

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1065**

In the Matter of the Welfare of the Children of: Y. F., Parent.

**Filed January 19, 2021
Affirmed in part and remanded
Segal, Chief Judge**

Martin County District Court
File No. 46-JV-19-137

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Considered and decided by Bryan, Presiding Judge; Segal, Chief Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant challenges the termination of her parental rights, arguing that the district court erred by finding that reasonable efforts failed to correct the conditions leading to the children's out-of-home placement and that termination was in the best interests of the children. We affirm the district court's conclusion that reasonable efforts failed to correct

the conditions, but because the district court did not make adequate findings regarding the children's best interests, we remand that issue to the district court for additional findings.

FACTS

In February 2019, the three children of appellant-mother Y.F. were adjudicated in need of protection or services within the meaning of Minn. Stat. § 260C.007, subd. 6(8) (2018), and were removed from Y.F.'s care. The county petitioned for termination of parental rights (TPR) in December 2019 pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2018). The children had remained in court-ordered out-of-home placement since their initial removal in February 2019.

In July 2020, the district court held an adjudicatory hearing on the TPR petition. The county presented testimony from the case manager, the psychologist who conducted a psychological evaluation and parenting assessment of Y.F., the guardian ad litem, a family-based services provider, the visitation supervisor, and the social worker who authored Y.F.'s community support plan. Y.F. and her mother and sister also testified at the hearing. Neither side presented testimony from Y.F.'s children.

The county's case manager testified that the county had concerns regarding Y.F.'s ability to provide a safe and stable living environment for the children. The county set goals for Y.F. to "complete specific parenting curricul[a], demonstrate the learned parenting skills during parenting time, obtain and maintain stable housing, maintain a clean environment . . . , and ensure [Y.F.] could meet the [c]hildren's basic needs." The county developed case plans signed by Y.F. As part of those plans, the county referred Y.F. to several services to assist her with such things as homemaking skills, budgeting, shopping,

food safety, life skills, and parenting education. She was also referred to vocational rehabilitation services to help her find employment. Y.F. completed one parenting curriculum but the services provider testified that, based on the provider's observations, Y.F. did not implement the techniques. Y.F. completed none of the other programming even though the county offered transportation assistance. She only attended a few sessions at most with the various providers.

The case manager also testified about Y.F.'s failure to follow the plans for visitation and care of the children. From June 2019 to March 2020, Y.F. missed 21 visits with the children, including three visits in the month preceding the adjudicatory hearing on the TPR petition. She also failed to attend most of the children's school conferences and medical appointments, despite attendance being part of the rehabilitation plan.

The county presented testimony that, when Y.F. did attend visitations, she seemed to have little control or authority over the children and the oldest child, age 12 at the time of the hearing, often assumed a parental role with the two younger children, ages six and four. County witnesses testified about instances where Y.F. failed to take away dangerous items from the younger children or to prevent situations where they could be injured, such as stopping one of the children from running into the street. The visitation supervisor testified with regard to the latter incident that, even though Y.F. was observing the child's actions, Y.F. did not seem to appreciate the danger presented and someone else had to intercede to prevent the child from running into the street.

To assist Y.F. with maintaining a clean home, the county provided Y.F. with a laminated cleaning chart to help Y.F. remember and track cleaning tasks. She was also

provided with a vacuum cleaner, broom, dustpan, mop, and dish soap. The case manager testified that, despite these efforts, the home was not clean and the county assisted in cleaning and taking out overflowing garbage bags on several occasions. Additional testimony was presented to the effect that Y.F. failed to achieve her goals of maintaining an adequate amount of food in the home and being able to handle and store food in a hygienic manner.

The county introduced evidence of the children's histories, showing that at the start of the out-of-home placement, the children had significant dental issues (one child had to have six teeth pulled), were behind on immunizations, and all had significant psychological issues. The younger children had behavioral issues, often kicking and hitting others. The six-year-old child was behind educationally, requiring him to repeat kindergarten. The case manager shared her observations that, during their placement in foster care, the children's behavior and health improved significantly.

