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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0728**

In the Matter of the Welfare of the Child of:
S. R. S. and D. A. S., Parents.

**Filed October 8, 2018
Affirmed
Cleary, Chief Judge**

Anoka County District Court
File No. 02-JV-17-856

Jason Steck, Edina, Minnesota (for appellant S.R.S.)

Anthony C. Palumbo, Anoka County Attorney, Nicholas M. Jannakos, Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County Social Services)

Ben Sime, Ramsey, Minnesota (guardian ad litem)

Considered and decided by Larkin, Presiding Judge; Cleary, Chief Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

On appeal from the termination of appellant-mother's parental rights, mother argues (1) that the record does not support the district court's determination that Anoka County Social Services made reasonable reunification efforts; and (2) that the district court denied mother due process when it commented on her judgment and questioned witnesses. We affirm.

FACTS

Appellant-mother and D.A.S. are the parents of B.D.S., born in 2011. Mother and D.A.S. are also the parents of J.A.S, born in 2013, who is not a party to these proceedings.

B.D.S. was diagnosed with Autism Spectrum Disorder (ASD) in 2014 and requires heightened levels of routine and structure to regulate his behaviors. Disruptions in routine and structure dysregulate B.D.S., causing him to act out aggressively towards himself and others. Mother has anxiety, depression, Posttraumatic Stress Disorder (PTSD), and a history of drug abuse.

In October 2014, respondent Anoka County Social Services (ACSS) filed a child-in-need-of-protection-or-services (CHIPS) petition for B.D.S. and J.A.S due to concerns regarding mother's homelessness and drug use. ACSS placed the children in foster care and the county implemented an out-of-home placement plan that identified tasks mother needed to complete for B.D.S. and J.A.S. to return to her care and custody. The adopted case plan required that mother complete chemical dependency treatment, maintain sobriety, participate in UAs as requested by ACSS, obtain safe and stable housing, and maintain her mental health. Although ACSS stated that mother was "mostly compliant" with her case plan, it also noted that mother missed over half of her individual therapy appointments and often discontinued services before completion.

In June 2016, B.D.S. and J.A.S. were returned to mother for a trial home visit. After about one month, ACSS terminated the trial home visit. The termination followed an allegation that B.D.S. suffered a rug burn when B.D.S. ran from mother's apartment unit and mother dragged him back inside by his legs. During the trial home visit, mother also

missed her individual therapy appointments and B.D.S.'s therapy appointments. In September 2016, the district court dismissed the CHIPS proceeding and returned B.D.S. and J.A.S. to mother's care over the objection of ACSS and the guardian ad litem.

ACSS instituted an investigation regarding the welfare of B.D.S. and J.A.S. in April 2017 after receiving a report that J.A.S. suffered an injury. An ACSS investigator determined that the injury was not the result of physical abuse, but the investigator learned that D.A.S. had moved into mother's apartment. The ACSS investigator was concerned about D.A.S.'s presence in the home because of D.A.S.'s history of drug abuse and previous imprisonment for acts of domestic violence against mother. D.A.S. also worked irregular hours and his work schedule dysregulated B.D.S.'s behaviors.

ACSS received reports throughout May and June of 2017 relating to B.D.S.'s behaviors. Throughout this timeframe, Anoka Police responded to several calls to help control B.D.S. Additionally, B.D.S. was taken to Mercy Hospital on four separate occasions for observation and treatment. On one occasion, B.D.S. was initially admitted to Mercy Hospital after an aggressive outburst. Mercy Hospital referred B.D.S. to PrairieCare, a children's facility specializing in treating mental health needs. PrairieCare recommended a ten-day stay, but mother removed B.D.S. after two days.

On June 23, 2017, mother called ACSS and informed an investigator that she was unable to control B.D.S.'s behavior. Mother brought B.D.S. to the Anoka County Government Center and ACSS placed B.D.S. in foster care.

ACSS filed a petition to terminate mother's and D.A.S.'s parental rights as to B.D.S. on June 28, 2017.¹ ACSS ultimately alleged three statutory grounds for termination under Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5) (2016). The district court granted a continuance due to B.D.S.'s recent dysregulated behaviors, resultant hospitalizations, and ACSS's concerns regarding the adequacy of B.D.S.'s services and his viability for permanent placement.

After the filing of the termination petition, the Anoka-Hennepin Narcotics and Violent Crimes Task Force executed a search warrant at mother's home in February 2018. Mother was not home, but officers found D.A.S. and J.A.S. in the residence. During the search, officers discovered methamphetamine and drug paraphernalia. Mother was charged with a fifth-degree controlled substance crime.

Before the police search, a parenting assessor completed an assessment of mother. Originally, the assessor recommended reunification; however, the assessor changed her recommendation after learning that D.A.S. was living with mother and that police had discovered methamphetamine in the home.

Another parenting assessor completed a file review of the case before trial. According to this assessment, mother had "been offered generous and timely services, many of which would have been very helpful and appropriate in supporting improved behavior management of a child with Autism. [Mother] simply did not follow through or

¹ D.A.S. submitted a Petition of Father to Voluntarily Terminate Parental Rights and the district court held the order in abeyance pending the outcome of mother's trial. D.A.S.'s parental rights are not at issue in this appeal.

utilize the opportunities [she was] given.” Additionally, the assessor concluded that ACSS had made reasonable efforts towards reunification. The district court found the parenting assessor’s testimony credible.

