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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1489**

In the Matter of the Welfare of the Child of: S. A. K., Parent.

**Filed May 10, 2021
Affirmed
Slieter, Judge**

Koochiching County District Court
File No. 36-JV-20-442

Kimberly A. Wimmer, Wimmer Law Office, PLLC, Littlefork, Minnesota (for appellant-mother S.A.K.)

Jeffrey Naglosky, Koochiching County Attorney, Molly J. French, Assistant County Attorney, International Falls, Minnesota (for respondent Koochiching County Public Health and Human Services)

Alexis Peterson, Marcell, Minnesota (guardian *ad litem*)

Considered and decided by Reilly, Presiding Judge; Slieter, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant-mother challenges the involuntary termination of her parental rights, arguing that the county failed to make reasonable reunification efforts, that the evidence was insufficient to support any of the statutory bases for termination, that termination was not in the child's best interests, and that the district court violated her due-process rights. The county's efforts to reunite the family were reasonable, at least one statutory basis for

termination was present, and termination was in the child's best interests. Additionally, the process to which mother was due was provided. Therefore, we affirm.

FACTS

Appellant-mother S.A.K. is the parent of the child, who was born in 2016. Koochiching County first received reports of improper treatment in 2016, including reports that mother had been using THC while breastfeeding and did not have stable housing. The county became formally involved with the family in September 2018, when mother returned to Minnesota after spending several months "camping" with the child across several states and the county received a report that the child tested positive for THC. Upon their return to Minnesota, it was reported that the child was not receiving proper care. The county filed a petition alleging the child to be a child in need of protection or services (CHIPS), pursuant to Minn. Stat. § 260C.007, subd. 6 (2020), and the district court signed an emergency *ex parte* order removing the child from mother's custody on September 11, 2018. The child was returned to mother's care on October 31, 2018, following mother's admission to the CHIPS petition and agreement to follow a court-ordered case plan. However, the child was again removed from mother's care on February 14, 2019, after the district court found that mother did not have stable housing. The motel at which she and the child had been residing had filed an eviction action against mother as a result of non-payment of rent.

On June 26, 2019, following limited compliance by mother with her case plan and receiving multiple criminal charges including vehicle safety infractions, failure to register her vehicle, and contempt, the county filed the first of two termination of parental rights

(TPR) petitions. Following a three-day court trial in August 2019, the district court dismissed the first TPR petition, concluding that mother had “begun to comply with parts of the case plan . . . including beginning to treat her mental health and finding suitable and sustainable housing.” The district court found that the child was still in need of protection or services, but that “further efforts may correct” the existing issues. The district court ordered that a trial home visit could begin after mother had successfully begun supervised visitation, had “at least 2 additional therapy sessions with her treating counselor(s),” and after “a short visit of the . . . mother’s home by the child and others chosen by the [county].” The child was returned to mother’s care in December 2019.

The child was again removed from mother’s care on April 2, 2020, after the social worker was made aware of a number of new incidents involving mother and law enforcement, some of which resulted in new criminal charges. The second termination petition was filed July 21, 2020. Mother denied this termination petition, which proceeded to trial.

During the second TPR trial, the district court heard testimony from numerous individuals, including the county social worker, the child’s guardian *ad litem* (GAL), mother’s therapist, and mother. The district court terminated mother’s parental rights to the child, finding the agency made reasonable efforts to reunify mother and the child, termination was justified under all three statutory bases set forth in the termination petition, and termination was in the best interests of the child. Mother appeals.

DECISION

Appellate courts affirm a district court's termination of parental rights if (1) the county made reasonable efforts to reunite the family, (2) one or more statutory basis for termination is supported by clear and convincing evidence, and (3) termination is in the child's best interests. *See In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We defer to the district court's decision to terminate parental rights if all the above statutory requirements for termination are met. *See In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 662 (Minn. App. 2018).

In reviewing a district court's decision to terminate parental rights, we apply a two-part standard of review under which we review a district court's "findings of basic or underlying fact[s] . . . for clear error," but review "'ultimate facts' and 'mixed questions of law and fact' (both often stated in 'the trial court's conclusions of law') . . . for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011) (quoting *Rubey v. Vannett*, 714 N.W.2d 417, 423-24 (Minn. 2006), *review denied* (Minn. Jan. 6, 2012)). A district court abuses its discretion if it resolves the discretionary question in a manner "that is against logic and the facts on record." *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

Mother does not clearly articulate whether she appeals because of the district court's findings of fact being clearly erroneous or because the district court's findings as to "ultimate facts" and its conclusions are the result of an abuse of discretion. As to either basis, we have reviewed the record to determine that the factual findings of the district

court are not clearly erroneous and its findings as to “ultimate facts” and its conclusions are not an abuse of discretion.

