STATE OF MINNESOTA
IN COURT OF APPEALS
A11-699

In the Matter of the
Welfare of the Children of:
S. J. R. and C. E. L., Parents.

Filed August 22, 2011
Affirmed
Shumaker, Judge

Itasca County District Court
File Nos. 31-JV-09-3870, 31-FA-10-981

John J. Muhar, Itasca County Attorney, Mary J. Evenhouse, Assistant County Attorney, Grand Rapids, Minnesota (for respondent Itasca County)

Darla M. Nubson, Grand Rapids, Minnesota (for respondent S.J.R.)

Erica Lynn Hill Austad, St. Cloud, Minnesota (for appellant C.E.L.)

Kim Allen, Grand Rapids, Minnesota (guardian ad litem)

Considered and decided by Wright, Presiding Judge; Shumaker, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

SHUMAKER, Judge

On appeal from the termination of his parental rights, appellant father argues that he has corrected conditions leading to the children's out-of-home placement; the county did not provide reasonable efforts to reunify the family; and termination of his parental rights is not in the best interests of the children. He also argues the district court should

have granted his request for a six-month extension to the permanency determination and that he is entitled to a new trial because the district court improperly admitted evidence that resulted in prejudicial error. We affirm.

FACTS

Appellant C.E.L. is the father of four children: R.K.L., age 10; S.R.L., age 8; F.T.L., age 6; and C.J.L., age 3.[1] All of these children have special needs. Appellant and the children's biological mother, S.J.R., never married but were in a relationship together from 1998 until April 2010. Throughout their relationship and their children's lives, appellant and mother abused chemicals, were intermittently incarcerated, and were often homeless. Appellant has been the primary caregiver for the children and was adjudicated the father of the children on March 25, 2010.

Prior to moving to Itasca County in 2005 or 2006, the family lived in Aitkin County. Aitkin County Health and Human Services (Aitkin County HHS) was notified that mother tested positive for methamphetamine while she was in the hospital and pregnant with F.T.L. in September 2004. After mother refused to return to treatment, Anoka County HHS filed a petition on October 13, 2004, alleging the older two children and the as-yet unborn F.T.L. were children in need of protection or services (CHIPS). Aitkin County HHS developed a case plan for appellant and mother and offered them numerous services. While the Aitkin County CHIPS file was open, mother relapsed at least twice, appellant relapsed at least once, and appellant was incarcerated in Aitkin

[1] Appellant has two additional children from a previous marriage: J.L., age 25, and D.L., age 20. Appellant has not had a relationship with J.L. or D.L. for 15 years.

County Jail from July 10 to July 28, 2005. During appellant's incarceration, the children were placed in foster care. Despite these events, the Aitkin County CHIPS case was closed on September 13, 2005, because mother completed inpatient chemical-dependency treatment.

After the Aitkin County CHIPS case closed, appellant and S.J.R. continued to have problems with substance abuse, codependency issues, obtaining adequate housing, legal violations and incarceration, and an unstable home life. When they moved to Itasca County, they voluntarily obtained services with and without the assistance of county social workers including, but not limited to, children's mental-health services, Invest Early Head Start, Project Clean Start, and assistance with locating adequate housing. During this time, the family was often homeless, stayed at shelters and stayed with other relatives. The children were cared for by their maternal grandmother from December 2008 until fall 2009.

Itasca County HHS began CHIPS proceedings in December 2009. The children were removed from the home on December 11, 2009. At the time of removal, mother was incarcerated and appellant was arrested and later incarcerated. At an "admit-deny" hearing on December 31, 2009, appellant and mother admitted their children were in need of protection or services. Itasca County HHS filed a petition to terminate mother's parental rights to the minor children on January 20, 2010. She was presumed to be a palpably unfit parent based on the previous involuntary termination of her parental rights to two other biological children, M.J.R. and M.Q.R., in Crow Wing County in 1998. Mother denied the petition and proceeded to trial. After trial, mother requested voluntary

termination of her parental rights to her four children, and the district court ordered termination of her parental rights on April 15, 2010.