Due to the ongoing concerns regarding Y.F.'s parenting abilities and lack of a clean and safe living environment, the case manager testified that it was her belief that Y.F. would be unable to properly care for the children in the foreseeable future and that termination of Y.F.'s parental rights was in the best interests of the children.

The psychologist who conducted a psychological evaluation and parenting assessment of Y.F. agreed, at the hearing, that termination of Y.F.'s parental rights was necessary due to Y.F.'s inability to provide care for the children. The psychologist further noted that testing showed that Y.F. is in the extremely low range of intellectual functioning, cannot understand simple questions, and has difficulty with memory.

The other county witnesses, including the guardian ad litem, all agreed that terminating Y.F.'s parental rights was in the children's best interests due to "safety needs, as well as the physical, mental and emotional health of the [c]hildren."

Y.F., Y.F.'s mother, and her sister testified that Y.F. was a very loving parent and has tried very hard to be the best parent possible. All three asserted that Y.F. had improved and was working hard to keep her apartment clean and fresh food available.

The district court granted the TPR petition pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5), finding that the county had made reasonable efforts at rehabilitation and that, despite these efforts, Y.F. failed to correct the conditions that caused the out-of-home placement. The district court further concluded that termination was in the best interests of the children. Y.F. now appeals.

DECISION

On this appeal, Y.F. claims that the district court's findings are not supported by sufficient evidence.

We review an order terminating parental rights "to determine whether the district court's findings address the statutory criteria and whether those findings are supported by substantial evidence and are not clearly erroneous." *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005) (quotation omitted). An appellate court will 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). An

appellate court is to grant “[c]onsiderable deference . . . 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).

I. The district court did not err in finding that Y.F. failed to correct the conditions leading to the out-of-home placement.

We first consider whether the district court erred by finding that reasonable efforts were made but that Y.F. failed to correct the conditions leading to the out-of-home placement of her children under Minn. Stat. § 260C.301, subd. 1(b)(5). That section provides, in relevant part, that parental rights may be terminated if the court finds:

(5) that following the child’s placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child’s placement. It is presumed that reasonable efforts under this clause 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. . . . ;

(ii) the court has approved the out-of-home placement plan . . . ;

(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.

Minn. Stat. § 260C.301, subd. 1(b)(5).

Y.F.’s main argument is that the evidence is not sufficient to support the district court’s findings that she failed to correct the conditions leading to the out-of-home placement and would not be able to provide appropriately for the children in the future. In

particular, Y.F. argues that the county's witnesses had not observed Y.F.'s home recently and she had made improvements in her housekeeping. She also argues that the psychologist's assessment had been completed more than a year before the trial, and that the psychologist had not seen Y.F. since April 2019. We are not persuaded.

Under Minn. Stat. § 260C.301, subd. 1(b)(5), it is presumed that reasonable efforts have failed to correct the conditions leading to out-of-home placement if the four factors quoted above are present. Here, all four have been established by the evidence put forward by the county. The first factor is satisfied because the children were in out-of-home placement for almost 17 months. The second factor is also satisfied by the county's evidence that there were court-approved rehabilitation plans.

With respect to the third factor—failure to correct the conditions—it is presumed that conditions have not been corrected “upon a showing that the parent . . . [has] not substantially complied with the court's orders and a reasonable case plan.” *Id.*, subd. 1(b)(5)(iii). Here, the county provided, as found by the district court, a plethora of evidence demonstrating Y.F.'s failure to comply with the plans. Specifically, as noted by the district court, Y.F. failed to complete all but one of the service programs, missed 21 visitations with her children, including three in the month before the hearing, and she missed most of the children's medical and educational appointments.

