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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0949
A21-0950**

In the Matter of the Welfare of the Child of: A. D. B. f/k/a A. D. H. (Mother)
and D. M. D. (Father) (A21-0949),

In the Matter of the Welfare of the Children of: A. D. B. f/k/a A. D. H. (Mother)
and D. P. B. (Father) (A21-0950).

**Filed January 24, 2022
Affirmed
Slieter, Judge**

Stearns County District Court
File Nos. 73-JV-21-441, 73-JV-21-439

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Considered and decided by Gaïtas, Presiding Judge; Smith, Tracy M., Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant-mother A.D.B. challenges the involuntary termination of her parental rights, arguing that the county failed to prove a statutory basis exists to support termination, the county failed to make reasonable efforts to reunite the family, and termination of her

parental rights was not in the best interests of the children. Because the county's reasonable efforts failed to correct the conditions leading to the children's out-of-home placement, and termination is in the children's best interest, we affirm.

FACTS

These are consolidated appeals from the district court's order terminating mother's parental rights to her children J.N.B. and T.M.D., born in 2020, and 2015, respectively.¹ At the time of the trial, mother had four children, only two of which are a part of this appeal.²

J.N.B. tested positive at birth for amphetamine, methamphetamine, THC, and alcohol. As a result, respondent Stearns County Human Services (the county) placed an emergency protective care hold on all four of mother's children and placed them into relative foster care.

The county initiated a child protection proceeding on March 25, 2020, and, following an emergency protective care hearing, the district court, due primarily to mother's chemical dependency, ordered all four children into the protective care of the county for foster care placement.

¹ J.N.B.'s father is D.P.B. and T.M.D.'s father is D.M.D, and neither father appeals the termination of his parental rights.

² The county petitioned to involuntarily transfer permanent legal custody of mother's two children who are not part of this appeal. A joint trial involving all four children occurred, and our court separately considered an appeal of the district court's order to transfer permanent legal custody and remanded the matter for further findings. *In re Welfare of Children of A.D.B.*, No. A21-0876 (Minn. App. Jan. 18, 2022).

On July 8, 2020, the district court adjudicated the children in need of protection or services (CHIPS). After mother made several, mostly unsuccessful, attempts at residential and outpatient treatment, the county petitioned the district court to terminate her parental rights to J.N.B. and T.M.D on January 22, 2021. The county alleged that: (1) mother was “palpably unfit” pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4) (2020); (2) reasonable efforts had failed to correct the conditions that led to placement pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5) (2020); and (3) the children were neglected and in foster care pursuant to Minn. Stat. § 260C.301, subd. 1(b)(8) (2020). Trial was held on June 1 and 4, 2021. The district court, based solely upon the second alleged statutory basis, terminated mother’s parental rights to J.N.B. and T.M.D. Mother appeals.

DECISION

I. The district court was within its discretion in concluding that reasonable efforts failed to correct the conditions leading to the children’s placement.

A. Standard of review

“We affirm the district court’s termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family.” *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted); *see* Minn. Stat. § 260C.301, subd. 7 (2020). “[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 Children of J.R.B., 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). This two-part standard, reviewing findings of underlying fact for clear error and “ultimate facts” for abuse of discretion, “is inherent in juvenile-protection caselaw.” *Id.* at 900-01.

“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, [they] 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.

Id. at 221-22 (quotations, citations, and alterations omitted).

B. Reasonable efforts failed to correct the conditions leading to the children’s placement.

Mother challenges the district court’s determination that clear and convincing evidence existed to terminate her parental rights to the children J.N.B. and T.M.D. The district court terminated mother’s parental rights “pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5)” after concluding that “following the child[ren]’s placement out of the home, reasonable efforts, under the direction of the Court, have failed to correct the conditions

leading to the child[ren]’s placement.” The district court’s conclusion is amply supported by the record.

Out-of-Home Placement Plans

The district court found that the county “prepared three Out of Home Placement Plans regarding the child[ren] with plan start dates of: March 23, 2020; September 23, 2020; and[] March 23, 2021” which were filed in the underlying CHIPS court files and were approved by the district court. This is supported by the record.