I. The district court did not clearly err by finding that the county made reasonable efforts to reunify mother and the child.

When a child is removed from the family home, the responsible social services agency must make “reasonable efforts” to reunify the parent(s) and child. Minn. Stat. § 260.012(a) (2020).

When determining whether reasonable efforts have been made, the court shall consider whether services to the child and family 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) (1)-(6) (2020). “The county’s efforts must assist in alleviating the conditions that gave rise to the dependency adjudication.” *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 the time the county was involved and the quality of effort given.” *Id.* A district court’s decision that the county made reasonable efforts to reunite the family is reviewed 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).

Mother argues that such efforts “simply did not happen.” The record belies this claim. The court-ordered case plan required mother to meet, among all other requirements,

three key components: (1) remain law-abiding; (2) maintain stable and appropriate housing; and (3) address her mental health, specifically directing mother to participate in “dialectical behavior therapy” (DBT). Mother complied with the second component but not the other two. The district court’s findings reflect that mother’s underlying mental-health condition was primarily responsible for the issues preventing mother from reunifying with her child.

The district court found that “the [county] ha[d] expended reasonable efforts towards reunification with mother, even though mother ha[d] repeatedly made it clear that she *did not intend to work cooperatively* with the [county].” (emphasis added). The record supports this finding. This court must consider “the quality of effort given.” *H.K.*, 455 N.W.2d at 532. In this case, the quality of effort was both sufficient and reasonable. The GAL had been in contact with mother’s therapist to coordinate therapy and the social worker had communicated and coordinated with mother’s Adult Rehabilitative Mental Health Services (ARMHS) workers. The ARMHS workers assisted mother to assure payment of her bills, assure she had transportation (including paying for car fuel), facilitated zoom visits between mother and child, and assisted mother with developing necessary daily skills. Additionally, when allegations of ongoing shoplifting by mother became known to the social worker, she offered to provide mother with assistance to purchase food and other necessities.

The record supports the district court’s finding that mother failed to address the main concern—her mental health—in *spite of* the county’s reasonable efforts. As found by the district court, mother’s failure to rehabilitate her underlying mental-health issues resulted

from mother's inability to recognize her need for treatment, which led to her failure to begin DBT treatment. Though it is undisputed that mother was regularly meeting with a therapist, she did not enroll in a DBT program and her therapist was—by his own admission—"not a DBT therapist." The entirety of mother's DBT effort consisted of DBT-related "worksheets," which were completed by mother but not reviewed by the therapist.

The social worker and GAL testified that they had seen very little progress in mother's mental-health therapy. The district court found the social worker and GAL to be credible, concluding that "nothing appeared to suggest in any way that mother's pattern of parenting conduct (and general lifestyle) will not continue Despite what [mother's therapist] may think, [mother]'s lack of meaningful progress [in therapy] will remain detrimental to the welfare of the child." Conversely, the district court found that the therapist "**could not** identify any concrete progress that [mother] ha[d] made." (emphasis in original).

Finally, as more evidence of the county's reasonable efforts towards reunification, the district court found that the child had been subject to child-protection proceedings "for 568 days of his short life. That is almost double Minnesota's established timelines for the need for permanency for a child who is only four." (emphasis in original). As noted above, "[w]hether the county has met its duty of reasonable efforts requires consideration of the length of the time the county was involved." *H.K.*, 455 N.W.2d at 532. The record amply supports the district court's findings and conclusion that the county made reasonable efforts to reunify mother and child. The district court did not clearly err in so finding.

II. The district court’s finding that the mother was palpably unfit to parent was not clearly erroneous and its final conclusion as to that statutory factor was not an abuse of discretion.

Involuntary termination of parental rights requires the existence of one or more of a number of statutorily delineated bases. Minn. Stat. § 260C.301, subd. 1(b) (2020). The district court found mother to be palpably unfit to parent, section 260C.301, subdivision 1(b)(4), and concluded that termination was justified pursuant to that statutory basis.¹

A district court may terminate parental rights if it finds

that a 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.

