasonable service available. Instead of a full psychological evaluation, the case manager requested that a parenting and attachment assessment take place in order "to get a professional opinion, get the professional's perspective and insight, and to see if there were any other services that might be beneficial to support reunification." The district court granted the county's request that a parenting and attachment assessment take place so that the county could "better identify the source of the problem and to better understand how to improve [mother's] parenting." The fact that mother may not agree with the parenting and attachment assessor's ultimate

recommendation does not render the service itself unreasonable. The record thus supports the district court's determination that the parenting and attachment assessment was a reasonable service to offer mother.

As to family therapy, the record also supports the finding that the county made reasonable efforts. The case manager testified that, while the older son was uncomfortable with beginning family therapy, one of the son's individual therapy goals was to work toward initiating family therapy. To that end, the case manager investigated possible family therapy providers and ultimately determined that LSS was the best fit because it provided the services mother and the children needed and it could take place in a reasonable timeframe. The case manager emailed mother, requesting that she sign a release of information so that the family could start therapy at LSS. Mother responded that she did not want to move forward with LSS because she had a prior bad experience with them. Although the case manager researched other providers, she could not find any family-therapy providers that provided the services the family would need without long waitlists. She reached out again to mother and explained that she thought LSS was the best option and asked mother to sign the release of information. The case manager never received a reply or a signed release of information from mother.

On appeal, mother argues that the case manager's family therapy option was unreasonable because, based on the psychologist that mother chose to provide therapy to the children, family therapy could have begun as early as January 2020. This psychologist testified at trial, and mother cites his testimony that, if reunification was the county's goal, there was no reason to delay family therapy. The psychologist testified that he "couldn't

see any downfalls" to the older son engaging in family therapy because the older son already talked with mother when he was in the therapy waiting room every week. Although the district court found the psychologist's testimony credible, it disagreed with his opinions and conclusions. Instead, the district court relied on the parenting and attachment assessor's testimony that attempting family therapy would harm the older son. On appeal, we defer to the district court's determination of the weight to be given to the evidence. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007), *review denied* (Minn. July 17, 2007).

The parenting and attachment assessor testified that she would "strongly disagree with [the psychologist's] recommendation" that mother and the children were ready for family therapy. She explained that, when a child refuses to engage in family therapy and remains adamant in their refusal, there is "tremendous pain behind that statement" and that "pain probably needs to be respected" for a 14-year-old. She testified that "forcing them to [engage in family therapy] in spite of what their statement is, causes more harm than good." The case manager corroborated the parenting and attachment assessor's concerns. She testified that, based on her conversations with the older son, he was uncomfortable moving forward with family therapy and that he did not trust the psychologist to keep his individual therapy sessions confidential. Because we will not reweigh the evidence, *id.*, the district court's determination that attempting family therapy too soon would harm the older son is supported by the record.

The record contains evidence of other services offered by the county, in addition to the assessments and efforts to arrange family therapy. These services included a chemical-

use assessment and random testing, visitation with the children, and a DBT therapy referral for mother. The district court found that the services offered to mother were adequate and appropriate to facilitate reunification with the children and that there were no other services that could be provided to mother that would allow the children to return to mother's care. The district court found that mother had tried; it observed that mother complied with many components of the case plan including completing diagnostic and chemical-use assessments and attending regular visitation. But it also noted that mother "actively sabotaged" the county's efforts to assist her family and reunite them. This finding is supported by the record.

The record reflects that mother blocked the guardian ad litem from attending individualized-education-plan meetings for the children and the guardian ad litem's access to the school. She cancelled medical appointments that the foster parents scheduled for the children. She failed to respond to requests by the case manager or the guardian ad litem—for example, a request to give the older son's glasses to him or the request to release information to LSS for family therapy.

On this record, we discern no clear error or abuse of discretion in the district court's determination that the county made reasonable efforts to reunify the family.

II. Reasonable efforts failed to correct the conditions leading to the children's out-of-home placement.

A district court may terminate parental rights when clear and convincing evidence shows "that 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). As explained above, the record supports the district court's finding that the county made reasonable efforts to address the conditions leading to the children's out-of-home placement. The record establishes that, despite the county's efforts, the conditions persisted.

The conditions that led to the children's out of home placement were physical and verbal abuse against the older son and neglecting both children by frequently leaving them without adult supervision or adequate food. Despite reasonable efforts to address these conditions, mother did not demonstrate any insight to her mistreatment and neglectful care of her children. Mother regularly made comments and acted in a manner that disregarded the children's physical and emotional boundaries, causing the children discomfort and distress. Mother consistently stated that her children were lying about any physical abuse and denied that she neglected or harmed them. The older son testified that he waited for mother to change during these proceedings and show him that "she's actually sorry" but that she never took responsibility for her actions. The district court found that mother's lack of progress toward respecting her children's boundaries and understanding how her behavior made her children feel underscored that she does not possess the parenting skills to safely assume the responsibilities of caring for her children.

