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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0611**

In the Matter of the Welfare of the Child of:
H. R. and B. R. (deceased), Parents.

**Filed October 18, 2021
Affirmed
Bjorkman, Judge**

St. Louis County District Court
File No. 69DU-JV-17-590

Matthew Miller, Duluth, Minnesota (for appellant-mother)

Mark S. Rubin, St. Louis County Attorney, Sara Jankofsky, Assistant County Attorney,
Duluth, Minnesota (for respondent St. Louis County Public Health and Human Services
Department)

Rebecca Shaw, Duluth, Minnesota (for child)

Tyler Modderman-Anderson, Duluth, Minnesota (guardian ad litem)

Considered and decided by Smith, Tracy M., Presiding Judge; Bjorkman, Judge;
and Hooten, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant-mother challenges the termination of her parental rights, arguing that the district court (1) clearly erred in its findings of fact regarding respondent-county's efforts to reunite the family and (2) abused its discretion by determining that termination is in the child's best interests. We affirm.

FACTS

Appellant H.R. (mother) has four children. Respondent St. Louis County Public Health and Human Services Department (the county) has been involved with and provided services to the family since 2006. Mother is hearing impaired and has a borderline IQ of 77. The recurring issues are unsanitary conditions in the home and neglect of her children's medical needs.

The child who is the subject of this case was born in 2009 and is the youngest of mother's children. The child has significant medical needs. He was diagnosed with a rare genetic disorder that causes elongated fingers and toes, joint laxity, intellectual disability, and skeletal anomalies, which required surgery to correct fused bones in his head. And he has been diagnosed with asthma, post-traumatic stress disorder, and attention deficit/hyperactivity disorder. The child takes 11 medications daily. He needs regular medical monitoring and care from a geneticist, a pediatric orthopedist, a pediatric physiatrist, an ophthalmologist, a cardiologist, a pediatric neurologist, a urologist, and an endocrinologist. Of greatest concern is the child's bicuspid aortic valve. It will likely require replacement, and routine monitoring is essential to prevent it from rupturing.

In 2011, the county petitioned to have the children adjudicated as needing protection or services (CHIPS). All four children were placed in temporary foster care. Mother and B.R. (father) complied with programming aimed at reuniting the family. The two youngest children remained in foster care longer due, in part, to their special needs. Ultimately, mother and father regained custody of all four children. The CHIPS case was closed in November 2013.

In March 2014, the county began receiving reports of unsanitary conditions in the home. In November, the county became aware of possible physical abuse by father against the child. After an investigation, the county determined that the family needed ongoing child-protection services. Mother and father were less engaged with these efforts than they had been in the past. But the social workers did not have significant concerns about the children's safety based on what they observed in the home. In December 2015, father was struck and killed by a car. Shortly thereafter, the county closed the child-protection case. But it continued to provide supportive services.

In May 2016, the county received reports from healthcare providers that the child was missing medical appointments. The providers expressed concern that mother was not able to meet the child's necessary healthcare needs. A social worker met with mother to discuss the issue and developed a plan to help her schedule and get the child to appointments. Three months later, the social worker learned that the child continued to miss appointments. She again met with mother to develop a plan to address the medical situation and condition of the home. Mother signed the plan. But she did not respond to the social worker's multiple attempts to schedule homemaker services. When mother failed to schedule and bring the child to appointments, the county initiated another CHIPS proceeding.

In July 2017, the county petitioned to terminate mother's parental rights (TPR) as to the two youngest children. The district court placed them in foster care and allowed the two oldest children to remain with mother under the county's supervision.

While the TPR case was pending, the county continued to provide services to the family. The social workers created a series of out-of-home placement plans (case plans) in conjunction with mother and directed her to services designed to help her meet the child's special needs and to reunify the family. In May 2018, the county asked to withdraw the TPR petition, replacing it with a petition for temporary custody. The county retained custody of the two youngest children.¹

In July 2020, the county again petitioned to terminate mother's parental rights to the child. The case proceeded to trial in March 2021, during which the district court heard testimony from 13 witnesses and received 16 exhibits. At the time of trial, the child had been in out-of-home placement for approximately 1,320 days.² The assigned social workers testified that they tried to engage mother in programming and offered alternative ways for her to meet the case-plan goals. But mother was reluctant to engage with the support staff and resources offered to her. Mother testified that the social workers did not explain the case plans to her, failed to accommodate her hearing and intellectual disabilities, and did not offer her appropriate services.