Itasca County HHS worked to reunite appellant and the children, providing appellant with numerous services, including: psychological/parenting evaluation; inpatient and outpatient chemical-dependency treatment; individual-counseling services; individual-medication management; case-management services; recovery specialist program services; in-home services to develop parenting skills; supervised visitation; transportation assistance and cab vouchers; childcare secured when the children were in his custody; and assistance scheduling appointments and managing his calendar. As of July 22, 2010, the children had been in out-of-home placement for six months. Three of the four children were under eight years of age at the time the CHIPS petition was filed, which required the district court to address permanency pursuant to Minn. Stat. § 260C.201, subd. 11a (2010). Based on appellant's efforts to comply with the case plan, the district court granted Itasca County HHS's request for a six-month extension to the permanency timelines pursuant to Minn. Stat. § 260C.201, subd. 11a(c)(1)(ii). Appellant had a trial home visit with the children from July 22 to September 1, 2010, which ended because appellant was unable to meet the daily needs of his children, including scheduling and attending their medical appointments, and providing a stable environment for them. Despite the assistance of Itasca County HHS, appellant made little progress on his case plans and was still unable to meet the children's daily physical, mental, and emotional needs.

After the trial home visit and prior to trial, appellant was evaluated at Grand Itasca Hospital, where he appeared confused and incoherent. On September 27, 2010, the hospital discovered appellant's entire 30-day supply of Wellbutrin (an antidepressant), which should have lasted him until October 13, 2010, was gone. Appellant could not account for the missing medication. He was deemed in need of additional monitoring and support and was placed in a "crisis bed" in the community, because the hospital determined it would be unsafe for appellant to return home. Another incident occurred on October 28, 2010, when appellant called the children's foster mother and other service providers in the middle of the night asking where the children were and sounding incoherent.

Itasca County HHS filed a petition to terminate appellant's parental rights, and a trial was held on January 31 and February 2, 3, and 4, 2011. The district court issued an order on March 4, 2011, finding that the state proved by clear and convincing evidence that reasonable efforts, under the direction of the court, had failed to correct the conditions leading to the children's placement, pursuant to Minn. Stat. 260C.301, subd. 1(b)(5) (2010). The district court held that the presumption in Minn. Stat. 260C.301, subd. 1(b)(5)(i)-(iv) was met but that, even if it had not been met, appellant's parental rights should still be terminated. The court also found, under the totality of the circumstances, clear and convincing evidence that termination of appellant's parental rights is in the best interests of the children. Finally, the district court denied appellant's request for an additional six-month extension of the permanency timeline pursuant to

Minn. Stat. § 260C.201, subd. 11a(c)(1)(ii), because it was not in the children's best interests.

Appellant moved the district court for a new trial arguing that: (1) the district court improperly relied on exhibits containing multiple instances of hearsay and that were not subject to any hearsay exceptions; (2) the court improperly considered testimony from social workers, mental-health practitioners, and the guardian ad litem; (3) the evidence was insufficient to support the termination of appellant's parental rights; and (4) the best interests of the children warrant appellant additional time to reunify with his children under Minn. Stat. § 260C.201, subd. 11a(c)(1)(ii). The district court denied appellant's motion. This appeal followed.

D E C I S I O N

"We affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted); *see also In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004) (same).

Appellant argues on appeal that he has corrected conditions leading to the children's out-of-home placement; the county did not provide reasonable efforts to reunify the family; and termination of his parental rights is not in the best interests of the children. He also argues the district court should have granted his request for a six-month

extension to the permanency determination and that he is entitled to a new trial because the district court improperly admitted evidence that resulted in prejudicial error.

I.

On appeal, "[c]onsiderable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). The reviewing court closely "inquires into the sufficiency of the evidence to determine whether the evidence is clear and convincing." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996).

The district court may terminate all rights of a parent to a child if, following out-of-home placement, reasonable efforts have failed to correct conditions leading to the child's placement. Minn. Stat. § 260C.301, subd. 1(b)(5). Reasonable efforts are presumed to have failed upon a showing that

> (i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;
> (ii) the court has approved the out-of-home placement plan required under section 260C.212 and filed with the court under section 260C.178;
> (iii) conditions leading to the out-of-home placement have not been corrected. 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; and

> (iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

Id.

