

*This opinion is nonprecedential except as provided by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
A20-1287**

In the Matter of the Welfare of the Children of: S. M. C. and C. L. S., Parents.

**Filed April 19, 2021
Affirmed
Larkin, Judge**

Rice County District Court
File No. 66-JV-20-756

Robin W. Finke, Grundhoefer & Ludescher, P.A., Northfield, Minnesota (for appellant-mother S.M.C.)

John Fossum, Rice County Attorney, Terence Swihart, Chief Assistant County Attorney, Faribault, Minnesota (for respondent Rice County Social Services)

Erik Brekke, Faribault, Minnesota (guardian ad litem)

Considered and decided by Gaïtas, Presiding Judge; Larkin, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

On appeal from the district court’s order terminating her parental rights, appellant-mother challenges the district court’s determinations that respondent-county proved a statutory basis for termination, that respondent-county made reasonable efforts to reunite the family, and that termination is in the children’s best interests. We affirm.

FACTS

This appeal stems from a child-protection proceeding that resulted in termination of appellant-mother S.M.C.'s parental rights to her children born in 2012 (the older child) and 2018 (the younger child). C.L.S. is the children's father. Mother has a third child, born in 2008, who resides in Chicago under the custody of the Illinois Department of Children and Family Services. That child was removed from mother's custody in 2016 due to medical neglect and is not a subject of the underlying proceeding.

The two children who are the subject of this appeal have significant special needs. The older child has attention deficit hyper activity disorder, interim explosive disorder, post-traumatic stress disorder, and gender dysphoria. The older child has difficulty coping with stress and emotions and has displayed physical aggression toward peers, teachers, and the younger child. The older child has been hospitalized for suicidal ideation and has received ongoing therapy.

The younger child is developmentally delayed and engages in self-injurious behavior, such as head banging. The younger child also has extensive medical issues including epilepsy, autism, aspiration into the respiratory tract, a herniated belly button, obstructive sleep apnea, reflux disease, hyperthyroidism, and sickle cell trait. The younger child has numerous dietary restrictions.

In December 2018, the older child called the police and reported that the parents were intoxicated and fighting over a bottle of alcohol. Around a week later, mother punched father in the mouth, causing his mouth to bleed. Police arrested mother and placed the children on a 72-hour health-and-welfare hold. Respondent Rice County Social

Services (the county) filed a child in need of protection or services petition. The district court granted the county temporary custody of the children and placed them outside the home. Mother later admitted to some of the allegations in the petition, and the children were adjudicated in need of protection or services.

In January 2019, the county developed case plans for the parents, which the parents signed. The case plans listed the following safety concerns: alcohol consumption, domestic violence, mental-health and anger-management issues, lack of parenting skills, and the open child-protection matter regarding mother's third child in Chicago. To address those concerns, the county recommended that the parents obtain chemical-use, parenting, and psychological assessments and comply with any resulting recommendations; participate in individual and family therapy; participate in anger-management and domestic-violence counseling; address the child-protection matter in Chicago; and establish paternity of the children.

The district court largely adopted the county's recommendations and ordered the parents to follow the recommendations of their chemical-use assessments and submit to testing; cooperate with the county; complete and follow the recommendations of a neuropsychological evaluation; participate in parenting education, individual therapy, and domestic-violence programming; and attend the children's appointments and engage in the children's treatment plans.

After the children were removed from mother's care, mother initially struggled to take positive steps toward reunification. She tested positive for alcohol in January and February 2019, as did father. In February 2019, she repeatedly violated a domestic-abuse

no-contact order (DANCO), which prohibited her from contacting father, and she was ultimately arrested. She remained in jail until March 15, 2019.¹

Mother then began to make progress on her case-plan components. She obtained a chemical-use evaluation, which recommended outpatient treatment. She began outpatient treatment in April 2019 and successfully completed the program in August 2019. She completed a parenting assessment in April 2019. The assessment indicated that mother had alcohol abuse and anger issues and might have difficulty understanding the children's developmental needs. The assessment listed several areas of parenting weakness, as well as risks for abusive parenting behaviors. The assessor recommended outpatient treatment for alcohol abuse, anger-management counseling, domestic-violence programming, couples therapy, parenting classes, and assistance from a parenting mentor.

