

*This opinion is nonprecedential except as provided by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
A20-1619**

In the Matter of the Welfare of the Children of: D. M. A., Parent.

**Filed June 7, 2021
Affirmed
Reilly, Judge**

Becker County District Court
File No. 03-JV-20-1102

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Brian W. McDonald, Becker County Attorney, Lisa Tufts Frederick, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent Becker County Human Services)

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

NONPRECEDENTIAL OPINION

REILLY, Judge

After a termination of parental rights trial, the district court found that Becker County Human Services proved by clear and convincing evidence two statutory grounds for terminating appellant-mother's parental rights. The district court also determined that the best interests of the children required termination of mother's parental rights and entered an order doing that. On appeal, mother argues that termination was inappropriate under the circumstances. We affirm.

FACTS

Appellant-mother has three children: Child A, born in 2005; Child 1, born in 2011; and Child 2, born in 2015. In October 2018, after receiving a child protection maltreatment report, Becker County Human Services (BCHS) placed Child 1 and Child 2 in emergency protective care and filed a Child in Need of Protection or Services (CHIPS) petition. The CHIPS petition did not include Child A because mother's custodial rights to Child A had previously been terminated.

The CHIPS petition alleged that the father of Child 1 and Child 2 sexually and physically abused them, domestic violence between mother and father occurred around the children, and mother and father were unable to provide the children with necessary care. There were no allegations that mother directly physically or sexually abused Child 1 or Child 2. There were allegations, however, that mother knew that father was abusing the children and did not protect them. Child protection investigated the allegations and interviewed Child A and Child 1. Because Child 2 appeared to be nonverbal, the investigator observed her.

Child A reported that father had sexually abused both her and Child 1 while she was in the home. Child A said that father would "touch them under their clothes," it "happened a lot," and father "would make them noodles in the middle of the night and wake them up so he could touch them." Child A stated that father would rub her genital area with his foot, place her hand on his "junk,"¹ touch her vagina with his fingers, and put his fingers

¹ Child A clarified that "junk" means male genitalia.

inside her vagina which “hurt a lot.” Child A reported that one night she went to bed with clothing on and woke up naked. When the interviewer asked Child A why she did not remember how she ended up naked, Child A stated that father forced her to take shots of alcohol and to drink beer. Child A also reported that one night she heard Child 1 screaming shortly after father went into Child 1’s bedroom and that Child 1 told her “Daddy put his fingers and his dick inside” of her and “it hurt really bad.” Afterwards, Child 1 started sleeping with Child A. Besides the sexual abuse, Child A reported that father often hit all three girls so hard that they fell over and he threatened to kill them all one day.

Child A stated that mother “knows about everything because [Child A] told her about what had happened.” After BCHS removed Child 1 and Child 2 from the home, investigators recorded a phone conversation between Child A and mother. On the phone, mother told Child A that Child 1 and Child 2 had been removed, admitted to knowing what father had done to the children, and asked Child A to lie if anyone asked Child A what happened to her because mother “need[ed] [Child A’s] siblings home.”

Child 1 similarly reported that father “touched” her and that mother knew about it, “told [father] not to do it again, and told Child 1 not to talk to anyone about it.” Child 1 also stated that father “touched” Child 2. When the interviewer asked Child 1 how she knew father “touched” Child 2, Child 1 said that she “could hear it happening upstairs,” because Child 2 was “crying like death,” and father was hitting Child 2. Child 1 declared that father “hits really loud.”

In July 2018, father assaulted mother in their home while mother and Child 2 were lying on the bed. Father first choked mother and then dragged her around by her hair “like

a ragdoll.” All three children witnessed the assault. Child A tried to help mother but father threw Child A over a stair railing, breaking two of her ribs. To get away from father, mother ran across the street with Child 2, leaving Child A and Child 1 alone with father in the home. This was not the first time that father assaulted mother.

Child 1 reported that on another occasion “mom and dad were fighting and dad was hitting mom” and it “scared” Child 1 so she tried to help mother but Child 1’s hand was hurt in the process. Child A and Child 2 also witnessed this assault. A friend of mother’s reported that father is very violent while intoxicated and he has held machetes against mother’s neck and stated, “no one would miss you anyway,” while threatening to slit her throat in front of all three children. Mother stated that after she saw father spanking Child 1 and intervened, father assaulted her for protecting Child 1. Mother continued to live with father until she received an order for protection against father and he was ordered to leave the home in December 2018.

