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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0537**

In the Matter of the Welfare of the Child of:
N. M., Mother.

**Filed October 4, 2021
Affirmed
Frisch, Judge**

Blue Earth County District Court
File No. 07-JV-20-4123

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Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

On appeal from an order terminating parental rights to her child, appellant-mother argues that the district court abused its discretion by determining that three statutory grounds to terminate parental rights exist and that termination was in the child's best interests. We affirm.

FACTS

Child in Need of Protection or Services

On July 17, 2019, appellant-mother N.M. gave birth to G.M., the child who is the subject of this appeal. On August 14, respondent Blue Earth County Human Services Department (the county) filed a petition to adjudicate G.M. in need of protection or services, alleging generally that G.M. was in an injurious or dangerous environment. Specifically, the county alleged that mother had struggled with substance abuse, voluntarily terminated her parental rights to two children in 2016, consented to a permanent transfer of custody of another child in 2018, and admitted to using synthetic marijuana in May 2019 while she was pregnant with G.M. The county asked the district court to order protective supervision. On August 27, the parties appeared for a hearing and mother denied the allegations. On September 13, the district court issued an order finding that the petition set forth a prima facie case for protective services but that it was in G.M.'s best interests to remain in mother's care, subject to the county's protective supervision.

On October 17, the district court conducted an emergency protective-care hearing, during which it received written correspondence and additional information. The district court then concluded that there were "reasonable grounds to believe the child [was] in surroundings or conditions which endanger[ed] the child's health, safety, or welfare." The district court ordered G.M. removed from mother's care and temporarily transferred custody of G.M. to the county for placement in foster care.

On October 22, mother entered an admission to the county's allegation that G.M. was in a condition or environment injurious or dangerous to him. She also signed an out-of-

home placement plan. The district court adopted the case plan and adjudicated G.M. as a child in need of protection or services (CHIPS). The case plan required mother to (1) complete a mental-health evaluation and sign necessary releases, (2) attend mental-health appointments and follow medical recommendations, (3) complete a domestic-violence program, (4) complete a group course for anger management, (5) submit to chemical testing, (6) refrain from using nonprescribed mood-altering substances, (7) complete an updated chemical-dependency assessment and follow recommendations, (8) maintain a safe living environment free from drugs and drug paraphernalia, (9) keep her social worker updated with her contact information, (10) maintain employment, (11) complete a parenting assessment and follow recommendations, and (12) provide for G.M.'s basic needs when in her care.

Petition to Terminate Parental Rights

On December 23, 2020, the county filed a petition seeking an order terminating mother's parental rights to G.M.¹ The county alleged three statutory grounds for termination: (1) failure to comply with parental duties, (2) palpable unfitness to parent, and (3) failure of reasonable efforts to correct conditions leading to the out-of-home placement. See Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5) (2020).

The petition contained allegations that G.M. had been in an out-of-home placement for over one year but that mother had “not demonstrated compliance with the

¹ The county also petitioned for an order terminating G.M.'s father's parental rights. The termination proceedings proceeded against both parents, and father's parental rights were ultimately terminated. Father did not join in this appeal.

recommendations for mental health services, outpatient chemical dependency [treatment], submitting to random [drug] testing . . . and ha[d] been inconsistent in her visits with [G.M.]” The petition described the county’s efforts to correct the conditions leading to G.M.’s out-of-home placement, including (1) providing mother with gas cards to facilitate mother’s supervised visitation, (2) supervised visitation, (3) a parenting-capacity assessment, (4) random drug testing, and (5) inpatient chemical-dependency treatment and the opportunity for outpatient treatment.

