STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0554
A23-0563

In the Matter of the Welfare of the Children of:
M. M. B. and P. J. J. G., Parents.

Filed October 9, 2023
Affirmed
Smith, Tracy M., Judge

Pine County District Court
File No. 58-JV-22-92

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Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In these consolidated appeals, appellant-mother M.M.B. and appellant-father P.J.J.G. appeal from the district court's order terminating their parental rights. Both

appellants challenge the district court's determination that the county made reasonable efforts to reunify the family. In addition, mother challenges the district court's determination that three statutory bases for termination of parental rights (TPR) were established, and father challenges the district court's determination that termination of his parental rights is in the children's best interests. We affirm.

FACTS

The following facts are drawn from the district court's findings of fact, conclusions of law, and order terminating parental rights.

Mother and father are the biological parents of T.M.M., born in 2009, and B.M.M., born in 2017. On December 21, 2021, T.M.M. and B.M.M. were removed from appellants' home. But this was not appellants' first involvement with respondent Pine County Health and Human Services. Six months earlier, in July 2021, the county received a report from the sheriff's office regarding a dispute between father and mother at appellants' home. The children witnessed a portion of this incident. As a result, the county opened a parent support outreach assessment and assigned a social worker.

On September 14, 2021, the county received reports that law enforcement had responded to the home four times the previous day. According to the reports, father was "manic" and tested positive for methamphetamine, and controlled substances and drug paraphernalia were left out and accessible to the children in the home. Both parents made various allegations against each other to law enforcement, but neither followed through with seeking an order for protection.

On October 5, 2021, the county received a report that father threatened to kill himself in front of the children. This report also alleged that the children were not attending school. It was later revealed that B.M.M. was never enrolled in school and T.M.M. did not attend school consistently because father claimed that he was dying and the parents wanted to keep her home.

Because of these incidents, the county made referrals for appellants to complete chemical-use assessments, discussed various agencies where appellants could obtain mental-health services, and arranged school-linked mental-health services for T.M.M.

On December 16, 2021, the county received a report that law enforcement had responded to appellants' home because father had fired a gun at an acquaintance while inside the home with the children present. A handgun was found in the parents' bedroom despite father's status as ineligible to possess a firearm due to his conviction of a crime of violence. The home was described as "very dirty," and animal feces and urine were observed in the house, including in the children's bedrooms. Father was arrested and charged with one count of unlawful possession of a firearm and one count of second-degree assault with a dangerous weapon.

The county opened a child-protection investigation, and a social worker met with T.M.M. at school. T.M.M. disclosed that she was worried for her safety because father had threatened that he would shoot her next.

On December 21, 2021, the county filed a petition alleging that the children were in need of protection or services (CHIPS), as well as an ex parte motion for emergency protective care. The children were placed in foster care. As the custodial parent, mother

entered an admission to the CHIPS petition. As a noncustodial parent, father was a participant in the CHIPS action but not required to enter an admission or denial to the CHIPS petition.

On February 23, 2022, the children were adjudicated CHIPS and custody of the children was transferred to the county for continued out-of-home placement. Appellants were ordered to comply with case plans aimed at reunification. The case plans required appellants to (1) complete chemical-use assessments and follow all recommendations, (2) abstain from mood-altering chemicals unless prescribed by a physician, (3) comply with random drug testing, (4) complete a mental-health assessment and follow all recommendations, (5) maintain safe and stable housing, (6) sign releases of information as necessary, (7) participate in visits with the children as ordered by the court, (8) remain law abiding, and (9) complete domestic-violence programming as directed by the social worker.

Over the course of the case, the family faced many obstacles to reunification. Father's frustration during visits with the children would escalate to inappropriate behavior. After several outbursts, the children's foster mother was granted a harassment restraining order against father. Both parents were complicit in preventing the social worker from visiting their home by erecting gates and threatening to harm the social worker if she "trespassed." T.M.M. was hospitalized several times for a severe, genetic blood disorder that was discovered while she was in foster care. T.M.M. was also hospitalized due to suicidal thoughts, which were triggered by an incident where mother video-conferenced father into a visit without permission. During one of T.M.M.'s

hospitalizations, hospital staff asked appellants to leave due to their escalated, inappropriate behavior. Father was arrested and incarcerated several times. And, while mother had some success with chemical-use treatment, she struggled with her sobriety.

On September 28, 2022, the county filed a petition to terminate both appellants' parental rights. Following a two-day trial in February 2023, the district court determined that the county established the following statutory grounds to terminate appellants' parental rights: (1) refusal or neglect to comply with parental duties, (2) palpable unfitness to parent, and (3) reasonable efforts failed to correct the conditions leading to out-of-home placement. The district court also determined that the county made reasonable reunification efforts and that termination of appellants' parental rights was in the children's best interests. The district court granted the TPR petition. Both father and mother appealed, and we consolidated the appeals.

