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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0539**

In the Matter of the Welfare of the Child of:
T. R. T. and K. M. W., Jr., Parents.

**Filed October 17, 2022
Reversed and remanded
Larkin, Judge**

Sibley County District Court
File No. 72-JV-21-48

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Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

After this court reversed and remanded the district court's termination of appellant-mother's parental rights to her child by default, the district court held a termination trial and once again terminated mother's parental rights. The termination was based on neglect stemming from mother's chemical dependency. Although mother had failed to cooperate with the county's reunification efforts prior to the default proceeding, she began chemical-dependency treatment immediately after that proceeding. She completed a chemical-

dependency evaluation, inpatient chemical-dependency treatment, and outpatient aftercare. She also documented her sobriety through the provision of negative urinalysis test results. At the time of trial, mother reported six months of sobriety. She was residing in sober housing, on a waitlist for individual therapy, and working two jobs. Mother challenges the termination of her parental rights, arguing that the record does not establish that conditions of neglect stemming from her chemical dependency would continue for a prolonged, indeterminate period. Because the record does not clearly and convincingly show that standard was met, we reverse and remand.

FACTS

Appellant-mother TRT and father KMW are the parents of a child born in 2018, who is the subject of the underlying child-protection proceeding.¹ Mother and father have never been married, and the Indian Child Welfare Act does not apply in this case.

In August 2019, father reported mother to Sibley County Public Health and Human Services (the county) based on suspected drug use and concerning text messages. In September 2019, the county placed the child on a 72-hour hold and filed a petition alleging that the child was in need of protection or services (CHIPS). The district court awarded father temporary custody of the child. The county developed a case plan for mother, which directed mother to obtain a chemical-dependency assessment, follow recommendations of a diagnostic assessment, and enter inpatient chemical-dependency treatment. Mother complied with her case-plan services. She obtained employment, maintained independent

¹ Father is not a party to this appeal.

housing, successfully completed inpatient treatment, and had weekly supervised visits with the child. In June 2020, the child was returned to mother's care and the CHIPS case closed. At that point the child had been in father's temporary custody for 270 days.

In December 2020, the county received a report regarding the child's welfare, which was based on concerns that mother was using drugs. The county did not initiate a child-protection proceeding in district court. Instead, the county assigned a child-protection social worker, AB, to work with mother in the Parent Support Outreach program. Attempts to contact mother were unsuccessful.

In January 2021, the county received another report regarding the child's welfare. The reporter alleged that mother was allowing a known drug user to provide childcare, that mother drove with the child in her vehicle even though mother did not have a valid driver's license, that the child had gotten "into the refrigerator" while mother was napping, and that the child was not adequately supervised when mother worked overnight shifts.

In March 2021, a vehicle that was known to be driven by mother was involved in a crash and its air bags were deployed. The child was not in the vehicle. When law enforcement and county social workers spoke with mother the day after the crash, she was holding the child and appeared to be under the influence of narcotics. A few days later, the child was placed on a 72-hour hold and placed with father. The county filed a second CHIPS petition regarding the child.

On March 31, 2021, the district court held an Emergency Protective Care hearing. The district court ordered the child to remain in father's custody and ordered a hair follicle test for both mother and the child. Mother's test result was positive for THC and

methamphetamine. The child's test result was positive for THC. After the hearing, social worker AB regularly called and texted mother in an attempt to develop a case plan, to arrange visits for mother, and to coordinate on court-ordered assessments.

On April 19, mother failed to appear for an Admit/Deny Hearing, and the district court found the child be in need of protection or services by default. The district court ordered mother to complete a chemical-health assessment, to complete a diagnostic assessment, and to comply with random drug testing. The district court ordered the child to remain in father's care and that visitation between mother and the child be supervised and increased or decreased as deemed appropriate by the social worker and the assigned guardian ad litem (GAL). The next day social worker AB left a detailed voice message for mother explaining what had happened in court and the steps mother needed to take moving forward.

After mother repeatedly failed to provide urine samples for analysis and managed to avoid contact with AB, AB communicated with mother on May 18, 2021, and reviewed mother's case plan. The county petitioned to terminate mother's parental rights that same day.

On June 7, 2021, mother was arrested for drug possession and driving after cancellation of her driving privileges. Mother tested positive for methamphetamine, amphetamines, and THC. On June 16, mother completed a chemical-dependency assessment, but she did not disclose her methamphetamine use to the assessor. The assessor recommended out-patient treatment. Mother began outpatient chemical-dependency treatment, but she was unsuccessfully discharged after four sessions because

she failed to attend programming, provided positive urine samples, and had outstanding warrants.

Because of mother's failure to respond to the county's communications, her first visit with the child was not scheduled until June 16, 2021. Mother overslept and did not attend that visit. Mother texted social worker AB, acknowledged that she missed the visit and asked AB to schedule another visit. The county filed a letter with the court the next day, stating that it was concerned about mother's drug use and lack of cooperation.

