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**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0720**

In the Matter of the Welfare of the Children of:
K. J. L. and M. A. M., Parents.

**Filed December 5, 2022
Affirmed
Cleary, Judge***

Hennepin County District Court
File No. 27-JV-21-1792

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Considered and decided by Bryan, Presiding Judge; Segal, Chief Judge; and Cleary, Judge.

NONPRECEDENTIAL OPINION

CLEARY, Judge

On appeal from the termination of her parental rights, mother argues that the record does not support the district court's determinations that (1) the county made reasonable efforts to reunify the family, (2) there was a statutory basis for termination, and

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

(3) termination of her parental rights was in the best interests of the children. Mother also argues that the district court improperly placed the burden of proof on her and violated her substantive and procedural due-process rights. We affirm.

FACTS

Appellant-mother K.J.L. and father M.A.M. are the parents¹ of C.D.M., born May 2018, and twins C.A.M. and C.E.M., born January 2020.² The twins were born premature and consequently spent the entire month of January in the hospital before being discharged to go home with mother and father. In February 2020, mother brought the male twin to the emergency room after she noticed a bruise on his cheek. She also reported that he had been eating and drinking less and sleeping more than usual. The emergency-room doctor referred the matter to the Midwest Children's Resource Center and requested that staff there evaluate the child for potential physical abuse.

A doctor evaluated the male twin, and a skeletal survey revealed that he had at least eight fractured ribs. The doctor estimated that the fractures were approximately 14 days old. At that time the child had only been home and in the care of his parents for two and one-half weeks due to his initial hospital stay. The child underwent a follow-up skeletal survey two weeks after the initial evaluation, which confirmed eight fractured ribs,

¹ Mother and father never married; father is considered the adjudicated father of the children because he signed a Recognition of Parentage form for each child. But because the parties were not married when the children were born and there have never been any paternity or custody proceedings, mother is legally the sole custodian of the children pursuant to Minn. Stat. § 257.541, subds. 1, 3 (2020).

² One twin is male, and one is female. For ease of reference, we will refer to the children as the male twin, the female twin, or the older child when referring to a specific child.

identified a likely ninth fractured rib, and revealed evidence of a healing fracture to the child's right femur. The older child and the female twin underwent physical examinations and skeletal surveys, but neither had injuries that suggested they had been abused. All three children were removed from the home and placed in relative foster care.

Respondent Hennepin County Human Services (the county) filed a petition to terminate the parental rights (TPR) of mother and father based on the egregious harm suffered by the male twin. Mother and father subsequently reached a settlement agreement with the county to resolve the petition through a children-in-need-of-protection-or-services (CHIPS) adjudication. The children were adjudicated CHIPS, legal custody of the children was transferred to the county, and the parents were ordered to comply with their case plans. The children remained in foster care, but the parents were later granted unsupervised visits, then overnights, and finally a trial home visit in September 2020. In November 2020, the district court dismissed the CHIPS case over the county's objection. At the time of dismissal, the county had still not determined who caused the male twin's injuries.

In August 2021, the county received a report regarding the safety and well-being of the children. Specifically, the county received a report that the male twin had a bruise on his forehead and additional bruising on his ears, neck, arm, legs, and back. According to the individual who made the report, the older child disclosed that father hit the male twin following a bathroom accident. The county investigated the report, and during the investigation asked mother to describe her understanding of why the current case was opened. Mother indicated that the children's paternal grandmother and the grandmother's boyfriend were watching the children and noticed the bruise on the male twin's forehead.

The grandmother asked the older child how the male twin got the bruise, and the older child responded that father hit the male twin. Mother stated that this “never happened,” and that the older child was “very dramatic” and “going to get [them] in trouble.” She also indicated that she believed that grandmother’s boyfriend was the one who made the report after he had an “exchange of words” with father, and that the grandmother wasn’t really concerned about the bruise. The social worker asked if father used physical discipline with the children, and mother said he did not. She also denied any history of domestic violence in her relationship with father.

Following the report, all three children underwent physical examinations and the twins had skeletal surveys done. The physical examinations and skeletal surveys revealed that both twins had injuries consistent with physical abuse. The male twin had bruising on his ears and forehead. The female twin had two healing rib fractures that were estimated to have occurred within the previous two months. The older child again stated, this time to the doctor who examined the children, that father had hit the male twin. Mother told the doctor that this did not happen, and that the older child can “be dramatic.” The doctor explained to mother that the ear bruising and fractured ribs were both uncommon, indicative of physical abuse, and could not have been caused in the ways mother suggested, such as the male twin pulling on his own ears or the female twin throwing herself on the ground. Despite the doctor’s explanation that the injuries were consistent with abuse rather than accidental injury, mother maintained that there was no physical abuse and that if she thought the children were being abused then she “ha[d] places [she] could go.”