The district court applied the presumption of failed reasonable efforts allowed by Minn. Stat. § 260C.301, subd. 1(b)(5), and terminated appellant's parental rights.

(i) Out of parental home for 12 months

Appellant concedes that when his parental rights were terminated, the children had resided outside of the parental home for 14 months within the preceding 22 months, thereby satisfying Minn. Stat. § 260C.301, subd. 1(b)(5)(i).

(ii) Court-approved out-of-home placement plans filed with the court

Appellant was provided with a written case plan for each child to guide his conduct as a parent, to safeguard the children, and to work toward reunification. Appellant does not dispute that all case plans and revisions were approved by the district court and filed with the court, satisfying Minn. Stat. § 260C.301, subd. 1(b)(5)(ii).

(iii) Conditions leading to the out-of-home placement have not been corrected

Appellant argues that he corrected most of the conditions that led to the children's out-of-home placement and that any uncorrected conditions would have been remedied in the foreseeable future. He identifies the main issues that led to the children's out-of-home placement as his lack of sobriety, mental-health problems, lack of adequate employment and housing, and his inability to parent his four special-needs children.

The district court acknowledged that appellant has "made positive steps toward attaining and maintaining his sobriety." He successfully completed residential and

outpatient treatment, resided in a halfway house, and was discharged after successfully completing programming. Appellant participates in the Recovery Specialist Program and the specialists there stated they believe appellant is sober. All of appellant's urinalysis results have been negative. However, the evidence shows that appellant has not fully complied with case plans or with the probation terms from his 2007 second-degree burglary conviction. Alcoholics Anonymous (AA) attendance is a requirement of both appellant's probation and his case plans. He has not provided proof of AA attendance since May 2010 and has failed to maintain a sponsor. Appellant argues this is something that can be resolved in the foreseeable future and therefore should not be considered a condition that has not been corrected.

Appellant also claims that he has corrected his mental-health issues because he attended medication management and individual therapy. But appellant did not regularly attend scheduled appointments for his medication management—either cancelling or failing to show up three times in the summer of 2010. In September 2010, appellant lost insurance coverage and stopped taking his prescribed medications without consulting his psychiatric nurse or a physician. As of the time of trial, he had resumed taking his medications but still did not have insurance coverage. Appellant's attendance at individual therapy sessions has also been intermittent. He did not attend counseling sessions with his therapist from May 2010 through September 2010. Further, appellant had two episodes in the fall of 2010, after the trial home visit ended, that call into question appellant's mental-health status. Appellant argues that since the children were

not in his care at the time, these two episodes should not be a factor in the court's determination.

Additionally, appellant has not made any genuine progress on his codependency issues with the children's mother. As early as 2005, he was ordered to address his codependency issues with mother as part of the Aitkin County CHIPS proceeding. This codependency was also cited as a risk factor in appellant's 2010 parenting-capacity assessment, and his case plan required him to address it with his therapist. Appellant claims he was working on this issue with his therapist, but his attendance at the required sessions was sporadic. Furthermore, he remained in contact with mother despite being prohibited from doing so by case plans and the court. In his brief to this court, appellant admits to having "three contacts" with mother but claims he never allowed the children to have contact with her. Most significantly, appellant spent the night with mother at her apartment while the children were in appellant's custody for the trial home visit. It is unclear who was caring for the children at this time. When confronted by service providers about this incident, appellant was not truthful. At trial he testified he had to contact mother to retrieve some of the children's belongings from her. The district court did not find this testimony credible. We defer to district court credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Appellant correctly argues that the law does not expressly mandate termination of his parental rights for contacting mother. However, appellant was prohibited from being in contact with mother by his case plans and court order. Noncompliance with a case plan is one way to prove a failure to correct conditions leading to out-of-home placement

pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5)(iii). *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 663 (Minn. 2008). Appellant's contact with mother constitutes noncompliance with his case plans and is proof of his failure to correct a condition that led to the children's out-of-home placement.

