STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0922, A21-0923

In the Matter of the Welfare of the Children of:
A. L. R., T. D. C. and J. D. M., Parents.

Filed December 13, 2021
Affirmed
Connolly, Judge

Chippewa County District Court
File Nos. 12-JV-21-7, 12-JV-20-71

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

In these consolidated termination-of-parental-rights (TPR) appeals, the mother of Child 1, Child 2, and Child 3 challenges the district court's determinations that she is a palpably unfit parent, that termination of her parental rights is in her children's best interests, and that respondent Chippewa County Family Services (CCFS) made reasonable

efforts to reunite the family (A21-0922); the father of Child 3 challenges the determinations that he neglected to comply with the duties imposed by the parent-child relationship, that his TPR is in Child 3's best interest, and that CCFS made reasonable efforts to reunite the family; he also argues that the district court erred in admitting the children's out-of-court statements under Minn. Stat. § 260C.165 (2020). Because we see no abuse of discretion in the TPRs and no error in the district court's admission of the statements, we affirm.

FACTS

Appellant A.L.R. is the mother of Child 1, an 11-year-old girl born in 2010; Child 2, a 9-year-old girl born in 2012; and Child 3, a 7-year-old boy born in 2014. Appellant J.D.M. is the father of Child 3.[1] In November 2019, A.L.R. accused J.D.M. of sexually assaulting Child 1, who was then nine; she recorded her accusation. In December 2019, J.D.M. was arrested.

In February 2020, Child 1 disclosed to a school social worker that J.D.M. was living in A.L.R.'s house and was not supposed to be there, that she was afraid to go to sleep with J.D.M. in the house, and that J.D.M. had touched her sexually. The incident was reported to the police, and the following day Child 1 had a forensic interview, in which she said that (1) J.D.M. had sexually abused Child 1, putting his "private" on and in her "private," which hurt, and "white stuff" came out of his private, (2) this happened before J.D.M. went to jail; (3) J.D.M. told Child 1 not to say anything about the incident; (4) when Child 1 told A.L.R. about the incident, A.L.R. did not believe her; (5) A.L.R. told Child 1 and Child 2

[1]The father of Child 1 and Child 2 voluntarily terminated his parental rights to them in March 2021.

not to say anything about what had happened to Child 1; (6) A.L.R. would beat Child 1 if she found out that Child 1 told anyone; (7) A.L.R. used to beat the children with a belt that she still had, but she no longer used the belt; and (8) Child 1 had another incident with J.D.M. when he got out of jail. The children were taken into protective care; a petition was filed to have them be declared children in need of protection or services (CHIPS); and J.D.M. was incarcerated.[2] In March 2020, the children were adjudicated CHIPS, and their control was transferred to CCFS.

In January 2021, a TPR petition was filed for A.L.R. and J.D.M. Following a trial, the district court terminated the parental rights of A.L.R. on the ground of palpable unfitness to be part of the parent-child relationship and of J.D.M. on the ground of neglect or refusal to comply with the duties imposed by the parent-child relationship. They filed notices of appeal of the TPRs, and this court consolidated their appeals.

On appeal, A.L.R. argues that (1) the finding that she was palpably unfit to be a party to the parent-child relationship is not supported by clear and convincing evidence, (2) the termination of her parental rights is not in her children's best interests, and (3) CCFS did not make reasonable efforts to reunite her family; J.D.M. argues that (4) the finding that he neglected to comply with the duties imposed by the parent-child relationship is not supported by clear and convincing evidence, (5) the termination of his parental rights is not

[2] The criminal charges relating to sexual assault were eventually dismissed but in this case the district court concluded that J.D.M. had committed domestic child abuse against Child 1.

in Child 3's best interest, (6) CCFS did not make reasonable efforts to reunite his family, and (7) the district court erred in admitting the children's out-of-court statements.

DECISION

Appellate courts "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, provided that the county has made reasonable efforts to reunite the family." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted). This court reviews the district court's factual findings for clear error, but reviews its determination of whether a particular statutory basis for termination exists 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. 17, 2012). We also "review a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion." *Id.* at 905. In TPR cases, "[c]onsiderable deference is due to the district court's decision because a 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).

