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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0938**

In re the Matter of the Welfare of the Children of: J. S.

**Filed November 2, 2020
Affirmed
Cochran, Judge**

Pope County District Court
File No. 61-JV-19-107

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Considered and decided by Slieter, Presiding Judge; Bratvold, Judge; and
Cochran, Judge

UNPUBLISHED OPINION

COCHRAN, Judge

This case involves appellant-mother's second challenge to the termination of her parental rights to a child born in 2019. Appellant's first challenge resulted in this court remanding the matter back to the district court for findings regarding the child's best interests. On remand, the district court made detailed findings and again terminated appellant's parental rights. In the current appeal, appellant argues that the district court abused its discretion by declining to reopen the record on remand and by denying her

post-remand motions. Because the district court did not abuse its discretion by declining to reopen the record or by denying appellant's motions, we affirm.

FACTS

On March 19, 2019, appellant-mother J.S. gave birth to a child.¹ The next day, Pope County Human Services opened an investigation because mother's parental rights to another child had recently been involuntarily terminated. After launching the investigation, the county petitioned the district court to involuntarily terminate mother's parental rights to the newborn child based on palpable unfitness to parent under Minn. Stat. § 260C.301, subd. 1(b)(4) (2018). Pursuant to its petition, the county took immediate custody of the child and requested a hair follicle test from mother. The hair follicle tested positive for methamphetamine.

In June 2019, the district court held a trial. The court heard testimony from two child protection social workers and the guardian ad litem. All three expressed concern about mother's ability to parent the child. The first social worker testified that mother's parental rights to her previous child had been terminated in 2018 because of child neglect. She also testified that mother was not a viable option for permanent placement for the child because of her "recent involuntary termination of parental rights, her child protection history, and past drug use." She expressed her belief that it would be in the child's best interests to remain in foster care. The second social worker testified to concerns about mother's ability to parent the child based on her "prior [termination of parental rights],

¹ Father is not a party to this appeal and was not a party to the original appeal.

[her] criminal history, [and her] child protection history.” The guardian ad litem testified that mother was not a viable permanency option because of her lack of understanding of why her parental rights had previously been terminated, her drug use, and her lack of stable housing. Mother also testified. Mother acknowledged that her parental rights to another child were involuntarily terminated in 2018, but testified that she had taken positive steps to maintain a safe and sober environment for both children. Mother also acknowledged multiple periods of relapse from sobriety.

By an order dated July 29, 2019, the district court involuntarily terminated mother’s parental rights to the child. The district court concluded that the county satisfied its burden of proving that mother was presumed to be palpably unfit under Minn. Stat. § 260C.301, subd. 1(b)(4), that mother failed to rebut the presumption, and that involuntary termination of mother’s parental rights was in the child’s best interests. But the district court did not analyze the best-interests factors set forth in Minn. R. Juv. Prot. P. 58.04 or make any specific findings to support its best-interests determination. Mother appealed, and we reversed and remanded for the district court to make proper best-interests findings. *In re Welfare of Children of J.S.*, No. A19-1505, 2020 WL 774012, at *3 (Minn. App. Feb. 18, 2020). We also provided that “the district court, in its discretion, may reopen the record or hold an evidentiary hearing.” *Id.*

Shortly after remand, mother moved the district court for an order directing the county to provide her with services aimed at reunification of mother and child. In support of her motion, mother included an email describing her efforts to better herself. The email provided updated information about mother’s circumstances, but did not offer any

information about how long she had been sober. And, mother did not move the district court to reopen the record or request an evidentiary hearing after remand.

Prior to issuing a decision on mother's motion for services, the district court issued its order on remand. In that order, the district court noted that it reviewed the information included in the email provided by mother along with her motion for services and concluded that the new information did not warrant reopening the record on remand. It stated:

The motion [requesting provision of services] was accompanied by an email from Mother. Although no affidavit or admissible evidence was provided, Mother makes no mention in the email about her length of sobriety, which is a primary concern in the case. The District Court declines to re-open the record because it finds that it had sufficient evidence at the time of the trial to make a determination on the child's best interests.

The district court then made detailed findings of fact, based on the evidence presented at trial, about the child's best interests and mother's fitness to parent. Based on those factual findings, the district court again concluded that mother had failed to overcome the presumption of palpable unfitness and that termination was in the child's best interests. On that basis, the district court reaffirmed its earlier decision to terminate mother's parental rights to the child.

After the district court issued its order on remand, mother moved for a new trial. On August 21, 2019 the district court held a hearing to consider mother's motion for a new trial and her motion requesting that the county provide services aimed at reunification. The district court denied both motions. This appeal follows.

DECISION

I. The district court did not abuse its discretion by declining to reopen the record or hold an evidentiary hearing after remand.

Mother contends that the district court abused its discretion by declining to reopen the record or hold an evidentiary hearing after remand. The county responds that the district court acted within its discretion when it declined to do so. We agree with the county.