The petition also contained allegations that mother had failed to comply with substantial portions of her case plan. Regarding mother’s mental-health and chemical-dependency issues, the county alleged, among other things, that (1) mother had been unsuccessfully discharged from outpatient treatment, (2) mother was “sporadic in her attendance with therapy” following her mental-health evaluation, (3) mother had failed to keep her case worker updated about her medications, (4) mother had not completed domestic-violence or anger-management programming, (5) mother had failed to follow through with weekly therapy appointments, (6) mother missed calling in for color-coded drug testing 120 times, (7) mother tested positive for drugs twice in October 2019, (8) mother failed to appear for drug testing 25 times between October 2019 and October 2020, and (9) mother was unsuccessfully discharged from outpatient chemical-dependency treatment. The county further stated: “The case worker has not conducted any recent home visits due to [mother] not making significant progress on her case plan.” The assigned county case manager attested that the allegations of the petition were true and correct.

Court Trial and Default

On March 5, 2021, the district court conducted a court trial. Mother's attorney appeared for trial, but mother failed to appear. Her counsel indicated that he had attempted to contact mother multiple times without response. The county indicated its intent to proceed by default and called mother's assigned case manager to testify in support of its petition.

The case manager testified that she worked on mother's case throughout its duration. At the time of trial, G.M. had been in out-of-home placement for a total of 505 days. The case manager testified that mother had failed to satisfactorily comply with her case plan, explaining that mother (1) had been "sporadic with her visits" with G.M., (2) had "not been following through with the mental[-health] recommendations," (3) had not been getting recommended medications, (4) failed to complete anger-management programming, (5) failed to complete domestic-violence programming, (6) did not comply with the county's drug-testing agreement, (7) missed 163 call-in days for drug testing, (8) missed 40 retinal scans for drug testing, (9) had "some positive drug testing," and (10) "was not following through with . . . outpatient" treatment. The case manager testified that mother sometimes went as long as one month without visiting G.M. and without contacting the case manager. There were also times when mother missed visits with G.M. during which "the visitation supervisor would have [to] go and feed [G.M]."

The case manager testified about various other areas of noncompliance. Mother was disallowed from renewing her lease due to noise complaints, damage to the property, and "having people around the home that are not safe." The case manager claimed it had

been difficult to maintain contact with mother because she had “at least five or more phone numbers” during the case. Mother completed a parenting assessment “but did not follow through with the recommendations.”

The case manager testified that, in her opinion, it was in G.M.’s best interests that mother’s parental rights be terminated and cited mother’s lack of progress on her case plan as the basis of that opinion.

Findings, Conclusions, and Order Terminating Mother’s Parental Rights

At the close of the case manager’s testimony, the district court orally pronounced:

I believe that . . . unfortunately the default has been proven up here and that based on the fact that [mother] has . . . substantially failed to comply with the case plan, the amount of time the child has been out of the home . . . and basically [mother’s] lack of interest in this situation and the fact that she is not here today, I will grant the termination of parental rights.

On March 29, 2021, the district court issued its written findings, conclusions, and order terminating mother’s parental rights. The district court took “judicial notice of all previous court orders, reports[,] and petitions” in the CHIPS and termination court files.² The district court found that the county’s request for supervision following G.M.’s birth was based on mother’s “past issues with chemicals, never completing treatment, and never completing a child protection case plan.”

² The district court may take judicial notice as set forth in Minn. R. Juv. Prot. P. 3.01, subd. 3, and Minn. R. Evid. 201(b). Mother did not object to the scope of the district court’s judicial notice, did not raise any related argument in a motion for a new trial or amended findings, and makes no relevant argument on appeal. Although the record on appeal is typically limited to “[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings,” Minn. R. Civ. App. P. 110.01, we consider the district court’s termination decision in light of the record considered by the district court.

The district court determined that three statutory grounds existed to support termination of mother's parental rights. First, the district court determined that (1) mother "substantially, continuously, or repeatedly refused or neglected to comply" with her parental duties "by failing to provide a stable, consistent, safe and sober living environment for [G.M.]," (2) mother was physically and financially able to do so, and (3) reasonable efforts by the county "failed to correct Mother's chemical dependency issues, which led to [G.M.'s] out-of-home placement and the TPR petition."³

Second, the district court determined that mother was palpably unfit to be a party to the parent-child relationship "because of specific conditions directly relating to the . . . relationship" which rendered mother incapable of caring appropriately for G.M.'s "physical, mental, or emotional needs." The district court also found that mother's "circumstances [were] not likely to change in the reasonably foreseeable future."

