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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-0369**

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

**Filed July 22, 2019  
Affirmed  
Johnson, Judge**

Benton County District Court  
File No. 05-JV-18-2276

Cathleen Gabriel, Annandale, Minnesota (for appellant mother J.R.A.)

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Foley, Minnesota (for respondent Benton County Human Services)

Tylor Cummings, Waite Park, Minnesota (guardian *ad litem*)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Kirk,  
Judge.\*

**UNPUBLISHED OPINION**

**JOHNSON, Judge**

The district court terminated a woman's parental rights to two children. We  
conclude that the district court did not err by finding that reasonable efforts had failed to

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

correct the conditions that led to the children's out-of-home placement. We also conclude that the district court did not err by finding that termination of parental rights is in the children's best interests. Therefore, we affirm.

## **FACTS**

J.R.A. is the biological mother, and J.M.K. is the biological father, of two minor children: W.R.K. (born in February 2011) and L.M.K. (born in August 2012). The county petitioned for the termination of J.R.A.'s and J.M.K.'s parental rights on November 26, 2018. The petition alleged three statutory grounds for termination: that J.R.A. and J.M.K. had substantially, continuously, or repeatedly refused to comply with the duties imposed by the parent-child relationship; that they were palpably unfit to be parties to the parent-child relationship; and that reasonable efforts had failed to correct the conditions leading to the children's out-of-home placement. *See* Minn. Stat. § 260C.301, subd.1(b)(2), (4), (5) (2018).

Trial began on February 8, 2019. As of that date, the children had been in out-of-home placement for 730 days since August 2015. At the outset of trial, J.M.K. voluntarily consented to the termination of his parental rights. The county then presented the testimony of a child-protection case manager, who had interacted with J.R.A. for two years and was familiar with J.R.A.'s interactions with the county since 2015. He testified that the county first filed a children-in-need-of-protection-or-services (CHIPS) petition in 2015 after J.R.A. overdosed on drugs while caring for her children and was found unresponsive. J.R.A. and the children were reunited in 2016, but the county again became involved with the family in 2017 because of a concern of educational neglect of the children. During that

period, J.R.A. was discharged from two chemical-dependency programs for using methamphetamine and marijuana. The county became involved again in January 2018 after a report of domestic violence between J.R.A. and J.M.K. and filed a second CHIPS petition in February 2018. The children again were placed in foster care after J.R.A. was suspected of being under the influence of controlled substances and avoided county social workers. In June 2018, J.R.A. admitted that her mental-health and chemical-dependency issues affected her ability to parent. The district court ordered a case plan that required J.R.A. to submit to drug testing, to obtain chemical-dependency and mental-health treatment, to obtain and maintain suitable housing, to cooperate with the county social workers, to attend visits with her children, to cooperate with a parental-capacity assessment, and to remain law-abiding. J.R.A. initially was not cooperative and missed some visitation sessions. She tested positive for methamphetamine and missed 26 drug tests. She failed to remain law-abiding because she was charged eight times between June 2018 and January 2019 for driving after revocation of her driver's license.

The county also presented the testimony of a psychologist who had performed a parental-capacity assessment. In his written report, he had noted that J.R.A. had an "extensive history of domestic turbulence, domestic violence, lengthy out-of-home placements for the children, and a history of drug abuse, which had collectively created an unsafe environment for [her] children." He cautioned against reunification "within the immediate future" and wrote that "[s]he has work yet to do," especially with respect to her mental health and her chemical dependency. At trial, he testified that J.R.A. recognized that her 12 years of methamphetamine use was a "serious problem." He was unaware that

J.R.A. had relapsed in November 2018 and testified that he was “very disappointed, but . . . not surprised” because she had gone through cycles of sobriety and relapse. He concluded by testifying that reunification is not appropriate “when she’s still got so much work to do,” especially when she seemed to be “sliding backward” in her treatment.

The guardian *ad litem* testified that “the conditions leading to the children’s out-of-home placement have not been corrected.” She testified to her view that termination would be in the children’s best interests due to J.R.A.’s lack of compliance with her case plan and other factors.

J.R.A. testified on her own behalf. She testified that “to be a good mom,” she needed to be sober, and that she needs “to focus on [her] treatment and [her] mental health.” She testified that she was currently in therapy to treat her mental-health issues, including chronic post-traumatic stress disorder, and was making progress. She testified that she has a medical marijuana prescription but also has purchased non-prescription marijuana because it is cheaper. She admitted that she had relapsed with methamphetamine in November 2018, that she had missed more than half of the scheduled drug tests, and that she had multiple charges of driving after the revocation of her driver’s license. On cross-examination by the state, she testified that she would not begin a new treatment program until after the trial and had been discharged from three treatment programs since 2015.

On February 25, 2019, the district court filed an order granting the county’s termination petition and terminating J.R.A.’s parental rights to the two children. The district court concluded that the county had proved all three statutory grounds for termination and that termination was in the children’s best interests. J.R.A. appeals.

