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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1163**

In the Matter of the Children of: S. J. K. W., K. T. S., D. R. H., Parents.

**Filed February 22, 2022
Affirmed
Frisch, Judge**

Wright County District Court
File No. 86-JV-20-4853

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Considered and decided by Frisch, Presiding Judge; Gaïtas, Judge; and Cleary, Judge.*

NONPRECEDENTIAL OPINION

FRISCH, Judge

On appeal from an order terminating parental rights and denying a transfer of permanent custody of the children to a relative, appellant-mother argues that the district

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

court abused its discretion by determining that statutory grounds existed to terminate her parental rights and that termination without a transfer of custody to a relative was in the best interests of the children. We affirm.

FACTS

Appellant S.J.K.W. (mother) gave birth to three minor children: T.J.W., D.R.H., and L.B.H (the children). The children, at times, lived with their maternal grandmother, T.W. In 2018, respondent Wright County Health & Human Services (the county) received reports that mother was using methamphetamine and that drugs were being sold out of her house. The county filed a petition for children in need of protection or services (CHIPS) and the children were adjudicated as CHIPS. In June 2019, a county social worker recommended that the children be returned to mother. However, the children spent a significant amount of time living with T.W. after mother regained custody.

In January 2020, mother was arrested for possession of methamphetamine. In May 2020, mother was again found with methamphetamine. A search of her home revealed drug paraphernalia and a loaded shotgun was located underneath a bed where the children had access. When asked about her drug use, mother said, “I don’t have a drug problem, I just use drugs.” Mother also indicated that she had “faked” her way through her case plan during the previous CHIPS proceeding. The county filed another CHIPS petition, and the children were placed into foster care.

While in foster care, the children began making significant improvements. A therapist who was assigned to evaluate the children while in foster care reported, “[t]he

progress these children have made since living in the [foster] home was both unexpected and amazing.”

Between July and October 2020, mother attended multiple chemical-dependency programs. Mother declined to release to the county the complete records of her treatment and refused to enter a program that would do so. In October 2020, after receiving pushback and increasingly antagonistic communications from mother regarding the adequacy of her treatment, the county filed a motion to terminate mother’s parental rights. Mother then filed a motion to transfer her parental rights to T.W.

In January 2021, the children were adjudicated CHIPS, and the county prepared a case plan for mother. Part of mother’s case plan required her to submit to drug tests and attend individual therapy to address her substance-abuse and mental-health needs. Mother was also required to attend parenting-skills classes. Despite her initial compliance with aspects of the case plan, mother failed to complete a majority, if not all, of her case plan tasks between April and July 2021.

Trial began in May 2021 and continued intermittently through July to accommodate witness schedules. The county offered testimony from the family’s social worker, family therapist, children’s therapist, and guardian ad litem. T.W. called numerous witnesses to testify as to her character and capability as a grandmother and mother. On August 24, 2021, the district court issued a detailed order terminating mother’s parental rights and denying mother’s motion to transfer parental rights to T.W. Mother appeals.

DECISION

I. The district court did not abuse its discretion when it terminated mother's parental rights.

Mother argues that the district court abused its discretion by terminating her parental rights because (1) there was not substantial evidence showing that the county made reasonable efforts to reunify the family, (2) there was insufficient evidence to support a statutory ground for termination, and (3) termination was not in the best interests of the children. The county argues that there was sufficient evidence in the record to support the district court's findings of fact and conclusions of law.

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, subs. 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. In doing so, "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.” *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. The district court’s finding that the county had made reasonable efforts to unify mother with her children is well-grounded in the record.

Mother first argues that “the trial court’s finding that [the county] made reasonable efforts to rehabilitate and reunify the family is unsupported by substantial evidence.” Generally, reasonable efforts to prevent placement of a child outside the home and for rehabilitation and reunification are required. Minn. Stat. § 260.012(a) (2020).¹ “Reasonable efforts at rehabilitation 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) (quotation omitted), *rev. denied* (Minn. Mar. 28, 2007).

In determining whether reasonable efforts have been made, the district court must consider whether services offered to the family 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). A district court also 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

¹ There were no findings in this case that reasonable efforts would have been futile. *See* Minn. Stat. § 260.012(h) (2020) (stating that, as an alternative to findings that a county made reasonable efforts, “the court may determine that provision of services or further services for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances or that reasonable efforts are not required as provided in paragraph (a).”).

county's efforts must be aimed at alleviating the conditions that prompted the out-of-home placement, and the efforts must conform to the problems presented. *Id.*; *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996).