Appellant also asserts that he maintained employment and housing for his children throughout the duration of the case. He did have employment during the trial home visit, but his contention that he maintained housing throughout the case is not accurate. Appellant did not have a home for the children from December 2009 to May 2010. During that time period, he was either incarcerated, attending inpatient treatment, or living in a halfway house. In May 2010, appellant rejected Itasca County HHS's recommendation to secure housing at a townhome and instead moved into a one-bedroom apartment, where he lived with the children during the trial home visit. Shortly before trial, appellant moved into the three-bedroom townhome originally recommended by social services.

The area of appellant's least progress is perhaps the most important: parenting his four special-needs children. First, appellant delayed unsupervised visits until May 2010, despite having the opportunity to start them as early as March 2010. It is unclear if appellant remained in contact with his children prior to May 2010. Second, appellant missed his first scheduled visit with his children at his new apartment in May 2010. The district court also found that the children were not placed with appellant for a trial home visit until July 2010—two months after he secured housing—because appellant intentionally delayed it. Appellant was also told to secure childcare in April 2010 in

anticipation of the trial home visit but he did not do so. He was unable to independently find childcare for the children at any time during the trial home visit, despite receiving contact information from his case manager for a person willing to provide childcare in appellant's home. Eventually, the case manager had to obtain childcare for him.

During the trial home visit, case workers provided extensive support to appellant, helping him schedule appointments, fill out a calendar, providing transportation to and from appointments, and securing daycare for the children. As the case workers began to scale back their support, appellant started missing the children's medical appointments and failed to arrive at respite care when scheduled. R.K.L. missed three visits with his psychologist during the trial home visit because appellant failed to arrange for transportation or did not remember the appointment times.[2] The case manager took R.K.L. to his next appointment, but appellant did not accompany them nor did he remember R.K.L. had an appointment.

The behavior of all of the children deteriorated during the trial home visit. A mental-health practitioner who observed F.T.L. and C.J.L. in a school-based setting during the trial home visit noted they appeared tired, were often hungry as soon as they arrived, and that F.T.L. had become more withdrawn and displayed aggressive behavior, hitting, kicking, and yelling at his classmates. Notably, when case workers met with appellant during the trial home visit to discuss these problems, he thought the trial home visit was going well.

[2] Appellant's driver's license was revoked because he has three DWI convictions. His unpaid fines prevent reinstatement of his license. The district court found he has not taken any steps to get his license back.

Noncompliance with a case plan is one way to prove a failure to correct conditions pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5)(iii). *T.R.*, 750 N.W.2d at 663. The district court found that appellant failed to comply with the following tasks in his case plans: (1) participation in individual therapy with a focus on codependency issues; (2) taking prescription medications only as prescribed; (3) remaining active in AA or another sober network; (4) attaining safe, suitable childcare for the children; (5) refraining from contact with mother; and (6) consistently providing a home environment that meets the children's physical, emotional, social, developmental, and educational needs.

The district court concluded that appellant's lack of insight about how to meet his children's daily needs, his inability to multitask, his failure to ensure that his children attended required appointments, and his inability to manage his own medical needs were the primary reasons the trial home visit failed and are what preclude appellant from being able to parent his children now or in the foreseeable future. Clear and convincing evidence supports the district court's finding that appellant failed to substantially comply with his case plans and has not corrected the conditions leading to the children's out-of-home placement. The record reflects that Minn. Stat. § 260C.301, subd. 1(b)(5)(iii), has been satisfied.

(iv) Reasonable efforts made by the county

Appellant challenges the district court's determination that the county made reasonable efforts to reunify his family. He claims the county's efforts "were inadequate, inconsistent, unavailable, and unrealistic given the circumstances." In determining

whether the county has made "reasonable efforts," this court must consider whether the county offered services that 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) (2010). "Whether efforts are reasonable also requires consideration of the length of time the county has been involved with the family as well as the quality of effort given." *In re Welfare of D.T.J.*, 554 N.W.2d 104, 108 (Minn. App. 1996) (quotations omitted); *see also S.Z.*, 547 N.W.2d at 892 ("The nature of the services which constitute 'reasonable efforts' depends on the problem presented.").