## DECISION

J.R.A. argues that the district court erred by granting the county's petition to terminate her parental rights.

This court reviews a termination of parental rights “to determine whether the district court’s findings address the statutory criteria and whether the district court’s findings are supported by substantial evidence and are not clearly erroneous.” *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We are mindful that “[p]arental rights are terminated only for grave and weighty reasons,” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990), but we give “considerable deference to the district court’s decision to terminate parental rights,” *S.E.P.*, 744 N.W.2d at 385. We apply a clear-error standard of review to “the district court’s findings of the underlying or basic facts” and an abuse-of-discretion standard of review to a district court’s ultimate determination as to “whether a particular statutory basis for involuntarily terminating parental rights is present.” *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). A finding of fact is clearly erroneous “if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted).

### I. Statutory Grounds

J.R.A. first argues that the district court erred by concluding that the county proved each of the three alleged statutory grounds. We begin by analyzing J.R.A.’s argument concerning the district court’s finding that reasonable efforts have failed to correct the

conditions that led to the children’s out-of-home placement. *See* Minn. Stat. § 260C.301, subd.1(b)(5).

After a CHIPS adjudication, a county social services agency must make “reasonable efforts . . . to prevent placement or to eliminate the need for removal and to reunite the child with the child’s family at the earliest possible time.” Minn. Stat. § 260.012(a) (2018). Reasonable efforts “are always required,” subject to a few exceptions. *Id.* Unless an exception exists, a district court may not terminate parental rights without finding that the county made reasonable efforts to reunify a parent and his or her children. Minn. Stat. § 260C.301, subd. 8 (2018). In determining whether a county has made reasonable efforts, a district court shall consider whether the services offered 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) (2018). If a parent has not substantially complied with a court-ordered case plan, it is presumed that the conditions leading to the children’s out-of-home placement have not been corrected. Minn. Stat. § 260C.301, subd. 1(b)(5)(iii).

In this case, the district court found that there was a court-ordered case plan that “was formulated to address [J.R.A.’s] chemical dependency and mental health issues.” The district court found that “the County made reasonable efforts to reunify the children with the parent” for the following reasons:

The County filed a case plan on June 27, 2018. The County’s efforts to implement the case plan include the provision of care management services, providing free transportation and bus

passes to [J.R.A.] to facilitate treatment and chemical testing, and supervised visitation between [J.R.A.] and the children. These efforts 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.

The district court ultimately found that the county's reasonable efforts had failed to correct the conditions that led to the children's out-of-home placement for the following reasons:

The record establishes that [J.R.A.] failed to substantially complete the Court ordered case plan established to address the conditions that led to the children's placement.

The record contains clear and convincing evidence that [J.R.A.] failed to comply with specific aspects of her Court ordered case plan in that she failed to abstain from the use of chemicals, particularly marijuana and methamphetamine, she missed required drug tests, she failed to complete any chemical dependency treatment program successfully, she failed to cooperate with Benton County Human Services at times, she failed to remain law abiding, and she failed to address her mental health issues in a timely manner, and she failed to cooperate with Benton County Human Services in their attempts to work a case plan so she could be reunified with the child[ren].

On appeal, J.R.A. contends, "It is questionable whether or not conditions leading to the out-of-home placement were adequately addressed by reasonable efforts from the agency." She further contends that the county "failed to make genuine efforts to reunify [her] with her children." J.R.A. does *not* contend that the conditions that led to the children's out-of-home placement have been corrected; rather, she focuses on the reasonableness of the county's efforts to correct those conditions.

The evidentiary record supports the district court's findings. Between August 2015 and trial, the county made multiple attempts to help J.R.A. become sober, even after she

had relapsed, and to correct the conditions leading to the children's out-of-home placement. The case plan required J.R.A. to, among other things, submit to drug testing and to remain law-abiding. The county provided J.R.A. with resources such as bus passes to drug testing and treatment sessions, referral to the parental-capacity assessment, and, for a period of time, health insurance. The county also provided supervised visitation sessions for J.R.A. and the children. J.R.A.'s appellate brief does not identify any particular form of assistance that the county should have provided but did not provide. The efforts made by the county are consistent with efforts that have been deemed reasonable in other cases. *See, e.g., In re Children of T.A.A.*, 702 N.W.2d 703, 710 (Minn. 2005); *In re Welfare of D.T.J.*, 554 N.W.2d 104, 109 (Minn. App. 1996); *In re Welfare of J.S.*, 470 N.W.2d 697, 703 (Minn. App. 1991), *review denied* (Minn. July 24, 1991).