Id., subd. 1(b)(4). 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.” *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). In line with these requirements, conditions relating solely to the parent—such as mental illness, substance abuse, or sexual misconduct—do not result in “palpable unfitness.” *Id.* at 661-62. Rather, there must be a “causal connection” between the

¹ The district court also concluded that termination was justified on the basis of failure of reasonable efforts to correct the conditions leading to out-of-home placement, *id.*, subd. 1(b)(5), and mother’s failure to comply with her parent-child duties, *id.*, subd. 1(b)(2). However, because only one statutory basis need be found to justify a termination of parental rights, *id.*, subd. 1(b), we do not review these conclusions.

condition “and the parent’s inability to care for the child.” *Id.* at 662. We “review the district court’s findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion.” *J.R.B.*, 805 N.W.2d at 901.

The district court based its finding of palpable unfitness on mother’s unresolved mental-health issues, as evidenced by mother’s inability to interact appropriately with the social worker, foster parents, or the public. The district court expressed specific concern with mother’s hostile relationship with the foster parents and social worker, which included both an inability to communicate effectively and truthfully (including mother’s concealment of pending criminal charges). The record supports these district court findings, as well as the district court’s final conclusion that this statutory factor had been satisfied.

The record includes examples of multiple online posts in which mother angrily accused the foster parents and child-protection workers of attempting to steal the child from her. In one post, mother, referencing a photo of the foster parents, indicated that they were “the sick f---s who [were] hurting [her] [child].” In another post, mother indicated that she had “decided to put hexes” on the social workers, GAL, foster parents, and others involved in the child-protection proceedings, and, following an automobile accident involving the social worker, claimed that the “hex” she had previously put on the social worker had caused the accident. This record supports the district court’s finding that this ongoing “dangerous and threatening behavior” stemmed from mother’s “refus[al] to accept the

recommendations of the professionals” regarding her need for DBT and mother’s overall lack of “insight into her untreated mental illnesses or dangerous behaviors.”

The district court also found as further indication of mother’s failure to address her mental health mother’s recent and numerous interactions with law enforcement involving instances of shoplifting, trespass, assault, and DWI, several of which led to criminal charges. The district court found that mother “ha[d] continued shoplifting in the presence of the child,” and, in one instance was “arrested in front of the child,” and in a separate incident “assaulted a security officer by dragging him with her vehicle in front of the child.” The district court also found that, during a DWI arrest at 2:45 a.m., mother—who had the 11-year-old child of her friend in the car—informed the officers that she had been drinking at a nearby bar and was taking “numerous medications,” including a muscle relaxer which made her feel “messed up,” and failed a field sobriety test.

The district court found that the above-described behaviors demonstrated an “inability to consistently place her son’s needs ahead of her own” and “teach her son safe and healthy behaviors.” The court found that the “mother’s manic and paranoid behaviors have worsened,” and that mother was unable to provide the child with a safe and stable environment. The district court noted that the negative consequences of mother’s inappropriate actions had already resulted in detriment to the child, and that the child was “sad and withdrawn” following visits with mother and would lash out and not act like himself following visits.

Finally, the district court found that the above-described behavior was likely to continue for a prolonged period without foreseeable end. *T.R.*, 750 N.W.2d at 661 (stating

conditions leading to palpable unfitness must “continue for a prolonged, indefinite period”). As noted by the GAL, mother had been given ample assistance and numerous opportunities to correct her detrimental behavior throughout the entirety of the child-protection proceedings, and had thus far failed to do so. The district court found that mother had failed to make progress but also resisted attempts at necessary treatment by claiming that she did not require treatment and did not pose a risk to the child. The district court found that mother’s resistance to necessary and court-ordered treatment was harmful to the child and in direct conflict with the possibility of any future attempts at rehabilitation or reunification.

These findings are supported by the record and clearly, directly connect to mother’s fitness as a parent, and support the district court’s conclusion that the conditions were likely to continue for a prolonged period. The district court did not clearly err in finding that mother is palpably unfit to parent and did not abuse its discretion in concluding this statutory basis was met by clear and convincing evidence.

III. The district court did not abuse its discretion in concluding that termination of mother’s parental rights was in the child’s best interests.

