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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1431**

In the Matter of the Welfare of the Children of: A. H.-N. and L. V., Parents.

**Filed May 24, 2021
Affirmed
Reyes, Judge**

Kandiyohi County District Court
File No. 34-JV-20-169

John E. Mack, New London Law, PA, New London, Minnesota (for appellant mother A. H.-N.)

Shane D. Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent Kandiyohi County Health and Human Services)

John Mueller, Litchfield, Minnesota (for father L.V.)

Janelle Schmoll, Lake Lillian, Minnesota (guardian ad litem)

Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant-mother argues that the district court abused its discretion in terminating her parental rights because the record does not support its determinations that (1) she is a palpably unfit parent; (2) the county made reasonable efforts to reunify the family; (3) termination is in child 1's best interest; and (4) it could take judicial notice of factual findings from a related child-in-need-of-protection-or-services (CHIPS) case. We affirm.

FACTS

Appellant A.H.-N. (mother) gave birth to M.L.A.H. (child 1) in 2018, and to C.J.L.A.H. (child 2) in 2019. As mother was not married at the time child 2 was born, she had sole legal custody and sole physical custody of child 2. *See* Minn. Stat. § 257.541 (2020) (addressing custody of child born to mother not married when child born or conceived). But L.V., child 1's father, shared joint legal custody of child 1 while mother had sole physical custody of child 1.

Respondent Kandiyohi County Health and Human Services (the county) first became involved with mother on August 28, 2019, when it received a child-maltreatment report that child 1 had second-degree burns on the child's foot, hand, and thigh (the burn incident). Mother stated that child 1 had climbed up a chair onto the stove while mother was not watching. Reviewing prior medical visits, social worker 1 noted mother visited the hospital when child 1 drank "vape juice" (April 25, 2019),¹ fell off the bed resulting in face injuries (July 25, 2019), and fell down the stairs just days before the burn incident. The following day, the county investigated mother's home, noting concerns that it was not baby proofed, had two to three totes stacked throughout the house, smelled of urine, that the stove burner knobs easily turn, and that mother did not maintain a healthy or consistent schedule for the children. The county recommended ongoing child-protective services and setting up a safety meeting to work with mother on the concerns.

¹ The medical record states that mother explained that "vape juice" is a "juice flavoured concentrated nicotine solution."

On November 5, 2019, the county removed the children from mother's care after child 2 had been hospitalized twice for failure to thrive; the second time, the medical provider reported failure to thrive from parental neglect: "My concern is this baby is intentionally not being fed the appropriate amount of formula and he is not gaining weight (the failure-to-thrive incidents). He is being neglected and the lack of nutrition will have serious effects on his brain development, growth and psychological well-being." During each hospitalization, child 2 gained weight. The county placed Child 2 in a nonrelative foster home and placed child 1 out-of-state with L.V.

On August 7, 2020, the county filed a petition to terminate parental rights (TPR) of mother to her children, asserting that (1) mother abandoned the children; (2) mother failed to satisfy her parental duties; and (3) reasonable efforts failed to correct the concerns leading to the out-of-home placements. The petition also asserted that the county made reasonable efforts to reunite the family and that termination was in the children's best interests. Mother entered denial of the petition on September 1, 2020. On October 13, 2020, the county amended its petition, adding a claim under Minn. Stat. §260C.301, subd. 1(b)(4) (2020), that mother is a palpably unfit parent.

The district court held a bench trial on the petition on October 14, 2020, at which mother, L.V., three social workers, the guardian ad litem, mother's marriage and family therapist, a family development specialist, a police officer, and an Adult Rehabilitative Mental Health Services (ARMHS) worker testified. On October 29, 2020, the district court terminated mother's parental rights to the children based on its finding that she is palpably unfit to parent the children, that reasonable efforts failed to correct the conditions leading

to the children’s placements, that the county made reasonable efforts to reunite the family, and that termination is in the children’s best interest. The district court dismissed the other two statutory grounds. This appeal follows.²

DECISION

“We 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). We give “considerable deference” to the district court’s TPR decision but must still “closely inquire into the sufficiency of the evidence to determine whether the evidence was clear and convincing.” *In re Welfare of K.L.W.*, 924 N.W.2d 649, 653 (Minn. App. 2019), *review denied* (Minn. Mar. 8, 2019). When reviewing a district court’s TPR decision, we review the district court’s factual findings for clear error but review “its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion.” *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 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 Children of T.R.*, 750 N.W.2d 656, 660–61 (Minn. 2008) (quotation omitted).

² L.V., who was granted sole legal custody and physical custody of child 1, takes no part in this appeal.

I. The district court did not abuse its discretion by determining that mother is palpably unfit to parent.

Mother argues that the district court abused its discretion by determining that she is palpably unfit to be a party to the parent-child relationship because (1) it relied on her mental-health issues not related to the parent-child relationship and (2) its underlying findings of fact are clearly erroneous. We disagree.