DECISION

"A district court may terminate parental rights if (1) at least one statutory ground for termination is supported by clear and convincing evidence, (2) the county made reasonable efforts to reunite the family, and (3) termination is in the child's best interests." *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 600 (Minn. App. 2021), *rev. denied* (Minn. Dec. 6, 2021). In reviewing an order terminating parental rights, appellate courts review the underlying findings of fact for clear error. *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). A factual finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (quotation omitted).

Appellate courts review the district court's determinations of whether the county made reasonable efforts at reunification, whether a statutory basis for TPR exists, and whether TPR is in a child's best interests for an abuse of discretion. *J.H.*, 968 N.W.2d at 600. "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

Both appellants challenge the district court's determination that the county made reasonable reunification efforts. Additionally, mother challenges the determination that a statutory basis for termination exists, and father challenges the determination that termination is in the children's best interests. We address each issue in turn.

I. The district court did not abuse its discretion by determining that the county made reasonable efforts to reunify the family.

Both father and mother argue that the district court abused its discretion by ruling that the county made reasonable efforts to reunify the family. For the county to satisfy its burden to provide reasonable efforts, the county's efforts must reasonably serve to prevent placement of children outside the home, to rehabilitate the family, and to reunify the family. *See* Minn. Stat. § 260.012(a) (2022). Reasonable efforts are "services that go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of Child. of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *rev. denied* (Minn. Mar. 28, 2007). For a county's efforts to be reasonable, the services offered must be:

> (1) selected in collaboration with the child's family and, if appropriate, the child; (2) tailored to the individualized needs of the child and child's family; (3) relevant to the safety, protection, and well-being of the child; (4) adequate to meet

> the individualized needs of the child and family; (5) culturally appropriate; (6) available and accessible; (7) consistent and timely; and (8) realistic under the circumstances.

Minn. Stat. § 260.012(h) (2022).

The district court determined that reasonable efforts were made by the county to rehabilitate the parents and reunify the family. It found that the services offered were relevant to the safety and protection of the children, adequate to meet the needs of the children and family, culturally appropriate, available and accessible, consistent and timely, and realistic under the circumstances.[1]

Specifically, the district court found that the county provided (1) referrals and resources for chemical-dependency treatment, mental-health services, and domestic-violence programming; (2) random drug testing; (3) in-person, phone, and text communication with appellants; (4) communication and attempted communication with treatment and service providers, school staff, and the guardian ad litem; (5) frequent after-hours communication; (6) coordination and rescheduling of visits; (7) a phone card to assist with communication between appellants and their children; (8) individual counseling for

[1] The district court appears to have relied on a previous version of Minnesota Statutes section 260.012(h), which did not include the first two factors present in the current version—that the efforts were (1) selected in collaboration with the child's family and (2) tailored to the individualized needs of the child and child's family. Thus, the district court did not make specific findings on those two factors. Neither party noted this discrepancy for this court's consideration, nor did they rely on these two factors in their arguments on appeal. Therefore, we will not consider the impact, if any, that the omission of findings on these two factors had on the district court's determination regarding reasonable efforts. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it.").

the children; (9) preschool for B.M.M.; (10) home visits; (11) more than $800 in gas vouchers and assistance with additional transportation; and (12) assistance contacting county resources for financial and medical needs. The record supports the district court's findings that the county provided these services to father and mother.

Mother argues that her progress toward reunification was impeded by father and that the agency failed to make reasonable efforts because, while the county required and made a referral for domestic-violence programming, it "failed to clearly articulate to Mother that she may be able to better care for the children if she were to no longer allow Father as a presence in her life or the lives of the children." The record, however, contradicts mother's contention. The second social worker assigned to the case testified that she had a discussion early in the case with both parents about the couple possibly parting ways to focus on their case plans. Mother's argument fails to acknowledge this testimony. In addition, mother and the second social worker testified that mother did not participate in domestic-violence programming as required by the case plans. They also testified that mother asked the social worker to waive this requirement after father was incarcerated and as trial approached. The district court found that mother failed to comply with the case plans' domestic-violence programming requirement. Mother's argument that the county did not make reasonable efforts because it failed to adequately address the concerns with mother's relationship with father is unpersuasive.

Father argues that the county failed to make reasonable efforts because the county did not help him arrange services and the social worker made only minor attempts to prompt the parents to follow the case plans. But the district court found that the social

workers made several referrals, gave the parents a list of services, and made frequent efforts to communicate with the parents in-person and via phone to track their progress. The first social worker testified that she made initial referrals for chemical-use assessments and that she discussed different agencies for mental-health resources. The second social worker testified that she made referrals for mental-health services and had conversations early on with father about where to go to complete assessments. This social worker further testified that she attempted to communicate regularly with father directly, but father would frequently only communicate through mother. When father did communicate directly, he would often "blow up [the social worker's] phone with . . . absurd messages, spewing profanities, and then he would collect himself, apologize, and then [she] wouldn't hear from him for a while." Father's argument that the county did not try to help him obtain services is unpersuasive.