Third, the district court determined that, despite the county's reasonable efforts, mother had "failed to comply with the reunification goals of her case plan and failed to demonstrate that the conditions leading to the out of home placement . . . had been corrected, particularly . . . Mother's mental health needs and chemical dependency needs." It also noted that G.M. had resided in an out-of-home placement for more than 500 days, explaining that "[t]here [was] a presumption that reasonable efforts ha[d] failed."

³ In passing, the district court also found that "provision of further services for the purpose of reunification would be futile and unreasonable" given mother's failure to comply with her case-plan requirements. But the district court did not incorporate this finding into its determination pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2), instead relying on the failure of reasonable efforts to correct the conditions leading to G.M.'s placement.

The district court also determined that termination of mother's parental rights was in G.M.'s best interests. It found that mother had not "been able or willing to make any sufficient changes in order to provide a safe home for [G.M.] and be a stable, attentive parent for him." The district court also found that mother had "failed to take advantage of the services and opportunities provided to them by [the county] to address [her] chemical dependency issues, mental health, and/or anger management issues, which [was] necessary to ensure the safety and well-being of [G.M.]." It explained that G.M.'s "safety and well-being is paramount and takes precedence over any competing interests of Mother . . . to preserve the child-parent relationship." And it determined that permanency planning and adoption would afford G.M. "the type of stability, safety, and attention that" mother had not provided and would be unable to provide in the reasonably foreseeable future.

The district court terminated mother's parental rights. Mother appeals.

DECISION

Mother argues that the district court abused its discretion by determining that statutory circumstances exist to permit termination and that termination is in G.M.'s best interests. Parental rights may only be terminated for "grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). Whether to terminate parental rights is discretionary with the district court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). A district court may order the termination of parental rights if it (1) finds by clear and convincing evidence that a statutory condition exists to support termination, (2) determines that termination is in the child's best interests, and (3) finds that reasonable efforts toward reunification were either made or were not required. Minn.

Stat. §§ 260C.301, subds. 1(b), 7, 8, .317, subd. 1 (2020); *see also In re Welfare of Child of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). “We review the termination of parental rights to determine whether the district court’s findings address the statutory criteria and whether the district court’s findings are supported by substantial evidence and are not clearly erroneous.” *S.E.P.*, 744 N.W.2d at 385.

I. The district court did not abuse its discretion by determining the existence of at least one statutory ground to support termination of parental rights.

The district court found the existence of three statutory circumstances to support termination of mother’s parental rights: failure to comply with parental duties, palpable unfitness to be a party to the parent-child relationship, and reasonable efforts failed to correct the conditions leading to G.M.’s placement.⁴ Mother argues that the district court abused its discretion because the county failed to present substantial evidence of any basis to terminate her parental rights. The county disagrees, arguing that clear and convincing evidence supports the district court’s findings regarding the statutory grounds to terminate mother’s parental rights.

The existence of a statutory condition permitting the termination of parental rights must be proved by clear and convincing evidence. Minn. Stat. § 260C.317, subd. 1; Minn. R. Juv. Prot. P. 58.03, subd. 2(a). The county bears the burden of proving the grounds for

⁴ “[W]e need only one properly supported statutory ground in order to affirm a termination order.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012), *rev. denied* (Minn. July 17, 2012). We decline to address the district court’s palpable-unfitness determination because, as set forth herein, the district court did not abuse its discretion by determining that mother failed to comply with her parental duties and that reasonable efforts failed to correct the conditions leading to G.M.’s out-of-home placement.

termination, including when proceeding by default. See *In re Welfare of Child of H.G.D.*, 962 N.W.2d 861, 869-70 (Minn. 2021). “[W]e closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing.” *S.E.P.*, 744 N.W.2d at 385. “[W]e will 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 Child. of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. 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 Child. of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted). “In applying the clear-error standard, we view the evidence in a light favorable to the findings. We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed.” *In re Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotations and citations omitted). Additionally,

[the] clear-error review does not permit an appellate court to weigh the evidence as if trying the matter *de novo*. Neither does it permit [an appellate court] to engage in fact-finding anew, even if the court would find the facts to be different if it determined them in the first instance. Nor should an appellate court reconcile conflicting evidence. Consequently, an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court. Rather, because the factfinder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding, an appellate court’s duty is fully performed after it has fairly considered all

the evidence and has determined that the evidence reasonably supports the decision.