The relevant case plan provisions, as discussed by the district court, required mother to:

- “comply with random urinalysis testing or any other form of chemical testing requested by [the county]”
- “complete a chemical dependency evaluation and follow all recommendations”
- “abstain from all mood-altering chemicals, drugs, and alcohol”

“[A] case plan that has been approved by the district court is presumptively reasonable.” *S.E.P.*, 744 N.W.2d at 388.

Conditions leading to the out-of-home placement were not corrected.

The district court found that “clear and convincing evidence exists that reasonable efforts with [mother] have failed to correct the conditions that led to the child[ren]’s out-of-home placement.” This finding is supported by the record.

April 2020 Chemical-Dependency Evaluation

Mother initially underwent a chemical dependency evaluation on April 3, 2020, and was diagnosed with “mild” to “moderate” chemical dependency. The assessment

recommended residential treatment and abstinence from all non-prescribed mood-altering substances.

Mother entered residential treatment on May 7, 2020. Upon admission, she was administered a drug test which was positive for methamphetamine and amphetamine. On May 19, 2020, mother, against staff recommendations, left the residential treatment to remove her belongings from her apartment from which she was being evicted. Upon return, mother was administered a drug test which was positive for methamphetamine. On June 16, 2020, on her own volition and against staff recommendation, mother left treatment without successful completion.

June 2020 Chemical-Dependency Evaluation

On June 18, 2020, mother completed another chemical dependency evaluation which again recommended residential treatment and abstinence from all non-prescribed mood-altering substances. Mother returned to residential treatment in July 2020 and reported that she “used” methamphetamine prior to her return. Mother successfully completed this treatment and was discharged in September 2020.

October 2020 Chemical-Dependency Evaluation

In October 2020, mother was referred to “aftercare” after completing her residential treatment, and she obtained an updated chemical dependency evaluation which recommended she complete an outpatient treatment program. Mother began attending virtual outpatient sessions on October 12. Her involvement in this program was, initially, “very consistent and [she was] very involved in her group programming,” but by late

December, mother had inconsistent attendance and was discharged without successfully completing her programming because she “did not follow” program recommendations.

Failed UAs

Mother was also required to submit to UA testing four to five times per month. She was provided instructions and she acknowledged that she was responsible for calling into the drug testing notification system. From October 7, 2020, through May 27, 2021, mother called in only seven times because, according to mother, “[t]here’s no point in calling” if she did not “have a ride to go test,” and she purportedly told her social worker that she did not have transportation. The district court, however, did not find mother’s assertions on this point to be credible. Instead, the district court found that mother’s social worker spoke to her about transportation services for her UA appointments, and mother refused to “avail herself of [those] services.”

Return to Outpatient Treatment

Mother returned to an outpatient treatment program in late January 2021. However, mother had “difficulties with attendance” and “maintaining sobriety.” Mother tested positive for methamphetamine from an oral sample provided on March 9, 2021, and on March 29, 2021, was discharged from outpatient treatment prior to successful completion.

April and May 2021 Chemical-Dependency Evaluations

On April 13, 2021, mother obtained another chemical dependency evaluation which diagnosed her with “severe” chemical dependency and recommended that she reenter residential treatment. Mother did not follow this recommendation and, instead, obtained a second evaluation in May of 2021 which recommended outpatient treatment. The district

court found that, as a result, mother “has refused to follow through with the recommended inpatient treatment.” Mother agreed to partake in the outpatient treatment which was set to begin the day after the first day of trial.

Thus, because mother has yet to complete her treatment, the record supports the district court’s finding that the condition of mother’s chemical dependency, which led to the children’s out-of-home placement, was not corrected.

C. The county made reasonable efforts to reunite the family.³

A determination of reasonable efforts requires the district court to 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) (2020); *In re Welfare of S.Z.*, 547 N.W.2d 886, 891 (Minn. 1996). Whether the services provided in a particular case constitute reasonable efforts depends on the duration of the county’s involvement, the nature of the problem, and the quality of the county’s effort. *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *rev. denied* (Minn. July 6, 1990). “The county’s efforts must assist in alleviating the conditions that gave rise” to the out-of-home placement. *Id.* “[P]rovision of reasonable efforts must be evaluated by the court in every case.” *S.Z.*, 547 N.W.2d at 892. However,

³ Mother’s argument that the county failed to make reasonable efforts to reunite the family relates to an element of the underlying statutory basis invoked by the district court to terminate mother’s parental rights. *See* Minn. Stat. § 260C.301, subd. 1(b)(5)(iv) (“reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.”). Therefore, we address the argument as part of our review of whether the county showed a statutory basis to terminate parental rights.

a detailed analysis of the factors set out in Minn. Stat. § 260.012(h) is not always required. *J.R.B.*, 805 N.W.2d at 904.