Mother did not begin individual therapy until September 2019. It was determined that she could address her anger-management issues in individual therapy. Mother was referred for a neuropsychological evaluation, but she did not complete it until January 2020. The evaluation had originally been scheduled for October 2019, but mother missed the appointment. Mother was diagnosed with dyslexia and a profound language comprehension disorder, and it was recommended that she undergo speech therapy. Mother declined to engage in the speech therapy because she was "busy." Mother was also diagnosed with generalized anxiety disorder.

¹ The DANCO was ultimately vacated in May or June of 2019.

Mother participated in some parenting education. The parents were referred to the Healthy Parents/Healthy Families Program, but the parents declined to participate after learning that the program was 26 weeks long. The parents commenced couples therapy in January 2020, but the programming ended because of the pandemic. Mother completed domestic-violence programming, but father did not.

During the course of the underlying proceeding, the parents had supervised visitation with the children, which eventually expanded to twice a week for two hours per visit. The older child did not want to visit with father, and their visitation ended in March 2020.

On March 31, 2020, the county petitioned the district court to terminate mother's and C.L.S.'s parental rights. The county alleged four statutory grounds for termination. In August 2020, the district court held a trial on the termination petition. In September 2020, the district court filed an order terminating mother's parental rights, concluding that the county had proved the alleged statutory grounds for termination, the county had made reasonable efforts to reunify the family, and termination was in the children's best interests. Mother appeals.²

DECISION

It is presumed that "a natural parent is a fit and suitable person to be entrusted with the care of his or her child." *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). Generally, "it is in the best interest of a child to be in the custody of his or her natural

² The district court also terminated C.L.S.'s parental rights, but C.L.S. has not participated in this appeal.

parents.” *Id.* Minnesota courts will terminate parental rights only for “grave and weighty reasons.” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). There are nine statutory grounds for terminating parental rights. See Minn. Stat. § 260C.301, subd. 1(b) (2020). A petitioner bears “the burden of producing clear and convincing evidence that one or more of the statutory termination grounds exists.” *In re Welfare of C.K.*, 426 N.W.2d 842, 847 (Minn. 1988).

In a termination-of-parental-rights (TPR) appeal, an appellate court examines the record to determine whether the district court applied the appropriate statutory criteria and reviews the court’s factual findings for clear error. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 249 (Minn. App. 2003). We give considerable deference to the district court’s credibility determinations. See *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) (“Considerable deference is due to the district court’s decision because a district court is in a superior position to assess the credibility of witnesses.”). We review the district court’s ultimate decision to terminate parental rights for an abuse of discretion. See *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136-37 (Minn. 2014) (stating that a district court has discretion on whether to terminate parental rights).

I.

Mother argues that the county failed to present sufficient evidence to support termination of her parental rights. The district court found that the county proved four statutory grounds for termination: (1) mother failed to satisfy her parental duties under Minn. Stat. § 260C.301, subd. 1(b)(2); (2) mother is palpably unfit under Minn. Stat. § 260C.301, subd. 1(b)(4); (3) mother failed to correct the conditions leading to the out-of-

home placement under Minn. Stat. § 260C.301, subd. 1(b)(5); and (4) the children are neglected and in foster care under Minn. Stat. § 260C.301, subd. 1(b)(8).

We may affirm the termination of mother's parental rights if one statutory ground is supported by clear and convincing evidence. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). We begin with section 260C.301, subdivision 1(b)(2), which permits a district court to terminate parental rights if it finds

the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable.

“The district court must also determine that, at the time of termination, the parent is not presently able and willing to assume her responsibilities and that the condition will continue for the reasonably foreseeable future.” *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 655 (Minn. App. 2018).