Under Minn. Stat. § 260C.301, subd. 1(b)(4), the county can prove a ground for termination by clear and convincing evidence if:

[The] parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.”

To show palpable unfitness, the party seeking termination must “prove a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that, it appears, will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child.” *T.R.*, 750 N.W.2d at 661. But conditions relating solely to the parent such as mental illness, substance abuse, or sexual misconduct do not, by themselves, result in “palpable unfitness.” *Id.* at 662. Rather, there must be a “causal connection” between the condition and the parent’s inability to care for the child. *Id.*

The district court found that mother’s failure to address her own mental-health needs and substance use prevents her from meeting the children’s needs for the foreseeable future. The record supports this finding. Social worker 1 testified that, early in her

investigation, she was concerned that mother did not provide a consistent schedule for the children; mother admitted she and the children would fall asleep between 10 p.m. and midnight, waking up around 11:30 a.m. The social worker testified that the schedule is “concerning for [child 1’s] long term well-being.” This is causally connected to the district court’s finding that mother’s mental-health symptoms include lack of motivation, fatigue, and inconsistent sleeping patterns that prevent her from adequately caring for her children. Mother’s cannabis use contributed to her inability to keep a schedule, meaningfully progress in the case plan, and consistently attend appointments. Social worker 3 testified that mother’s “inconsistency over a long period of time shows that she’s unable to meet her own needs and she would struggle to meet her children’s.” The record shows that mother has tested positive for cannabinoids from May to September 2020 and that she failed to provide urinalysis samples several times. The guardian ad litem testified that mother “has consistently tested positive for [cannabinoids], and [her] behaviors do not demonstrate she can safely assume the parental role.” In discussing contacts with the therapy, visitation, and ARHMS appointments, mother concedes that “[v]irtually all of these contacts have been inconsistent. She often has been late to these sessions, but has attended them.” On this record, the district court did not err by finding that mother’s chemical use is causally connected to her palpable unfitness.

Next, mother appears to argue that the district court clearly erred in its underlying factual findings regarding (1) inconsistent visitations; (2) the burn incident; (3) a feeding log; (4) her unemployment; (5) her positive urinalyses; (6) child 2’s failure to thrive; and (7) her unsafe parenting. The district court here found that:

- [Mother] has not shown a desire to maintain a relationship with the children.
- She has shown a lack of motivation and commitment with working the case plan and addressing her mental health needs.
- She has prioritized codependent, unhealthy, and abusive relationships versus focusing on her parenting skills, child development education, and attachment with [the children].
- [Mother] has been inconsistent following the visitation plan.
- Her lack [of] safe parental supervision resulted in [child 1] suffering hospitalization for burns, and due to her lack of parenting skills, [child 2] was diagnosed as failure to thrive.
- [Mother] has been unable to complete a feeding log for her children's health and nutrition
- [Mother] has not established an independent, safe, and stable home.
- [Mother] has not gained employment to financially provide for the children's needs.
- [Mother] has consistently tested positive for THC.
- [Mother's] behaviors do not demonstrate that she can safely assume the parenting role for [the children].

First, mother acknowledges that she missed some visitations but argues that “[m]ost of them were accompanied by legitimate reasons.” The guardian ad litem testified that her visitations were inconsistent, and the family development specialist testified that mother was “late a lot” and cancelled 11 visits.

Second, without citation to law, mother suggests that, because the burn incident occurred before the county became involved, the district court should not consider it. Mother provided direct testimony on the burn incident and the other hospital visits at trial, all of which are relevant to whether she is palpably unfit. Nothing in our law requires the district court to turn a blind eye to negligent or intentional acts that result in harm to a child

before the county is involved, especially when one of the asserted bases for termination includes a *pattern* of conduct by the parent.

Third, she argues that “not keeping [a feeding log] did not deprive her children of food.” Instead of focusing on the opportunity to show her commitment to feed adequately her three-month old child, mother argues her failure “merely frustrated the social workers.” Contrary to mother’s characterization, those social workers were concerned by child 2’s two hospitalizations for failure to thrive and the doctor’s assessment during the second hospitalization that she was concerned the child “is intentionally not being fed the appropriate amount.”

Fourth, social worker 2 explained to mother that she should first establish therapies, parenting skills, and her mental-health services before seeking employment that would accommodate her availability. But as discussed below, mother did not make sufficient progress to begin seeking employment.

Fifth, the record shows that mother tested negative for cannabinoids in September. But that does not render clearly erroneous the district court’s finding that she “consistently tested positive” for cannabinoids before September and failed to provide a urinalysis on two dates in May and again in June. We also note that mother’s first negative urinalysis occurred a month before her parental rights were terminated, after she had a year to demonstrate sobriety.

