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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0468**

In re the Matter of the Welfare of the Child of: J. R. H. T. and P. J., Parents.

**Filed October 25, 2021
Affirmed
Reilly, Judge**

Otter Tail County District Court
File No. 56-JV-20-2929

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Considered and decided by Gaïtas, Presiding Judge; Ross, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant-mother challenges a district court order terminating parental rights to a minor child. Because the record supports the district court's determination that a statutory ground for termination exists and termination is in the child's best interests, we affirm.

FACTS

Child in Need of Protection or Services

Appellant J.R.H.T. is the mother of a child (the child) born in December 2014.¹ In early 2020, Otter Tail County Department of Human Services (the county) received reports that the child was living in an unsafe environment and was exposed to drug use. Following its investigation, the county filed a petition on February 10, 2020, alleging that the child was in need of protection or services (the CHIPS petition), and seeking an order for immediate custody. The district court held an emergency protective care hearing on February 13 and granted the county's request for immediate custody of the child. On March 10, the county filed an out-of-home placement plan. After the district court held a contested adjudication trial on the CHIPS petition in July and August 2020, it adjudicated the child in need of protection or services. The district court ordered placement to continue with the county and formally adopted the county's out-of-home placement plan. A short time later, the county filed a second out-of-home placement plan, which largely matched the first plan. The district court ordered mother to comply with this plan.²

Petition to Terminate Parental Rights (TPR)

On November 25, 2020, the county filed a petition seeking to involuntarily terminate mother's parental rights to the child. The county alleged four statutory grounds

¹ The district court also terminated the parental rights of the child's father, P.J. Because father does not challenge the district court's termination of his parental rights, we limit our review to the district court's termination of mother's parental rights.

² The county offered mother services right after the removal of the child. But the district court did not order her to comply with the plan until after adjudication, in August 2020.

in support of termination: (1) abandoning the child; (2) substantially, continuously, or repeatedly refusing or neglecting to comply with the duties imposed by the parent and child relationship; (3) failing to correct the conditions that led to the child's out-of-home placement; and (4) neglecting the child in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(1), 1(b)(2), 1(b)(5), and 1(b)(8) (2020).

TPR Trial and District Court Order Terminating Mother's Parental Rights

The district court held a court trial in March 2021. The district court heard testimony from the county's ongoing case manager, the child's clinical therapist, mother's treatment counselors at Teen Challenge and Healing House, the guardian ad litem (the GAL), the child's grandmother, and mother. On April 1, the district court issued its written findings, conclusions and order, terminating mother's parental rights to the child. The district court found that the testimony of the county's witnesses was both credible and supported by the evidence presented. The district court did not find mother's testimony credible.

The district court determined that the county satisfied its burden of proving by clear and convincing evidence that mother's parental rights should be terminated because: (1) the child was abandoned,³ (2) mother failed to comply with the parent and child relationship, (3) mother failed to correct the conditions leading to the child's out-of-home placement, despite reasonable efforts by the county to return the child to mother's home, and (4) the child was neglected and in foster care. The district court also found that the county made reasonable efforts to return the child to mother's home and offered services

³ Mother argues that the evidence does not support abandonment. The county agreed that this statutory ground had not been proven.

that were timely, available, relevant, and culturally appropriate for the child and the family. The district court found that these services provided a meaningful opportunity to address the child's out-of-home placement. Yet the district court found that mother did not fully engage in these services and substantially failed to comply with the court-ordered placement plan to demonstrate a commitment to reunification. Lastly, the district court determined that termination of mother's parental rights was in the child's best interests. The district court weighed the competing interests of mother and the child and concluded that the benefits to the child that would result from a termination of parental rights outweighed the interests in preserving the parent and child relationship.

Mother appeals.

DECISION

I. The district court did not abuse its discretion by determining that at least one statutory ground existed to support termination of parental rights.