In determining that subdivision 1(b)(2) was satisfied, the district court found that the children have “high needs” and that the parents “lack the knowledge and ability to provide” for those needs “now and in the reasonably foreseeable future.” The district court noted that the parents were unable to move to unsupervised visitation “given their inability to meet the needs of the [c]hildren during the visits and to truly understand the needs [of] the [c]hildren.” The district court further noted that the “visit supervisors had to intervene

to keep the [c]hildren safe as the parents were unable to recognize the dangers to the youngest child especially.”

The record is replete with evidence regarding the children’s significant special needs. One of the older child’s foster parents provided the following example of a manifestation of the older child’s mental-health issues:

[W]e were joking around, we were living life, right, as you do, you’re making dinner, um, something upset her and the next thing I knew she was at the kitchen sink with a very sharp knife, like a butcher knife sharp knife, holding it to her throat saying she was going to kill herself. And she’s 7. And so I, you know, I think that’s the only time I shouted at her to tell her to put it down. And so it was at that level of self harm, it wasn’t kids trying to be dramatic self harm, it was that level.

The older child’s therapist recommended 24-hour care in a facility or residential treatment program for that child. The older child underwent ten separate moves while in out-of-home care, in part, due to the older child’s significant behavioral issues and violent tendencies.

The younger child’s foster parent testified that the younger child’s medical issues included grand mal seizures, as well as an extensive medication regimen including Olanzapine and Diastat for seizures, Atenolol for thyroid issues, Omeprazole for stomach issues, Clonidine and Trazodone for sleep, Melatonin “at night,” Citirizine for allergies, Ciprodex for a chronic ear infection, Azithromycin as a preventative measure for the child’s lungs, and an Albuterol inhaler/nebulizer.

The record contains clear and convincing evidence that mother did not demonstrate an ability to meet the children’s substantial needs despite the county’s efforts to provide her with the requisite skills. The county provided mother with information regarding the

children's medical appointments and kept her updated on their medical and mental-health needs. Yet mother's attendance at the children's medical appointments was sporadic. During her testimony, mother could not identify the special dietary needs of the younger child, who was underweight when placed into foster care. She had difficulty identifying the younger child's medical issues and could not identify the younger child's medication regimen. Mother was honest regarding her lack of understanding. She testified:

To be honest, I quite don't know, um, I've been hearing a lot of medical histories that a lot of people been saying the name that I'm not aware of because I never been around nobody with those problems. Lung disease, seizures, or feeding problem, and that stuff. So, um, I really to be honest to myself and to the Court, it might could have been I could do some of the things with my child as far that I can encourage or do some stuff that I have to do, make sure he gets some of his doctor appointments. But to be honest I'm . . . willing to go get some help because that's a lot of health problem for a child as far as by myself.

During her testimony, mother could not identify all of the older child's mental-health needs. Mother testified that, prior to the older child's removal from the home, she saw "not much" in terms of behavior problems, though she acknowledged being contacted by the school because the older child "hit a lot of children." Mother's plan for reunification ran counter to the older child's needs. For example, despite the older child's troubled relationship with father, who is diagnosed as schizophrenic, and despite the history of domestic violence between the parents, mother was living with father at the time of trial and intended to maintain that relationship and living arrangement. Although mother had completed domestic-violence programming, father had not done so.

The parenting evaluator testified that the children's special needs would pose "significant parenting issues" for mother. The guardian ad litem (GAL) likewise did not think that mother could meet the children's needs without consistent in-home services. The GAL testified that mother "would need consistent around the clock help in the home to care for both kids at the same time," and father could not provide that necessary assistance.³ Indeed, the record shows that mother was unable to meet the children's needs during supervised visits. For example, on one occasion, mother ended a visit early because she was overwhelmed by the younger child. On another occasion, one of the case aids had to intervene during a visit to ensure that mother was giving the younger child the correct foods. In addition, mother was unable to recognize when the younger child became overstimulated during visits.

