STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0493

In the Matter of the Welfare of the Children of:
L.M.L. and E.M.R., Parents.

Filed November 21, 2022
Affirmed
Klaphake, Judge[*]

Anoka County District Court
File No. 02-JV-21-670

Mallory K. Stoll, Ashley K. Morelli, Blahnik, Prchal & Stoll, PLLC, Prior Lake, Minnesota (for appellant L.M.L.)

Anthony C. Palumbo, Anoka County Attorney, Kathryn M. Timm, Assistant County Attorney, Anoka, Minnesota (for respondent county)

Considered and decided by Johnson, Presiding Judge; Jesson, Judge; and Klaphake, Judge.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant-mother challenges the termination of her parental rights, arguing that the record does not support the district court's determinations that respondent-county's reasonable efforts to correct the conditions leading to her children's out-of-home placement

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

had failed and that termination is in the children's best interests. Because we see clear and convincing evidence supporting those determinations, we affirm.

DECISION

Appellant L.M.L. is the mother and E.M.R. is the father of two children, R.R., now 9, and H.R., now 5, who were adjudicated children in need of protection or services (CHIPS) in April 2019. In August 2019, they were removed from appellant's home and placed in foster care, where they have remained.

In August 2020, respondent Anoka County Social Services (ACSS) filed a petition for the termination of appellant's parental rights. In June 2021, the district court denied the petition and ordered a trial home visit to start in July 2021; a case plan was developed for appellant. At appellant's request, the children's home visit was postponed because appellant did not have daycare arranged, did not have a driver's license, and appellant could not provide financial support for the children. Her case plan was amended, and ACSS provided further services. Because appellant tested positive for methamphetamine in August 2021, the trial home visit was cancelled.

ACSS filed a second petition for termination of appellant's parental rights in November 2021. Following a trial, the district court filed an order terminating appellant's parental rights, ruling that: (1) ACSS made reasonable efforts to rehabilitate appellant and reunite the family; (2) Minn. Stat. § 260C.301, subd. 1(b)(5) (2020) (citing failure to correct the conditions leading to the children's out-of-home placement as one ground for

termination) had been met; and (3) the termination of appellant's parental rights was in her children's best interests. Appellant challenges these rulings.[1]

This court will "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) (citations omitted). Factual findings are reviewed for clear error; a determination that a statutory ground to terminate parental rights exists is reviewed for an abuse of discretion. *J.K.T.,* 814 N.W.2d at 87.

1. ACSS's Efforts to Reunite the Family

In termination proceedings, a district court must "make specific findings regarding the nature and extent of efforts made by the responsible social services agency to rehabilitate the parent and reunite the family." Minn. R. Juv. Pro. P. 58.04(c)(2)(i). As to the nature and extent of ACSS's efforts, the district court found that ACSS: (1) provided appellant with information about resources she could use to improve her life and the children's lives, specifically food shelves, day care programs, a driving diversion program,

[1]Appellant also challenges the district court's findings that she met three other statutory criteria for termination: parental neglect (Minn. Stat. § 260C.301, subd. 1(b)(2) (2020)); palpable unfitness (Minn. Stat. § 260C.301, subd. 1(b)(4) (2020)); and children neglected and in foster care (Minn. Stat. § 260C.301, subd. 1(b)(8)). We do not address the other grounds for termination because any one of the statutory grounds is sufficient for termination. Minn. Stat. § 260C.301, subd. 1(b) (2020); *In re Welfare of Child of J.K.T.,* 814 N.W.2d 76, 87 (Minn. App. 2012) (noting that this court will affirm a termination decision if at least one statutory ground is supported by clear and convincing evidence).

and an enhanced treatment program; (2) provided gas cards and gift cards so appellant could use her own funds for the driver's license diversion fee; (3) expressed concern about the two abusive men in appellant's life, E.R. and J.M., and encouraged her to keep away from them and keep them away from her children; (4) tried to help appellant recognize that her pattern of violence and co-dependency with these men was detrimental to and risky for the children; (5) tried to persuade appellant to enroll in an enhanced-treatment program and in programs that would hold her more accountable than the dialectical-behavioral-therapy program she had chosen; and (6) provided services to address appellant's parenting issues, domestic-violence pattern, and drug use.