The child’s best interests is “the paramount consideration” in all termination proceedings. *J.R.B.*, 805 N.W.2d at 902. “The ‘best interests of the child’ means all relevant factors to be considered and evaluated.” Minn. Stat. § 260C.511(a) (2020). We review a district court’s determinations regarding best interests for an abuse of discretion, and grant “considerable deference” to such determinations in doing so. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012).

In analyzing the best interests of the child, the district court must consider “(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); Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). The district court did not specifically identify these three factors in conducting its best-interests analysis. The district court did specifically conclude that “[i]t is in the best interests of this child . . . that the parental rights of [mother] be . . . terminated.” Though specific reference to the three best-interest factors is helpful in analyzing the sufficiency of a district court’s findings, the record reveals that the district court did weigh all three factors, thereby supporting its conclusion that termination was in the best interests of the child. *See In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 667-68 (Minn. App. 2020) (noting that while district courts must make “a specific finding that termination is in the best interests of the child,” they need only “analyze” the three best-interests factors, with the primary concern being whether the factual basis for the district court’s determination address those factors).

We will assume, without so deciding, that the first two factors weigh against termination. Even so, the district court did not abuse its discretion in concluding that those two factors were overcome by the weight of the third factor.

The district court found that mother “loves her son intensely,” and that this weighed in favor of maintaining the parent-child relationship. However, the district court also found that “simply loving a child emotionally does not provide the child with all the needs that a four-year-old has. The rest of the basic responsibilities that are required of a parent must

be present, and not just for a few hours or on some days.” The district court compared the love shared between mother and child with the child’s interest in “stability,” including the need for a parent who can “meet [the] child’s needs on a consistent and routine basis.” The district court found that, despite numerous individuals encouraging mother to obtain mental-health treatment, mother failed to make any progress in resolving the mental-health issues, which prevented her fulfilling the rest of her “basic responsibilities.” As noted above, the district court noted that this lack of insight and mother’s placing of the child in dangerous and compromising situations (including situations involving law enforcement) had resulted in mother being “unable to provide the child with the stable, safe, secure environment in which he thrives.” The court found that mother’s inability to appropriately care for the child posed a risk of harm. Weighing this against the factors in favor of maintaining the parent-child relationship—including the loving relationship between mother and the child—the district court concluded that termination was in the child’s best interests.

The district court did not abuse its discretion in concluding that termination of parental rights was in the child’s best interests.

IV. The district court did not violate mother’s due-process rights.

Finally, mother argues that her due-process rights were violated in two ways. First, she argues that the district court erred by failing to grant a continuance of the TPR trial. Second, she argues that the district court erred by relying on criminal *charges* rather than *convictions* in making its findings.

We review a parent’s due-process claims in the context of a TPR proceeding *de novo*. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008). “Although the amount of process due in a particular case varies with the unique circumstances of that case, prejudice as a result of the alleged violation is an essential component of the due process analysis.” *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008) (citations omitted).

A. Denial of Continuance

Mother argues that because of scheduling confusion she had “approximately a 1 week notice of the trial date in this matter.” The record indicates otherwise. The TPR trial date of September 28, 2020, was first determined and provided to the parties during an admit/deny hearing held on July 29, 2020. It is true that, on September 17, 2020, due to a judge-removal motion, the September 28 trial date was initially cancelled. However, the same trial date was placed back on the court’s calendar once a substitute judge was available to preside. The district court denied mother’s continuance request. Mother fails to explain how the continuance denial on these facts resulted in an inability to adequately prepare for trial. Prejudice is an “essential component of the due process analysis.” *Id.* No due-process violation occurred related to this issue.

B. Reliance on Criminal Charges

Mother argues that the district court erred in considering her criminal charges. Mother argues that “[t]here is a fundamental problem with punishing a parent and depriving her of parental rights permanently over an issue such as this where there were no criminal convictions at the time of the TPR trial.” However, the district court made no

determinations regarding the criminality of mother's actions, noting it "still presume[d] the mother innocent of any pending charges against her when sitting in **criminal** court." (emphasis in original). Rather, the district court simply took notice of the pending charges, viewed them in light of the testimony given by the social worker, GAL, and mother (including mother's own testimony that shoplifting was an issue for her, and that for her it "brings relief"), and found the testimony regarding the charges to be sufficiently credible so as to be "enlightening for the court in this **civil** proceeding." (emphasis added). The district court's consideration of these criminal charges and the facts surrounding them was not error. No violation of mother's due-process rights occurred on this issue.

Affirmed.