> [C]lear-error review does not permit an appellate court to weigh the evidence as if trying the matter de novo. . . . [A]n appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court. Rather, . . . an appellate court's duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.

In re Civil Commitment of Kenney, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotations and citations omitted).

1. ALR's Palpable Unfitness

The district court may terminate parental rights if it finds

> that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4) (2020). The district court found that: (1) A.L.R. knew that J.D.M. was sexually abusing Child 1 and, by denying the abuse and doing nothing about it, she neglected to care for Child 1's physical and mental needs; (2) the physical discipline A.L.R. had previously used, i.e., hitting the children with a belt that left marks on them, was domestic child abuse under Minn. Stat. § 260C.007, subd. 13 (2020);[3] and (3) A.L.R. continued to disbelieve the children despite clear and convincing evidence that they had experienced significant trauma caused by J.D.M., a man she let reside in her home. The record supports these findings. The district court also concluded that ALR's "dishonesty with figures and institutions responsible for [her] compliance suggest that she may for the reasonably foreseeable future disregard the reasonable requests by [CCFS] and Court orders for protective action."

[3] The district court noted that the children's guardian ad litem (GAL) had testified that "all three children made statements regarding physical abuse perpetrated against them by [A.L.R.]. These statements were consistent even when [the children were] interviewed separately."

Moreover, a parent may be found to be palpably unfit because of a causal connection between the parent's substance use and the inability to parent children. *In re Welfare of the Children of T.R.*, 750 N.W.2d 656, 662 (Minn. 2008). The relevant time period for a finding of palpable unfitness includes all time up to the termination hearing. *In re Welfare of M.A.*, 408 N.W.2d 227, 232 (Minn. App. 1987), *rev. denied* (Minn. Sept. 18, 1987). To be a basis for termination, the palpable unfitness must be expected to continue for "the reasonably foreseeable future." Minn. Stat. § 206C.301, subd. 1(b)(4). The district court ordered A.L.R. to abstain from alcohol, and she understood that this was a condition of the children being returned to her. The district court found that, although A.L.R. had made "progress in her path to sobriety," (1) she was seen with J.D.M. at a liquor store three days before the trial, (2) she testified that court orders and the risk of jail were not enough to keep her sober, and (3) she failed to comply with court orders to abstain from alcohol and to notify CCFS of her relapses. The district court concluded that "[b]ecause [A.L.R.] was unable to demonstrate accountability in her progress towards sobriety, she was unable to be reunited with her children."

A.L.R. argues that her use of alcohol is not a barrier to reuniting her with her children. At trial, she testified that she did not complete some tests because she did not trust CCFS and that she previously lied to the court in saying that one positive urinalysis test was due to her taking medication when it was actually due to her consumption of alcohol. A.L.R. also argues that: (1) the district court erred in finding that she had relapsed because "[a] relapse for alcohol requires more extensive use than just drinking a few alcoholic beverages"; (2) she had only "three small slips," one of which was shortly before

the TPR trial; and (3) "[her] diagnosis does not mean she needs to permanently abstain from alcohol use." She provides no legal or other support for any of these arguments. We decline to reach inadequately briefed issues. *State Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997). The district court did not abuse its discretion in finding that A.L.R.'s refusal to abstain from alcohol when she knew that abstinence was a requirement for having her children returned to her was an indication of palpable unfitness.

Clear and convincing evidence of A.L.R.'s physical abuse of the children, her failure to address J.D.M.'s sexual abuse of Child 1, and her continuing use of alcohol supports the finding that A.L.R. is palpably unfit to be a party to the parent and child relationship and provides a basis for her TPR. "[A] trial court may involuntarily terminate parental rights when only one criterion [for termination] is proven." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004).

2. The Best Interests of the Children

Appellate courts "apply an abuse-of-discretion standard of review to a district court's conclusion that termination of parental rights is in a child's best interests." *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 657 (Minn. App. 2018).

The children have been in court-ordered out-of-home placement since February 2020. The district court found that they "are adjusting well to placement," including being excited about activities with their foster parents, who are "helping the children learn coping skills." Child 2 and Child 3 are together in the same home. Child 1 has had suicidal ideation with a plan and is in treatment with support; the district court noted that "once [her

mental health] needs have been addressed, it is anticipated that Child 1 will return to the same placement as Child 2 and [Child] 3."