The district court found that the county “made reasonable efforts to rehabilitate [mother] and reunite her with the children. [The county] acted with due diligence by attempting to provide appropriate, necessary services to enable [mother] to try to get her to a point where she could safely parent the child.” The district court further found that the county “referred [mother] to urinalysis testing, a trial home visit, chemical dependency assessments, treatment facilities, supervised parenting time, transportation services to parenting time, and more.” The county “also worked with [mother] to get her back into programs that she was discharged from or wanted to switch locations.” Though mother did participate in some services, including chemical use assessments and completing treatment in September of 2020,” she ultimately “did not avail herself of the services in a manner that corrected the conditions that led to the unsafe environment.” Mother “relapsed multiple times since completing inpatient treatment and has failed to show sustained sobriety.”

Mother argues that the county “failed to meet its duty of reasonable efforts to reunify” the family. The record compels our disagreement.

Given the report of J.N.B.’s prenatal exposure to alcohol and drugs, mother was provided a chemical-dependency evaluation which diagnosed her with chemical dependency and recommended that she enter residential treatment and abstain from all non-prescribed mood-altering substances. The county social worker met with mother and referred her to chemical testing, chemical-dependency evaluations, treatment facilities,

supervised parenting time, and transportation services. Mother sought treatment at a facility that would permit her children to live with her, and the county was able to arrange a trial home visit at such a facility while mother completed residential treatment.

The district court also found that the county “offered to set up transportation” for mother, though, to take advantage of this offer she “need[ed] to tell” the county the “specific time[s] for the rides,” and “to message” the county “with the scheduled pick-up time that worked for her.” Mother, however, failed to do so. The record supports these findings. The county contacted mother in May 2021 to set up transportation again for testing and reminded mother of the importance of testing. But mother told the county employee that she had her own means of getting to the testing facilities. Mother’s two social workers testified that they informed mother about rides for her UAs, but mother never followed up.

Mother relies on her own testimony to argue that the county provided no assistance with transportation for her UA testing, and therefore, the testing services were “were not adequate to meet the needs of [mother] and were not realistic under the circumstances because they were not available and accessible.” However, “we give considerable deference to the district court’s findings.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012). And the district court found mother’s explanation for not providing UA tests not credible.

Lastly, mother argues that the district court “utterly failed to consider . . . whether the services offered were culturally appropriate.” Mother’s argument is not supported by the record.

The district court approved three out-of-home placement plans for each child at issue in this case. Each plan specifically addressed mother's "religious and cultural needs," and mother reported on three separate occasions over a one-year period that the children have "not regularly attended services of a spiritual community." At no point, as far as could be deciphered from the record, did mother raise concerns that the services provided were not culturally appropriate. *See* Minn. Stat. § 260.012(f) (2020) ("Reasonable efforts are made upon the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family."); *see also S.E.P.*, 744 N.W.2d at 388 (stating that a "court approved case plan carries with it an imprimatur of reasonableness"). Additionally, generally, appellate courts address only those questions previously presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see In re Welfare of Child. of A.I.*, 779 N.W.2d 886, 894 (Minn. App. 2010) (applying *Thiele* on appeal from a termination of parental rights). Because the question of the cultural propriety of the county's efforts was not previously presented to and considered by the district court, that question is not properly before this court.

In sum, the district court did not abuse its discretion because the record amply supports the district court's finding that following the children's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the condition of mother's chemical dependency which led to the children's placement.

II. The district court was within its discretion in concluding that termination of mother's parental rights is in the best interests of the children.