Sixth, mother argues that she never had an opportunity to show she can take care of child 2. But that ignores that mother received specific instructions to feed child 2 after the

first hospitalization, and she nevertheless failed to provide the necessary care, which resulted in a second hospitalization.

Seventh, on unsafe parenting, mother argues that the burn incident and failure to thrive are only two incidents that harmed the children. But mother ignores her own trial testimony admitting she took child 1 to the hospital after he fell from the bed, fell down the stairs, and drank “vape juice.” These are at least five examples in which the children were taken to the hospital under her care. For these reasons, we are not persuaded that the district court clearly erred in its factual findings relevant to mother’s palpable unfitness.

Lastly, mother appears to suggest that the district court’s dismissal of the other two statutory grounds is inconsistent with and exclusive of its finding that she is palpably unfit. But because mother does not provide any legal support for this argument, we conclude that she has forfeited that argument. *See State, Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address issue absent adequate briefing); *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 166 (Minn. App. 2005) (citing this aspect of *Wintz* in TPR appeal).

II. The district court did not abuse its discretion by determining that the county made reasonable efforts.

Mother appears to argue that the district court abused its discretion by determining that the county made reasonable efforts because the county (1) made no effort to offer mother treatment for marijuana use and (2) had an obligation to help her find employment or other sources of income, which it did not satisfy. We are not persuaded.

We review a district court’s decision that the county made reasonable efforts to reunite the family for an abuse of discretion. *See In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 323 (Minn. App. 2015), *review denied* (Minn. July 20, 2015). When a child is removed from the family home, the county must, generally, make “reasonable efforts” to reunify the parent(s) and child. Minn. Stat. § 260.012(a) (2020). In determining whether the county made “reasonable efforts,” the district court considers whether the services 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) (2020). “The county’s efforts must assist in alleviating the conditions that gave rise to the dependency determination.” *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). “Whether the county has met its duty of reasonable efforts requires consideration of the length of time the county was involved and the quality of the effort given.” *Id.* The district court must make “individualized and explicit findings regarding the nature and extent” of the county’s efforts to rehabilitate the parent and reunite the family. Minn. Stat. § 260C.301, subd. 8(1) (2020). We review those specific findings for clear error. *D.L.D.*, 865 N.W.2d at 321.

Here, the district court found that the county referred mother for a chemical-use assessment, individual therapy, and drug testing among other reasonable efforts to reunify her with the children. The record supports these findings. It also supports the district court’s finding that mother was inconsistent in her appointments. Social worker 2 testified that, over the course of nearly a year, the county offered mother individual therapy through

several providers. She missed the first session, arrived an hour and a half late for the second session, and attended two more before her insurance expired. Social worker 3 testified that the county offered mother transportation to appointments and visitation.

We also note that during the psychological and parenting assessments on January 15 and 27, 2020, mother did not disclose her cannabis use to the psychologist and drug counselor. Mother merely stated that she had used marijuana twice with her mother three years ago, but that she had not done so recently. Based on mother's failure to disclose her cannabis use, it is reasonable that the assessment did not recommend chemical-dependency treatment or testing. As the record reflects, the county provided drug testing from March through September 2020. Social worker 2 testified that after mother tested positive for THC, the county referred mother for a chemical-use assessment which recommended no treatment at the time. The district court, therefore, did not abuse its discretion by finding that the county made reasonable efforts to address mother's marijuana use.

Mother's argument that the county had a duty to help mother obtain employment or some other source of income is flawed as a matter of law and fact. First, it misunderstands the only statutory ground on which the district court granted the TPR: palpable unfitness. The district court relied primarily on mother's inability to respond to the safety and well-being of the children as demonstrated by the numerous hospital visits, and the record contains no indication that mother's inability to respond to the safety and well-being of the children was related to her lack of a job. The county therefore did not have a duty to find her employment as that was not the principal concern underlying the petition. It is true that the case plan asked mother to obtain stable employment. But social worker 2 explained

that the county wanted her to “get established in her therapies and her parenting skills and all her mental health services before she would seek employment because we just didn’t know what her availability would be.” Mother testified she understood this. Additionally, the county provided alternative means of support by referring WIC for the children and offering transportation assistance to the services. On this record, we are not convinced that the county owed mother an absolute duty to help her find employment or that it failed to satisfy its obligations to provide her support. Nor has mother shown that, if the county did help her find a job, this would have addressed the principal concerns underlying the petition.

III. Mother forfeited her argument that the district court abused its discretion by determining that the TPR is in child 1’s best interest.

Mother makes a conclusory argument that the district court abused its discretion by finding that the TPR is in child 1’s best interest.³ But mother identifies neither a specific error in the district court’s best-interest factors nor any other abuse of discretion in the district court’s best-interests analysis. Because we cannot discern mother’s argument, and because she provides no legal support for any alleged error, we conclude that she has forfeited the argument. *See J.B.*, 698 N.W.2d at 166.