In light of these and other findings, the district court concluded that "[i]t is in the best interests of the [c]hildren to terminate [A.L.R.]'s parental rights." The best interests of the children are the paramount consideration in a TPR case. Minn. Stat. § 260C.301, subd. 7 (2020). The district court also concluded that the children have no interests competing with, or conflicting with, the termination of A.L.R.'s parental rights.[4] Where the interests of parent and child conflict, the interests of the child are paramount. *Id.* The district court noted that the GAL testified that it is in the best interests of the children that A.L.R.'s parental rights be terminated and did not abuse its discretion by agreeing with that testimony.

3. Services provided by CCFS

In TPR cases, a district court must ensure that the county makes reasonable efforts to reunite a family and determine whether those efforts have failed. Minn. Stat. § 260.012(a) (2020); see Minn. R. Juv. Prot. P. 58.04(c)(2)(i) (requiring the district court to make findings regarding reunification efforts or that those efforts were not required). Here, we reject A.L.R.'s assertion that the county failed to make those efforts. The district court's order lists 63 services provided by CCFS and notes that A.L.R. "failed to cooperate with multiple case plans." Testimony from a social worker, a chemical case manager, a

[4] A.L.R. argues that this statement is error because the district court should have considered the children's other interests, such as staying together. But the district court did address this, noting that Child 2 and Child 3 are together and that Child 1 is not with them now because of her need for mental-health treatment, but will hopefully rejoin them later.

counselor, and a GAL, all of whom the district court found to be credible witnesses, provided further evidence of CCFS's efforts on behalf of this family.

A.L.R. was shown to be palpably unfit for the parent-child relationship; it is in the children's best interests to terminate her rights to them, and CCFS made reasonable but unsuccessful efforts to reunite the family.

4. J.D.M.'s Neglect to Comply with the Duties of the Parent and Child Relationship

A district court may terminate parental rights if it finds

> 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, . . . if the parent is physically and financially able, and . . . reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the [TPR] petition.

Minn. Stat. § 260C.301, subd. 1(b)(2) (2020). The district court found that J.D.M. refused to sign a case plan provided by CCFS, which provided or attempted to provide visitation with the child, an out of home placement plan, a rule 25 assessment, parenting classes, and a diagnostic assessment.[5] The district court noted that "[w]hile [J.D.M.'s] incarceration complicated what services could be provided, CCFS provided [him] with alternatives that could satisfy the case plan. . . . CCFS explained the services to [J.D.M.] and he refused to sign the [document] needed to start services." The district court found further that:

> [J.D.M.] refused to cooperate with reasonable requests from CCFS because 'he didn't feel like he had to.' J.D.M. has stated that he does not need parenting classes because he is a good

[5] He did sign a case plan on March 8, 2021, shortly before trial.

> parent and would not participate in his parenting education option.
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> . . . .
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> CCFS requested J.D.M. to submit to a psychosexual evaluation that he never completed. At trial, J.D.M. accused CCFS of not knowing what a psychosexual evaluation was and [said] that he did not do it because he is not a "chomo" or child molester.

Testimony from the chemical case manager indicated that J.D.M. failed to complete a chemical use assessment. Child 1 repeatedly and consistently described J.D.M.'s sexual abuse of her and said in her interview that she believed he was still in A.L.R.'s residence and in A.L.R.'s room because A.L.R. carried two plates of food, beers, cups of coffee, etc. into the room, and Child 1 had heard J.D.M.'s voice.

J.D.M. argues that he was the non-custodial parent of Child 3 and that, in any event, there was no evidence that Child 3 was neglected, there were no noted developmental delays with Child 3, and there are no ongoing medical concerns regarding Child 3. But the district court found from the testimony of caregivers that:

> Child 3 has been struggling with mental health symptoms, including emotional identification and emotional regulation. [He] also has instances of enuresis and encopresis, which have no related physical health causes. . . . [He] works with an in-home skills worker to identify and regulate emotions and continues to see an individual therapist to address ongoing mental health symptoms that appear to be trauma related, per his individual therapist.
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> . . . .
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> . . . Child 3 was recently tested for the need for additional assistance in the classroom and is now receiving special education services.