The county arranged for a supervised visit for mother and child to occur on June 23, 2021. Mother texted the visitation supervisor before the scheduled visit and stated that she was picking up food for the visit and would be at least ten minutes late. A few minutes later, mother called the supervisor and said that she had been pulled over for driving without a license and that her friend was coming to get her. The supervisor cancelled the visit. A third visit, scheduled for June 30, 2021, was cancelled after mother failed to confirm the appointment.

On July 7, 2021, mother attended her first supervised visit with the child since the second CHIPS petition was filed in March 2021. Social worker AB noted that the child was clearly bonded with mother and that it was difficult for the child to leave mother at the end of the visit. Mother and the child had a second visit one week later, which also went well. Nonetheless, AB and the GAL decided to suspend future visits based on mother's lack of follow-through with her case-plan services, and mother has not had another visit with the child since July 2021.

In a report to the court dated July 28, 2021, the county asked the district court to relieve it of the duty to provide reasonable efforts to reunify mother and the child because:

[The child] is 2.5 years old, and has been in the temporary custody of his father for 13 months combined. [Mother] is not pro-actively working her child protection case plan. [M]other has been unsuccessfully discharged from her [intensive outpatient programming], has not completed her diagnostic assessment, does not follow through with random testing and is not consistent with visits with her child. [Mother] has had an active warrant since July 8th. When [mother] does provide random drug tests, she has been positive. [The child] has routine, stability, consistent care from his father and resides in a safe and clean environment where his needs are met.

On August 4, 2021, mother failed to appear at a pretrial hearing on the petition to terminate her parental rights, and the district court terminated her rights by default.

On August 17, 2021, mother was arrested on an outstanding warrant. On August 24, mother completed a chemical-dependency evaluation. On August 27, mother filed her first notice of appeal in this case. On August 31, the chemical-dependency assessor recommended inpatient treatment for mother.

As of September 1, mother was regularly attending Alcoholic Anonymous (AA) and Narcotic Anonymous (NA) meetings. On September 22, mother began inpatient treatment at New Ulm Medical Center. Her risk of relapse was determined to be high. On October 21, mother completed treatment at New Ulm. Mother then began outpatient treatment at Nuway and moved into a sober-living facility.

By order opinion filed December 27, 2021, this court held that mother had not received proper notice of the August hearing at which her parental rights were terminated

by default.² *In re Welfare of Child of T.R.T.*, No. A21-1087, 2021 WL 6200680, at *3 (Minn. App. Dec. 27, 2021). This court reversed the termination order and remanded for further proceedings on the petition to terminate mother’s parental rights. *Id.*

On December 29, 2021, mother contacted social worker AB and requested visitation with the child. The record suggests that AB believed that the child needed to attend reunification therapy before reestablishing visitation with mother. On January 7, 2022, mother met with AB and agreed to a case plan. Mother informed AB that although she could be discharged to a private residence in Arlington, she did not think it was a safe place. Mother also informed AB that she had applied for employment with two employers, that she was attending AA and NA meetings, and that she was attending an NA meeting specific to methamphetamine use. On January 11, mother provided a urine sample for analysis, which tested negative for controlled substances.

On January 12, the county filed a report with the district court asking to be relieved of its duty to provide reunification efforts. The county’s reasons were as follows:

Timelines to work towards reunifying [the child and mother] have been exceeded. There is not time remaining to comply with a case plan and work towards reunification. [Mother] was successful in reunification with [the child] during the first CHIPS [case], when [the child] was out of her custody. [The child] was removed a 2nd time and there was 3

² The county proceeded by default under Minn. R. Juv. Prot. P. 18.01, which permits a district court to “receive evidence in support of the petition” if a parent fails to appear for a pretrial hearing after “being properly served” with notice pursuant to Minn. R. Juv. Prot. P. 53.04. Rule 53.04 provides that in termination of parental rights proceedings, “[f]or each hearing following the admit/deny hearing, the court shall order and the court administrator shall serve upon each party, participant, and attorney a written notice of the date, time, and location of the next hearing.” In reversing and remanding, this court concluded that mother did not have “proper notice” of the default hearing.

months remaining in the timelines. [Mother] did not use the remaining 3 months to comply with her case plan. [Mother] was not in compliance with her case plan at the time of the TPR in August 2021.

This case is about what is in the child's best interest. The child . . . remains in the care of his father, where [the child] has now been full-time, since March 26, 2021, nearly 10 consecutive months, nearly 1/3 of his life. [The child] has stability, routine, predictability and structure in the care and custody of his father.

The child protection matters have all involved concerns related to [mother's] chemical use. Chemical use and entering treatment has been occurring since [mother] was pregnant with [the child], and remains an issue as [the child] has just turned 3 years old.

