This opinion is nonprecedential except as provided by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
A21-1357

In the Matter of the Welfare of the Child of:
M. W. and T. S., Parents.

Filed April 25, 2022
Affirmed
Bjorkman, Judge

Washington County District Court
File No. 82-JV-21-244

Victoria M.B. Taylor, Taylor, Krieg & Reinke LLC, St. Paul, Minnesota (for appellant-mother M.W.)

John Chitwood, Chitwood Law, PLLC, St. Paul, Minnesota (for respondent-father T.S.)

Pete Orput, Washington County Attorney, Erin Johnson, Assistant County Attorney, Stillwater, Minnesota (for respondent Washington County Community Services)

Ann Flesher, Stillwater, Minnesota (guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Frisch, Judge; and Kirk, Judge.[*]

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant-mother challenges the termination of her parental rights to one child, arguing that (1) the district court should have dismissed this action because respondent-

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

county did not timely file a permanency petition, (2) clear and convincing evidence does not support a statutory basis for termination, and (3) the district court abused its discretion by determining that termination is in the child's best interests. We affirm.

FACTS

Appellant M.W. (mother) and T.S. (father)[1] are the parents of G.S. (the child) who was born in April 2019. Approximately five months later, mother was hospitalized for mental-health issues. A contemporaneous welfare check at the home revealed father was caring for the child and appeared to be intoxicated. The child was removed from the home on an emergency basis and has never returned to mother's care.

On September 5, 2019, respondent Washington County Community Services (the county) filed a petition alleging that the child and mother's two older children from a previous relationship needed protection or services.[2] Mother admitted the petition, and the county assigned a case manager to work with the family.

Mother has a history of significant mental-health issues. She began experiencing psychotic symptoms during adolescence and sustained a traumatic brain injury in 2014. Since her injury, mother has required a number of services to meet her daily needs. These include services from a psychiatrist, family doctor, sleep doctor, adult mental-health worker, adult rehabilitative mental-health services (ARMHS) worker, public-health nurse, personal-care attendant (PCA), and a medication nurse.

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[1] The district court also terminated father's parental rights to the child. Father challenges that decision in a separate appeal, No. A21-1347.

[2] In August 2020, mother agreed to transfer custody of her older children to their father.

The case manager was concerned by her initial observations of mother's mental health and by the doubts existing service providers expressed about mother's "ability to safely parent her children independently." Because of the extensive supportive services already in place, the case manager focused on assessing and developing mother's parenting skills, further evaluating her mental health, and arranging visits between mother and the child. These services and mother's responsibilities were memorialized in court-approved out-of-home placement plans. The overall goals were for mother to address her mental-health concerns and "demonstrate that she can provide a safe and stable home environment . . . that will meet [the child's] physical and emotional needs."

The parenting assessor reported that mother's "own physical and psychological needs were apparent," that she "struggle[d] to recognize and respond to [the child's] emotional cues or physical safety," and that she "fully admits that multitasking is impossible with her brain injury and she must have assistance from others." The doctor who completed the neuropsychological evaluation similarly stated that mother's "capacity to parent safely is extremely limited" and "[h]er need for PCA and ARMHS worker to support and maintain daily levels of independent functioning indicate that [mother]'s ability to build a bond of attachment and trust with her child and bolster her parenting skills and abilities is currently not a reasonable expectation."

As recommended by the parenting assessor and neuropsychologist, the county offered additional services to mother. She completed an intake session with a program designed to help mothers build attachment with their children and locate an ongoing support system. But she did not engage further with the program, stating she was too busy

and overwhelmed with her other obligations. Mother attended a parenting-skills workshop with her two older children for approximately two months. The child was not added to those sessions because mother was unable to manage the older children without assistance from the workshop leader. And the case manager, in conjunction with mother's other service providers, referred mother to an intensive residential-treatment services (IRTS) facility.

