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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0501**

In the Matter of the Welfare of the Child of:
P. D. J., Parent.

**Filed October 17, 2022
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-JV-21-1563

Cresston Gackle, Cresston Law LLC, Minneapolis, Minnesota (for appellant-mother P. D. J.)

Michael O. Freeman, Hennepin County Attorney, Mary M. Lynch, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Health and Human Services)

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Considered and decided by Gaitas, Presiding Judge; Worke, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Mother challenges the district court's termination of parental rights (TPR), arguing that the district court abused its discretion by concluding that the child suffered egregious harm, mother failed to satisfy her parental duties, mother is palpably unfit, and TPR is in

the child's best interests. Mother also challenges the timing of the permanency trial. We affirm.

FACTS

On July 16, 2021, respondent Hennepin County Health and Human Services (the department) received a report that appellant-mother P.D.J. neglected her infant child¹ (the child). According to a police report, mother's neighbor called 911 after mother knocked on his door and stated that the child was crying. Officers knocked on mother's apartment door, but she did not answer until nearly one minute passed. When she answered, mother was holding the child, who was wrapped in "paper towels and a wool sweater and appeared to be in discomfort."

Officers detected an "overwhelming chemical smell" in the apartment that made them lightheaded. Large amounts of trash and household items lying around made it difficult for officers to walk; they stepped on "glass alcohol bottles repeatedly and had to place their hands on the walls . . . to keep their balance." Officers observed moldy food, old standing water in a sink, and a bathtub filled with water and some substance.

Mother told the officers that she and the child "had bugs on them." Officers saw "sores on [the child's] arms and severe redness on her back," as if mother "had been trying to scrub off what she thought were bugs." The child's hands were "almost rubber like . . . purple," and "wrinkly as if she had been left in water for a significant amount of time."

¹ Mother has four children. This appeal relates only to mother's youngest child, A.W.-J., born in 2021.

Paramedics observed “clear signs of neglect.” The child “show[ed] physical signs of extreme dehydration”; she had “extreme” diaper sores, indicating that she “probably stays in the same diaper for up to 24 hours at a time”; she “has a mark on the back of her head (as well as the sores on her body) indicative of being left on her back full time”; and she was likely in the bathtub for “close to an hour” due to how cold she was. An ambulance transported the child to the hospital.

Responders believed that mother was under the influence of narcotics. Mother appeared to be “very paranoid and erratic” and had “significant difficulty staying on point, answering simple questions, and locating child care products within the home.” Mother packed items to take to the hospital that were inconsistent with a visit to the hospital, including “strawberries, a roll of paper towels, and other items she seemed to randomly find and pick up off of the ground.”

At the hospital, the child

had a blood alcohol level of .135 . . . [s]he was very dehydrated
. . . [s]he had what appeared to be chemical burns all over her
back and head. Her vaginal area was extremely red and
swollen with a rash that was beyond . . . a normal diaper rash
. . . . [and] she was terrified of [taking a bath].

Based on this information, officers obtained a search warrant for mother’s apartment.

Mother told officers that she tried to clean the apartment to get rid of the bugs on her and the child, put Lysol on the child’s bouncer, and put the child on the paper towels in the bouncer. She claimed to have “holes” in her hands, stated that she was itchy, acted fidgety, and did not stop moving. Mother had a butane torch in her pocket, which officers know is commonly used by drug users. Officers found over seven grams of

methamphetamine and two “meth pipes” in the apartment. Officers also found a baby bottle holding liquid that field tested positive for alcohol. Mother was charged with felony neglect of a child.

A report from the child’s maltreatment team showed that the child was diagnosed with a significant chemical skin burn. The report provided:

The extent and degree of chemical burn injuries on [the child]’s body is not typical of routine child care, and it is an unusual presentation of an accidental chemical exposure due to the large area of skin affected. Rather, the injuries are consistent with either child abuse or child endangerment. In either setting, the degree of depressed level of consciousness due to ethanol exposure on presentation could have been fatal if she had not presented to medical care.

On July 21, 2021, the department filed a TPR petition. The department noted that mother has four children, and this was the third child-protection petition filed since 2017 in Hennepin County. The department alleged that mother’s parental rights should be terminated because she failed to satisfy her parental duties, she is a palpably unfit parent, and the child experienced egregious harm while in mother’s care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (6) (2020).

On July 22, 2021, an order for protective care and out-of-home placement was filed. And because the child’s father was deceased, she was put in relative foster care. The district court found that reasonable reunification efforts were not required because the TPR petition stated a prima facie case that mother subjected the child to egregious harm. The district court found that “there are no services or efforts available which could allow the [child] to safely remain in the home.”