Appellant takes issue with the fact that all four children were placed in his one-bedroom apartment at once, instead of by gradual transition, as suggested by the psychologist who conducted appellant's parental-capacity assessment. But there is ample evidence to support the district court's finding that appellant actively participated in planning meetings before the trial home visit and had input into all of the decisions. Shared-family foster care was discussed as an option for reunification, as was transitioning one or two children at a time to appellant's care. The district court also noted that, to the extent appellant was "forced" to take all four children in a one-bedroom apartment, the apartment was appellant's choice, and he had previously rejected a larger residence.

Appellant also contends that his work schedule and lack of transportation made it difficult to obtain daycare and to get his children to their various appointments. But

caseworkers advised appellant to secure childcare for his children in anticipation of the trial home visit as early as April 2010. He failed to follow the recommendation and did not make any genuine effort to obtain childcare even after the trial home visit started, instead relying on one of the caseworkers to do this for him.

Appellant claims that it was unfair that he was given only five weeks to make the necessary adjustments before the trial home visit ended and the termination-of-parental-rights petition was filed. But appellant was given much longer than five weeks to correct the conditions leading to the children's out-of-home placement. Before the trial home visit in July 2010, the children had not been in his care since December 2009. The majority of this time was spent addressing appellant's legal troubles, his mental-health issues, and his problems with chemical dependency. Caseworkers tried to help him prepare for the trial home visit beforehand, recommending that he secure childcare in advance and holding planning meetings about the trial home visit.

Three caseworkers testified that appellant was provided extensive in-home services during the trial home visit. One testified that the service providers spent "countless" hours to help appellant succeed. Ultimately, the level of assistance the caseworkers provided was unsustainable and "if providers continued to invest so many 'man hours' in this case, they could not effectively manage the rest of their caseload." Appellant was provided with numerous services, including psychological/parenting evaluation; inpatient and outpatient chemical-dependency treatment; individual counseling; individual medication management; case-management assistance; recovery specialist program options; in-home services to develop parenting skills; supervised

visitation; transportation assistance and cab vouchers; service providers securing childcare when the children were in his custody; and assistance scheduling appointments and managing his calendar. There is clear and convincing evidence supporting the district court's determination that the county made reasonable efforts to reunite appellant and his children.

Clear and convincing evidence supports all four elements of Minn. Stat. § 260C.301, subd. 1(b)(5)(i)-(iv). The evidence is sufficient to trigger the statutory presumption that reasonable efforts "failed to correct the conditions leading to the [children's] placement" and to establish that appellant has not rebutted that presumption. Minn. Stat. § 260C.301, subd. 1(b)(5).

II.

Appellant also argues that termination of his parental rights is not in the best interests of the children. "[T]he best interests of the child must be the paramount consideration . . . ." Minn. Stat. § 260C.301, subd. 7 (2010). "[D]etermination 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) (quoting *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003)). In analyzing the best interests of the child, the 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." *In re Welfare of R.T.B.* 492 N.W.2d 1, 4 (Minn. App. 1992).

The district court addressed each of the factors set out in *R.T.B.* The court acknowledged that appellant clearly loves his children and wants to maintain a parent-child relationship with them. The district court also noted appellant "has made some commendable progress toward maintaining sobriety, securing employment, and attaining suitable housing to meet his children's needs." Despite appellant's good-faith effort to meet the needs of his children, the district court determined that the children have varying degrees of interest in preserving the parent-child relationship. C.J.L. was three years old at the time of the district court's determination and is too young to express a clear preference. F.T.L., age 6, and S.R.L., age 8, also do not appear to have any strong attachment to appellant. R.K.L., the eldest, has expressed a preference to live with appellant but is also worried that he will have to take care of his younger siblings if that happens. The district court found that R.K.L. has the strongest interest in preserving the relationship with appellant, "but even that interest is qualified."