“Even when statutory grounds for termination are met, the district court must separately find that termination is in the child’s best interests.” *J.K.T.*, 814 N.W.2d at 92. 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); *see* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) (same). “Competing interests include health considerations, a stable environment, and the child’s preference.” *J.K.T.*, 814 N.W.2d at 92. “[T]he best interests of the child must be the paramount consideration” and “[w]here the interests of parent and child conflict, the interests of the child are paramount.” Minn. Stat. § 260C.301, subd. 7. On appeal, appellate courts “review a district court’s ultimate determination that termination is in a child’s best interest for an abuse of discretion.” *J.R.B.*, 805 N.W.2d at 905. Additionally, “[b]ecause the best-interests analysis involves credibility determinations and is generally not susceptible to an appellate court’s global review of a record, we give considerable deference to the district court’s findings.” *J.K.T.*, 814 N.W.2d at 92 (quotation omitted).

Mother argues that the record does not support the district court’s conclusion that clear and convincing evidence shows it is in the best interests of the children to involuntarily terminate mother’s parental rights. We disagree.

The record shows that Mother has been unable to find safe and stable housing since the children were removed from her custody. Except for J.N.B.’s unsuccessful 41-day trial

home visit, the children have not resided with mother throughout this proceeding. During the trial home visit, mother failed to bring J.N.B. to a medical appointment and failed to reschedule that appointment. On several occasions, mother has been both discharged from treatment without completing that treatment, and relapsed. Mother's chemical dependency is still a concern because her most recent chemical dependency evaluation recommended that she enter residential treatment, which she has refused to do. Therefore, the record supports the district court's conclusion that termination is in the children's best interest.

Mother argues that the district court "did not specifically make a finding regarding the child's interest in preserving the parent-child relationship." The record belies this claim. The district court acknowledged that the children seem "comfortable around" and "enjoy[] visits" with mother, and mother "wishes to preserve the parent-child relationship," but that the children have "spent limited time with her." It concluded that "although [mother] wishes to preserve the parent-child relationship . . . the child[ren]'s competing interests are in favor of termination."

The district court also found that the children were "currently in a safe, stable environment" and "meeting developmental milestones," which is supported by the record. J.N.B. is "doing great" in his placement and is "growing appropriately, [and] meeting his milestones." Furthermore, despite concerns with fetal alcohol spectrum disorders and diagnosed sensory concerns, "he's doing very well; he's walking, meeting milestones, growing appropriately."

As for T.M.D., "[h]e experiences many behavior challenges but he is doing well overall. Services are being put in place and have been put in place, assessments are

continuing. But overall in the home with the provider he's doing well." T.M.D. "is cognitively delayed" though "[n]ot significantly enough to where he's on an IEP [individualized education program]." Therefore, the competing interests of the children favor termination.

Lastly, mother argues that the district court "erroneously concluded that [her] chemical dependency is still a concern that would impact the children's safety" and that "[t]he conditions at the time of the hearing do not show that [mother] continued to abuse chemicals or that her chemical dependency was still a concern such that it would impact the children's safety."

"[E]vidence relating to termination must address conditions that exist at the time of the hearing," and the evidence must also show "the conditions giving rise to the termination will continue for a prolonged, indeterminate period." *J.R.B.*, 805 N.W.2d at 901 (quotation omitted); *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001). The district court may consider the past, but the primary consideration should be "the projected permanency of the parent's inability to care for his or her child." *S.Z.*, 547 N.W.2d at 893 (quotation omitted). The record shows that the present condition of mother's chemical dependency will continue for a prolonged, indeterminate period based on mother's failure to complete outpatient treatment and mother's refusal to reenter residential treatment despite recommendations that she do so.

First, the district court found not credible mother's testimony denying that she has chemical dependency issues with methamphetamine or amphetamine and we defer to the district court's credibility finding. *See J.K.T.*, 814 N.W.2d at 92. Second, although mother

completed residential treatment in September 2020, the evidence supports the district court's determination that mother "did not avail herself of the services in a manner that corrected the conditions that led to the unsafe environment." As the district court found, she "relapsed multiple times since completing inpatient treatment," and she "failed to show sustained sobriety." Given mother's failure to complete outpatient treatment and mother's refusal to reenter residential treatment despite recommendations to do so, the record shows that the present condition of mother's chemical dependency will continue for a prolonged, indeterminate period.

Accordingly, the district court was within its discretion to conclude that termination of mother's parental rights is in the best interests of the children.

Affirmed.