Mother challenges the district court's termination of her parental rights. Parental rights may only be terminated for "grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). Whether to terminate parental rights is discretionary with the district court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). A district court may order the termination of parental rights if it (1) finds by clear and convincing evidence that a statutory condition exists to support termination, (2) determines that termination is in the child's best interests, and (3) finds that reasonable efforts toward reunification were either made or were not required. Minn. Stat. §§ 260C.301, subds. 1(b), 7, 8; .317, subd. 1 (2020); *see also In re Welfare of Child. of*

S.E.P., 744 N.W.2d 381, 385 (Minn. 2008). “We review the termination of parental rights to determine whether the district court’s findings address the statutory criteria and whether the district court’s findings are supported by substantial evidence and are not clearly erroneous.” *S.E.P.*, 744 N.W.2d at 385.

The existence of a statutory condition permitting the termination of parental rights must be proved by clear and convincing evidence. Minn. Stat. § 260C.317, subd. 1; Minn. R. Juv. Prot. P. 58.03, subd. 2(a). The county bears the burden of proving the grounds for termination. *See In re Welfare of Child of H.G.D.*, 962 N.W.2d 861, 869-70 (Minn. 2021). “[W]e closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing.” *S.E.P.*, 744 N.W.2d at 385. “[W]e will review 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 Child. of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. 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 Child of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted).

Here, the district court determined that the county proved by clear and convincing evidence that reasonable efforts failed to correct the conditions leading to the child’s out-of-home placement.⁴ The district court may terminate a parent’s rights on this ground if

⁴ The district court determined that three other statutory bases also supported termination. The state concedes that the record did not support termination based on abandonment. But

“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). A reviewing court presumes that reasonable efforts have failed if: (1) the “child has resided out of the parental home under court order for a cumulative period of 12 months,” (2) “the court has approved the out-of-home placement plan,” (3) the “conditions leading to the out-of-home placement have not been corrected” as shown by the parent not “substantially [complying] with the court’s orders and a reasonable case plan,” and (4) “reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.” *Id.*, subd. 1(b)(5)(i)-(iv).

Mother does not challenge the first and second elements, which the record supports.

Mother did not correct the conditions leading to the out-of-home placement.

As for the third element, mother argues that she corrected the conditions leading to the out-of-home placement. We are not persuaded. The county opened an investigation after it received reports that the child was living in an unsafe environment and that adults used and possessed controlled substances around him. The county found several prior child-protection reports showing “concerns of chemical use by [mother], injuries the child had suffered, inappropriate supervision of the child, and concerns surrounding the child’s environment.” The reports revealed that mother and other caregivers passed out from drug use in front of the child, rendering them unable to provide for the child’s health or safety.

because we determine that mother failed to correct the conditions leading to the child’s out-of-home placement, we do not address the remaining two bases. *See In re Welfare of Child of R. W.*, 678 N.W.2d 49, 55 & n.2 (Minn. 2004) (recognizing that only one statutory ground needs to be proven to support termination of parental rights).

The county also learned that the child spent as much as one to two weeks each month living with mother's cousin in North Dakota because mother was unable to care for him. Mother's cousin told the county that mother "had a history of prior controlled substance use" and was using drugs. The child's maternal grandmother also took care of the child "for significant periods of time."

When the county took custody of the child in February 2020, following the emergency protective care hearing, the county noticed that the child's hair and eyebrows had been shaved. The county investigator testified that in her 19 years in child protection she had never encountered a child who had their eyebrows shaved, but she had experienced situations in which a child's head had been shaved to avoid a hair follicle test.

At the CHIPS trial, the district court credited testimony from the county's witnesses that the child was "without necessary food, clothing, shelter, education or other care because the child's parent is unable or unwilling to provide said care." The district court noted that the child did not have a "primary or stable residence," and instead "float[ed] from house to house" among various relatives. The district court was also "concerned" that mother only visited the child one time—in June—between his removal and the CHIPS trial. The district court determined that mother failed to show sobriety or "otherwise cooperate with [the county] in any way, including visitation with the child."