Id. at 221-22 (quotations and citations omitted). As a result, we must “fully and fairly consider the evidence, but so far only as is necessary to determine [whether the evidence] reasonably tends to support the findings of the factfinder.” *Id.* at 223 (quotation omitted). Thus, “[w]hen the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* (quotation omitted).

A. The district court did not abuse its discretion by determining that mother failed to comply with her parental duties.

The district court determined that mother neglected or failed to comply with her parental duties “by failing to provide a stable, consistent, safe and sober living environment” despite her physical and financial ability to do so. Mother contends that the district court abused its discretion because there was no evidence presented regarding her living conditions and because her chemical-dependency struggles were insufficient to support the determination. The county responds that mother’s failure to comply with portions of her case plan support the district court’s determination.

A district court may terminate parental rights if it finds

that 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.

Minn. Stat. § 260C.301, subd. 1(b)(2).

Mother focuses too narrowly on the physical environment of her home rather than the overall environment of her care and her ability to provide for G.M.'s needs. In the latter, broader context, “[f]ailure to satisfy requirements of a court-ordered case plan provides evidence of a parent’s noncompliance with the duties and responsibilities under section 260C.301, subdivision 1(b)(2).” *In re Welfare of Child. of K.S.F.*, 823 N.W.2d 656, 666 (Minn. App. 2012). And the district court made numerous findings regarding mother’s failure to comply with her case-plan requirements, including mother’s failure to attend outpatient treatment, comply consistently with drug-testing requirements, complete domestic-violence and anger-management programming, follow the parenting assessment’s recommendations, and maintain consistent contact with G.M. Because the county presented evidence that mother failed to comply with various components of her case plan aimed at establishing a “safe and sober living environment,” the district court did not abuse its discretion by determining that mother “substantially, continuously, or repeatedly refused or neglected to comply with” her parental duties. Minn. Stat. § 260C.301, subd. 1(b)(2).

B. The district court did not abuse its discretion by determining that reasonable efforts failed to correct the conditions leading to G.M.’s out-of-home placement.

Even though we have affirmed the district court’s determination that mother failed to comply with her parental duties, we will also consider its determination that reasonable

efforts under its direction failed to correct the conditions leading to G.M.'s out-of-home placement. The district court determined that reasonable efforts by the county failed to correct the conditions leading to G.M.'s out-of-home placement. Mother contends that the district court abused its discretion because the county's reunification efforts were insufficient and unreasonable. The county contends that it made reasonable efforts to correct the conditions predicated G.M.'s placement but that mother failed to utilize the opportunities afforded to her.

The district court may terminate parental rights if it finds "that following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). "Reasonable efforts encompass more than just a case plan." *J.K.T.*, 814 N.W.2d at 88. "Reasonable efforts at rehabilitation are services that go beyond mere matters of form so as to include real, genuine assistance. The quality and quantity of efforts to rehabilitate and reunify the family impact the reasonableness of those efforts." *In re Welfare of Child. of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *rev. denied* (Minn. Mar. 28, 2007).

Mother contends that the district court identified only two efforts which were collectively insufficient and unreasonable: the scheduling of supervised visits for mother and the provision of gas cards to attend visits. Although these were the only relevant findings appearing under the reasonable-efforts heading in the district court's order, the district court also characterized mother's case plan itself as "reasonable," recognized that it was aimed at "addressing Mother's mental health needs and chemical dependency

needs,” and determined that the county had “made reasonable efforts *to rehabilitate Mother.*” By characterizing the county’s efforts and the case plan as reasonable, and by linking them to mother’s underlying mental-health and chemical-dependency struggles, the district court did not limit its consideration of the county’s reasonable efforts to provide supervised visits and gas cards.