The day after the children's medical examinations, the social worker and a police officer removed the children from the parents' home. While the children were being removed, mother asked the officer: "If [father] doesn't live here, can I have my kids back?" The officer found this suspicious, and asked mother if she would like to talk. Mother insisted that the children were safe, and when the officer asked why she made the comment about father, mother responded that it was because father was listed as a suspect for causing the children's injuries. The older child was transported to CornerHouse for an interview, and the older child again reported that father hit the male twin. The older child also reported that father had hit mother.

The county filed a second TPR petition and alleged four statutory bases for termination: (1) the parents had refused or neglected to comply with the duties of the parent-and-child relationship, (2) the parents were palpably unfit to parent, (3) reasonable efforts failed to correct the conditions leading to out-of-home placement, and (4) egregious harm to the children. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (6) (2020). The district court held an emergency protective-care hearing and ordered that the children be placed in foster care. The district court also determined that the county had established a *prima facie* case for an expedited permanency petition and relieved the county of the duty to provide reasonable efforts to reunify the family pursuant to Minn. Stat. § 260.012(a) (2020).

In November 2021, father was charged with one count of contributing to the need for child protection or services. The complaint summarized the various injuries suffered by the twins and indicated that the older child stated that father had hit the male twin. In

January 2022, father pleaded guilty. His signed plea petition provided the following factual basis: “I was overzealous and physical in disciplining the children, and my actions directly contributed to the need for CPS to become involved with the children.” Father was sentenced to 365 days in jail, with execution of the sentence stayed for two years, and placed on probation.

In February 2022, the district court held a TPR trial. At the beginning of trial, the county moved to amend the petition to allow father to voluntarily terminate his parental rights. Father testified and waived his right to a TPR trial and stated that he believed it was in the best interests of the children that his parental rights be terminated. The district court found that father had provided good cause for the voluntary termination of his parental rights. The district court then proceeded with the trial regarding mother’s parental rights.

The county called mother as the first witness. She testified that she moved out of the home that she shared with father on the day the children were removed and that she and father had not lived together since that day. She stated that if the children were returned to her care, she would not allow father to see them, and when asked if it was possible that she would allow contact in the future responded: “I don’t see that happening now.” Mother also testified, contrary to her earlier statements, that father had abused her during their relationship. She indicated that the abuse was “[m]ore emotional than physical” but that “[t]here [were] some occasions where physical abuse occurred.” She testified that the last incident of physical abuse occurred during the first child-protection case when the children were in relative foster care.

The county asked mother about the first child-protection case, and she responded that during the first case she thought that her grandmother had caused the male twin's injuries. She testified that her grandmother was the only individual other than herself and father who had cared for the children during the time frame the child suffered the injuries, and that she had discovered that her grandmother had been using methamphetamine. Mother was raised primarily by her grandmother, and testified that she was aware that her grandmother had a history of methamphetamine use because her grandmother used drugs "on and off" for mother's "whole life." Mother believed that her grandmother was sober during the time period when she watched the children, but during the pendency of the first child-protection case discovered that she had relapsed.

Mother was later recalled as a witness by her attorney and provided further testimony about father. She testified that she never saw father get angry with the children or hit, slap, punch, squeeze, throw, or push them, or otherwise do anything that would make her suspect that he might hurt the children. She testified that when she learned of the new injuries to the twins in August 2021, she did not initially think it was father who had caused the injuries. But she testified that she "know[s] now that he did it" and that her opinion changed because she did not "feel as though he would admit to something if he didn't truly do it." In addition to mother, the district court heard testimony from various social workers involved in the case, the doctor who examined the children in August 2021, mother's neighbor, mother's former employer, and the guardian ad litem.

Following trial, the district court issued a detailed order and made findings specific to each witness, general findings, and conclusions of law. The district court found that

mother loved the children and there was a clear bond between mother and the children, but that the children had suffered horrific injuries from father while in the care of mother. The district court further found that “mother had sufficient reason to know that [r]espondent father abused the children, and [r]espondent mother failed to protect her children” and noted that even after the older child reported that father had hit the male twin, “mother did not believe that [r]espondent father inflicted the abuse” and “could have and should have taken greater caution with [r]espondent father’s access to the children.”

The district court ultimately terminated mother’s parental rights after determining that the county had made reasonable efforts to reunify the family despite being relieved of the duty to do so, that there was clear and convincing evidence to establish all four statutory bases for termination alleged by the county, and that termination of mother’s parental rights was in the best interests of the children. Mother appeals.

