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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1245**

In the Matter of the Welfare of the Child of:
O. E. M., Parent.

**Filed April 25, 2022
Affirmed
Smith Tracy M., Judge**

Fillmore County District Court
File No. 23-JV-21-177

Michael D. Schatz, Rochester, Minnesota (for appellant-mother O.E.M.)

Brett Corson, Fillmore County Attorney, Melissa Hammell, Assistant County Attorney,
Preston, Minnesota (for respondent Fillmore County Social Services)

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Considered and decided by Connolly, Presiding Judge; Reilly, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant O.E.M. (mother) argues that the district court abused its discretion by terminating her parental rights because the record does not support the district court's determination that respondent Fillmore County Social Services (the county) proved, by clear and convincing evidence, the presence of any of four statutory grounds for termination. Because the district court did not err by determining that there was clear and convincing evidence supporting at least one of those statutory grounds, we affirm.

FACTS

Mother gave birth to the child who is the subject of this appeal, in April 2018. Child's father is unknown. Child tested positive for THC at birth, after which mother admitted to prenatal use of marijuana and alcohol. The county became involved with mother and child after a May 2019 report that child, then 13 months old, was found crawling down a gravel driveway by a passerby. Later reports to the county stated that mother fed child by putting food on a dirty floor, that mother neglected to change his diapers, that mother yelled at child, that mother allowed child to use pill bottles as a rattle, and that she told providers that she smoked marijuana regularly. Another report to the county said that mother was having sex for money and sometimes bringing child with her to these encounters.

After these reports, mother began voluntary participation in a parenting program with the county. In December 2019, the county received another report, alleging that child was sleeping in a car with mother's significant other, D.M., while mother was working. On December 27, 2019, after mother refused additional services, the county filed a petition for child in need of protection or services (CHIPS). On that same date, the district court ordered temporary out-of-home placement of the child, and the child was placed in nonrelative foster care, where he has remained throughout the case. On January 8, 2020, mother entered an admission to the CHIPS petition and admitted that she had left the child unattended in the home on multiple occasions while she was in the detached garage and that her child spent overnight hours in her vehicle with D.M. while she was working.

In January 2020, the district court approved an out-of-home-placement plan (OHPP), which required that mother cooperate with various assessments; provide a safe, nurturing, and stable home for the child; provide age-appropriate supervision; and continue to work with the county and service providers. In May 2020, after the county had provided many services in accordance with the OHPP, the county filed its first termination-of-parental-rights (TPR) petition. In June 2020, the county filed an updated OHPP that included additional concerns and requirements, especially regarding mother's lack of stable housing.

The district court held a trial on the county's petition, spanning seven days over the period August 26 through October 14, 2020. The trial included testimony from mother, the primary county social worker, the foster parents, the guardian ad litem (GAL), D.M., and several providers. On November 12, the district court issued its findings of fact, conclusions of law, and order, dismissing the petition. The district court found that the county failed to prove by clear and convincing evidence any of the three statutory grounds for termination asserted by the county. It found that mother had substantially complied with many of the OHPP requirements and expressed concern about the timing of the June OHPP, noting that mother had not had sufficient time to complete the requirements. Though the district court denied the petition, it determined that the child still needed protection and services and would remain out of the home while mother continued to work on the OHPP.

In December 2020, the district court approved another updated OHPP, and services continued. In March 2021, the district court ordered reunification efforts to cease, citing,

among other problems, concerns raised by the GAL, an attachment assessment that raised serious concerns about mother's ability to parent, and mother's plan to rely on other people to provide most of child's care.

The county filed a second TPR petition in April 2021, alleging the existence of four statutory grounds for termination of parental rights, under Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2020). A five-day trial was held in July and August 2021 and included testimony from mother, the primary county social worker, the foster parents, the GAL, and several providers. Following trial, the district court terminated mother's parental rights, finding that there was clear and convincing evidence to support each of the four statutory grounds argued by the county. Mother appeals.

DECISION

District courts may terminate the rights of a parent to that parent's child if (1) at least one of the statutory grounds for termination is supported by clear and convincing evidence, (2) termination is in the best interests of the child, and (3) the county, unless not required to, 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). Additionally, the petitioner must show that the "conditions justifying termination exist at the time of the trial and will continue to exist for an indeterminate period." *In re Welfare of D.F.B.*, 412 N.W.2d 406, 410 (Minn. App. 1987), *rev. denied* (Minn. Nov. 18, 1987). A district court may terminate parental rights only for "grave and weighty reasons." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (quotation omitted). But parental rights, though safeguarded, are "not

absolute” and should not be “enforced to the detriment of the child’s welfare and happiness.” *In re Adoption of Anderson*, 50 N.W.2d 278, 284 (Minn. 1951).