The district court concluded the children's need for a stable, predictable environment "greatly outweigh[s] any interest in preserving the child-parent relationship." Appellant is unable to provide this to his children. All four children have special needs that require attention. C.J.L. is developmentally delayed and has attachment issues. F.T.L. is developmentally delayed, suffers from generalized anxiety, has attention-deficit disorder (ADD), and has been diagnosed with brittle-bone disease and fetal-alcohol syndrome. S.R.L. also suffers from generalized anxiety, attention-

deficit/hyperactivity disorder (ADHD), brittle-bone disease, and had some level of fetal-alcohol exposure. The most in need of a stable environment, however, is R.K.L., who has been diagnosed with posttraumatic stress disorder, ADHD, oppositional-defiant disorder, brittle-bone disease, fetal-alcohol syndrome, "severe emotional disturbance," and is currently in residential placement at Northwoods Residential Treatment Facility in Duluth. R.K.L.'s psychologist testified that if he is not placed in a stable, predictable, permanent home soon, he is at risk for long-term institutionalization. The district court found this testimony credible. *See Sefkow*, 427 N.W.2d at 210 (holding that appellate courts defer to district court credibility determinations).

The guardian ad litem, social worker, and in-home service provider all testified that termination of appellant's parental rights is in the best interests of the children. Appellant claims that the evidence does not support the district court's conclusion because some of the county's witnesses testified that there is a bond between appellant and his children. However, this testimony alone does not establish that it is in the children's best interests for appellant to retain custody, especially considering the substantial evidence to the contrary.

Clear and convincing evidence shows that the children are in dire need of a stable, permanent home and that appellant is unable to provide that now or in the foreseeable future. Accordingly, we will not disturb the district court's determination that it is in the best interests of the children to terminate appellant's parental rights.

III.

Appellant argues the district court should have granted his request for a six-month extension to the permanency determination. Under Minn. Stat. § 260C.201, subd. 11(a)(2) (2010), if a child has been in foster care for 12 months or more, the district court, if it is in the best interests of the child and for compelling reasons, "may" extend the child's out-of-home placement up to an additional six months before making a permanency decision. *See Effinger v. State*, 380 N.W.2d 483, 487 (Minn. 1986) (noting that the use of "may" in a statute conferred discretion on the district court).

As previously discussed, the district court found that it is in the children's best interests to terminate appellant's parental rights. The court also specifically held that an additional six-month extension would not be in the best interests of the children. Appellant argues that he has substantially complied with his case plans and has proved that he could successfully parent his children. These assertions contradict the district court's well-supported findings. Appellant does not explain why a six-month extension would serve the children's best interests. Substantial evidence in the record shows that the children need a stable, permanent home and a predictable routine. Time is of the essence for the children, especially R.K.L., who is at risk for long-term institutionalization if he is not provided a stable, suitable, and permanent placement soon. Appellant has been unable to provide this to his children in the past, and will not be able to meet his children's needs in the foreseeable future.

Alternatively, appellant claims that even if Minn. Stat. § 260C.201, subd. 11(a)(2), does not apply, the district court has inherent authority and discretion to allow further

reunification efforts. Regardless of whether the district court has this authority, appellant's argument is unpersuasive in light of the significant amount of evidence that the children's best interests are served by the immediate termination of appellant's parental rights. Accordingly, the district court did not abuse its discretion when it denied appellant's request for a six-month extension before making a permanency determination.

IV.

Finally, appellant argues he is entitled to a new trial because the district court admitted improper evidence resulting in prejudicial error. "Whether to receive evidence is discretionary with the district court." *J.W. by D.W. v. C.M.*, 627 N.W.2d 687, 697 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001). Procedural and evidentiary rulings are within the district court's discretion and are reviewed for an abuse of that discretion. *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001). To prevail on appeal, an appellant must show both error and prejudice resulting from the error. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975).