Here, the district court found that the county had made reasonable efforts to reunify mother with the children. The county connected mother to a variety of services to assist with mother's mental-health, chemical-dependency, and parenting-skills issues. The county also facilitated numerous meetings between the children and mother during the pendency of the CHIPS and termination proceedings. The county consistently followed up with mother and attempted to assist mother with scheduling her chemical-testing appointments. The county maintained contact with mother and exchanged many communications regarding the steps that mother needed to take to achieve reunification with the children. The county made these and other efforts notwithstanding mother's admission that she "faked" her way through her programming during the earlier CHIPS proceedings.

Mother does not identify any deficiencies in the services the county provided to her or argue that the district court incorrectly evaluated the factors set forth in Minn. Stat. § 260.012(h). Rather, mother argues that the county was biased against her. The record does not support this allegation. The county worked as closely with mother as mother would allow. Although the county pushed back against mother's choices, including not attending a chemical-dependency program that would release mother's records to the county, the record supports the conclusion that the county was at all times working to prepare mother for reunification with the children. Thus, the district court's findings

related to these reasonable efforts is supported by the record, and the district court did not abuse its discretion in ruling that the county made reasonable efforts to reunite mother and the children.

B. The district court did not abuse its discretion when it found that statutory grounds for termination existed.

The district court found four statutory grounds to support the termination of mother's parental rights: palpable unfitness to parent, failure of reasonable efforts to correct the conditions leading to the children's placement, failure to comply with parental duties, and that the children were neglected and in foster care. Mother argues that there is not sufficient evidence in the record to support any of the statutory grounds for termination. The county disagrees, arguing that clear and convincing evidence supports the district court's findings regarding the statutory grounds to terminate mother's parental rights.

“[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. “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 Child. of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted). “In applying the clear-error standard, we view the evidence in a light favorable to the findings. We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed.” *In re Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation and citation omitted).

We must “fully and fairly consider the evidence, but so far only as is necessary to determine beyond question that [the evidence] reasonably tends to support the findings of the factfinder.” *Id.* at 223 (quotation omitted). Thus, “[w]hen the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* (quotation omitted). Only one properly supported statutory ground is needed for us to affirm a termination order. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012).²

1. Palpable Unfitness

A district court may terminate parental rights if it finds that the parent is “palpably unfit to be a party to the parent and child relationship.” Minn. Stat. § 260C.301, subd. 1(b)(4). To meet its burden under this subdivision, “the county must prove a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that, it appears, will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child.” *T.R.*, 750 N.W.2d at 661. The county’s burden under this subdivision is “onerous.” *Id.* (quotation omitted).

Here, the district court ruled mother to be palpably unfit. In a detailed order, the district court set forth mother’s long-standing struggles with chemical-dependency and mental-health issues, despite the county’s intervention of services, as evidence that mother

² Although the district court concluded that the children are neglected and in foster care, we decline to address the district court’s findings on this issue as there are other sufficient statutory grounds supporting termination.

was palpably unfit. The district court found that mother's failure to take care of her own needs resulted in her inability to meet the needs of the children.

The district court's conclusion is supported by the record. Despite her claim that she completed a series of chemical-dependency programs and her sporadic attendance at therapy sessions, mother herself admitted that she believed that she could not take care of the children. She testified multiple times that she could not parent due to her struggles, despite all the resources she had received.

The record also reflects that the children have been harmed due to mother's inability to take care of her own mental-health and substance-abuse issues. The children's therapist opined that all three children had suffered trauma because of their experiences living with mother. The family therapist concluded that mother's failure to address her "lack of parenting capacity" resulted in the children being "harmed." That therapist determined that mother showed a severe lack of parenting skills and noted that, once the children were removed from mother's care, they experienced substantial improvements in all areas of their lives.

During the proceedings before the district court, mother admitted multiple times that she was not capable of caring for her children. The clear and convincing evidence in the record, including the testimony of multiple therapists who interacted with mother and the children, indicate that mother's inability to parent harmed the children. Therefore, it was not an abuse of discretion for the district court to rule mother to be palpably unfit to parent.