Mother argues that clear and convincing evidence does not exist to support termination because she substantially complied with the case plan. But there is no presumption that completion of a case plan necessarily equates with a correction of the conditions that led to the out-of-home placement. *J.K.T.*, 814 N.W.2d at 89. Rather, the issue is "whether the parent is presently able to assume the responsibilities of caring for

the child." *Id.* As discussed above, although mother may have completed the case plan to the best of her ability, the record clearly and convincingly shows that mother did not improve her parenting skills to a degree that corrected the conditions that led to the children's removal from the home. The district court did not abuse its discretion when it determined that mother's failure to meaningfully engage with the diagnostic assessment, family therapy, and DBT therapy prevented her from addressing the underlying conditions that led to the children's out-of-home placement.

In sum, the district court did not abuse its discretion by ruling that clear and convincing evidence established that reasonable efforts failed to correct the conditions that led to the children's out-of-home placement. We need not address mother's arguments regarding the other statutory bases the district court relied on because only one statutory basis is necessary to terminate parental rights. *See* Minn. Stat. § 260C.301, subd. 1(b) (2020) (allowing termination of parental rights upon satisfaction of "one or more" statutory conditions).

III. Termination of mother's parental rights is in the children's best interests.

Even when the district court finds that a statutory ground for termination is met, "the district court must separately find that termination is in the child's best interests." *J.K.T.*, 814 N.W.2d at 92. When, under Minn. Stat. § 260C.301, subd. 1(b), a statutory basis for terminating a parent's rights to a child exists, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2020).

"In analyzing the best interests of the child, the court must balance three factors: (1) the child's interest in preserving the parent-child relationship; (2) the parent's interest

in preserving the parent-child relationship; and (3) any competing interests of the child." *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). "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. "Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7. We review "a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion." *J.R.B.*, 805 N.W.2d at 905.

In determining that TPR was in the children's best interests, the district court explained:

> [Mother's] interactions with the children is unhealthy, including creating tension between the two brothers and overruling the boundaries of the children. [Mother] puts her own needs before her children's safety and security, leaving them alone and unsupervised in a home that was not fit to live in, was isolated from everyone else, had inadequate food, and was sometimes too cold. She showed little to no concern for their education. She physically harmed and threatened [the older son]. Then, when confronted by DCSS about her children's suffering, she accused her children of lying about her behavior, rather than trying to honestly assess how she might do better as a parent. As [the parenting and attachment assessor] concluded, [mother] has expressed no remorse about any of her past actions, and she is not receptive to any suggestions that she needs to modify her parenting.

Regarding the older son, the district court determined that mother "mostly ignores him or violates his emotional, physical and sexual boundaries, leaving him uncomfortable." It found that mother has physically harmed and threatened the older son and that he has no interest in maintaining the parent-child relationship. The district court found that the older

son feels safer and more supported in his foster care placement and that he wants to stay with his foster family.

Regarding the younger son, the district court also found that, while he is conflicted about his relationship with mother and he misses her, he has not asked to return to his mother's care. When asked by the district court to rank where he wants to live, the younger son ranked the foster care placement first, his half-sister second, and mother's boyfriend third. The district court found that the younger son is thriving in his foster home and is well-adjusted to his life there. His grades are better, his relationship with his brother has improved, and he gets along well with his foster family. Because both children are doing well in their foster care placement and they need permanency and stability, the district court determined that clear and convincing evidence exists that terminating mother's parental rights is in the children's best interests.

Mother contends that "to find that termination is in a child's best interests without attempting family therapy is contrary to Minnesota law and the whole intent behind child protection cases to reunify a broken/wounded family." But mother cites no caselaw to support her argument. Instead, she again challenges the district court's credibility determinations. She argues that the parenting and attachment assessor's testimony is not credible and that the district court erred by relying on it. We defer to a district court's credibility determinations, *T.D.*, 731 N.W.2d at 555, and mother has not shown those determinations are clearly erroneous. Here, the district court found that family therapy would not only not lead to reunification, but that it would be harmful to attempt it before the older son is ready. As discussed above, this finding is supported by the record.

Overall, the record reflects that the children have done well in their foster care placement, that they have both made progress since they were placed there, and that, if they were removed or separated from each other they might regress or deteriorate.

The district court analyzed the three factors outlined above and concluded that the children's best interests are served by terminating mother's parental rights. The district court did not abuse its discretion by finding that it is in the children's best interests that mother's parental rights be terminated.

Affirmed.