J.D.M. also argues that his failure to complete a psychosexual evaluation is not an issue because "this only becomes an issue if [he] either admitted or was found to have sexually abused someone" and "there was no admission by [himself] that he ever abused Child 1." We disagree. As the district court noted, Child 3 was in the house when this happened, and by abusing Child 1, J.D.M. "create[d] a dangerous environment for his child (Child 3)," thus neglecting to comply with the duties imposed by the parent-child relationship.

J.D.M. also claims there was no evidence that he refused to provide food, clothing, or other care for Child 3, but he does not explain how he did this while incarcerated. A district court may consider the fact of incarceration in conjunction with other evidence supporting a TPR petition. *In re Welfare of A.Y.-J.*, 558 N.W.2d 757, 761 (Minn. App. 1997), *rev. denied* (Minn. Apr. 15, 1997).

J.D.M. has also moved to Nebraska, and he does not explain how he would provide for Child 3, who is in Minnesota; he says only that Child 3 should have been returned to A.L.R. J.D.M. also claims to have substantially complied with his case plan and says this is all the law requires. While this is true, the district court found that J.D.M. did not substantially comply: while he claimed to have worked with various social service agencies towards reunification, he did not substantiate any of those claims, and his completion of an anger management program was not enough to establish substantial compliance.

The district court did not abuse its discretion in finding that J.D.M. has refused or neglected to comply with the duties imposed by his parent-child relationship with Child 3.

5. Best Interests of the children

J.D.M. says that both he and A.L.R. have "a vested interest in preserving the parent-child relationship" and that the district court "never even weighed the competing interest factors for or against termination of parental rights, which is itself clearly erroneous." But the best interests of the children are the paramount consideration in a TPR case, and, if the interests of children and parents conflict, the interests of the children are paramount. Minn. Stat. § 260C.301, subd. 7. Thus, the district court did not need to weigh the interests of J.D.M. and A.L.R. against the needs of the children because, by statute, the children's needs are paramount.

The district court found that, "Given [J.D.M.'s] history of noncompliance with [c]ourt orders, dishonesty with law enforcement, and meeting with [A.L.R.] just prior to trial, the [c]ourt is not convinced that [J.D.M.] will comply with court orders or reasonable requests by CCFS toward reunification" and that "[b]oth [CCFS] and [the GAL] believe it is in the best interests of all the children subject to the [TPR] petition that J.D.M.'s parental rights be terminated." There was no abuse of discretion in the decision that terminating J.D.M.'s parental rights was in his child's best interests.

6. Reasonable efforts

As mentioned above, the district court's order enumerated 63 services that CCFS provided to A.L.R. and J.D.M., including during the period when J.D.M. was incarcerated. The district court noted that his "incarceration and refusal to keep in contact and cooperate with CCFS frustrated efforts towards reunification." J.D.M. refused to accept services to deal with the sexual abuse alleged by Child 1 and corroborated by Child 2 because J.D.M.

has not admitted the abuse; he refused services to improve his parenting skills because he believes his parenting skills are adequate.

J.D.M. also argues that "given [his] incarceration during a pandemic for approximately 7 months during the case then his move to Nebraska, CCFS failed to establish that services were available, timely, or truly realistic under the circumstances." But CCFS did what it could; neither J.D.M.'s incarceration nor his decision to move to Nebraska was within the control of CCFS, and his refusal to accept some services and to complete a psychosexual assessment prevented the services CCFS did provide from bringing about reunification.

The district court did not err in concluding that CCFS made reasonable efforts to reunite J.D.M. with Child 3 but that these efforts were unsuccessful, that J.D.M. failed to comply with the duties imposed by his parent-child relationship with Child 3, and that it was in Child 3's best interest to terminate J.D.M.'s parental rights.

7. Admission of the Children's Out-of-Court Statements into Evidence

"We review a district court's evidentiary rulings, including rulings on foundational reliability, for an abuse of discretion." *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012).