After the CHIPS trial, the county filed an out-of-home placement plan. The district court ordered mother to comply with this plan. The placement plan required mother to: (1) abstain from the use of all non-prescribed mood-altering substances, (2) ensure that the child was not exposed to drug use or domestic violence, (3) complete a chemical-use

assessment, (4) comply with random drug screening, (5) ensure that the child was not exposed to any criminal activity, (6) complete a parental capacity evaluation with a diagnostic assessment component, (7) complete parenting education, and (8) remain law abiding.⁵

During the termination-of-parental-rights trial, the district court heard testimony from the county case manager about mother's lack of compliance with the court-ordered placement plan. The case manager testified that as of the first day of trial, the child had been out of mother's home for 390 days. The case manager referred mother for a rule 25 assessment, which she did not complete. Later, in October 2020, mother did complete an assessment. The assessment recommended that mother complete inpatient chemical dependency treatment, random testing, and mental-health counseling. Mother was scheduled to start inpatient treatment at Teen Challenge on October 15, 2020, but she failed to start treatment as scheduled. Mother entered the program about a month later, in November 2020. Mother completed three drug tests in September 2020, before entering Teen Challenge. She tested positive for methamphetamine and amphetamines on two of these tests. Mother did not complete any drug tests in October or November. The case manager testified that mother had shown no periods of sobriety while in the community.

The district court also heard testimony from the Teen Challenge counselor. The Teen Challenge counselor testified that mother denied having a drug problem and showed little insight into her drug use. Mother admitted that she used methamphetamine the day

⁵ On or about March 26, 2021, the state charged mother with a felony fifth-degree controlled substance crime.

before she entered Teen Challenge because “[i]t was a free high because she knew she had to go to treatment.” The Teen Challenge counselor testified that even after mother began engaging in treatment, she continued to deny that she was responsible for her actions or for the child’s trauma.

On appeal, mother argues that she corrected the conditions leading to the child’s out-of-home placement because she successfully completed inpatient treatment at Teen Challenge and was engaged in outpatient treatment at Healing House. The district court acknowledged that mother successfully graduated from Teen Challenge and has had no positive urinalysis tests at Healing House. But the district court also credited the witness’s testimony that mother’s prognosis was only “fair, if [she] follows all recommendations.” The district court noted that mother was still in treatment as of the time of trial and had not shown that she could maintain her sobriety outside of treatment. The district court found that while mother entered and remained in treatment to address her drug-use issues, “the testimony indicates that [she] still largely refuses to accept responsibility for her actions leading to the out of home placement of the child, and her actions (or lack thereof) that caused the child to remain in foster care for over a year.”

The record supports the district court’s findings that mother refuses to accept responsibility for her actions. Mother was in Teen Challenge from November 13, 2020 to January 11, 2021. Mother at first denied having a drug problem and claimed she “just lacked motivation for sobriety and lack of awareness of her drug addiction.” The counselor characterized mother as being at the highest risk factor for continued use and relapse. Mother was “closed off” in November and December 2020. Eventually, the counselor told

mother that she would not graduate from Teen Challenge if she did not engage in treatment. Mother began to complete her homework and participate in treatment at that time, but continued to deny that she was responsible for her actions and explained that she only sold drugs but did not take them. Teen Challenge discharged mother in December 2020 and recommended a transfer to Healing House.

A case coordinator at Healing House has been working with mother since she transferred to Healing House from Teen Challenge in January 2021. The witness testified that mother has “done really well” in the program, participates in class, and completes her assignments. Mother is at phase two of the program, out of four total phases. Mother is eligible to remain at Healing House until about January 2023 and has not yet completed her treatment. Mother was still at Healing House at the time of trial. The district court acknowledged that at the time of the TPR trial mother was addressing her controlled substance issues. But the district court also found that:

Maybe the single most important fact in this case is that for a large portion of the time that the child was placed out of home, [mother] did nothing. Based on her testimony, she [now] understands that her addiction and inability to accept responsibility made it difficult for her to engage in services and the Court commends that realization; however, in the months that it took for her to reach this level of understanding, the child was left to wonder where his Mother was and when he would see her again. This caused significant trauma to the child and the Court does not find it in his best interests to force him to continue living with this uncertainty, especially when [mother] is still a significant amount of time away from being able to independently live with and care for the child.