We acknowledge that mother ultimately completed a substantial portion of her case plan. She largely addressed her alcohol and domestic-violence issues, which led to the children's removal from her care, although she maintained her relationship with father. However, the record supports the district court's determination that mother failed to develop an appreciation of the extent of the children's significant special needs and to acquire the skills necessary to meet those needs, which is particularly concerning given the prior removal of mother's third child due to medical neglect.

³ Nothing in the record suggests that 24-hour in-house care is a feasible option. See *In re Welfare of A.V.*, 593 N.W.2d 720, 723 (Minn. App. 1999) ("Here, the only remaining option is 24 hour in-house care, an option the [district] court properly determined to be infeasible."), *review denied* (Minn. Aug. 25, 1999).

We also acknowledge that the children’s physical and mental-health issues were not the reason for their removal from mother’s care and custody. Indeed, the magnitude of the children’s needs did not become apparent until they were placed out of home. But “[e]ven if [a] parent eliminates the factual bases that existed at the time of the child’s removal, if a new factual basis arises after removal, the condition cannot be corrected until that new factual basis also has been eliminated.” *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 323 (Minn. App. 2015), *review denied* (Minn. July 20, 2015). A district court’s decision in a TPR proceeding must be based on evidence concerning the conditions that exist at the time of the termination. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007), *review denied* (Minn. July 17, 2007).

In sum, even though mother addressed the issues that initially led to the children’s removal from her care and made a commendable effort to improve her ability to parent these special-needs children, clear and convincing evidence supports the district court’s determination that mother substantially neglected to meet the children’s specialized needs and will be unable to properly care for them now and in the future. The district court therefore did not abuse its discretion by terminating mother’s parental rights under section 260C.301, subdivision 1(b)(2). Because the record provides a statutory basis for termination on that ground, we do not address the other grounds on which the district court relied. *See R.W.*, 678 N.W.2d at 55.

II.

Mother challenges the district court’s finding that the county made reasonable reunification efforts. The district court must make “specific findings” in every TPR

proceeding “that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made” or “that reasonable efforts for reunification [were] not required” as set out in Minn. Stat. § 260.012 (2020). Minn. Stat. § 260C.301, subd. 8 (2020). The district court must make “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.” *Id.*, subd. 8(1).

In determining whether the county made reasonable efforts, the district 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). We review a district court’s finding that reasonable efforts were made for clear error. *See In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (stating that we review the district court’s factual findings for clear error).

In determining that the county made reasonable efforts, the district court found that the parents “had eighteen months” to utilize the case-plan services, which included chemical-dependency evaluations, treatment, and testing; parenting programming; individual therapy; couples therapy; neuropsychological evaluations; domestic-violence programming; parenting assessments; and case-management assistance. The district court found that the services were accessible to the parents, culturally appropriate, available, consistent, timely, realistic under the circumstances of the case, relayed to the parents in a meaningful manner, and relevant to the safety and protection of the children.

Mother's challenge to the district court's reasonable-efforts determination is based on her argument that the county failed to timely provide her with services recommended by her neuropsychological evaluation, specifically, speech and language therapy. Following her neuropsychological evaluation in late January 2020, the county received an email from the neuropsychological evaluator with a preliminary recommendation of speech and language therapy. Then, in late February 2020, the county received the evaluator's finalized written report. However, the county did not make a referral for that speech and language therapy until August 2020.

Although the six-month delay between the recommendation for speech and language therapy and the county's referral is concerning, it does not render the district court's finding that the county made reasonable efforts clearly erroneous. We note that once the county made a referral for speech and language therapy, mother refused to utilize that service. In addition, as found by the district court, the service providers largely accounted for mother's language difficulties. For example, mother's individual therapist testified that she suspected mother had a language disorder and that she "may have done things a little differently" had she been aware of the results of the neuropsychological evaluation, but she was "not sure how much [she] would have done differently."