The district court held an admit/deny hearing on August 26, 2021. On February 14, 2022, the district court held a trial on the TPR petition. The social worker assigned to the case testified about the July 2021 incident, referencing the police report included in the department's file. The social worker testified that, although the department was relieved of reunification efforts, the department attempted to assist mother. The voluntary case plan required mother to complete a psychological evaluation, receive mental-health care, complete a chemical-dependency assessment and follow any recommendations, complete a parenting assessment, demonstrate her sobriety via urinalysis (UA) or some other method, complete parenting education, and obtain and retain safe housing.

Mother completed a chemical-dependency evaluation and was referred to outpatient treatment, but she did not attend, even though she admitted to using methamphetamine daily and the child was born substance-exposed to THC. Although mother claimed that she completed UAs, the records she provided failed to show sobriety because testing she underwent did not test for the presence of alcohol. Mother was required to undergo a psychological assessment and receive treatment. But she did not receive treatment, even though she had previously been under mental-health commitments with the last expiring on June 10, 2021. And mother reported being homeless.

The social worker testified that mother's parental rights to the child should be terminated. She stated: "There's really no other option" because the child "almost died" as a result of the alcohol found in her system, separate and apart from the chemical burns she sustained. She stated that the child deserved to be adopted.

The child's foster mother, her paternal aunt, testified that the child has chemical-burn marks. She was told by "three different medical professionals that [the marks] most likely will not improve until [the child is] around four years old" and that they might not heal entirely. The foster mother and her husband hoped to adopt the child.

The guardian ad litem (GAL) testified that it was in the child's best interests for mother's parental rights to be terminated. She testified:

When [the child] was brought to [the hospital] in July 2021 she showed signs of serious physical neglect that had to have occurred over an extended period of time. She had signs of severe diaper rash, sores on her body from being left unattended, she was dehydrated, she tested positive for alcohol, in addition to the chemical burns on her body. This egregious harm to [the child] indicates a total lack of regard for her well-being. [Mother] has demonstrated an ongoing pattern of putting her children in high-risk situations as indicated from prior child protection cases including crashing her car while driving under the influence with her children to having children live in a home where a drug raid occurred where police discovered a large number of guns, ammunition and drugs. . . . [Mother] has not demonstrated she has fully addressed the reasons this case was opened, and she has not demonstrated she is committed to putting [the child]'s needs above all else as demonstrated by her lack of case plan compliance.

Mother, who was represented by counsel, stated that she wanted to call witnesses on her behalf. The district court left the record open for one week to allow mother to prepare. But mother ultimately decided to not call any witnesses.

On March 22, 2022, the district court filed findings of fact, conclusions of law, and order for TPR. The district court determined that the child suffered egregious harm while in mother's care. The district court stated that "[t]he child was not only temporarily but substantially and permanently disfigured by chemical burns" and mother admitted to

“spraying Lysol on the child’s infant carrier and lying her on it.” The district court also concluded that “[t]here is significant evidence that . . . [m]other was under the influence of methamphetamine at the time her neighbor placed the 911 call.”

The district court determined that “[t]hroughout the eight months that this case has been open . . . [m]other has failed to demonstrate the ability to provide the child with food, clothing, shelter, and other care and control necessary for her wellbeing.” The district court concluded that mother failed to demonstrate sobriety, participate in mental-health and chemical-dependency treatment, or complete a psychological evaluation or parenting assessment. Further, the district court stated that mother “demonstrates a lack of insight into her chemical dependency issues and the dangerous situations that those issues present to the child’s safety.”

The district court determined that mother is a palpably unfit parent “due to a consistent pattern of behavior and conduct that is detrimental to the child’s needs.” The district court stated that “there is significant evidence” that mother’s issues are “longstanding” and “pre-date the [d]epartment’s involvement in the summer of 2021.” These enduring issues, and mother’s failure to address them, each impact her ability to keep the child safe.

Finally, the district court concluded that TPR was in the child’s best interests because mother will not be able to care for the child for the reasonably foreseeable future, and the child will be placed at “a significant risk of instability, physical and emotional harm, and further neglect” in mother’s care. This appeal followed.

DECISION

Termination of parental rights

Mother argues that the district court abused its discretion by terminating her parental rights. 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). On appeal, this court reviews the underlying findings of fact for clear error and the TPR decision for an abuse of discretion. *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 600 (Minn. App. 2021), *rev. denied* (Minn. Dec. 6, 2021).

A district court may terminate parental rights if (1) at least one statutory ground for termination is supported by clear and convincing evidence, (2) the department made reasonable reunification efforts, and (3) TPR is in the child’s best interests. *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). The district court concluded that three statutory grounds for TPR were supported by clear and convincing evidence: (1) the child suffered egregious harm; (2) mother failed to satisfy her parental duties; and (3) mother is palpably unfit. The district court also concluded that TPR is in the child’s best interests.