In March 2020, mother moved to her mother's home while waiting for an opening at an IRTS facility. While there, mother experienced hallucinations and was hospitalized for mental-health reasons on three occasions. In July, mother moved to an IRTS facility, and then to an adult foster home approximately a month later. In-person supervised visits with the child resumed but mother continued to struggle. One visit had to end early because mother exhibited extreme paranoia about being stalked and could not focus on the visit.

About the time mother moved to the adult foster home, the county placed the child with father. In October, the county filed a petition to transfer permanent legal and physical custody of the child to father (the transfer petition). At the same time, the county asked to be relieved of the obligation to make reasonable efforts to reunite the child and mother. The district court granted the county's request.

In November, mother moved from the adult foster home to an adult group home. The group home did not allow children, but the case manager continued to assist mother with supervised visits. Mother struggled to focus on the child during these visits.

The child remained in father's care until May 4, 2021. On that day, father was arrested for driving while under the influence. The child was in the vehicle at the time of

the arrest. In response, the county moved to dismiss the transfer petition and filed a termination of parental rights (TPR) petition with respect to both parents. Mother moved to dismiss the TPR petition as untimely. The district court denied the motion.

Trial on the TPR petition commenced in August. At that time, the child had not been in mother's care for more than 700 days and the two never had unsupervised visits. The case manager testified that mother has required many services over the past two years just to meet her own basic needs, that she continues to need these services, and that neither the services provided nor mother's efforts have corrected the conditions that led to the child's out-of-home placement. The guardian ad litem (GAL) testified about her concerns for the child, that mother is not able, "now, or in the foreseeable future, [to] safely parent" the child, and that termination of mother's parental rights is in the child's best interests. The GAL also testified that the child is doing well in foster care and she has no reason to doubt that the foster parents would continue to facilitate contact between the child and mother. The district court found the testimony of the case worker and the GAL to be credible.

Mother testified about the progress she has made, that she was feeling the best she had since her 2014 injury. She also discussed her plan to move to an apartment in October, which would be the first time she lived alone. Mother's disability case manager described the improvements mother has made that would allow her to successfully parent the child and live in her own home. The district court found mother's testimony credible "as to her love for [the child] and her desire to parent [the child]" and "as to the improvements she had made since the beginning of the case." But the court did not find her testimony credible

"as it relates to the impact of her mental health on her relationship with [the child] and as to her beliefs about her ability to live independently and safely and effectively parent [the child]." And the district court found the disability case manager's testimony was credible but of limited worth because she had only worked with mother since August 2020 and "never observed [mother] with any of her children."

After the trial, the district court found that the county made reasonable efforts to reunite mother with the child, but that the evidence shows mother is unable "to live independently and manage her mental health symptoms." While acknowledging mother's love for the child and mother's progress during the almost two-year proceeding, the district court found that the county's reasonable efforts had not corrected the conditions that led to the child's placement out of the home. The district court concluded that clear and convincing evidence supports three statutory grounds for termination: (1) neglect of parental duties, (2) failure of reasonable efforts "to correct the conditions leading to the child's placement," and (3) the child's status as "neglected and in foster care." Minn. Stat. § 260C.301, subd. 1(b)(2), (5), (8) (2020). And the district court determined that termination of mother's parental rights is in the child's best interests. Mother appeals.

DECISION

Parents are presumed fit to be entrusted with the care of their children. *In re Welfare of Clausen*, 289 N.W.2d 153, 156 (Minn. 1980). Accordingly, parental rights may be terminated only for "grave and weighty reasons." *In re Child of E.V.*, 634 N.W.2d 443, 446 (Minn. App. 2001) (quotation omitted). We will affirm a district court's decision to terminate parental rights only "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 Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted).