“[T]ermination of parental rights is always discretionary with the [district court].” *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). We defer to the district court’s decision “because a district court is in a superior position to assess the credibility of witnesses.” *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). When reviewing whether there is a statutory basis for termination, we determine whether the district court’s findings address the statutory criteria and are supported by clear and convincing evidence. *J.K.T.*, 814 N.W.2d at 87. We review factual findings for clear error and the existence of a statutory basis for termination for an abuse of discretion. *Id.* 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.” *Id.* (quotation omitted). We do not engage in fact-finding, reweigh the evidence, or “reconcile conflicting evidence.” *In re Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotation omitted); *see In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* in a termination-of-parental-rights appeal), *rev. denied* (Minn. Dec. 6, 2021). Further, we need not “go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court.” *Kenney*, 963 N.W.2d at 222 (quotation omitted). We review the record “to confirm that evidence exists to support the decision.” *Id.* The district court abuses its discretion if it improperly applies the law. *J.K.T.*, 814 N.W.2d at 87.

Mother challenges the district court’s determination that four statutory grounds for termination exist based on clear and convincing evidence—specifically, that (1) mother has “substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship”; (2) mother is “palpably unfit” to parent; (3) “reasonable efforts . . . have failed to correct the conditions leading to” child’s out-of-home placement; and (4) child “is neglected and in foster care.” Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8). Only one of these grounds needs to be present to satisfy the statutory-ground requirement for termination of parental rights. Minn. Stat. § 260C.301, subd. 1(b) (2020).

The first statutory ground for termination that the district court determined to be present is that mother refused or neglected to comply with her parental duties. This ground is met when

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.

Id., subd. 1(b)(2).

Mother argues that the district court abused its discretion by finding that she refused and neglected her parental duties because she has “done everything right” since before the first trial and because the conditions leading to out-of-home placement have been

corrected. She asserts that she has complied with her OHPP, has attended sessions with providers, has spent time with child “when allowed to,” and has provided necessary food, clothing, shelter, education, and other care.

Refusal or Neglect of Parental Duties

The district court made a number of factual findings supporting its determination that mother has refused or neglected to comply with her parental duties. Its findings are supported by the record. The district court noted that neither the county nor the GAL have recommended that a trial home visit occur. It cited issues with failure to understand and properly apply skills learned in parenting classes and its continuing concern about whether mother met the child’s basic needs, like diaper changes and toilet training. The district court also found that mother was not able to provide a safe environment for child, noting mother’s past history of allowing unsafe people to stay in the home, including one individual who used marijuana in the home and used violence against mother; her testimony that she would continue to allow unsafe people in the home; and the threatening behaviors of D.M., as well as D.M.’s own medical needs, which the court found make him unsafe to care for the child by himself. The district court also pointed to mother’s unstable relationships with D.M. and others; her lack of an adequate support system, which consisted of D.M. and his parents; and her angry and hostile behavior with the county, the GAL, and the district court.

The district court also made findings about mother’s relationship with child, finding that mother is “easily irritated and frustrated with [child] when he does not conform to her expectations” and that she “appears to resent that [child] needs help with things.” Witness

testimony showed that mother struggled to know what was age-appropriate for child. Additionally, the district court found that mother “does not have the ability to provide [child] with emotional support, attachment, and comfort,” noting testimony from providers about mother’s own mental health problems, including an attachment disorder, the foster family’s testimony about child’s lack of affection and initial inability to seek comfort, mother’s statements that “she did her own thing and [child] did his own [thing],” and observations by providers of child’s lack of attachment and even attempts to leave the room he was in with mother at visits. The district court also relied on testimony from a provider who conducted an attachment assessment. That provider testified that mother does not have the ability to form an attachment with child and that no services would render her fit to parent.

Other evidence in the record also supports the district court’s finding that the mother has refused and neglected to comply with her parental duties. For example, child was often left alone, even for hours, and he often put himself to bed or slept in a car with D.M. while mother worked. Additionally, mother repeatedly refused to shift to a day shift to accommodate child, even though the day shift was an available option. Mother eventually switched to a job with a day shift, but the district court noted concern that this was not a “lasting and genuine change” as mother only made the change right before the second trial. Further, mother noted that her erratic sleep schedule—which made her extremely tired when parenting child—would not change with a day shift. Mother also said that she wanted to be D.M.’s caretaker. Mother’s living situations were also controlled by D.M., first living in a home with him, and then moving to a trailer that was owned by D.M.’s father.