Next, father argues that the county failed to make reasonable efforts because the COVID-19 pandemic made obtaining services difficult. But father fails to explain exactly which services were closed or unavailable because of the pandemic, and it appears that no evidence was entered into the record that supports his contention that services were unavailable due to the pandemic. Furthermore, the district court found that father had many opportunities to engage in, and to varying degrees of success did in fact engage in, substance-use and mental-health services. Father and the second social worker testified that father attended therapy during the course of the case. Father testified that he attended three different substance-use treatment programs over the course of the case. The second social worker confirmed that father completed one in-patient treatment program but that he was

discharged from another program for failure to participate for an entire month and was discharged from another program without staff approval in December 2022. Father's argument that the pandemic interfered with services is unpersuasive.

Lastly, father argues that the county failed to make reasonable efforts because, if the county wanted reunification, it should have extended "for much longer" the period of time for him to comply with and complete the case plans. This argument, too, is unpersuasive. The initial case plans were established in February 2022. A permanency progress review hearing was held on June 2, 2022, and, on August 26, 2022, an intermediate disposition review hearing was held. Following the August hearing, the district court ordered the county to file a permanency petition within 30 days because it found that the parents were not in compliance with the case plans and that it was in the children's best interests to proceed to permanency. The district court is required to commence permanency proceedings and hold an admit/deny hearing on the permanency petition no later than 12 months after the child is placed in foster care. Minn. Stat. § 260C.503, subd. 1 (2022). The hearing in this case was held on November 4, 2022, at which point the children had been in foster care for 10½ months. Trial was held in February 2023—over a year after the children had been removed from the home. The county's TPR petition was timely and appropriate.

Ultimately, the district court made detailed findings, supported by the record, regarding the numerous services and resources provided by the county that met the criteria in Minnesota Statutes section 260C.012(h). As a result, the district court did not abuse its discretion in determining that the county made reasonable efforts to reunite the family.

II. The district court did not abuse its discretion by determining that a statutory basis for termination of mother's parental rights was established by clear and convincing evidence.

Mother argues that the district court abused its discretion when it determined that three statutory bases for termination were proved by clear and convincing evidence. The district court found that (1) mother refused or neglected to comply with parental duties, (2) mother was palpably unfit to parent, and (3) reasonable efforts had failed to correct the conditions leading to out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5) (2022). A decision to terminate parental rights may be affirmed based on only one statutory ground. *S.E.P.*, 744 N.W.2d at 385.

We begin with the district court's determination that mother failed to correct the conditions leading to out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5). Under this statutory basis, a basis to terminate parental rights exists if the district court rules 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." *Id.* In assessing whether the conditions that led to out-of-home placement have been corrected, "[t]he critical issue is not whether the parent formally complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child." *J.K.T.*, 814 N.W.2d at 89. It is presumed that reasonable efforts have failed upon a showing that (1) a child has resided out of the home under court order for a cumulative period of 12 months within the preceding 22 months, (2) the court approved the out-of-home placement plan, (3) conditions leading to the out-of-home placement have

not been corrected, and (4) reasonable efforts have been made by the social services agency to rehabilitate and reunite the family. Minn. Stat. § 260C.301, subd. 1(b)(5).

The district court found that the children had been in court-ordered out-of-home placement for more than 12 months. The district court also found that the court approved the out-of-home placement plan and ordered the parents to comply with the plan on February 23, 2022, and August 26, 2022. Further, the district court found that reasonable efforts were made by the county to rehabilitate and reunite the family.

Mother seems to challenge the district court's determinations regarding the conditions that led to removal and the district court's determination that the conditions were not corrected. She makes three arguments.

First, mother asserts that the initial condition that led to removal was father's discharge of a firearm and that his incarceration corrected this condition. But the district court found that several conditions led to the children's out-of-home placement. These included (1) the unsanitary condition of the home, (2) educational neglect, (3) instability within the home, (4) the parents' unaddressed mental-health needs, (5) the parents' chemical use, (6) domestic violence, and (7) safety concerns as demonstrated by the gun incident. Furthermore, while the safety concerns posed by father's discharge of a firearm were corrected by his incarceration, the district court found that other conditions—substance use, mental-health issues, instability in the home, and domestic violence—were not corrected. Thus, father's incarceration is not dispositive as to whether the conditions leading to removal were corrected.