The district court determined that clear and convincing evidence supported termination under three statutory bases: (1) refusing or neglecting to comply with the duties imposed by the parent-child relationship, (2) failure of reasonable efforts to correct the conditions leading to the child's out-of-home placement, and (3) the child's status as

¹ In December 2019, mother consented to transfer custody of the child's older brother to his foster parents.

² This is in addition to the more than 900 days the child was in foster care before July 2017.

neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(2), (5), (8) (2020). The district court made detailed credibility findings, crediting the testimony of the social workers, physicians, nurse, guardian ad litem (GAL), and foster mother, and finding it was “unable” to credit much of mother’s testimony. The district court also determined that termination is in the child’s best interests. Mother appeals.

DECISION

Parental rights may only be terminated for grave and weighty reasons. *In re Custody of N.A.K.*, 649 N.W.2d 166, 175 (Minn. 2002). We will affirm a district court’s decision to terminate “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 Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted). We defer to a district court’s credibility determinations. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). And we will not disturb a district court’s determination that clear and convincing evidence supports a statutory termination ground, absent an abuse of discretion. *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 899, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012).

The district court concluded that clear and convincing evidence supports three statutory bases for termination. As to these bases, mother’s sole challenge is to the findings of fact that underly the court’s determination that the county made reasonable efforts to reunite her with the child. We review a district court’s findings of fact for clear error. *In re Child. of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008). A finding of fact is clearly erroneous

if it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Id.* at 660-61 (quotation omitted). Noting that “[t]he clear-error standard of review is familiar because it applies across so many contexts[,]” our supreme court recently stated:

In applying the clear-error standard, [appellate courts] view the evidence in a light favorable to the findings. [Appellate courts] 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).

I. The district court did not clearly err in its findings of fact regarding the county’s efforts to reunite the family.

Unless relieved of its obligation by the district court, a county seeking to terminate a person’s parental rights must make reasonable efforts to reunite the child and parent. Minn. Stat. § 260.012(a) (2020). Reasonable efforts must “go beyond mere matters of form so as to include real, genuine assistance.” *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). They must be “(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).

A county must describe these efforts in an out-of-home placement plan filed within 30 days after a child is placed in foster care. Minn. Stat. § 260C.212, subd. 1(a) (2020). The plan must be prepared “jointly with the [child’s] parent,” state why the child was

placed in foster care, explain the changes and services needed to allow the child to safely return home, and “when reunification is the plan.” Minn. Stat. § 260C.212, subd. 1(b), (c)(2) (2020). The plan must be signed by the parent, submitted to the district court for approval, and “explained to all persons involved in its implementation.” Minn. Stat. § 260C.212, subd. 1(b)(1)-(3), (c) (2020); *see also In re Welfare of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018).

Mother argues that the district court clearly erred by finding that (1) the case plans were created with her input, (2) the county sufficiently explained the case plans to her, and (3) the provided services accommodated her hearing and intellectual disabilities. We are not persuaded for two reasons.

First, the record supports the challenged findings of fact. The four social workers³ who worked with mother from 2016 through the time of trial all testified that mother helped develop the case plans. Mother’s second social worker stated that she and mother created the first case plan. The plan required mother to, among other things, keep the home reasonably clean and ensure that the needs of all family members were met. It also required her to complete a psychological evaluation and follow recommendations, and to engage with services, including parenting-education and homemaker/home-management services. The social worker arranged for the psychological assessment and referred mother to service providers, including a number that offered parenting education. Mother continued to resist

³ The four social workers included the initial social worker who conducted the family assessment prior to the 2016 CHIPS proceeding, and three social workers who were assigned sequentially between 2017 and 2021. A fifth social worker has been the child’s developmental disabilities case manager since 2014.

that programming, even after the social worker directed her to a more individualized program.

The second social worker likewise referred mother to several different programs. She testified that she provided information about the programs to mother in small chunks, as recommended by the psychologist who assessed mother, and repeated the information on multiple occasions. The social worker stated that she “often call[ed] when something happened so that [she] could talk to [mother] and then email [mother] after she didn’t answer the phone.”