Additionally, while mother did attend therapy, there were many concerns about her progress, including her inability to apply skills and her lack of progress towards addressing her own trauma. As to parenting classes and substance-abuse treatment, while mother did show progress, there were concerns from providers that she would revert to bad habits and substance abuse without support from the county.

There were also several concerns about mother's visitation with child. Mother sometimes missed visits and did not request video visits until late 2020. She also tended not to check in with the county or the foster parents about child. Further, providers noted that mother was often tired during visits and that she and D.M. sometimes slept while child was awake. Child often had negative reactions to visits, as noted by his foster parents, who noticed that certain behaviors, like tantrums, reappeared or increased after visits with mother. Further, there were recommendations from providers that visits cease and concerns from child's therapist.

Evidence about child's behavior also supports the district court's determination. There is evidence that child is not used to having his needs met and evidence of concerns about his attention span. He has been diagnosed with post-traumatic-stress disorder and has other behavioral problems. Further, his therapist testified that mother is a "trauma trigger" to child. Child is also doing much better in foster care, where he has formed attachments with his foster parents and has shown improvement in his behavior.

Mother points to evidence in the record that supports her position. There is evidence in the record that mother was engaging with her providers, including in therapy and parenting classes. There is evidence that she was learning from those experiences; for

example, a provider noted that she was applying concepts learned in parenting class to her parenting of child. There is also evidence that mother displayed appropriate behavior in visits with child, including changing his diaper, bringing a snack, and properly reprimanding him. The record also shows that mother tested positive for a substance only twice and completed her substance-abuse treatment, has maintained a stable job and passed a nursing-assistant exam during this case, and has had shelter available for child in a home and later a trailer she shared with D.M.

But the presence of this evidence does not undermine the district court's determination based on other evidence. *See Kenney*, 963 N.W.2d at 222 (holding that an appellate court's role is to "review . . . the record to confirm that evidence exists to support the decision" and not to reconcile conflicting evidence). The district court's specific factual findings—especially its findings on mother's lack of attachment to child, her inability to meet basic needs and provide safe housing, her inability to apply skills learned in parenting classes, her lack of understanding of child's needs, and child's negative reactions to mother—are supported by the record and adequately support the determination that mother refused or neglected her parental duties.

Reasonable Efforts

A determination that a parent refused or neglected to comply with parental duties also requires clear and convincing evidence that "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).

The district court made extensive factual findings about the reasonable efforts by the county and their failure to correct conditions leading to child's out-of-home placement. The district court listed the many services provided to mother and the results of those services. For example, the district court noted the attachment assessment and its conclusions; therapy for mother, child, and mother and child together; multiple parenting-education programs; mental-health services; medication management; a parental-capacity evaluation; chemical-dependency treatment; drug and alcohol testing; housing services; payment for insurance; visitation with child and transport to that visitation; and medical services for child. The district court found that "[i]t took approximately 28 months of [child's] life for the mother to start engaging with parenting education" and that now that she is engaged, "her lack of understanding and ability to understand is clear."

Overall, the district court was concerned that mother was not making lasting changes and cannot learn the skills that she lacks. This included specific concerns that mother would revert to substance abuse if the county was not involved, especially since she repeatedly denied having a chemical-dependency problem. Additionally, the district court made findings that mother, despite participating in services, was not making much progress and that "[a]dditional services will not likely bring about lasting parental adjustment enabling a return of [child] to the mother's home in a reasonable period of time." Based on the evidence described above, the district court's findings are supported by the record.

In sum, we conclude that the district court did not abuse its discretion by determining that mother refused or neglected her parental duties and that reasonable efforts

have failed to correct the conditions that formed the basis of the county's second TRP petition. Mother ultimately asks this court to hold that evidence in her favor outweighs evidence that the district court relied on in making its decision. But we do not reweigh the evidence or reconcile conflicting evidence. *Kenney*, 963 N.W.2d at 221-22. Because there is adequate evidence in the record to support the district court's determination of the presence of a statutory ground, Minn. Stat. § 260C.301, subd. 1(b)(2), the district court did not abuse its discretion when it terminated mother's parental rights.¹

Affirmed.

¹ Because the county only needs to prove the presence of one statutory ground for termination, we do not need to determine whether the district court abused its discretion in determining that other statutory grounds were present. *Id.*, subd. 1(b).