Mother likens the circumstances in this case to those in *In re Welfare of Child of E.C.S.*, an unpublished opinion of this court. No. A18-2106, 2019 WL 2262324 (Minn. App. May 28, 2019). In that case, we reversed a termination of parental rights based upon the county's failure to make reasonable efforts to reunite the family. *Id.* at *1. We determined that the county failed to make reasonable efforts, in part, because the county

did not allow unsupervised visitation or provide the mother with sufficient opportunity to participate in specialized care of her children. *Id.* at *7. Essentially, the county did not provide the mother “with a meaningful opportunity to demonstrate her ability to parent the children.” *Id.* at *8.

Unpublished opinions, now designated “nonprecedential” opinions, are not precedential, but they may be persuasive. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993) (“At best, these opinions can be of persuasive value.”); see Minn. R. Civ. App. P. 136.01, subd. 1 (discussing written opinions of this court). *E.C.S.* is not persuasive because the reversal in that case was based on significantly different facts than those in this case. In *E.C.S.*, the GAL supported unsupervised visitation, and the district court directed the county to move forward with unsupervised visitation in coordination with the GAL, but the county unilaterally decided against it. 2019 WL 2262324, at *7. Those are not the circumstances here.

In sum, on appeal, the party asserting error bears the burden to make the alleged error “appear affirmatively before there can be reversal.” *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) (quotation omitted); see also *Horodenski v. Lyndale Green Townhome Ass’n*, 804 N.W.2d 366, 372 (Minn. App. 2011) (“[T]he burden of showing error rests on the party asserting it.”). Mother has not established that the district court’s reasonable-efforts determination is clearly erroneous.

III.

Mother challenges the district court’s conclusion that termination of parental rights is in the children’s best interests. A district court cannot terminate parental rights unless it

is in the best interests of the child. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). “In analyzing the best interests of the child [in a termination-of-parental rights case], 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). We review the district court’s determination that termination is in the child’s best interests for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

Generally, a court presumes that it is in the best interests of the child to be in the custody of the parents. *In re Welfare of Clausen*, 289 N.W.2d 153, 156 (Minn. 1980). Nevertheless, the child’s competing interests include a stable environment. *R.T.B.*, 492 N.W.2d at 4. In balancing the three best-interest factors, “the interests of the parent and child are not necessarily given equal weight.” *Id.* “Where the interests of parent and child conflict, the interests of the child are paramount.” Minn. Stat. § 260C.301, subd. 7 (2020).

The district court reasoned:

It is clear that it is in the best interests of the Children in this case to terminate the parental rights of the Mother and Father. Although Mother has engaged in services she is not able to provide for the needs of the Children at this time. The Children separately require consistent, constant, patient, and stable supportive caregivers. Parenting them together will require even more patience and skill that the Mother simply has not acquired through the services. The Father failed to engage in the majority of the services and is unable to meet the needs of the Children.

The Children deserve to be in [a] home with a caregiver who can provide . . . them [with] appropriate parenting and

meet their medical and mental health needs on a consistent basis. Their needs outweigh any interest the Mother and Father have in preserving the parent-child relationship and the Children have in preserving the parent-child relationship.

The district court's reasoning addressed the best-interest factors. Moreover, the record supports the district court's reasoning. For example, the case manager testified that termination of parental rights was in the best interests of the children based upon the parents' "lack of meaningful change, lack of understanding of the children's high needs," and father's failure to fully participate in case-plan services.

Mother notes that the older child, on several occasions, mentioned a desire to live with mother. Mother also points to her engagement in services and improved parenting, including her ability to recognize when the younger child is having a seizure, and acceptance of the older child's gender preference.⁴ The district court's order terminating mother's parental rights recognizes mother's completion of several case-plan services. Nonetheless, the court concluded that mother simply cannot provide the level of care necessitated by the children's significant medical and mental-health needs. In doing so, the district court did not abuse its discretion in determining that termination of mother's parental rights is in the children's best interests.

Affirmed.

⁴ The older child was assigned male gender at birth but identifies as female and asks to be called by a female name.