The recorded forensic evidence of Child 1 and Child 2 concerning J.D.M.'s sexual abuse of Child 1was offered under Minn. Stat. § 260C.165 (2020), which provides in relevant part:

> An out-of-court statement not otherwise admissible by statute or rule of evidence is admissible in evidence in . . . any proceeding for termination of parental rights if:

> (1) the statement was made by a child under the age of ten years . . .
> (2) the statement alleges, explains, denies, or describes:
> (i) any act of sexual penetration or contact performed with or on the child; [or]
> (ii) any act of sexual penetration or contact with or on another child observed by the child making the statement;
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> . . . .
>
> (3) the court finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient idicia of reliability; and
> (4) the proponent of the statement notifies other parties of an intent to offer the statement . . . sufficiently in advance of the proceeding.
> (5)
> . . . .
>
> For purposes of this section, an out-of-court statement includes a video, audio, or other recorded statement.

Minn. Stat. § 260C.165.

J.D.M.'s attorney argued that "if [the state] want[s] to prove that there was some sort of sexual contact between [J.D.M.] and this child then that child needs to testify to it" and objected to admission of the recorded statements on two grounds: first, that although Child 1 was under ten when she was interviewed, she was now ten and "old enough to testify," and second, that some of Child 1's mental-health records indicate that she is not always reliable. The district court disagreed, saying it "would find that certainly paragraph[s] one and two [of Minn. Stat. § 260C.165] have been met, at least in regarding [a] child who was under the age of ten and physical abuse was described by the child that they observed or was . . . acted upon them."

J.D.M.'s attorney also argued that the forensic interviews had not been properly conducted and were "unreliable testimony." The district court said:

> [T]he reliability . . . really goes to the weight of . . . this evidence. . . . Certainly, . . . if there's a forensic interview standard and that standard wasn't met that would go to the weight of the evidence, but that . . . [is] really not discussed in [Minn. Stat. § 260C.165] . . . [I]t would go to the reliability of the person to whom the statement is made. . . . [U]nder that standard I would find . . . that . . . [the recorded statements are] admissible.

On appeal, J.D.M. relies not on Minn. Stat. § 260C.165 but instead on Minn. Stat. § 595.02, subd. 3 (2020), which also concerns the admissibility of statements concerning sexual penetration or contact made by a child under ten but adds the requirement that the child "either: (i) testifies at the proceedings; or (ii) is unavailable as a witness and there is corroborative evidence of the act." Minn. Stat. § 595.02, subd. 3(b).[6] In the reply brief, J.D.M. argues that "[t]he requirement that out-of-court statements should only be admitted if the child testifies, or the child is unavailable and there is corroborating evidence, should be enforced in this matter and in all other child protection matters." But that would involve grafting the additional requirement of Minn. Stat. § 595.02, subd. 3, on to Minn. Stat. § 260C.165, and this court "cannot supply [to a statute] what the legislature purposely omits or inadvertently overlooks." *Renstrom v. Indep. Sch. Dist. No. 261*, 390 N.W.2d 25, 27 (Minn. App. 1986) (quotation omitted).

J.D.M. also argues in the reply brief that "[t]he legal analysis indicates that the out-of-court statements of Child 1 and Child 2 are not reliable and should not have been

[6] Minn. Stat. § 595.02, subd. 3, was not mentioned at trial.

admitted or relied upon by the district court." But J.D.M.'s brief does not provide legal analysis so much as opinion on the reliability of the statements.

> The allegations made in Child 1's interview were not corroborated by any other first-hand evidence. There was no physical evidence to support Child 1's claim. There were no other witnesses that observed Child 1's allegations. . . .
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> . . . Child 1 was not placed under oath for this interview, nor was she cross-examined. These factors alone call into question the reliability of Child 1's interview. In addition, this interview took place right after Child 1 had allegedly made allegations to a teacher . . . [and] little to no evidence was presented regarding exactly what those allegations were. . . . Child 1 stated she knew why she was being questioned. That . . . is another concerning factor, as it gives the impression that Child 1 [knew] what [was] expected of her and what she need[ed] to [s]ay during the interview.
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> . . . .
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> Even more concerning is the multitude of evidence regarding Child 1's reliability, that was completely ignored by the district court. . . .

J.D.M. provides no legal support for the implications that child victims of sexual abuse should be able to produce evidence and witnesses and be subjected to cross-examination. The district court did not abuse its discretion in admitting or relying on the recording of Child 1's interview to terminate J.D.M.'s parental rights to Child 3.

There was no abuse of discretion in the district court's termination of the parental rights of A.L.R. and J.D.M.

Affirmed.