A district court's duty on remand is to "execute the mandate of the remanding court strictly according to its terms." *Duffey v. Duffey*, 432 N.W.2d 473, 476 (Minn. App. 1988). If the remanding court does not give specific instructions, the district court may handle the case "in any manner not inconsistent with the remand order." *Id.*

Appellate courts "review a district court's compliance with remand instructions for an abuse of discretion." *State v. Montermini*, 819 N.W.2d 447, 454 (Minn. App. 2012). A district court abuses its discretion if "it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law." *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (quotation and citations omitted).

Mother raises two main arguments in support of her contention that the district court abused its discretion by not reopening the record or holding an evidentiary hearing after remand. First, she argues that our prior decision *required* the district court to either reopen the record or hold an evidentiary hearing after remand. Mother's argument is based on a misreading of our decision. In our decision, we stated that the district court "in its

discretion, may reopen the record or hold an evidentiary hearing.” *J.S.*, 2020 WL 774012, at *3. Our use of the word “may” makes clear that we left the decision to the discretion of the district court. If we had intended to require the district court to reopen the record or hold an evidentiary hearing, we would have used the word “must” rather than the word “may.” Mother’s argument is inconsistent with the plain language of our decision.

Second, mother argues that even if the district court had the discretion to reopen the record or hold an evidentiary hearing, the district court abused its discretion by failing to do so. She contends that the district court abused its discretion because it needed updated information about mother’s circumstances to make its determination on remand. The record shows otherwise.

On remand, the district court considered whether to reopen the record or whether to base its decision on the existing record developed at the July 2019 trial. In reaching its decision, the district court considered the email from mother filed in support of her motion for reunification services. The email was the only new information filed by mother prior to the district court’s order on remand. The email discussed changes in mother’s life since trial, including housing, employment, participation in counseling, attendance at “NA meetings,” and other matters. But the email did not discuss how long mother had been sober. The district court focused on this omission in its decision regarding whether to reopen the record. The district court noted “[m]other makes no mention in the email about the length of her sobriety, *which is a primary concern in the case.*” (Emphasis added.) The district court then concluded that it had sufficient evidence at the time of trial to make a determination on the child’s best interests and declined to reopen the record.

The district court's decision to not reopen the record on remand was a proper exercise of its discretion. The remand by this court was for the purpose of making best-interests findings. *Id.* The best-interests factors include: (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 interests of the child. Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). Competing interests of the child may include a "stable environment, health considerations[,] and the child's preferences." *In re Welfare of the Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. Jan. 6, 2012). If "the interests of the parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7 (2018).

In its order on remand, the district court made detailed findings of fact regarding the best-interests factors and analyzed each factor individually. With regard to the first factor, the district court concluded that the child had no interest in preserving the parent-child relationship because the child, who was placed in foster care shortly after birth, did not have a relationship with mother. The district court also determined that the child is vulnerable and needs a caregiver who will prioritize his needs. With regard to the second factor, the district court concluded that mother has a great interest in preserving the parent-child relationship based on her testimony that she loves her child and wants to care for the child. Finally, with regard to the competing interests of the child, the district court did not believe that mother could provide a safe environment free from the influence of drugs. And the district court was concerned that the child's health could be compromised as a result of "[m]other's drug issues" if the child were returned to mother. The court

recognized “[m]other’s efforts at sobriety” but did not believe that the child could “live a healthy life in her care as evidenced by [m]other’s multiple relapses and ongoing issues with drug use.” The district court was especially concerned that mother did not “recognize how her drug use impacts her children.” Balancing the interests, the district court concluded that it was in the child’s best interests that mother’s parental rights be terminated.

Given the court’s focus on mother’s ability to remain sober and her history of challenges with drug use, we conclude that the district court acted well within its discretion when it declined to reopen the record after remand for purposes of making the best-interests findings. While mother’s updated information in her email was relevant to the best-interests factors, the record supports the district court’s determination that the new evidence did not address a key factor identified by the court—mother’s sobriety. And the court was able to fully address the best-interests factors with the evidence developed at trial. Thus, the district court acted within its discretion in declining to reopen the record or hold an evidentiary hearing.

Mother also argues that the district court abused its discretion by not seeking input from the parties before it decided not to reopen the record. But mother fails to identify any statute or caselaw requiring the district court to hold such a hearing or otherwise seek input from the parties on remand. The case relied upon by mother, *El Nashaar v. El Nashaar*, 529 N.W.2d 13, 14 (Minn. App. 1995), does not involve a matter on remand. Rather, that case addresses a situation where the district court continued a hearing on an ex parte temporary order for protection beyond the period permitted by statute. *Id.* Moreover, in

this case, mother never filed a motion to reopen the record or a request for a hearing on the matter. And mother has not suffered any prejudice because, as discussed above, the district court considered her new information when deciding whether to reopen the record. In sum, the district court did not abuse its discretion when it decided not to reopen the record without first holding a hearing on the matter.