That same month, BCHS filed a termination of parental rights (TPR) petition seeking to terminate both parents’ parental rights to Child 1 and Child 2. The district court held a TPR trial in December 2019. In January 2020, the district court issued an order that terminated father’s parental rights by default, but permitted mother to continue to work towards reunification with Child 1 and Child 2.²

In June 2020, BCHS filed a second TPR petition alleging that mother’s parental rights should be terminated under Minn. Stat. § 260C.301, subd. 1 (2020). The district

² Father does not challenge the termination of his parental rights on appeal.

court held mother's one-day TPR trial in November 2020. The district court limited the evidence to the issue of reunification efforts between January 2020 and the time of the second TPR trial. BCHS called four witnesses: an investigator with the Becker County Sheriff's Office, mother, a BCHS child protection social worker (social worker), and a capacity-to-parent evaluator. Mother called three witnesses: mother's friend, mother's boyfriend, and mother's brother. The guardian ad litem (GAL) also testified. Trial testimony established these facts.

During the CHIPS proceeding and again in August 2020, mother signed case plans for both Child 1 and Child 2 designed to help her reunify with the children. The case plans stated that because of mother's "failure to protect her children and her lack of support regarding their allegations of sexual abuse," before she could be reunified with Child 1 and Child 2, she must "demonstrate that she will protect her children from harm and prioritize their needs for safety and well-being, as well as attend to their psychological and emotional needs." The case plans thus mandated that mother have no contact with father and stated that any of mother's future partners must be screened by BCHS. The case plans also required mother not to allow people with a "criminal history, child protection history, or unmet chemical dependency needs" around her children and to "not form relationships with them or allow them in her home."

Following the first TPR trial in late January 2020, the GAL and social worker went to meet with mother in the home where she had recently moved. The purpose of the meeting was to prepare to reunify the children with mother on a trial home visit. The social worker and GAL inspected the home to make sure it was appropriate for the children and

noticed a picture of father placed above the children's bed. After the social worker discussed her concerns about the picture with mother, she removed it.

On February 10, 2020, mother called the social worker to report that she received a phone call from father late Friday night or early Saturday morning and she answered the call because she did not recognize the number. Mother stated that this phone call was the first contact she had with father. Because a domestic abuse no contact order was in place between mother and father, the Becker County Sheriff's Office investigated the allegation that father had contacted mother. An investigator obtained a search warrant for the telephone records of mother and father from January 2019 to February 2020. The telephone records showed that mother and father had communicated extensively through text messages, beginning on February 5, 2020, five days earlier than mother reported.³ And at trial, mother testified that she had been communicating with father for roughly a week before they began exchanging text messages.

In May 2020, mother started dating a new partner (boyfriend). Shortly after, in June or July 2020, boyfriend moved into mother's home. Mother did not get approval from BCHS before allowing boyfriend to move in. She testified that she did not seek BCHS's approval because "that is my home, that is my decision." After dating for four months, mother and boyfriend became engaged in September 2020. At trial, mother testified that she plans to marry boyfriend.

³ Between February 5, 2020, and February 8, 2020, mother and father exchanged nearly 800 text messages.

When BCHS became aware that mother was dating a new partner, both the social worker and GAL asked to do a background check on boyfriend. Mother refused to comply. Mother testified that before allowing boyfriend to move into her home, she ran a “Google” background check on him and noticed that boyfriend had criminal history which, in part, involved domestic abuse. Boyfriend’s criminal record did not bother mother because it was “old” and she believed he had changed.

BCHS’s review of boyfriend’s court records revealed these convictions: a first-degree burglary and assault in 2011, a gross misdemeanor domestic assault in 2012, and a violation of a domestic abuse order for protection in 2013. And in August 2019, less than a year before mother started dating him, boyfriend was convicted of felony domestic assault. At the time of trial, boyfriend was still on probation. Additionally, in 2013, the district court involuntarily terminated boyfriend’s parental rights.