Second, mother argues that father's incarceration alleviated concerns about his propensity for violence toward mother. However, the district court found that, despite participating in couples counseling, appellants continued to struggle with domestic violence and unhealthy relationship dynamics. Moreover, the district court found that mother intended to remain in a relationship with father and that the parents had not participated in domestic-violence programming. Although father's incarceration alleviated immediate threats of violence against mother, the district court's determination that the conditions of domestic violence and unhealthy relationship dynamics were not corrected is still supported by its findings and the record.

Third, mother argues that the conditions leading to removal were corrected because she had been sober for approximately two months at the time of trial. Testimony and exhibits established that mother attended and was successfully discharged from residential treatment in March 2022 and that she then successfully competed outpatient programming in July 2022. But, thereafter, mother did not follow continuing care recommendations. She relapsed and tested positive for amphetamine and methamphetamine on August 8, October 18, and November 15, 2022. Mother then followed recommendations and enrolled in an outpatient program, in which she remained at the time of the trial. She again tested positive for amphetamine and methamphetamine several times in November and December, but by the time of trial she had been sober for two months.

In its order, the district court explained why mother's recent sobriety, in and of itself, did not address concerns about mother's chemical use. Specifically, the district court cited concern regarding mother's pattern of use after participating in treatment programs, that

her relapses coincided with father's use while he was out of custody and in her life, and that mother refused to increase programming to four times per week as recommended by her current treatment counselor. Thus, although mother was sober in the two months leading up to trial, the district court's determination that the condition of substance use was not sufficiently corrected is supported by its findings and the record.

In sum, the record supports the district court's findings that mother failed to adequately address her mental health, domestic violence in her relationship with father, and her sobriety. Therefore, the district court did not abuse its discretion when it determined that mother failed to correct the conditions leading to the out-of-home placement of the children. Because we conclude that the district court did not abuse its discretion in determining that the county proved this statutory basis for termination of parental rights by clear and convincing evidence, we need not address the other two bases found by the district court. *See S.E.P.*, 744 N.W.2d at 385.

III. The district court did not abuse its discretion by determining that termination of father's parental rights was in the best interests of the children.

Father argues that the district court abused its discretion by determining that termination was in the best interests of the children. In any termination proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2022). In analyzing the best interests of the child, 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." *J.H.*, 968 N.W.2d at 604 (quotation omitted); *see* Minn. R. Juv. Prot.

P. 58.04(c)(2)(ii) (requiring the district court to analyze the same factors). Competing interests of the child "include a stable environment, health considerations, and the child's preferences." *In re Welfare of M.A.H.*, 839 N.W.2d 730, 744 (Minn. App. 2013). The district court "must consider a child's best interests and explain its rationale in its findings and conclusions." *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003).

Father appears to challenge the district court's analysis of the best-interests factors. First, father points out that the evidence shows that the children have an interest in maintaining the parent-child relationship. Specifically, father states that the children are bonded with and love their parents. The district court acknowledged the children's interest in preserving the parent-child relationship by considering T.M.M.'s stated preferences, which included her love for her parents and desire to return home. However, the district court also found that T.M.M. acknowledged that her parents' lack of progress on the case plans might make reunification impossible. Additionally, the district court found that T.M.M. expressed fear of returning home at times. The record supports the district court's findings regarding the children's interest in preserving the parent-child relationship.

Father also argues that the evidence shows that he has a strong interest in maintaining the parent-child relationship. He cites to testimony about his strong desire to have his children returned and to evidence that he saved up $4,000 to pay for housing, that he participated in visitation as much as he could, and that he completed the required mental-health and chemical-use assessments. In its order, the district court acknowledged that father loves his children. However, the district court also found that father missed numerous visits and that some rescheduled visits ended abruptly due to father becoming

verbally aggressive. The record supports the district court's findings regarding father's interest in preserving the parent-child relationship.

Importantly, father fails to acknowledge any competing interests of the children in his challenge of the district court's ultimate determination that termination was in the children's best interests. Regarding competing interests, the district court found that the children had been in a safe, stable, consistent environment for over a year, which allowed them to develop and progress. The district court also found that this environment enabled the children to have their needs met. It found that the guardian ad litem testified credibly that the children were thriving in their placement. However, the district court also found that the children have significant therapeutic work ahead to overcome their diagnoses and prevent future issues. Ultimately, the district court found that the parents had not made sufficient progress to demonstrate that they could care for the children now or in the foreseeable future. The record supports the district court's findings regarding the competing interests of the children.

The district court's analysis focused on the three required balancing factors. While father and the children may have interests in preserving the parent-child relationship, the district court made detailed findings, supported by the record, about the children's best interests to the contrary. Thus, the district court did not abuse its discretion in determining that the termination of father's parental rights was in the children's best interests.

Affirmed.