Evidence

Initially, mother argues that the district court erred in determining that the department proved that the child suffered egregious harm “because of the scant level of evidence presented at the trial, lack of medical or other testimony, error in admitting a police report . . . error in treating an exhibit admitted not for its substance, and failing to link anything . . . to any unproved harm to the child.” In other words, mother seems to

claim that the TPR determination depends on unreliable evidence, and that the properly admitted evidence fails to show egregious harm and palpable unfitness.

“The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion.” *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). A new trial based on an improper evidentiary ruling is available only if a party demonstrates prejudicial error. *Id.* at 46. “An evidentiary error is not prejudicial if the record contains other evidence that is sufficient to support the findings.” *J.K.T.*, 814 N.W.2d at 93.

Mother claims that the district court improperly relied on certain evidence that was admitted over objection. The district court admitted the police report from the July 2021 incident as a public record. It also admitted medical records and permitted the social worker to testify about the police report and the medical records.

Under Minn. Stat. § 260C.193, subd. 2 (2020):

Before making a disposition in a case, terminating parental rights . . . the court may consider any report or recommendation made by the responsible social services agency, probation officer, licensed child-placing agency, foster parent, guardian ad litem, tribal representative, the child’s health or mental health care provider, or other authorized advocate for the child or child’s family, a school district concerning the effect on student transportation of placing a child in a school district in which the child is not a resident, or any other information deemed material by the court.

And a hearsay exception includes

[a] memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made

at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

Minn. R. Evid. 803(6).

The social worker testified that the department enters records from different sources into a statewide system, including records from law enforcement and medical professionals. She testified that the department is statutorily required to maintain a secure database to maintain third-party records. She testified that the records are part of a joint investigation with law enforcement in which the different sources share information, avoid duplication, and ensure the safety of the child. The social worker testified that she reviewed, among other pieces of information, the police report and the child's consultation report from the Center for Safe and Healthy Children. She included information from these sources in her report.

The district court stated that it received the exhibits "not necessarily for the truth of everything in them" and noted that the author (the social worker) was available, and there was "opportunity for cross examination to point out whatever . . . the defense is calling into question." The district court correctly applied the law for the admission of this evidence and did not abuse its discretion.

Egregious harm

TPR is appropriate if the district court determines

that a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care.

Minn. Stat. § 260C.301, subd. 1(b)(6). "Egregious harm" is "the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care." Minn. Stat. § 260C.007, subd. 14 (2020). "Egregious harm" includes the infliction of "substantial bodily harm" to a child. *Id.*, subd. 14(2). "Substantial bodily harm" is a "bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member." Minn. Stat. § 609.02, subd. 7a (2020).

Here, the record shows that the child suffered egregious harm while in mother's care. The child was solely in mother's care. And the evidence showed that the child nearly died while in mother's care due to the alcohol in her system, which was apart from the chemical burns she suffered. The foster mother testified that the child still has chemical-burn marks on her body and may have them her entire life.

In a TPR proceeding, the district court must find "(1) that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made . . . or (2) that reasonable efforts for reunification are not required as provided under section 260.012." Minn. Stat. § 260C.301, subd. 8 (2020). Under Minn. Stat. § 260.012(a)(1) (2020),

reasonable efforts are not required when the district court determines that a petition states a prima facie case of egregious harm.

Here, the day after the department filed the petition, the district court found that the petition stated a prima facie case that mother subjected the child to egregious harm. Thus, the department was relieved of reasonable efforts. Because the department was not obligated to make reasonable efforts and the district court correctly determined that the child suffered egregious harm, one statutory basis for TPR has been proved by clear and convincing evidence. We could continue our analysis to determine whether TPR is in the child's best interests. *See In re Welfare of Child. of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004) (stating that to affirm TPR, one statutory ground for TPR must be proved by clear and convincing evidence and the record must show TPR is in the best interests of the child). The district court, however, determined that two other bases for TPR were proven, and we will consider mother's challenges to these determinations.

Parental duties

A district court may terminate parental rights if it finds that a parent has "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(2). Parental duties include, but are 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." *Id.* The district court must also determine that, at the time of termination, the parent is not presently able and willing to assume her responsibilities and

that the condition will continue for the reasonably foreseeable future. *See In re Welfare of J.K.*, 374 N.W.2d 463, 466-67 (Minn. App. 1985), *rev. denied* (Minn. Nov. 25, 1985). Parental rights may not be terminated for failure to comply with parental duties unless the department's reasonable efforts failed to correct the conditions that led to the child's out-of-home placement, or the district court finds that reasonable efforts would be futile and therefore unreasonable. Minn. Stat. § 260C.301, subd. 1(b)(2).