At trial, a capacity-to-parent evaluator testified that mother has a personality disorder with mixed features including obsessive-compulsive traits, schizoid traits, and histrionic traits. The capacity-to-parent evaluator testified that mother’s type of personality disorder is one that typically cannot be overcome and “really does impact her judgment and . . . the type of partners that she picks.” Mother also has a “borderline range of intellectual functioning” which makes it difficult for her to choose appropriate partners. And given mother’s low intellectual functioning and personality disorder, regardless of the services that mother receives, she may be unable to overcome the concern that she cannot protect her children from harm. Mother’s pending marriage to a person with domestic

abuse convictions led the capacity-to-parent evaluator to believe that mother still lacks insight and concern for her children.

At the end of trial, the district court found that BCHS proved by clear and convincing evidence two statutory grounds for termination. The district court found that mother is palpably unfit to be a party to the parent-child relationship under Minn. Stat. § 260C.301, subd. 1(b)(4), and that mother failed to correct the conditions that led to the children's out-of-home placement under Minn. Stat. § 260C.301, subd. 1(b)(5). After finding that the best interests of Child 1 and Child 2 required termination, the district court terminated mother's parental rights. Mother appeals from the order of termination.

DECISION

Mother challenges the district court's order terminating her parental rights to Child 1 and Child 2 and argues we must reverse the order because termination was inappropriate when "she had a bonded relationship with her children, had never harmed or injured the children and was engaged in her case plan." On appeal from a district court's termination-of-parental-rights order, 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." *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 "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted). And a district court abuses its discretion if it acts against logic, enters factual findings

unsupported by the record, or misapplies the law. *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010).

We will affirm a district court's termination of parental rights when (1) the county made reasonable efforts to reunify the family, (2) clear and convincing evidence supports one or more statutory bases for termination, and (3) termination is in the children's best interests. *See In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). Here, the district court found that BCHS made reasonable efforts to reunify mother with Child 1 and Child 2, clear and convincing evidence supported statutory bases for termination, and termination was in the best interests of Child 1 and Child 2. We agree.

A. The district court did not abuse its discretion by determining that BCHS made reasonable efforts to reunify mother with Child 1 and Child 2.

During oral arguments, mother asserted that she is challenging the district court's determination that BCHS made reasonable efforts to reunify mother with Child 1 and Child 2. Based on mother's briefing, however, it is not clear that mother challenged this determination. In her sole paragraph in her brief discussing reasonable efforts, mother does not cite anything in the record or point to any erroneous conclusion. Because mother inadequately briefed any challenge to the district court's reasonable efforts determination, we conclude that this issue is not properly before this court. *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an issue absent adequate briefing); *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 166 (Minn. App. 2005) (applying this aspect of *Wintz* in a TPR appeal), *review dismissed* (Minn. May 3, 2005). Although we conclude that mother forfeited this issue, we may

review a TPR order “as the interest of justice” requires and thus we briefly discuss mother’s argument for the sake of completeness. Minn. R. Civ. App. P. 103.04.

During a TPR proceeding, the district court must determine whether a county made reasonable efforts to reunite the parent with their children. *T.R.*, 750 N.W.2d at 664. “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.” *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). We review a district court’s ultimate determination of whether the efforts the county provided were reasonable for an abuse of discretion. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 322-23 (Minn. App. 2015), *review denied* (Minn. July 20, 2015).

Here, the district court determined that BCHS made reasonable efforts to reunify mother with Child 1 and Child 2. We agree. The county removed Child 1 and Child 2 from mother’s care in October 2018, and the district court terminated her parental rights in December 2020. For those two full years, BCHS provided mother with various services including: individual therapy, family therapy, domestic violence classes, parenting classes, a parenting evaluation, and visitation. We conclude that the district court did not abuse its discretion by determining that BCHS made reasonable efforts to reunify mother with Child 1 and Child 2.

B. The district court did not abuse its discretion by finding that clear and convincing evidence supports a statutory ground for termination.

A statutory ground to terminate parental rights exists when a parent is palpably unfit to be a party to the parent-child relationship. Minn. Stat. § 260C.301, subd. 1(b)(4). A

parent is “palpably unfit” when “a consistent pattern of specific conduct” is 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.* Here, the district court found that “despite being given an opportunity to work on her case plan [mother] continues to revert to and cultivate unsafe relationships that place her children in the path of harm.” We agree.