DECISION

“[P]arental rights may be terminated only for grave and weighty reasons.” *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). Termination generally requires clear and convincing evidence that (1) the county has made reasonable efforts to reunite the family, (2) there is a statutory ground for termination, and (3) termination is in the child’s best interests. *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We review the district court’s determination as to whether a statutory basis for termination has been established 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). But “we review the underlying findings of fact for clear error.” *In re Welfare of*

Child of J.H., 968 N.W.2d 593, 600 (Minn. App. 2021), *rev. denied* (Minn. Dec. 6, 2021). We also defer to the district court's opportunity to assess witnesses' credibility. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Mother argues that (1) the record does not support the district court's determination that the county made reasonable efforts to reunify the family; (2) the district court abused its discretion in determining that the county established a statutory basis for termination; (3) the district court erred in determining that termination of mother's parental rights was in the best interests of the children; (4) the district court improperly shifted the burden of proof to mother; and (5) the district court violated her due-process rights. We address each argument in turn.

I. The county was relieved of the duty to provide reasonable efforts for reunification.

Mother first argues that the record does not support the district court's finding that the county made reasonable efforts to reunify the family.

Under Minn. Stat. § 260C.301, subd. 8 (2020), the district court was required to a make a finding either:

(1) that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family; or

(2) that reasonable efforts for reunification are not required as provided under section 260.012.

Here, the district court made findings under both subdivision 8(1) and (2). The district court found that the county made reasonable efforts to reunify the family, but noted that the county did so “despite the fact that the [county] was relieved of reasonable efforts due to the egregious harm the children experienced” pursuant to Minn. Stat. § 260.012(a). That statute provides that reasonable efforts at reunification are not required if the district court makes a determination that the TPR petition establishes a prima facie case that the parent has subjected a child to egregious harm. The district court made such a determination in the order following the emergency protective-care hearing and relieved the county of the duty to provide reasonable efforts to reunify the family under Minn. Stat. § 260.012(a). Mother never challenged this determination and even notes in her brief that the county “was not required to provide reasonable efforts despite the district court including it in the TPR Order.”

Accordingly, we need not address mother’s argument that the record does not support the district court’s determination that the county made reasonable efforts to reunify the family. The county was properly relieved of the duty to make reasonable efforts for reunification, and therefore even if mother were correct that the record does not support the district court’s determination that the county made reasonable efforts at reunification, mother would still not be entitled to relief.

II. The county established a statutory basis for termination.

Mother next argues that the evidence is insufficient to support the district court’s determination that there were statutory grounds for termination. Generally, a district court

may terminate parental rights if at least one statutory ground for termination is supported by clear and convincing evidence. *S.E.P.*, 744 N.W.2d at 385.

Here, the district court determined that there were four statutory grounds for termination: (1) mother failed to satisfy her parental duties, (2) mother was palpably unfit to parent, (3) reasonable efforts failed to correct the conditions leading to out-of-home placement, and (4) the children experienced egregious harm while in mother's care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (6). We focus our analysis on the district court's termination of mother's parental rights on the basis of egregious harm.

The district court may terminate parental rights upon a determination

that a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care.

Minn. Stat. § 260C.301, subd. 1(b)(6). "Egregious harm" includes "the infliction" of "substantial bodily harm" to a child. Minn. Stat. § 260C.007, subd. 14(2) (2020); *see also* Minn. Stat. § 609.02, subd. 7a (2020) (defining "[s]ubstantial bodily harm" to include "a fracture of any bodily member"). Mother does not dispute that the children's injuries constitute egregious harm.

A district court may terminate parental rights on the basis that a child suffered egregious harm while in the parent's care even if the parent did not personally inflict the harm or was not physically present when the harm occurred. *In re Welfare of Child of T.P.*, 747 N.W.2d 356, 361 (Minn. 2008). But to terminate parental rights in such cases, "a court must find that the parent either knew or should have known that the child had experienced

egregious harm . . . by clear and convincing evidence.” *Id.* at 362. A finding that a parent knew or should have known that a child experienced egregious harm is necessary, but not independently sufficient to satisfy the egregious-harm statutory ground. *Id.* at 362 n.4. The parent’s actions in light of the “nature, duration, or chronicity” of the egregious harm must also “indicate a lack of regard by that parent for the child’s well-being.” *Id.* (quotation omitted).

The district court found that “mother had sufficient reason to know that [r]espondent father was the abuser in the first case and that he continued to abuse the children when they were returned to their parents’ care.” Mother argues that the record does not support this determination and instead contends that she did not have reason to know that father was the abuser until he pleaded guilty to the criminal charge in January 2022. We disagree. The district court made detailed and thorough findings to support its determination that mother knew or should have known of the abuse, and the record amply supports those findings.