J.R.A. also contends that she "complied with the services and conditions provided for in the case plan" and that she "was doing everything requested of her." But the evidence shows that she did not comply with several critical requirements of the case plan. She frequently missed appointments with her therapist or cancelled appointments at the last minute, and she allowed her health insurance to lapse. She was discharged from multiple treatment programs due to poor attendance or for testing positive for methamphetamine. In the six weeks leading up to trial, J.R.A. was charged three times for driving after the revocation of her driver's license. Just days before trial, she missed four intake appointments for a new chemical-dependency treatment program. The evidence indicates that the conditions that led to the children's out-of-home placement were not corrected

primarily because of J.R.A.'s inability to remain sober and to comply with other aspects of her case plan.

Thus, the district court did not err by finding that the county proved that reasonable efforts have failed to correct the conditions that led to the children's out-of-home placement.

This court may affirm a district court's termination of parental rights if "at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). In light of our conclusion that the county proved at least one statutory ground for termination, we need not analyze J.R.A.'s arguments with respect to the other two statutory grounds.

## **II. Best Interests**

J.R.A. also argues that the district court erred by finding that the termination of her parental rights is in the best interests of the children.

"[I]n terminating parental rights, the best interests of the child are the paramount consideration, and conflicts between the rights of the child and rights of the parents are resolved in favor of the child." *J.R.B.*, 805 N.W.2d at 902; *see also* Minn. Stat. § 260C.301, subd. 7 (2018). "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); *see also* Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). 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). This court applies an abuse-of-discretion standard of review to a district court’s best-interests finding. *See In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008).

In this case, the district court found that it was in the best interests of the children to terminate J.R.A.’s parental rights for the following reasons:

[J.R.A.’s] chemical addiction has played a major role in [her] lifestyle, which has exposed the children to domestic abuse which still profoundly affects [her] mental health and ability to function, as adduced in her own testimony. The children have been exposed to a never-ending cycle of poor living conditions with their mother, placement out of the home while their mother is in treatment, and then return to the family home, only to be taken out again when the cycle repeats. The children themselves wish to remain in their current relative foster care. [L.M.K.] and [W.R.K.], who are 6 and 7 years old respectively, have spent two years of their lives placed out of their mother’s home since 2015. They deserve and require a permanent home free of drug abuse and violence.

....

[J.R.A.] failed to comply with specific aspects of her Court ordered case plan in that she failed to abstain from the use of chemicals, particularly marijuana and methamphetamine, she missed required drug tests, she failed to complete any chemical dependency treatment program successfully, she failed to cooperate with Benton County Human Services at times, and she failed to address her mental health issues in a timely manner, and she failed to cooperate with Benton County Human Services in their attempts to work a case plan so she could be reunified with the child[ren].

....

[J.R.A.’s children] need a safe, stable, caring home environment and to be with caregivers who are attuned to their

needs and are willing and able to provide for those needs. [J.M.K.] and [J.R.A.] have failed to provide such an environment in the past and cannot provide such an environment in the future.

J.R.A. contends that the district court's best-interests finding is based solely or primarily on the fact that "the children have been out of the home for a prolonged period." J.R.A. cites *In re Welfare of M.A.*, 408 N.W.2d 227 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987), for the proposition that "there is no legal basis for granting termination solely because the child cannot be returned immediately to the parental home." *Id.* at 233. But the supreme court's more-recent caselaw emphasizes permanency. As the supreme court has explained, "We require an expeditious resolution of permanency because we will not allow children to linger in uncertainty." *In re Welfare of Child of R.K.*, 901 N.W.2d 156, 162 (Minn. 2017). Indeed, "The child's best interests . . . remain the paramount consideration in every termination case." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 397 (Minn. 1996) (quotation omitted); *see also M.D.O.*, 462 N.W.2d at 375. In *S.E.P.*, the supreme court affirmed the district court's finding that the best interests of the children favored termination of parental rights because, in part, the mother "was not capable for the reasonably foreseeable future of caring appropriately for the children's ongoing needs." 744 N.W.2d at 387. In this case, the district court found that J.R.A.'s children "deserve and require a permanent home free of drug abuse and violence." The district court did not clearly err or abuse its discretion in making that finding.

J.R.A. also contends that the district court's best-interests finding is erroneous on the ground that "the children have expressed that they miss their mom," "are happy to see

her at visits and say they have fun with” her, and “have stated they want to live with their mother.” To be sure, there is evidence in the record that supports this contention. But the district court found that the children, who then were only six and seven years old, wished to remain with their paternal grandparents. That finding also is supported by evidence in the record. In any event, a child’s preference is just one factor for a district court to consider in determining the best interests of the child. *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 668 (Minn. App. 2012). The district court did not clearly err in finding that the children wished to remain in foster care with relatives and did not abuse its discretion by placing greater weight on other factors.

Thus, the district court did not err by finding that the termination of J.R.A.’s parental rights is in the best interests of the children.

In sum, the district court did not err by granting the county’s petition and terminating J.R.A.’s parental rights.

**Affirmed.**