The third social worker testified that mother told him that she had “had enough parenting services” and did not need parenting education. He also testified that he met with mother every few months, discussed the case plans in person and provided mother written copies, and offered to make referrals for the recommended services. At mother’s request, he generally communicated with her by text or email unless a more urgent issue required a call. Because mother told him she has trouble hearing, he made a point of checking to make sure she heard and understood him.

The fourth social worker began working with mother before the COVID-19 pandemic and continued through the time of trial. She gave mother written copies of the relevant case plans, in person before the pandemic and later by mail. She reviewed the case plans with mother, and regularly offered to help mother access services, including virtual programming. She was aware of mother’s disabilities. She often communicated with mother by text and email. When speaking directly to mother, the social worker made

sure mother could read her lips, and she raised her voice. And she followed mother's request to address problems one-by-one instead of all at once.

Second, mother's arguments essentially invite us to reweigh the evidence—something we cannot do. *See L.A.F.*, 554 N.W.2d at 396 (“Considerable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses.”). Mother contends that the district court should have credited her testimony over that of the social workers because she did not sign every case plan, some of the case plans did not list her as involved in its creation, and none of the case plans note her disabilities. And she points to her own testimony that the social workers never told her what she needed to do to be reunited with the child and insulted her in various ways. These arguments are unavailing.

The district court made careful and thorough findings based on the testimony and other evidence. In particular, the district court did not credit mother's testimony that the social workers did not communicate effectively with her, said she was “stupid,” and told her she was “supposed to walk to the Twin Cities” for the child's medical appointments. Rather, the court found, “It simply makes no sense that [mother] could hear numerous insulting and outlandish statements from social workers but not hear anything that social workers told her related to reunification and [the child's] significant medical constellation.” Likewise, the court did not credit (and characterized as “astonishing”) mother's testimony that the former GAL told her she was “too stupid” to understand the child's medical needs and that “the boys were better off without her, and would never come home.”

In short, the evidence reasonably supports the district court’s finding—including its express credibility determinations—that mother had a hand in creating the case plans, understood what they required, and received services that accommodated her disabilities. On this record, we discern no clear error in the findings that led the district court to conclude that the county made reasonable efforts to reunify mother with the child.

II. The district court did not abuse its discretion by determining that termination is in the best interests of the child.

The child’s best interests are the “paramount consideration” in all termination cases. Minn. Stat. § 260C.301, subd. 7 (2020). Accordingly, the rules of juvenile protection require that

before ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze:

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); see *In re Welfare of Child. of M.A.H.*, 839 N.W.2d 730, 744 (Minn. App. 2013) (describing the best-interests analysis in a TPR case as weighing three discrete interests: the child’s interest in maintaining the relationship, the parents’ interest in maintaining the relationship, and any competing interest of the child). “Competing interests include such things as a stable environment, health considerations and the child’s preferences.” *In re Welfare of Child. of K.S.F.*, 823 N.W.2d 656, 668 (Minn. App. 2012) (quotation omitted). We review a district court’s best-interests determination

for abuse of discretion. *In re Welfare of Child. of K.L.W.*, 924 N.W.2d 649, 656 (Minn. App. 2019), *rev. denied* (Minn. Mar. 8, 2019).

It is undisputed that the district court made the requisite best-interests findings. Mother argues that the district court abused its discretion by determining that the evidence weighs in favor of termination because the GAL did not investigate before recommending termination, and because the evidence is insufficient to support the best-interests findings. We address each argument in turn.

A. Guardian ad Litem

Mother first asserts that the district court abused its discretion because the GAL did not fulfill his obligation under the Minnesota Rules of General Practice to

conduct an independent investigation to determine the facts relevant to the situation of the child or incompetent adult and the child's parent, legal custodian, or other household or family member, which must include, unless specifically excluded by the court: . . .

(ii) meeting with and observing the child in the home setting and considering the child's or incompetent adult's wishes, as appropriate; and

(iii) interviewing parents, caregivers, and others relevant to the case.

Minn. R. Gen. Prac. 905.01(a)(ii-iii) (rule 905.01). Mother contends that the GAL never met or spoke to her during the year leading up to the trial, never observed her visits with the child, and that his trial testimony reflects his failure to conduct an independent investigation.⁴ The record defeats these arguments.