The record also supports the district court’s findings that mother refused to take responsibility for the child’s trauma. The child’s therapist first met the child in September

2020. The therapist completed a diagnostic assessment with the child and diagnosed him with adjustment disorder with mixed disturbance of emotions and conduct based on experiencing trauma and neglect. The therapist described the child as “hyperactive,” “dysregulated,” and “quite aggressive in his interactions with the toys.” Based on her observations, the therapist believed that he “had been in a place that was unsafe.”

The GAL also prepared a statement to share with the district court about mother’s response to the child’s trauma. The GAL noted that mother did not comply with the court order to submit to random testing “for most of the first ten months of this case,” and allowed the child “to wonder about her whereabouts for months.” The GAL stated that the child “needs to have permanency established for him now,” and “should not be expected to continue to linger in out of home placement, waiting for [mother] to make the necessary changes.” Ultimately, the GAL supported establishing permanency for the child by terminating mother’s parental rights.

The district court found the testimony of the county’s witnesses credible. The record supports the district court’s findings that mother has not corrected the conditions that led to the child’s out-of-home placement under the third element.

The county made reasonable efforts to reunify the family.

As to the fourth element, the district court found that the county made reasonable efforts to return the child to mother. We review the district court’s underlying factual findings for clear error, and its ultimate determination for abuse of discretion. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321-22 (Minn. App. 2015), *rev. denied* (Minn. July 20, 2015); *see also In re Welfare of Child. of J.R.B.*, 805 N.W.2d at 900-01 (stating that

“we will review 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”).

Counties are required to make reasonable efforts at reunification before a district court may terminate a parent’s rights. *In re Welfare of Child of T.R.*, 750 N.W.2d at 664; Minn. Stat. § 260.012(a) (2020). Reasonable efforts are “services that go beyond mere matters of form so as to include real, genuine assistance.” *In re Welfare of Child. of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotations omitted), *rev. denied* (Minn. Mar. 28, 2007). To determine whether efforts were reasonable, the district court considers whether the services offered were: (1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances. Minn. Stat. § 260.012(h) (2020). Finally, the district court must consider “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), *rev. denied* (Minn. July 6, 1990).

The district court made thorough findings of fact related to the county’s efforts to alleviate the conditions that gave rise to the need for out-of-home placement. The district court found that the county “exercised due diligence and offered services that were timely, available, relevant, and culturally appropriate for the child and family to remedy the circumstances requiring the foster care placement.” These services included: (1) chemical health services; (2) parenting-skills services, including a parental capacity evaluation, a family resource worker, skills during visitation, and parenting classes; (3) mental health

services, including diagnostic assessments; (4) services aimed at addressing the family’s basic needs, such as assisting with housing, providing direction to financial resources and housing, and assisting with obtaining a driver’s license; (5) transportation services; and (6) visitation with the child. Despite these offerings, the district court found that mother failed to “fully engage” with the county’s services, and thus “substantially failed to comply with the court ordered case plans to demonstrate a commitment to reunification and remediation of the issues that necessitated removal of the child.”

Extensive evidence in the record supports the district court’s findings that the county made reasonable efforts to reunify the family. The county offered transportation services to facilitate visitation with the child, but mother did not request or engage in this service. Following the November 2020 visit, the county “had to cancel every other visit” after November 2020, “due to [mother] not complying” with drug testing. Mother only had two visits with the child in 390 days, despite the county’s efforts. The county case manager testified that mother also failed to complete the parental capacity evaluation required by her case plan. The case manager testified that mother had only “minimal visitation” with the child “throughout the entire case.” The case manager noted that these visits were supervised because mother was not “able to show that she [was] sober.” The case manager noted that mother did not establish any periods of sobriety in the community. Additionally, the case manager testified that mother did not have stable employment, failed to remain law abiding, and did not find stable housing.