The district court found that mother knew or should have known that father was abusing the children based on a number of factors. The district court noted that mother and father resided with the children in a small apartment, that mother herself had been physically abused by father, and that the older child had witnessed some of the domestic abuse against mother. At trial, the foster parent testified that mother disclosed to her “that there were times that [mother] and [father] were violent or domestically volatile, and situations in which [the older child] would be called in . . . to help alleviate and deescalate the situation.” The foster parent further testified that the older child had “recounted stories

where he had been—he was called in to help what he thinks is protect his mother during domestically volatile situations.” Based on these disclosures the foster parent opined that the interactions between mother and father were “not safe” and “that [father] was not safe was—was a known experience.” The record indicates that the older child disclosed during a forensic interview after he was removed from the parents’ house in August 2021 that he saw father hit mother. This evidence amply supports the district court’s finding that mother was aware of father’s violent tendencies but remained in denial about the fact that he was the source of the abuse of the children.

The district court noted that mother believed that her grandmother was responsible for the first incident of physical abuse against the male twin because mother discovered that her grandmother had been using methamphetamine at that time, but found that that “suspicion . . . was either misplaced or created as a way to remain in denial that” father caused the injuries. As the district court observed, the injuries suffered by the child during the first child-protection case were inconsistent with mother’s testimony that her grandmother would nod off or fall asleep while using methamphetamine. Moreover, mother testified that she initially believed that her grandmother was the abuser because “she was back using meth” and, based on the time frames the doctors provided for the child’s injuries, her grandmother “was the only one that had watched [the children] other than” herself and father. Mother further testified that she no longer permitted her grandmother to watch the children after she discovered her grandmother was using methamphetamine again.

Based on this testimony, mother and father were the only people to care for the children during the time frames relevant to both the February 2020 and August 2021 injuries. And when the children were removed from the home in August 2021, mother acknowledged that she was aware that father was suspected of causing the injuries. She was also aware that the older child had stated that father hit the male twin and had made this report to multiple individuals, but remained adamant that this did not occur, and that the older child was just being “dramatic.” This supports the district court’s concern with “mother’s willful denial that [r]espondent father might have been the abuser.” Mother’s denial hindered not just her own ability to protect the children but also the county’s ability to determine the source of the abuse. During the investigation mother denied not only that father could be the abuser but also that father ever physically abused her. As noted above, the evidence presented at trial established that father did physically abuse mother on multiple occasions and in the presence of the older child. Mother’s decision not to disclose this information plainly impacted the county’s ability to investigate the abuse.

The district court also determined that the nature of the injuries indicated a lack of regard for the children’s well-being. The district court found that the children “suffered horrific injuries” and noted that mother herself described the male child’s ear bruising as “constant.” The district court also emphasized that the children suffered not only physical injuries but also that “[t]he children’s mental and emotional health has been damaged, as all three have been diagnosed with post-traumatic stress disorder and require numerous services, such as occupational therapy, physical therapy, speech therapy, and day treatment.” And while mother is correct that a doctor indicated that the children’s fractured

ribs would not necessarily be detectable by the naked eye, the male twin presented with external injuries in both February 2020 and August 2021. Indeed, the male twin's extensive bruising is what prompted the report to child-protective services in August 2021 and led to the second TPR petition. But despite the male twin's bruises and the older child's report that father hit the male twin, mother dismissed the bruises as from "being a kid," denied the older child's disclosure, and indicated that she believed that the report was made due to an argument between father and another individual rather than out of genuine concern for the children. It is clear from these facts that the bruises were visible and caused concern to other individuals, but that mother dismissed the injuries. The district court also found that mother continued to provide implausible explanations for the children's injuries even after being informed that the injuries were diagnostic of abuse. This supports the determination that the nature of the injuries and mother's response to the injuries indicates a lack of regard for the well-being of the children.

On this record, the district court did not err in determining that mother knew or should have known that the children experienced egregious harm, and the nature of the harm indicated a lack of regard for the children's well-being such that a reasonable person would believe it to not be in the best interests of the children to be in mother's care. The district court therefore did not abuse its discretion in determining that there was clear and convincing evidence to support the termination of mother's parental rights on the basis of egregious harm. Because we conclude that the record supports the district court's determination related to the statutory basis of egregious harm, we need not address the three additional statutory grounds found by the district court. *See S.E.P.*, 744 N.W.2d at

385 (stating that a court may terminate parental rights if at least one statutory ground is established).