I. The district court did not err by declining to dismiss the untimely TPR petition.

Minnesota law provides that "a permanency or termination of parental rights petition must be filed at or prior to the time the child has been in foster care or in the care of a noncustodial or nonresident parent for 11 months." Minn. R. Juv. Prot. P. 52.01, subd. 1; *see also* Minn. Stat. § 260C.505(a) (2020). We review a district court's application of the law, including juvenile-protection rules and statutes, de novo. *In re Welfare of Child of R.S.*, 805 N.W.2d 44, 48-49 (Minn. 2011); *In re Welfare of Child. of M.A.H.*, 839 N.W.2d 730, 746 (Minn. App. 2013).

The county concedes that it did not timely file a permanency or TPR petition. We agree. The child was removed from parents' care on August 30, 2019, and remained in foster care until the county placed him with father on August 8, 2020, a period of over 11 months. The county did not file the transfer petition until October 5, 2020, approximately 13 months after the child entered foster care. Mother contends that this untimeliness required dismissal of the later-filed TPR petition. We disagree.

Dismissal of the TPR petition would be contrary to the paramount concern in all child-protection proceedings—the "health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2(a) (2020). Mother argues that dismissal of the TPR petition was warranted in October 2020 because of the child's need for permanency. But granting the relief mother requests—reversing the TPR decision—would cut directly against this

argument: it would delay permanency for the child even longer. And mother could have timely filed her own petition to expedite the process of establishing a permanent placement for the child. *See* Minn. Stat. § 260C.515, subd. 4(6) (2020) (stating that "another party to the permanency proceeding . . . may file a petition to transfer permanent legal and physical custody to a relative"); Minn. R. Juv. Prot. P. 54.03, subd. 1 (stating that a "party . . . shall file a permanent placement petition if the party disagrees with the permanent placement determination set forth in the petitions filed by the other parties").

Our conclusion that the district court did not err by denying mother's dismissal motion is consistent with the distinction between mandatory and directory statutes. A mandatory statute is one that specifies an automatic consequence for failing to comply with a requirement. *See, e.g.*, *In re Civ. Commitment of Giem*, 742 N.W.2d 422, 426-28 (Minn. 2007) (concluding statutory procedural provisions were "mandatory" where they specified a consequence for the failure to hold a civil-commitment hearing within the statutory time frame). A directory statute is one that contains a deadline or other requirement but does not specify a consequence for noncompliance. *See, e.g.*, *Johnson v. Cook County*, 786 N.W.2d 291, 295 (Minn. 2010) (stating that a statute is directory when it contains "a requirement but provide[s] no consequence for noncompliance" (quotation omitted)). Noncompliance with a directory statute does not invalidate the action taken. *See In re Welfare of J.J.H.*, 446 N.W.2d 680, 682 (Minn. App. 1989) (stating "we find no basis for adopting appellant's proposition of law that an order issued after noncompliance with such a rule must be automatically and finally reversed"), *rev. denied* (Minn. Dec. 8, 1989).

Neither Minn. Stat. § 260C.505 (2020) nor Minn. R. Juv. Prot. P. 52.01 provides a penalty for failing to timely file a permanency petition. We previously rejected the argument that a TPR order must be reversed because it was untimely under Minn. R. Juv. Prot. P. 10.01 and 39.05, subd. 1. *In re Welfare of Child of S.L.K.-S.*, No. A17-1570, 2018 WL 1787969, at *4 (Minn. App. Apr. 16, 2018). There, as here, the governing rules did not mandate a consequence for the district court's failure to timely issue the order, and we noted that the appellant "provide[d] no authority to support reversal as a consequence of the . . . lack of compliance with the rules." *Id.* While our decision in that case is not precedential, we find its reasoning persuasive and likewise decline to reverse the district court's denial of mother's motion to dismiss the untimely filed TPR petition.

II. The district court did not abuse its discretion by concluding that the county's reasonable efforts failed to correct the conditions that led to the child's out-of-home placement.