Based on this testimonial evidence—which the district court found credible—the district court determined that the county’s efforts were “reasonable efforts to reunify [the

child] with [mother].” Despite these reasonable efforts, the district court found that “the conditions that made out-of-home placement necessary continue to exist.” The record supports the district court’s findings that the county made reasonable efforts to reunify mother and the child under the fourth element.

Clear and convincing evidence in the record supports the district court’s underlying factual findings identifying the services offered by the county. And we discern no abuse of discretion in the district court’s ultimate determination that the county’s efforts were reasonable.

In sum, the district court did not abuse its discretion in determining that reasonable efforts failed to correct the conditions leading to the child’s out-of-home placement under Minn. Stat. § 260C.301, subd. 1(b)(5), and by terminating mother’s parental rights on this basis.

II. The district court did not abuse its discretion by determining that termination of mother’s parental rights is in the child’s best interests.

Even if a statutory basis for termination is present, the child’s best interests are the “paramount consideration” in a termination proceeding. Minn. Stat. § 260C.301, subd. 7 (2020); *see also* Minn. Stat. § 260C.001, subd. 2(a) (2020). The district court balances three factors when considering the child’s best interests: (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. Minn. R. Juv. Prot. P. 58.04(c)(2)(ii); *see also In re Welfare of Child. of J.R.B.*, 805 N.W.2d at 905 (“Competing interests [of the child] include such things as a stable environment, health considerations

and the child's preferences." (quotation omitted). We review a district court's best-interests determination for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

The district court weighed the competing interests of mother and the child and concluded that mother "failed to place the needs of the child" above her own needs and desires. The district court noted that from the outset, mother showed an inability to "differentiate what is best for her and what is best for the child." The district court determined that the child would "benefit[] from stability," and that he was "unsafe and unhealthy" in mother's care. The district court found that the child had an interest in achieving a safe and stable permanent home, which mother could not provide. The district court balanced the competing interests of the child for a safe, sober, and stable living environment against mother's interests in maintaining a relationship with the child. Upon weighing the factors, the district court found that the interests favored terminating mother's parental rights.

The district court's best-interest findings are amply supported by the record. The child did not have a permanent residence and was regularly "shuffled" between relatives in Minnesota and North Dakota. The child's therapist testified that in therapy the child exhibited signs consistent with a child raised in an "unsafe" environment. The therapist diagnosed the child with an adjustment disorder with mixed emotions and conduct based on the trauma and neglect he experienced.

Further, both the therapist and the child's grandmother testified that the child exhibited concerning behaviors following an in-person visit with mother. Grandmother has been the child's primary caregiver since February 2020. Grandmother stated that the

child had “terrible fits” when he first came to live with her, but has since “gotten better.” Grandmother agreed that the child “feels very much a part of [the] household,” and is integrated into her home and the community. The child attends school, Cub Scouts and church, and has made friends at school. Yet following the February 2020 visit with mother, grandmother noticed that the child “wouldn’t eat at all” for nearly two weeks. Grandmother also observed some remote visits between mother and the child and described them as “not well.” The therapist was also troubled by the child’s behavior following the November 2020 visit with mother. The therapist noticed “a serious regression going on following the visit,” and noted that the child had more problems in school, increased hyperactivity, and additional disciplinary problems at school. The therapist had three conversations with mother, during which mother blamed grandmother for the child’s problems and refused to take responsibility for the child’s trauma. The therapist did not believe that face-to-face contact with mother was in the child’s best interests.

The GAL testified that although mother loved the child, she “[has] not put his needs above her own.” The GAL stated that the child had been in out-of-home placement for more than 390 days, which was “a significant amount of time in a six-year-old’s life.” The GAL stated that the child “needs to have permanency established for him now.” The GAL believed that terminating mother’s parental rights would be in the child’s best interests.

We determine that there are sufficient facts in the record to support the district court’s determination that termination of mother’s parental rights is in the child’s best interests. Thus, the district court did not abuse its discretion on this issue.

In sum, because a statutory ground for termination of parental rights is supported by clear and convincing evidence and termination is in the child's best interests, the district court did not abuse its discretion by terminating mother's parental rights to the child.

Affirmed.