Exhibits

Appellant claims reports and letters by the children's mental-health workers, the social worker, and the guardian ad litem were improperly admitted into evidence at trial despite his repeated objections. Specifically, appellant objects to: (1) exhibits 4(a)-(d), chronological case notes of social worker Lindsay Nelson-Schultz; (2) exhibits 11(b)-(d), reports of guardian ad litem Kimberly Allen; (3) exhibit 13, letter to Nelson-Schultz from the children's mental-health practitioner Jodi Mix; (4) exhibit 14, letter to Nelson-Schultz

from mental-health practitioner Jodi Winkels; (5) exhibit 16, report to the district court from Nelson-Schultz; (6) exhibit 22, letter from the children's mental-health case manager Sue Kavanagh; and (7) exhibit 23, letter from S.R.L.'s therapist Katie Rubesh. The district court denied appellant's motion for a new trial due to improper evidentiary rulings.

According to appellant, this evidence was prepared for purposes of litigation and is therefore inadmissible under Minn. R. Evid. 803(6). Rule 803(6) provides that: "A memorandum, report, record, or data compilation prepared for litigation is not admissible under [the business-records] exception." But, as the district court noted, Minn. Stat. § 260C.193, subd. 2 (2010), allows the district court to consider certain reports or recommendations before terminating parental rights, including any made by "the responsible social services agency, probation officer, licensed child-placing agency, foster parent, guardian ad litem, tribal representative, the child's health or mental health care provider, or other authorized advocate for the child or child's family . . . or any other information deemed material by the court." Minn. Stat. § 260C.193, subd. 2.

The statute clearly allows the district court's admission of exhibits 11(b)-(d), the guardian ad litem's reports and exhibit 16, the social worker's report to the district court. Further, the guardian ad litem and the social worker who prepared the reports testified at trial. Appellant had the opportunity to—and did—cross-examine the guardian ad litem and the social worker about the exhibits.

Exhibits 22 and 23 were also admissible under Minn. Stat. § 260C.193, subd. 2. Exhibit 22 is a letter from Sue Kavanagh, the children's mental-health case manager, in

which she described her work with the family and recommended termination of appellant's parental rights. Exhibit 23 is a letter from Katie Rubesh, S.R.L's therapist, where she opined that S.R.L. needed permanency as quickly as possible. She did not make a recommendation on the ultimate issue of whether to terminate appellant's parental rights. The district court properly considered these recommendations before terminating appellant's parental rights because they were made by the children's mental-health case manager and S.R.L.'s therapist. *See* Minn. Stat. § 260C.193, subd. 2 (stating that before terminating parental rights, "the court may consider any report or recommendation made by . . . [the] child's health or mental health care provider"). Even if admission of exhibits 22 and 23 were improper, the error was not prejudicial. The district court expressly stated that the exhibits were not determinative in the decision to terminate appellant's parental rights. The court did not even cite these exhibits in its findings of fact or conclusions of law. Also, Sue Kavanagh and Katie Rubesh both testified at trial. Appellant was free to cross-examine them about any statements in their letters.

Nelson-Schultz's chronological case notes, exhibits 4(a)-(d), were also properly admitted at trial. The business-records exception states that business records are admissible if the custodian or another qualified witness can testify that the records were (1) made by a person with personal knowledge of the matters recorded; (2) made at or near the time of the recorded event; (3) kept in the course of a regularly conducted business activity; and (4) made as part of the regular practice of that business activity. Minn. R. Evid. 803(6).

Nelson-Schultz testified at trial that she wrote the chronology case notes in exhibits 4(a)-(d), as she does with every case. She stated she notes every contact she has with the family or other service providers working with the family, that she keeps these notes in the normal course of her work, as required by law, and she relies on the notes to determine appropriate services and activities to help reunify the family. Accordingly, Nelson-Schultz's case notes satisfied the business-records exception to the hearsay rule and were properly admitted at trial. Additionally, appellant has not shown how admission of these notes was prejudicial.

Appellant next contends that two letters to Nelson-Schultz from the children's mental-health practitioners, Jodi Mix (exhibit 13) and Jodi Winkels (exhibit 14), were improperly admitted into evidence. He argues that the letters are inadmissible because they contain opinions on whether appellant's parental rights should be terminated and "are strongly slanted in their tone." But even business records containing an opinion on an ultimate issue are admissible if the witness offering the opinion is available for cross-examination by the fact-finder. *In re Child of Simon*, 662 N.W.2d 155, 161 (Minn. App. 2003); Minn. R. Evid. 803(6) (business records include opinions). The mental-health practitioners who wrote the letters, as well as the social worker who received them, testified at trial and were available for cross-examination.