The district court terminated mother’s parental rights following a three-day court trial. In its 34-page order, the district court considered the testimony and recommendations of ACSS, a foster parent of B.D.S., various service providers, parenting assessors, mother, and the guardian ad litem. The district court found that the county proved by clear and convincing evidence each of the statutory grounds for termination. Additionally, the district court found that ACSS had made reasonable efforts to reunify the family and that termination is in the best interests of the child.

D E C I S I O N

On appeal, mother does not challenge the statutory grounds for termination of her parental rights. Instead, she argues that the record does not support the district court’s determination that the county made reasonable reunification efforts. In addition, mother asserts that the district court denied her due process.

I. The record supports the district court’s determination that the county made reasonable reunification efforts.

Mother asserts that ACSS failed to provide reasonable reunification efforts because no new services were attempted after ACSS filed the termination petition. Mother’s argument focuses on a statement made by the ACSS investigator—that ACSS would no longer “try to fix things.” Mother asserts that ACSS ignored the potential benefit of

additional services that could have been attempted as further reunification efforts before ACSS instituted permanency proceedings.

The trial court is vested with broad discretion in deciding child protection cases. *In re Booth*, 91 N.W.2d 921, 924 (Minn. 1958). A district court may terminate parental rights if clear and convincing evidence establishes that (1) at least one statutory basis supports termination; (2) the county made reasonable efforts to reunite the family; and (3) termination is in the child's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). Because mother only challenges the second requirement, we focus our analysis on ACSS's reunification efforts. We review a district court's factual findings for clear error and will not disturb a finding that the county made reasonable efforts if it is supported by substantial evidence. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901, 904 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

Once a child is removed from the home, the county must make reasonable efforts to reunify the parent and child. Minn. Stat. § 260.012(a) (2016). In a termination proceeding, the district court "shall make findings and conclusions as to the provision of reasonable efforts." Minn. Stat. § 260.012(h) (2016). Specifically, the district court must consider whether a county's reunification efforts 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)(1)-(6). Additionally, the district court must make specific findings "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.” Minn. Stat. § 260C.301, subd. 8(1) (2016). Finally, the district court must consider “the length of the time the county was involved and the quality of effort given.” *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990).

Here, the district court found that ACSS offered a “multitude” of services to mother that were “substantial and tailored to address the issues that led to [B.D.S.]’s removal”, but that mother was unable to consistently follow through with the services. Specifically, the district court found that 17 services for mother and 5 services for B.D.S. were in place during the CHIPS proceeding from 2014 to 2016. At the close of the CHIPS proceeding in 2016, the district court found that 11 services were ongoing. The district court found that the “efforts were consistent and timely, available and accessible, and realistic under the circumstances.” Finally, the district court found that the services failed due to mother’s inconsistent use, inability to internalize the teachings, and inability to make good decisions.

In its order, the district court detailed the services that ACSS made available to mother. The district court order found that mother had received inpatient and outpatient chemical dependency treatment. The district court also found that Partnership for Family Success offered mother services for transportation, housing, a psychological assessment, and parenting skills. Additionally, the district court found that Partnership for Family Success worked with mother to clear her debt and gave her a referral for a housing voucher. The district court found that mother also worked with an Early Childhood Family Education instructor throughout the CHIPS proceeding. Consequently, mother’s argument

that additional services could have been pursued by ACSS is unpersuasive given the number of services already offered to mother. The district court's findings are supported by the record, and the district court did not err in finding that the county made reasonable reunification efforts.

II. Mother failed to preserve her due process argument for appeal, and it is therefore forfeited.

On appeal, mother raises for the first time the claim that her due process rights were violated. Mother contends that the district court pre-judged her credibility and that the district court's questioning of her during her testimony exhibited bias against her. Mother argues that these exchanges with the district court denied her due process.

Mother did not raise her due process argument in the district court. We generally do not consider matters that were not presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981) (declining to address a constitutional issue raised for the first time on appeal from a termination of parental rights). To determine if bias was properly presented to the district court, this court looks for an objection made at trial or a motion for recusal. *See Gummow v. Gummow*, 375 N.W.2d 30, 34 (Minn. App. 1985). A party's failure to raise a claim of judicial bias during the trial makes the timeliness of the issue "questionable." *Id.* Here, mother neither objected to the district court's comments or questions during the course of the trial nor made a motion for recusal. We decline to reach mother's argument because it has been forfeited.

Although the issue is not properly before us, the district court's conduct during a portion of the trial is concerning. The district court's comments to mother before she testified gave the appearance that the district court may have already determined the outcome. In addition, the district court's questions directed to mother during her testimony were sharp and adversarial. As the fact-finder in a termination of parental rights case, the district court had the duty to maintain the appearance of impartiality throughout the entirety of the proceeding, regardless of the facts of the case. It is unfortunate that in this case the comments and questions made by the district court did not meet that standard. Nevertheless, the issue has been forfeited.

Affirmed.