The final factor, whether the county made reasonable efforts to rehabilitate the parent and reunite the family, is not contested by Y.F. on appeal. And, regardless, there is ample evidence in the record to support the district court's findings on this factor. Thus,

all the elements are established and the statutory presumption provided in Minn. Stat. § 260C.301, subd. 1(b)(5), is applicable.

Y.F. attempts to rebut the presumption by arguing that the county's evidence was stale and that she had recently improved. Even if she was improving with regard to maintaining a cleaner home in recent months, that is just one of a number of the goals contained in the rehabilitation plan and is not adequate to overcome the statutory presumption or to prove that she is currently able to parent three children. *In re Welfare of J.K.*, 374 N.W.2d 463, 466 (Minn. App. 1985) (holding that improvements immediately before the termination hearing were insufficient to overcome the whole of a parent's negative history), *review denied* (Minn. Nov. 25, 1985); *see also In re Welfare of J.L.L.*, 396 N.W.2d 647, 651-52 (Minn. App. 1986) (holding that termination was proper when parent was unable to care for children appropriately, even when parent took recent steps to improve and had desire to improve). And, as noted above, Y.F. failed to appear for three visits with her children in the month preceding the hearing.

With regard to Y.F.'s claim of stale evidence, while the psychologist had not observed Y.F. with her children for over a year prior to the hearing, the focus of the psychologist's testimony was on clinical testing and observations of Y.F.'s cognitive abilities to parent the children. The county presented testimony from its case manager and the visitation supervisor concerning Y.F.'s more recent interactions with the children.¹

¹ The visits would all have been supervised because Y.F. never progressed far enough in her plan to have unsupervised visits with her children.

Here, the county's witnesses provided undisputed testimony that Y.F. failed to comply with the case plans. They also shared their opinion that it was not likely that Y.F. would be able to care for her children in the foreseeable future. The district court was within its discretion to accept this testimony as credible. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 90 (Minn. App. 2012). We conclude that the district court's determination that Y.F. failed to correct the conditions leading to the out-of-home placement despite reasonable efforts is supported by clear and convincing evidence.

II. The district court did not issue sufficient findings on the children's best interests.

Y.F. next argues that the district court did not properly consider and make findings on the best interests of the children. She argues that the findings the district court did make (1) lacked the children's preferences or an explanation of why their opinions were not included, (2) did not analyze the three best-interests factors, and (3) consisted only of limited conclusory statements regarding the best interests of the children.

When making a decision on a TPR matter, the Minnesota Rules of Juvenile Protection Procedure require that

[b]efore ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze: 1. the child's interests in preserving the parent-child relationship; 2. the parent's interests 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 include such things as a stable environment, health considerations and the child's preferences." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 668 (Minn. App. 2012) (quotation omitted). When an appellate

court reviews the best-interests determination, it should not comb through the record to determine the children's best interests because it involves credibility determinations. *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003) (citing *Schmidt v. Schmidt*, 436 N.W.2d 99, 105 (Minn. 1989)); see also *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009).

Here, the district court's best-interests findings were conclusory and did not explain its rationale sufficiently to allow appellate review. *Tanghe*, 672 N.W.2d at 626 (“[T]he district court, in a termination proceeding, must consider a child's best interests and explain its rationale in its findings and conclusions.”). In particular, the district court failed to make any findings on the children's interests in preserving the parent-child relationship. *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 669 (Minn. App. 2020) (holding the district court's best-interests analysis was inadequate because, among other reasons, it did not specifically address the child's interest in preserving the relationship); *D.L.D.*, 771 N.W.2d at 547 (affirming the district court's finding of the parents' palpable unfitness but remanding for failure to make findings on the best interests of the child). We thus remand for additional findings on the children's best interests.

In light of our decision to remand, we need not address Y.F.'s contention that the district court erred by not obtaining the preferences of any of the children with regard to termination. On remand, however, the district court may, at its discretion, reopen the record to allow additional evidence with respect to consideration of the children's best interests.

Affirmed in part and remanded.