Throughout this case, mother displayed a consistent pattern of forming and maintaining relationships with unsafe individuals. After father’s parental rights were terminated and despite mother’s case plan and a domestic abuse no contact order prohibiting contact, mother continued to communicate with father. Mother testified that she contacted father about a vehicle that they shared and argues that the nearly 800 text messages the two exchanged do not show that they had an ongoing relationship. We disagree. The text messages support the district court’s finding that mother and father had an ongoing relationship.

Similarly, while working towards reunification, mother began a new relationship with a man who has both criminal and child protection history. After dating him for only two months, mother allowed him to move in. When BCHS tried to conduct a background check on live-in boyfriend, mother refused to comply. And after dating for four months, mother and boyfriend became engaged and plan to marry—all despite mother’s knowledge of boyfriend’s criminal and child protection history.

Mother’s own testimony supports the district court’s findings that she has not learned to adequately protect her children from harm or to prioritize their needs, safety, or

well-being. At trial, mother agreed that a person—exactly like boyfriend—“with a felony burglary that assaulted a person on the day of the burglary during the commission of that crime” was not a safe person to be in her home. But when BCHS asked mother how she thought it would work having a dangerous felon in her home with her children, mother testified that she “thought it would work out well.”

Furthermore, the capacity-to-parent evaluator testified that mother’s type of personality disorder typically cannot be overcome and impacts both her judgment and the type of partners she picks. Given mother’s low intellectual functioning and personality disorder, mother has not been able to adequately learn to identify, and to protect her children from, unsafe individuals. And her relationship with boyfriend—an individual with domestic violence and child protection history—shows that mother still lacks insight and concern for her children despite two years of counseling and services.

Mother’s pattern of allowing unsafe individuals into her life and inability to identify unsafe individuals renders mother unable, for the reasonably foreseeable future, to appropriately care for the needs of Child 1 and Child 2. We conclude that the district court did not abuse its discretion by finding that mother is palpably unfit to be a party to the parent-child relationship.⁴

⁴ Because “[t]ermination of parental rights will be affirmed as long as at least one statutory ground for termination is supported by clear and convincing evidence,” we need not reach the issue of whether the district court abused its discretion by finding that mother has failed to correct the conditions leading to the children’s out-of-home placement. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

C. The district court did not abuse its discretion by finding that termination of mother’s parental rights is in the best interests of Child 1 and Child 2.

When a statutory ground for termination exists, the district court must determine whether termination is in the best interests of the children. *R.W.*, 678 N.W.2d at 57. In analyzing what is in the best interests of the child, the district 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 a district court’s best-interests analysis for an abuse of discretion. *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 669 (Minn. App. 2020).

In her briefing, mother argues that termination was inappropriate because “she had a bonded relationship with her children,” but mother identifies no error in the district court’s weighing of the three best interests factors. As before, we conclude that mother has forfeited this issue. *Wintz*, 558 N.W.2d at 480; *J.B.*, 698 N.W.2d at 166. Even if we were to assume that mother intended to appeal the district court’s implicit determination that the third best interests factor outweighs any evidence against termination, we would affirm.

Here, the record lacks any evidence—other than mother’s own statement—showing that mother had a bonded relationship with Child 1 or Child 2. And the record contains no evidence that either child was bonded with mother. But the record does contain evidence that termination is in the best interests of the children. The district court found that both children experienced trauma while in mother’s care that continues to impact them. The

district court acknowledged that Child 1 has been able to verbalize the trauma she experienced. Yet, even though Child 2 has been unable to verbalize the trauma she endured, which has impacted her nervous system and has led her to self-harm in the form of prematurely pulling out her own baby teeth. In fact, Child 2 began this self-injurious behavior after a joint therapy session with mother.

The mental health of both Child 1 and Child 2 and their ability to process trauma is “fragile” and exposure to further violence would harm their health. Thus, the district court found that it was in the best interests of both Child 1 and Child 2 that mother’s parental rights be terminated. We agree and discern no abuse of discretion in the district court’s finding that the best interests of Child 1 and Child 2 require termination of mother’s parental rights.

Affirmed.