Even though it was not required in this case, the department provided a case plan for mother. The evidence showed that mother did not comply with services. Further, the child was neglected. The evidence showed that the child likely stayed in the same diaper for 24 hours and had sores on her body from being left on her back for long periods of time. She was so cold that paramedics believed that she had been left in a bath for at least an hour. The child "had a blood alcohol level of .135," showed physical signs of extreme dehydration, had "chemical burns all over her back and head," and had an extreme diaper rash. This evidence shows that mother substantially neglected her parental duties. And mother's failure to take any steps to comply with a case plan shows that any reasonable efforts would be futile and unreasonable.

Palpably unfit

Under Minn. Stat. § 260C.301, subd. 1(b)(4), a district court may terminate parental rights based on a finding

that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern . . . of specific conditions directly relating to the parent and child relationship . . . which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably

foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

The district court determined that “there is significant evidence that . . . [m]other’s chemical dependency, mental health, and neglectful living conditions are longstanding issues.” The district court determined that these issues, and mother’s failure to take any significant steps to address them, impact her ability to keep the child physically and emotionally safe. As already described, the record supports the district court’s determination.

Best interests

Even when statutory grounds for TPR are satisfied, the district court must still find that TPR is in the child’s best interests. *J.K.T.*, 814 N.W.2d at 92. In making this determination, the district court considers “(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) (listing these factors). “Competing interests include health considerations, a stable environment, and the child’s preference.” *J.K.T.*, 814 N.W.2d at 92. When the district court rules that a statutory basis for TPR exists, if “the interests of parent and child conflict, the interests of the child are paramount.” Minn. Stat. § 260C.301, subd. 7 (2020). “Because 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 district court abused its discretion in determining that TPR was in the child's best interests because the department mainly advocated for TPR so that the child could be adopted. She claims that TPR is not in the child's best interests because she is black, the child is biracial, and the foster family is white.

The GAL testified that it was in the child's best interests for mother's parental rights to be terminated because the child "showed signs of serious physical neglect that had to have occurred over an extended period of time." She testified that this "indicate[d] a total lack of regard for her well-being." Further, the GAL stated that other child-protection petitions described how mother had a "pattern of putting her children in high-risk situations" and mother's failure to adhere to a case plan demonstrated that she is not committed to "putting [the child]'s needs above all else." The district court agreed.

The district court found that the department showed that mother has a history of "use of illicit substances and poor mental health," which present safety risks for the child. The district court found that over the course of the matter, mother "demonstrated erratic, confrontational, and unstable behavior," and failed to acknowledge "that these behaviors are problematic or demonstrated the necessary behavioral changes that could instill confidence that [she] would be able to provide the child with a safe, stable environment."

The district court concluded that mother will not be able to care for the child for the reasonably foreseeable future because in mother's care, the child will be placed at "a significant risk of instability, physical and emotional harm, and further neglect." The district court also concluded that TPR will allow the child to be "adopted by a family that is committed to caring for her and will keep her in an environment that will provide

consistency and support.” The district court considered the relevant interests and determined that the child’s interests in a healthy, stable environment were paramount.

Due process

Mother argues that her due-process rights were violated when the district court held “a trial on the TPR petition on February 14, 2022, nearly 4.5 months beyond the deadline for holding the trial under the applicable court rules.”

First, mother never challenged the trial date. As a reviewing court, we generally consider only issues presented and considered by the district court. *See 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 TPR).

Second, even considering mother’s argument, she has not shown any prejudice. The record shows that mother moved to continue the trial due to her pending criminal matter. Mother also requested an additional trial date after the February 14 date because she wanted to call witnesses. Further, in opening statements, mother’s attorney argued:

[I]t is not in [the child]’s best interest to have the relationship with her mother legally severed because more time and more demonstration of compliance and progress on her case plan would enable [mother] to parent her child successfully and healthily. So, when the evidence closes, I will ask this Court to make a finding not terminating my client’s rights and instead reverting this matter to CHIPS for continued progress.

The request for more time to demonstrate compliance and progress does not show that an earlier trial date would have been beneficial to mother. Mother has failed to show prejudice that requires reversal. *See State v. Cannady*, 727 N.W.2d 403, 409 (Minn. 2007) (applying

harmless-error analysis to due-process argument); *In re Welfare of D.J.N.*, 568 N.W.2d 170, 176 (Minn. App. 1997) (declining to reverse TPR for harmless error); *see also In re Welfare of Child. of D.F.*, 752 N.W.2d 88, 98 (Minn. App. 2008) (applying *Cannady* and *D.J.N.* in TPR appeal).

Affirmed.