In making findings about a social-service-department's efforts, the district court "shall consider whether services to the child[ren] and family were: (1) relevant to the safety and protection of the child[ren]; (2) adequate to meet the needs of the child[ren] 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). The district court's findings reflect these considerations.

As to factor (1)—the safety and protection of the children—the district court found that ACSS provided services to enable appellant to become a safe and stable parent for them, tried to break her pattern of co-dependent relationships with men who abused her and used drugs, and tried to stop appellant's drug use because she was "not a safe parent and [could not] adequately protect her children when she [was] not sober."

As to factor (2)—the adequacy of the services provided—the district court found that ACSS provided appellant with resources for food, housing, money, transportation,

mental health, and chemical-dependency support sufficient to meet the children's needs and her own, as well as parenting services, and that appellant declined the additional services offered during the pretrial hearings. ACSS also provided appellant with Partnerships for Family Success (PFS) and with a parenting consultant, S.H., who worked with appellant from June 2021 to February 2022. The district court found that ACSS "attempted to minimize situations in which [appellant] could sabotage her reunification with her children." This included discussions about boundaries; sobriety; staying clear of abusive, unhealthy relationships; simplifying her relationships through one sole provider; requesting her to search for an alternative medication that was not part of the amphetamine/dextroamphetamine class of drugs; and asking her to use marijuana only as prescribed and to use prescribed drugs rather than street drugs. As to factor (3)—whether the services were culturally appropriate—the services provided were found to be culturally appropriate.

As to factor (4)—the availability and accessibility of the services—the district court noted that when appellant had trouble obtaining food, ACSS told her about food shelves, including food shelves that delivered; and when she was concerned about the home visit because she had no child care, ACSS postponed the visit and gave her resources on finding daycare.

As to factor (5)—the consistency and timeliness of the services—when appellant expressed a specific need, such as food, ACSS tried to provide a service, as well as providing long-term services such as parenting services.

As to factor (6)—whether the services were realistic—the district court found that ACSS provided all the resources necessary for appellant and the children, including direct financial assistance, and when she expressed worry about being a full-time parent, ACSS arranged for advanced services such as PFS and S.H. But the district court also noted that only appellant "could actually utilize these resources and practice the skills she was taught."

Finally, as to the quality of ACSS's effort, the district court found the effort was "high quality" and that ACSS had been working since January 2019 to help appellant become a better parent, free herself from abusive relationships, and stay sober.

Appellant does not refute the district court's findings; instead, she argues that ACSS failed to make reasonable efforts to rehabilitate her and reunite her family because "[the supervised] visitation between [her] and her children was wholly inadequate and unreasonable." But she provides no legal support for the view that parental rights cannot be terminated unless a parent has had unsupervised visitation, and in light of the fact that it is the best interests of the children, not of the parent, that, when a statutory basis to terminate parental rights is present, is paramount under Minn. Stat. § 260C.301, subd. 7 (2020), unsupervised visitation could not be required unless it was appropriate for the children.[2]

[2]Appellant relies on a nonprecedential decision, *In re Welfare of Child of E.C.S.*, No. A18-2106, 2019 WL 2262324, at *8 (Minn. App. May 28, 2019) (concluding that "the county failed to make reasonable efforts to reunite mother and her children" and therefore reversing the termination of mother's parental rights). But her reliance is misplaced. That decision was based on "mother's substantial compliance with more than 20 requirements in [her] case plan" and the fact that there was "no record support for the [district court's]

The district court did not abuse its discretion in concluding that ACSS had made reasonable efforts to rehabilitate appellant and to reunite her family.

2. The Statutory Basis for Termination

The district court found that reasonable efforts had failed to correct the conditions leading to the children's out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5). Four conditions collectively give rise to the presumption that this has occurred. *Id*. The first is that the children have resided out of the home under court order for a 12-month period during the last 22 months. *Id.*, subd. 1(b)(5)(i). The children here have resided out of appellant's home since August 2019, now 38 months, or more than three 12-month periods. This is one-third of R.R.'s nine years and more than one half of H.R.'s five years. Moreover, when children on whom a CHIPS petition is filed are under age eight, the presumption that the conditions leading to the out-of-home placement have not been corrected arises if the child has resided out of the home for six months, unless the parent has maintained regular contact and was complying with the case plan. *Id.* That was not the situation here.