III. The district court properly analyzed the best interests of the children.

In a proceeding regarding the termination of parental rights, “the best interests of the child [is] the paramount consideration.” *J.R.B.*, 805 N.W.2d at 902. The district court “must balance three factors: (1) the child’s interest in preserving the parent-child relationship; (2) the parent’s interest in preserving the parent-child relationship; and (3) any competing interest of the child.” *W.L.P.*, 678 N.W.2d at 711. Competing interests of the child “include a stable environment, health considerations, and the child’s preferences.” *In re Welfare of Child. of M.A.H.*, 839 N.W.2d 730, 744 (Minn. App. 2013). We review the district court’s determination that termination is in a child’s best interests for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

The district court found that there is a strong bond between mother and the children, and that mother loves the children, but nonetheless determined that termination was in the children’s best interests based on the circumstances. The district court also considered the children’s needs, which included not only the need to be safe from physical abuse but also “significant special needs that require careful and intensive attention for the foreseeable future.” The district court observed that “[t]he children have an overriding need for permanency in this case,” that the twins had spent the majority of their lives in foster care, and all three children had had at least three different caregivers for significant portions of their lives. These findings are supported by the record and support the district court’s ultimate determination.

Mother argues that “the district court failed to properly address the needs of the children, their wishes, and what is in their best interests” and that “[t]he testimony is uncontroverted that there is a strong, continuing bond between Mother and the children.” As noted above, the district court considered these factors, but nonetheless determined that termination of mother’s parental rights was in the best interests of the children. Mother also argues that the district court should have given more weight to the testimony of the guardian ad litem, who testified that it was not in the best interests of the children for mother’s parental rights to be terminated. But “[d]etermination of a child’s best interests is generally not susceptible to an appellate court’s global review of a record, because of the credibility determinations involved, and because of the multiple factors that must be weighed.” *M.A.H.*, 839 N.W.2d at 744 (quotation omitted). Mother’s argument amounts to a challenge to the district court’s weighing of the evidence and credibility determinations, which is beyond the scope of our appellate review. The district court properly analyzed the relevant evidence, made findings relating to that evidence that are supported by the record, and exercised its discretion to make credibility determinations. We therefore will not disturb the district court’s best-interests determination.

IV. The district court did not improperly shift the burden of proof to mother.

Mother next argues that the district court improperly shifted the burden of proof to mother. In TPR cases, the burden of proof is on the party petitioning to terminate parental rights. *Id.* at 740. The burden of proof in this case was therefore on the county to establish that mother’s parental rights to the children should be terminated.

Mother argues that the district court improperly shifted the burden of proof to her and “[r]ather than demand that the [county] prove that Mother knew Father was abusive and posed a danger to her children, the court required Mother to prove that she did not know of the abuse or danger.” Mother bases this argument on two statements in the district court’s order. First, the district court’s order states that “mother has not demonstrated by clear and convincing evidence that she could care for and protect the children from further severe harm or even death if the children were returned to her care and custody.” Second, the district court determined that mother’s compliance with the case plans during both child-protection cases “is not sufficient to overcome the clear and convincing evidence” that she failed to comply with her parental duties.

Mother argues that these statements demonstrate that the district court improperly shifted the burden of proof to her. We agree that the statements in isolation may suggest that the burden of proof was improperly shifted to mother. But when we view the district court’s order as a whole, we are persuaded that the district court did not improperly shift the burden of proof. Importantly, the district court correctly stated the burden of proof in its conclusions, stating that there “is clear and convincing evidence” to support its conclusions. The district court also prefaced its order by stating that it was making its findings “by clear and convincing evidence.” Finally, when setting out the standard for terminating mother’s parental rights on the basis of egregious harm the district court stated: “In order to terminate parental rights in a situation similar to this, however, the Court must find clear and convincing evidence that the parent either knew or should have known that the child experienced egregious harm.” We therefore conclude that the district court

properly placed the burden on the county to present clear and convincing evidence to support termination, rather than improperly shifting the burden to mother to present clear and convincing evidence that her parental rights should not be terminated.

V. Mother failed to preserve her due-process arguments.

Finally, mother argues that the district court violated her due-process rights by denying her counsel the “right to submit a meaningful closing argument” and “threatening to side against [mother] if she did not submit a proposed order for the court.” Mother did not raise these issues below. Appellate courts generally will not consider issues not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). “Even in the context of termination of parental rights, failure to raise constitutional issues in the district court precludes the issues from being raised on appeal.” *In re Welfare of A.L.F.*, 579 N.W.2d 152, 156 (Minn. App. 1998). We therefore conclude that mother’s due-process arguments are not properly before this court.

Affirmed.