2. Failure of Reasonable Efforts to Correct Conditions

The district court may terminate parental rights if it finds “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). Termination of parental rights may be proper even when the parent has substantially complied with a case plan if the record contains clear and convincing evidence showing that the parent is presently unable to assume parenting responsibilities. *J.K.T.*, 814 N.W.2d at 89.

Reasonable efforts are presumed to have failed when the children have been in foster care for a cumulative period of 12 months within the preceding 22 months, the court approved the out-of-home placement plan and the plan is filed with the court, the conditions leading to out-of-home placement have not been corrected, and reasonable efforts have been made by the social-services agency to rehabilitate the parent and reunite the family. Minn. Stat. § 260C.301, subd. 1(b)(5)(i)-(iv). “It is presumed that conditions leading to a child’s out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court’s orders and a reasonable case plan.” *Id.*, subd. 1(b)(5)(iii).

Here, the district court found that reasonable efforts had failed to reunify mother with her children. In May 2020, the children were placed in foster care and remained in foster care through the conclusion of trial in July 2021, a period of time well over 12 months. The district court approved the placement plan in its January 8, 2021 order adjudicating the children CHIPS, and the plan had been previously filed with the court.

The district court highlighted how mother's efforts to complete her case plan waned as trial approached and that she demonstrated a general lack of effort to complete her case plan.

Again, these findings are supported by clear and convincing evidence in the record. Mother's case plan required her to attend weekly therapy sessions and participate in consistent drug screenings. While the record shows that mother complied with some of these requirements, the record also shows that she stopped attending therapy in March 2021 and missed a series of drug tests beginning in April 2021. The record does not contain any evidence that mother completed any additional therapy sessions or drug screenings between April 2021 and the conclusion of trial in July 2021. Mother also did not release all of her treatment information to the county and the county struggled to get mother to enter acceptable programming. Thus, the record indicates that mother has not been in substantial compliance with the case plan, and it is presumed that the conditions leading to out-of-home placement have not been rectified. *Id.*

Even if mother could show that she substantially complied with her case plan, the key inquiry that remains is whether mother is able to resume parenting responsibilities. *J.K.T.*, 814 N.W.2d at 89. Mother herself admitted that she is not. And, as explained herein, mother admitted that she was unable to parent despite the county's provision of many years of reasonable services to address her mental-health, chemical-dependency, and parenting-skills issues. Thus, the district court did not abuse its discretion when it ruled that there was a presumption that reasonable efforts had failed to correct the conditions leading to the children's placement.

3. Failure to Comply with Parental Duties

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, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able.

Minn. Stat. § 260C.301, subd. 1(b)(2). “Failure to satisfy requirements of a court-ordered case plan provides evidence of a parent's noncompliance with the duties and responsibilities under section 260C.301, subdivision 1(b)(2).” *In re Welfare of Child. of K.S.F.*, 823 N.W.2d 656, 666 (Minn. App. 2012).

Here, the district court found that mother did not comply with the case plan, citing her failure to successfully complete mental-health and chemical-dependency-treatment requirements, as explained above. Mother also failed to attend parenting classes. The therapist evaluating mother and children determined that mother's personal issues caused physical, mental, and emotional harm to the children. These findings are supported by clear and convincing evidence in the record, and the district court therefore did not abuse its discretion by concluding that mother failed to fulfill her parental duties.

C. The district court did not abuse its discretion when it concluded that termination of mother's parental rights was in the best interests of the children.

A district court may terminate parental rights only if it is in the child's best interests. *S.E.P.*, 744 N.W.2d at 385. When a statutory basis to terminate parental rights exists, “the

best interests of the child must be the paramount consideration.” Minn. Stat. § 260C.301, subd. 7. When addressing a child’s best interests in a termination proceeding, the district court must consider (1) “the child’s interests in preserving the parent-child relationship,” (2) “the parent’s interests 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 *In re Welfare of Child. of J.C.L.*, 958 N.W.2d 653, 656-57 (Minn. App. 2021) (distinguishing best-interests test for termination matters from best-interests test for non-termination matters), *rev. denied* (Minn. May 12, 2021). Where the interests of the parent and the child conflict, the interests of the child are paramount. Minn. Stat. § 260C.301, subd. 7. We review a district court’s best-interests determination for an abuse of discretion. *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 669 (Minn. App. 2020).