Appellant's case plan had 21 provisions. Among the 16 provisions that the district court found not to have been met were:

A: having no contact with E.R.;

B: not permitting the children to have contact with E.R. unless it was supervised;

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finding that mother's *near* completion of the case plan was inadequate." *Id.* Here, the district court found that "[appellant] has failed to substantially comply with the case plan and court orders."

C: abstaining from all nonprescribed mood altering chemicals, including alcohol;

D: not relapsing on methamphetamine and having a chemical-dependency evaluation if she did continue to use methamphetamine;

E: demonstrating that she was awake, sober, and able to care for the children during visits;

F: submitting to random urinalysis testing;

G: not allowing anyone using drugs or under the influence of drugs and alcohol into her home; and

H: not permitting the children to have contact with J.M.

The district court summarized:

> [Appellant] argues that she has her relationships with [J.M.] and [E.R.] under control and that she has now resolved each case as asked of her by ACSS. Her argument is flawed and misses the mark. When viewed in context, these abusive relationships have been relevant throughout the life of this case, since back to 2019. [Appellant] has re-engaged [and] continued to re-engage in these relationships despite custody of her children being at stake. [Appellant] has continued these relationships even though it was clear that these relationships were detrimental to her and to her children. She continued these relationships despite having other resources to get her needs met.

Appellant argues again on appeal that she has stopped the relationships with J.M. and E.R. and resolved her chemical abuse issues, but the district court found repeatedly that, on these and other issues, her testimony is not "credible." We defer to these credibility findings. *See, e.g., In re Welfare of the Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009) (deferring to a district court's credibility determinations in a termination-of-parental-

rights proceeding). Thus, the first condition for the presumption that reasonable efforts have failed has been met.

The second condition, that the court has approved an out-of-home case plan; the third condition, that the conditions leading to out-of-home placement have not been corrected; and the fourth condition, that reasonable efforts to rehabilitate the parent and reunite the family have been made by the social services agency, have also been met. *See* Minn. Stat. § 260C.301, subd. 1(b)(5). Clear and convincing evidence shows that ACSS made reasonable efforts and that those efforts failed to correct the situation leading to the children's out-of-home-placement.

3. Best Interests

In any termination proceeding, when a statutory basis to terminate parental rights exists, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7. The district court agreed with the social workers, the parenting consultant, and the guardian ad litem that terminating appellant's parental rights to her children is in their best interests. Where "there is ample evidence in the record to support the district court's conclusion that mother is in no position to care for [the children] in the reasonably foreseeable future," a "district court act[s] within its discretion in finding that [the children's] best interests would be served by terminating mother's parental rights." *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 658 (Minn. App. 2018).

The district court found that:

> The children consider [their foster parents] to be their parents. The children have an interest in preserving the parent-child relationship with [appellant], but they have a true parent

> relationship with [their foster parents]. Additionally, there is no indication that [appellant] is able to care for the children in the reasonably foreseeable future.
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> . . . .
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> The children deserve permanency and have an interest in knowing where their home is. The children have a strong bond with the [foster parents], who[m] they consider [to be] their parents. The [foster parents] provide care for the children. . . . The children consider the foster parents' home as their home.
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> . . . The children have been in limbo for years . . . . This could go on indefinitely since [appellant] does not show signs of being ready to parent [the children] at any point in the near future. This is unfair for the children. The children deserve to know who their parent is and where they can call home. The children's [best] interests support terminating [appellant's] parental rights.
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> This is a difficult case. [Appellant] has made some improvements. . . . But this case has lingered far past [the] statutory deadlines. The Court is still unable to safely return the children to [appellant's] full-time care. Even [appellant] agrees that the current situation is not tenable.

Appellant argues that the district court's finding that it was not in the children's best interests is refuted by the record. Appellant argues that she "had been compliant with her case plan at the time of trial and had corrected the conditions that led to the out of home placement"; that the district court "punished [her] because the foster parents did a great job as foster parents"; that she "was not given the opportunity to parent the children"; and that the district court "completely undermined both [her] and the children's interests in preserving the parent-child relationship." But appellant does not address the facts that she is not yet ready, after three years, to parent the children full-time on her own, or that they have a need for permanency.

Affirmed.