⁴ Mother cites no legal authority to support her argument that a district court abuses its discretion by terminating parental rights in cases where the GAL did not meet the requirements of rule 905.01. We have found no such authority. *Cf. State Dep't of Labor*

The district court found that the GAL reached out to mother several times, but “was unsuccessful in connecting” with her. The GAL’s testimony supports this finding. He testified that he tried to call mother on June 6, 18, and September 24 of 2020, but her voicemail was not set up. He tried again on March 4, 2021, in preparation for trial, and followed up with a text to which mother responded on March 9, the day before the trial began. At that time, the GAL consulted his supervisor who agreed it was not appropriate to call mother back as the trial was beginning. In addition to his efforts to interview mother, the district court found, and the record supports, that the testifying GAL consulted with the former GAL, met with the child, and attended quarterly meetings with the social worker, foster-care licenser, and foster mother during which they discussed the visits between mother and the child and mother’s progress. And the record shows mother and the child had only one in-person visit while the GAL was assigned to the case, and their virtual visits were “often incredibly short,” so as to offer the GAL only minimal insight into their relationship.

The district court specifically addressed mother’s rule 905.01 argument, noting that interviewing mother and personally observing her with the child was preferable, but that this was difficult for the GAL to perform under the circumstances, and their absence did not mean the GAL’s testimony and recommendations should be disregarded. Moreover, while the district court credited the GAL’s termination recommendation, it expressly stated

& Indus. v. Wintz Parcel Drivers, Inc., 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach inadequately briefed issues); *see also In re Welfare of Child of P.T.*, 657 N.W.2d 577, 586 n.1 (Minn. App. 2003) (applying *Wintz* in a termination-of-parental-rights appeal).

that it was not “solely relying upon testimony from the [GAL].” The district court also found that the county “presented clear and convincing evidence related to the best interests analysis from every single witness including the mother, [the child’s pediatrician], [the coordinated care nurse], [mother’s psychological evaluation administrator], [the child’s foster mother], and every social worker who testified.” The record does not persuade us that the district court abused its discretion by considering the GAL’s testimony.

B. Sufficiency of the Evidence

Mother next argues that the evidence is insufficient to support the district court’s determination that termination serves the child’s best interests. She specifically asserts the finding that “without the interventions that have been provided, [the child’s] medical condition would be dire” lacks evidentiary support. We disagree.

The child’s genetic condition is rare, requiring continued monitoring as the child grows to address potential complications. Both the child’s pediatrician and his coordinated-care nurse testified that the child needs to take numerous medications every day, must attend regular appointments with numerous specialists, and needs a caregiver who is able to track his progress. Without these interventions, the child would not make optimal progress and he could have serious cardiovascular issues.

Although the child’s failing bicuspid aortic valve is the most pressing medical concern, his pediatrician testified that regular monitoring by other medical specialists is also important. An orthopedist assesses the child’s bones and joints because his genetic anomalies put the child at risk for “more pain and dysfunction.” A physiatrist oversees his speech and physical therapy and makes sure he has appropriate orthotics supporting his

joints. An ophthalmologist follows the child's vision because he is at risk of developing severe nearsightedness.

Mother points to the pediatrician's testimony that the child no longer needs growth hormones—one of the major concerns at the time the child was placed in foster care—as evidence that the child's current medical status is not “dire.” But the district court credited the above medical testimony and the foster mother's explanation that the child continues to have physical and mental-health issues that require regular monitoring and treatment. And the district court's finding that no services or programs would enable mother to meet the child's medical needs is amply supported by testimony from the social workers and medical providers about mother's consistent inability or refusal to use the resources the county provided or otherwise ensure that the child's significant medical needs are met.

Ultimately, the district court explained how it balanced the interests of mother and the child, finding that

mother has not been able to meet the child's medical or mental health needs and has demonstrated her complete unwillingness to engage in the numerous available services that would increase her capacity to meet [the child's] needs, any interests in preserving the relationship would be nominal at best and would come at significant risk to [the child's] life.

The district court then found that “the child will be able to be adopted by an individual who can meet his significant needs, with whom the child already has a significant relationship, and who is committed to maintaining the child's relationship with his biological siblings.” The district court acknowledged mother's love for the child, but noted that the child had been in out-of-home placement for more than half of his life and continued reunification

services were not consistent with permanency plans for the child, particularly because mother had not “made any meaningful progress on her reunification plan.”

The record shows mother loves the child and expresses her desire to appropriately care for him. But our careful review of the record persuades us that the district court did not abuse its discretion by determining that termination is in the child’s best interests.

Affirmed.