IV. The district court did not abuse its discretion by taking judicial notice of findings from the parallel CHIPS case.

Mother argues that the district court abused its discretion by taking judicial notice of certain facts from a CHIPS order because that CHIPS proceeding has not been formally

³ Mother makes no argument as to child 2.

closed. This argument fails because (1) mother did not preserve the appeal in a posttrial motion and (2) mother has not shown prejudice resulting from the alleged evidentiary error.

We review a district court's evidentiary decision to take judicial notice for an abuse of discretion. *Fed. Home Loan Mortg. Corp. v. Mitchell*, 862 N.W.2d 67, 71 (Minn. App. 2015) (“A district court’s decision whether to take judicial notice of proffered facts is an evidentiary ruling that we review only for abuse of discretion.”), *review denied* (Minn. June 30, 2015). Under the Minnesota Rules of Juvenile Protection Procedure, a district court may take judicial notice as allowed by the rules of evidence. Minn. R. Juv. Prot. P. 3.02, subd. 3. In addition, the district court “upon its own motion . . . , may take judicial notice only of findings of fact and court orders . . . in *any* other proceeding in *any* other court file involving the child or the child’s parent.” Minn. R. Juv. Prot. P. 3.02, subd. 3 (emphasis added). Consistent with rule 3.02, this court has recognized that a district court may take judicial notice of “court records and files from prior adjudicative proceedings.” *See In re Welfare of D.J.N.*, 568 N.W.2d 170, 174 (Minn. App. 1997).

As an initial matter, appellant has not preserved this issue for appeal. Generally, a party must assign error to an evidentiary ruling, like the decision to take judicial notice, in a motion for a new trial or amended findings to preserve the issue for appellate review. *Cont'l Retail, LLC v. County of Hennepin*, 801 N.W.2d 395, 399 (Minn. 2011); *In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. App. 1994) (applying this rule to juvenile cases), *review denied* (Minn. Nov. 29, 1994). The purpose for requiring such a question to be raised in a motion for a new trial or amended findings is that it “gives the [district] court time to consider the context of the objection and the effect the error may have had on the

outcome of the case. This permits the [district] court to more fully develop the record for appellate review or to correct its own mistake and alleviate the need for appellate review.” *Jacobson v. \$55,900 in U.S. Currency*, 728 N.W.2d 510, 524 (Minn. 2007) (considering objections to issues that arose during trial) (quotation omitted). Mother did not move for a new trial or for amended findings, and as such, she has not preserved the alleged error for appeal.⁴

Even if mother had sufficiently preserved the issue, her argument would fail because she has not identified any prejudice. Appellant bears the burden of showing that the district court abused its discretion in its evidentiary ruling resulting in prejudicial error. *In re Welfare of Child. of J.B.*, 698 N.W.2d 160, 172 (Minn. App. 2005). “An evidentiary error is prejudicial if the error might reasonably have changed the result of the trial.” *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 51 (Minn. App.1998). Without identifying any specific findings that were prejudicial, mother merely states that the “judicially noticed findings were critical to the District Court’s ultimate determination. They cover pages four through 11 in the District Court’s order and constitute the basis for

⁴ During the trial, the district court put counsel on notice that it would be taking judicial notice of various aspects of the CHIPS file when it said “I’m wondering why we’re focusing so much on the CHIPS facts when we have very limited time to use for trial. Is there a way where I could take judicial notice of findings of fact that I’ve already found in another proceeding?” Counsel for the county responded, “I just wanted this evidence because [mother] has been questioning the failure to thrive diagnosis recently.” At the conclusion of the mother’s testimony, the district court then stated “I’m also making a record of that I’m going to be taking judicial notice of all the Findings of Fact in the CHIPS case and I will cut and paste those findings directly into my order from this—this trial, and it’ll be—I’ll identify it all those findings very obviously so that you know where they’ve come from.” Mother made no objection at that time. Nor did mother raise the question in a posttrial motion.

its ultimate determination.” Mother fails to address the fact that, even if the district court had not taken the contested judicial notice, most, if not all, of those findings could have been independently based on testimony presented at trial, including her own. Specifically, mother testified about the main safety concerns, including the hospital visits that resulted in the CHIPS petition. Mother also had an opportunity to cross-examine the witnesses who testified about her inability to keep appointments, lack of progress in parenting skills, and safety concerns for the children. As such, mother has not met her burden to show prejudice. *See In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 93 (Minn. App. 2012) (stating that “[a]n evidentiary error is not prejudicial if the record contains other evidence that is sufficient to support the findings”); *see also Waters v. Fiebelkorn*, 13 N.W.2d 461, 465 (1944) (noting, generally, that “error without prejudice is not ground for reversal.”).

Affirmed.