The district court made findings regarding mother’s failure to comply with the recommendations of the parenting assessment, to follow drug-testing protocols, to complete anger-management and domestic-abuse programming, and to maintain consistent contact with her case manager. It found that mother (1) failed to complete domestic-violence and anger-management programming, (2) failed to consistently comply with random drug testing, (3) failed to call in for color-code testing on 163 days, (4) failed to submit to eye-scan testing on 40 days, and (5) failed to enter recommended outpatient chemical-dependency treatment. The district also found that mother (1) was inconsistent in maintaining contact with G.M., (2) maintained an inconsistent living situation, (3) held “sporadic employment,” and (4) failed to comply with the recommendations of the parenting-capacity assessment. The district court’s findings and analysis necessarily recognized that the county made certain efforts to rehabilitate mother and reunify her with G.M. through parenting education, drug testing, and overall communication about, and monitoring of, case-plan compliance. We have recognized that such efforts may be reasonable given the particular facts of the case. *E.g., In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 656, 663 (Minn. App. 2018) (considering county’s efforts to address chemical dependency, provide transportation, inform of necessary reunification steps,

maintain contact, and require drug testing); *In re Welfare of A.H.*, 402 N.W.2d 598, 604 (Minn. App. 1987) (considering parenting-skill instruction). On this record, mother fails to demonstrate that the district court abused its discretion by determining that the county's efforts were reasonable given mother's circumstances and that those reasonable efforts failed to correct the conditions leading to G.M.'s out-of-home placement.

II. The district court did not abuse its discretion by determining that termination of parental rights is in G.M.'s best interests.

The district court determined that termination of mother's parental rights is in G.M.'s best interests. Mother contends that the district court abused its discretion because it failed to adequately consider competing interests and because she made changes sufficient "to provide a safe home for G.M. and be a stable, attentive parent for him." The county responds that the district court adequately balanced the necessary factors and that its determination was not an abuse of discretion.

A district court may terminate parental rights only if it is in the child's best interests. *S.E.P.*, 744 N.W.2d at 385. "[T]he best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7. The district court must consider (1) "the child's interests in preserving the parent-child relationship," (2) "the parent's interests in preserving the parent-child relationship," and (3) "any competing interests of the child." Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). We review a district court's best-interests determination for an abuse of discretion. *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 669 (Minn. App. 2020).

We reject mother's contention that the district court "almost entirely neglected to analyze either G.M.'s interest in preserving a relationship with his mother or [mother's] interest in preserving a relationship with her son." The district court found that mother had not "been able or willing to make any sufficient changes in order to provide a safe home for [G.M.] and be a stable, attentive parent for him." On the record at the hearing, the district court noted mother had a "lack of interest in this situation" following her nonappearance. And the district court acknowledged that mother might have had an interest in maintaining the relationship but reasoned that "[a]ny interest . . . is outweighed by [G.M.'s] interest in a safe and stable home." Although the district court did not explicitly refer to *G.M.'s* interest in maintaining a relationship with mother, the district court's findings and analysis recognized that G.M.'s interest was diminished given mother's inability to provide a safe and suitable home.

We also reject mother's contention that she made sufficient changes to provide a safe home and a stable relationship for G.M. She relies on evidence of her *partial* case-plan compliance, but the district court emphasized key, unfulfilled requirements aimed at addressing mother's primary struggles. The district court thoroughly explained why G.M.'s need for a "safe and stable home" rendered termination in G.M.'s best interests. It reasoned that mother was and would remain unable to provide G.M. that type of home, whereas adoption presented the possibility of "stability, safety, and attention." Mother demonstrates no clear error in the district court's findings. Accordingly, we discern no abuse of discretion in the district court's determination that termination is in G.M.'s best interests.

In conclusion, the district court did not abuse its discretion by determining the existence of at least one statutory circumstance to support termination of mother's parental rights. Nor did the district court abuse its discretion by determining that termination is in the best interests of G.M. We therefore affirm the termination of mother's parental rights.

Affirmed.