Appellant also argues that the letters are inadmissible because they were prepared for purposes of litigation. *See* Minn. R. Evid. 803(6). In determining whether a document was prepared for litigation, a district court must consider when and by whom the report was made and the purpose of the report. *Nat'l Tea Co., Inc. v. Tyler*

Refrigeration Co. Inc., 339 N.W.2d 59, 62 (Minn. 1983). The letters were written two months before trial and were used to update Nelson-Schultz on reunification efforts. Mix's letter described her work with F.T.L. and C.J.L. Winkels's letter updated Nelson-Schultz on the family's progress with in-home family-skills training that Winkels provided. By appellant's reasoning, virtually all records made in a potential termination-of-parental-rights matter could be said to be made in anticipation of litigation. Minn. R. Evid. 803(6) cannot reasonably be read that broadly.

Even if the letters were improperly admitted because they were prepared for purposes of litigation, the error was not prejudicial. Appellant claims admission of Mix's letter was prejudicial because the district court relied on it in finding that C.J.L. did not have an attachment to appellant. However, Mix testified at trial to C.J.L.'s lack of attachment to appellant. Appellant argues Winkels's letter was prejudicial because the court made a finding that "Winkels concluded that 'with the added responsibility of providing continuous daily care of the kids, [appellant's] ability to parent effectively seemed to diminish.'" This is merely a summary of Winkels's opinion. Further, Winkels's testimony at trial was consistent with her letter, and other case workers testified similarly—that as the trial home visit progressed, appellant's parenting abilities diminished. Appellant's argument that admission of these letters was prejudicial error is unpersuasive. The mental-health practitioners' testimony was consistent with the contents of their letters, and the record shows that the district court's final determination would remain the same whether or not it relied on the two findings appellant claims were prejudicial.

Testimony

Appellant also claims the children's mental-health workers, the social worker, and the guardian ad litem were impermissibly allowed to testify about whether appellant's parental rights should be terminated. He contends that because they were not expert witnesses they should not have been allowed to testify as to their opinions on the ultimate issue—whether or not appellant's parental rights should be terminated. Appellant claims "there was absolutely no foundation offered for these opinions."

> A district court's evidentiary ruling on the admissibility of an expert opinion rests within the sound discretion of the [district] court and will not be reversed unless it is based on an erroneous view of the law or it is an abuse of discretion. The district court has considerable discretion in determining the sufficiency of foundation laid for expert opinion.

Gross v. Victoria Station Farms, Inc., 578 N.W.2d 757, 760-61 (Minn. 1998) (quotations and citations omitted). "[W]e have stated that even if this court would have reached a different conclusion as to the sufficiency of the foundation, the decision of the district court judge will not be reversed absent clear abuse of discretion." *Id*. at 761 (quotations omitted). The district court considered the professional qualifications of each of these witnesses, and the extent of their involvement with the family. The district court found that "[t]heir specialized training in the fields of social work and child psychology made their opinions on the best interests of the [c]hildren relevant and helpful to the court." The district court did not abuse its discretion when it concluded these case workers were expert witnesses. And because they were expert witnesses, their testimony as to whether or not appellant's parental rights should be terminated was not improper.

Appellant also argues that the district court abused its discretion by admitting, over his objection, hearsay statements of the children to their mental-health workers. He claims there was no valid exception to the hearsay rule because the county never stated that the children were unavailable to testify and there is no other applicable exception for their statements. Appellant objected to testimony about the children's suggestions to case workers that appellant was in contact with mother and that being placed with him caused the children's poor behaviors. While the district court did note the suspicions of case workers that appellant and mother were in contact against court orders, appellant admitted at trial that he had been in contact with mother. Therefore, the social workers' speculations that the two were seeing each other were irrelevant and did not prejudice appellant.

Affirmed.