II. The district court did not abuse its discretion in denying mother’s motion for a new trial.

Mother also challenges the district court’s denial of her motion for a new trial, which she filed after the district court issued its order on remand. Mother argues that the district court abused its discretion in denying her motion for a new trial because a new trial was “the only way . . . new evidence could be presented to the court” regarding the developments in her life since the June 2019 trial. In addition, she raises substantive challenges to the merits of the district court’s decision denying her motion for a new trial.

Appellate courts review “a district court’s decision to grant or deny a new trial for an abuse of discretion.” *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). A district court abuses its discretion if “it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law.” *T.A.M.*, 791 N.W.2d at 578 (quotation and citations omitted).

We conclude that the district court did not abuse its discretion in denying mother’s motion for a new trial because the motion was not properly before the district court. Mother filed her motion for a new trial in June 2020 after the district court issued its May 2020 order on remand. This was mother’s second motion for a new trial. Mother had previously

filed a motion for a new trial in August 2019 after the June 2019 trial, which the district court denied.

Mother's most recent motion for a new trial was procedurally improper because the district court did not hold a trial after remand. "A motion for a new trial is an anomaly where there has been no trial and the denial of such a motion is not appealable." *Johnson v. Johnson*, 439 N.W.2d 430, 431 (Minn. App. 1989). And, while mother's first motion for a new trial was timely, this most recent motion was brought well past the ten-day window for a new trial in relation to the June 2019 trial and July 2019 order terminating mother's parental rights. See Minn. R. Juv. Prot. P. 21.01, subd. 1 (requiring a motion for a new trial to be served within ten days of service of notice of the filing of the court's order finding that the statutory grounds set forth in the petition are proved). Because mother's most recent motion for a new trial was not properly before the district court, the district court did not err in denying the motion. See *Brodsky v. Brodsky*, 733 N.W.2d 471, 480 (Minn. App. 2007) (holding that the district court did not abuse its discretion by denying a motion that was procedurally defective). Consequently, it is not necessary to address mother's substantive challenges to the district court's denial of that motion and we decline to do so.²

We do note, however, that we are not persuaded that a motion for a new trial was the only avenue available to mother to present new evidence to the district court after

² Mother's substantive arguments include that: (1) the district court erred by concluding that it was not required to consider mother's new evidence on remand, and (2) the district court erred by concluding that Minn. Stat. § 260C.301, subd. 1(b)(4) is constitutional as applied to mother.

remand. Mother could have filed a motion to re-open the record once she received our remand decision in her first appeal, but she chose not to do so.³ Instead, she filed a motion requesting that the district court order the county to provide reunification services. The district court's denial of that motion is addressed below.

III. The district court did not abuse its discretion by denying mother's motion for provision of services.

Mother argues that the district court abused its discretion by denying her motion, made after remand, for an order directing the county to provide her with services aimed at reunification. Generally, in a juvenile-protection proceeding, the district court must “ensure that reasonable efforts . . . by the social services agency are made to . . . reunite the child with the child's family at the earliest possible time.” Minn. Stat. § 260.012(a) (2018). But reasonable efforts by the social services agency are not required where the petitioner shows a prima facie case that “the parental rights of the parent to another child have been terminated involuntarily.” *Id.* (a)(2).

In its order denying mother's motion for services, the district court noted that it had previously found that the county made a prima facie showing that mother's parental rights to another child had been involuntarily terminated. On that basis, the district court denied mother's motion for services consistent with Minn. Stat. § 260.012(a)(2). The district court also denied the motion on the grounds that mother's request was beyond the scope of our remand.

³ A party can make a motion for relief or an order under Minn. R. Juv. Prot. P. 14.01 and request a hearing on that motion under Minn. R. Juv. Prot. P. 14.06.

In her brief, mother recognizes that the district court was not required to order the county to provide the requested services. But she argues that the court still had the discretion to order the services. And she contends that its failure to do so was an abuse of discretion because the provision of services would have provided the district court with updated information on the lives of mother and the child that could have been used in making its findings on remand.

District courts are vested with broad discretionary powers in juvenile-protection matters. *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009). Even assuming those broad discretionary powers include the authority to order the requested services after remand, the district court acted well within its discretion when it denied mother's motion for services. As the district court correctly noted, the law does not require reunification services where, as here, the county has made a prima facie showing that the parent previously had their parental rights involuntarily terminated. See Minn. Stat. § 260.012(a)(2). And the record supports the district court's conclusion that it had sufficient evidence from the trial to make the required best-interests findings on remand.

The district court also properly concluded that the motion was beyond the scope of our remand to the district court. Our decision required findings on the best-interests factors and gave the district court the discretion to reopen the record. *J.S.*, 2020 WL 774012, at *3. But we did not require, or even address, the provision of additional services by the county.

See id. Accordingly, we conclude that the district court did not abuse its discretion by denying mother's motion for the provision of services.

Affirmed.