We review an order terminating parental rights to determine whether the district court's findings (1) address the statutory criteria and (2) are supported by substantial evidence. *S.E.P.*, 744 N.W.2d at 385. In doing so, we "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998). We review the district court's factual findings for clear error and its determination that there is a statutory basis for termination for 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 we view all of the evidence in a light favorable to the finding and "are left with a definite and firm conviction that a

mistake has been committed." *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021), *rev. denied* (Dec. 6, 2021).

The district court determined that clear and convincing evidence established three statutory bases for termination, including the failure of reasonable efforts under the direction of the county to correct the conditions leading to the child's placement out of the home. Minn. Stat. § 260C.301, subd. 1(b)(5). Mother does not challenge the reasonableness of the county's efforts. Nor does she challenge the district court's October 2020 order relieving the county of its duty to make reasonable efforts. Rather, mother asserts that the county did not present evidence that she was—at the time of trial—unable to safely care for the child and that the district court improperly terminated her rights based on her mental disability. The record defeats both arguments.

First, at the time of trial, mother was residing in an adult group home that did not allow children. She received assistance every day to meet her own basic needs. Although mother intended to move into her own apartment during the coming months, she acknowledged that she would be assisted in that effort by an independent living skills worker. And it is undisputed mother had not spent any unsupervised time with the child in almost two years and still struggled to attend to the child during supervised visits. Both the case manager and GAL indicated mother's present inability to safely parent the child was not likely to change in the foreseeable future.

Second, the district court based its termination decision on mother's inability to care for the child, not on mother's mental-health challenges. A parent's mental illness alone is not a basis for terminating parental rights. *In re Welfare of P.J.K.*, 369 N.W.2d 286, 290

(Minn. 1985). The record reflects that evidence of mother's significant mental-health issues informed the district court's findings that she is not able to safely care for the child. But the record also reflects that the district court focused on the evidence of how these issues impact mother's ability to parent. The court noted that mother cannot control the fact that she suffers from mental illness, but went on to find that mother was simply not in a position to care for the child, even with the supportive services she receives and will continue to receive. We likewise recognize that mother loves the child and has done nothing to intentionally harm or neglect the child. To the contrary, she has worked diligently to address her challenges and strongly desires to safely parent the child. But the record supports the district court's finding that mother is simply unable and not in a position to be the parent this young child needs.

On this record, we conclude that the district court did not abuse its discretion in terminating mother's parental rights due to the failure of the county's reasonable efforts to correct the conditions leading to the child's placement out of the home.[3]

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

In analyzing the best interests of the child in a TPR proceeding, courts must balance: (1) the child's interest in preserving the parent-child relationship, (2) the parent's interest

[3] Because we see no abuse of discretion by the district court in determining that the county's reasonable efforts failed to correct the conditions that led to the child's out-of-home placement, we need not consider the other two statutory termination grounds. *S.E.P.*, 744 N.W.2d at 385. But our review of the record supports the district court's determination that mother neglected to comply with the duties of the parent-child relationship. Minn. Stat. § 260C.301, subd. 1(b)(2).

in preserving the parent-child relationship, and (3) any competing interest of the child. Minn. R. Juv. Prot. P. 58.04(c)(2)(ii); *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). We review a district court's best-interests determination for abuse of discretion. *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 657 (Minn. App. 2018). The "determination of a child's best interests is generally not susceptible to an appellate court's global review of a record, and . . . an appellate court's combing through the record to determine best interests is inappropriate because it involves credibility determinations." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quotation omitted).

The district court expressly considered and balanced the three factors set out in rule 58.04(c)(2)(ii) and *R.T.B.* In doing so, the district court carefully noted factors that weighed in favor of and factors that weighed against termination. Mother essentially argues that the district court erred by not weighing the best-interests factors in her favor. But the record evidence supports the district court's determination and it is not our place to comb through the record and reweigh the factors. *Id.* Our review of the record satisfies us that the district court did not abuse its discretion in concluding that termination of mother's parental rights is in the child's best interests.

Affirmed.