Here, the district court found that termination of mother’s parental rights was in the best interests of the children. The district court found that given the age of the children, they did have an interest in maintaining the parent-child relationship. It also acknowledged that mother possessed an interest in preserving the relationship. However, the district court also noted that mother had caused substantial harm to the children by exposing them to drug use, dangerous persons, violence, and trauma, and as a result, the children suffered and fell behind their peers academically and developmentally. The district court also observed that despite mother’s interest in preserving the relationship, mother did not take the appropriate steps to fulfill her case plan. Although presented with competing interests, the district court placed the interests of the children first and concluded that mother’s inability to provide for their care made reunification impossible.

The district court's conclusion is supported by the record. The children's guardian ad litem testified that it was in the best interests of the children for mother's parental rights to be terminated. The family therapist stated that mother lacked the ability to understand the needs of her children, specifically articulating that her "lack of insight and empathy goes to the heart of the problem in terms of her lack of capacity." She concluded that it would be in the best interests of the children to be adopted by their foster parents. She noted the progress the children made in terms of physical, emotional, social, and educational well-being when taken out of mother's care was "unexpected and amazing." She also concluded that if the children were to be moved out of the care of their foster parents, they would be "harmed again." The district court explicitly found the testimony of the family therapist to be credible.

Overall, the district court's order terminating mother's parental rights was thoughtful, thorough, and well-crafted. Because there is sufficient evidence the district court deemed credible to support its conclusions, we find no abuse of discretion in the district court's decision to terminate mother's parental rights.

II. The district court did not abuse its discretion when it denied mother's motion to transfer custody of the children to T.W.

Mother argues that the district court abused its discretion by denying the petition to transfer permanent legal and physical custody of the children to their grandmother, T.W. Once a district court terminates the biological parents' parental rights, it must order guardianship to the commissioner of human services, a licensed child-placing agency, or an individual who is capable and willing of assuming duties and responsibilities to the

child. Minn. Stat. § 260C.325, subd. 1(a) (2020). The district court may transfer physical and legal custody to a “fit and willing relative in the best interests of the child” if certain requirements are met. Minn. Stat. § 260C.515, subd. 4 (Supp. 2021).

The best interests of the children govern the district court’s permanency determination, including consideration of the child’s relationship with relatives. Minn. Stat. § 260C.511(b) (2020). We review the district court’s decision to deny transferring custody for an abuse of discretion. *In re Welfare of Child. of A.I.*, 779 N.W.2d 886, 895 (Minn. App. 2010).

Here, the district court determined that it was not in the best interests of the children to be placed with T.W. It found that although T.W. cares deeply for her grandchildren and wants the best for them, the children would likely struggle in her care. It found it “apparent that given her lack of insight into their needs, difficulty following through with their continued care, and her close relationship with [mother] that transferring permanent legal and physical custody of [children] to [T.W.] is not in the best interests of the minor children.”

The district court’s conclusion is supported by the record. The county social worker determined that T.W. continued to allow mother to access the children, despite the negative effects mother has on the children. The social worker also stated that T.W., although not actively neglecting the children, did not consistently meet their needs while they were in her care, including failing to keep up with needed medical appointments. The family therapist reached similar conclusions. She opined that the children have been harmed as a result of T.W.’s inability to set clear boundaries and limits with mother, that T.W. failed to

adequately address the children's needs, and did not believe that T.W. could address their future needs. She explicitly noted that the children were out of control when with T.W. The family therapist concluded that it was in the best interests of the children that T.W. not have primary custody and instead serve as a visiting grandparent.

T.W. called many witnesses to testify on her behalf, including personal friends, family members, and acquaintances. Although these witnesses provided positive anecdotes about T.W. and the children, their testimony did not address the key issues regarding the children's physical, emotional, and mental-health needs while in the care of T.W. Thus, it appears that the district court implicitly gave more weight to the evidence provided by the social worker and family therapist than to the testimony from T.W.'s witnesses. *See In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992) (stating that we defer to the district court's determinations regarding the weight of evidence and testimony); *see also In re Welfare of the Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009) (deferring to a district court's implicit credibility determination in a termination-of-parental-rights proceeding); *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 735 (Minn. App. 2009) (deferring to a district court's implicit credibility determination in a child-in-need-of-protection-or-services proceeding).

The district court therefore did not abuse its discretion by ruling that a transfer of custody to T.W. was not in the best interests of the children.

Affirmed.