On January 19, 2022, the district court relieved the county of its duty to provide reasonable reunification efforts. The district court reasoned that “[c]ontinuing to make reasonable efforts to reunify the child with his mother would be futile based upon the length of time the child has been out of the home, the timelines having run and the imminent trial.” The district court also prohibited visitation between mother and the child until recommended by the child's reunification therapist.³ Mother and child last had contact on July 14, 2021.

In February 2022, the county filed a report with the district court stating that father had failed to take the child to an intake appointment for reunification therapy. A second intake appointment was scheduled, but it was cancelled because the child was unwilling to wear a mask at the appointment. The child completed an intake appointment in mid-February, and the therapeutic assessor opined that the child did not need therapy and that

³ The record does not indicate that the district court's decisions regarding reasonable efforts and visitation were made after a hearing or with input from mother or her attorney.

overall, the child “is a healthy, happy 3 year old.” The record does not indicate whether the county attempted to schedule visitation between mother and child after that assessment.

On February 28, mother completed outpatient treatment at Nuway. On March 8, the district court began a trial on the petition to terminate mother’s parental rights. At that time, the record indicates that mother had been addressing her chemical dependency to the satisfaction of her treatment providers and had been sober since August 2021, a little over six months.

The district court heard testimony from several witnesses, including mother, father, social worker AB, several police officers, mother’s probation officers, and several of mother’s friends and treatment providers. Evidence was presented regarding mother’s progress in chemical-dependency treatment. For example, mother’s treatment provider at NuWay testified she had a positive attitude and “had positive reactions to situations she probably wouldn’t have handled well in the past.” The housing manager at mother’s sober-living facility testified that mother “was known as a very positive support person for anybody that was around her” and that mother is “making better decisions and thinking about what it is that she needs to do before doing it.” Mother testified that at the time of the March trial she was employed both as a cook and as a machine-operator technician, that she had cut off contact with a previous friend who was a known drug user, that she had applied to be a Certified Peer Recovery Specialist, that she was regularly attending AA and NA meetings, and that she was on a waiting list for individual therapy.

The district court summarized mother’s treatment progress at the time of trial as follows:

56. [Mother] attended and graduated from inpatient treatment at the New Ulm Medical Center (NUMC) from September 22, 2021, through October 21, 2021. She then moved to a sober living facility in Mankato called Nuway where she attended intensive outpatient treatment. [Mother] completed the Nuway intensive outpatient treatment program on February 28th, 2022.

57. [KW] from the New Ulm Medical Center testified about [mother's] 2021 inpatient treatment, and her prior NUMC inpatient treatment completed in 2018. [KW] stated [mother] seemed to be much more serious about her treatment in 2021 than she was in 2018.

58. [KW] also noted [mother] has undergone inpatient treatment at four other facilities: at ATCW in 2004; at Welcome Manor in 2018; at Waverly in 2019; and at House of Hope in 2019.

....

72. [LH] is a Certified Peer Recovery Support Specialist at Beyond the Brink in Mankato, Minnesota. [Mother] has been residing in Beyond the Brink sober living facilities since October 2021 and is currently living in a woman's sober housing building. [LH] testified [mother] has met every requirement they have asked of her. She has passed every UA they have asked her to provide. She has complied with their house rules including 30 hours per week of structured time and regular attendance at AA/NA meetings. She has also obtained employment and is currently looking for housing in the area.

In sum, the district court acknowledged mother's "recent success in treatment," but it concluded that "she has failed to establish she is capable of maintaining long-term sobriety," explaining:

[I]n spite of [mother's] recent success in treatment and sober housing, she has failed to establish she is capable of maintaining long-term sobriety. As much as the Court hopes this will be the case, her track record during the pendency of the second CHIPS proceeding and history of repeated

treatment efforts followed by relapses foreshadows an uncertain future.

The district court found that the child has a strong connection with father, who is meeting the child's needs, and that "[g]iven [mother]'s lack of engagement in services and lack of contact, her interest in preserving the parent-child relationship has been minimal."

On March 25, 2022, the district court issued an order terminating mother's parental rights on three statutory grounds: continuous or repeated refusal or neglect to provide necessary care under Minn. Stat. § 260C.301, subd. 1(b)(2) (2020); palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4) (2020); and failure to correct the conditions that led to the child's out-of-home placement under Minn. Stat. § 260C.301, subd. 1(b)(5) (2020).

Mother appeals the termination of her parental rights.

DECISION

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 county made reasonable efforts to reunite the family, if reasonable efforts were required; and (3) termination is in the child's best interests. *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008); Minn. Stat. § 260C.301, subd. 1(b) (2020) (setting forth statutory grounds for termination). In reviewing a termination order, we review the underlying findings of fact for clear error. *S.E.P.*, 744 N.W.2d at 385, 387. We review both the district court's determination of whether a particular statutory basis to terminate parental rights exists and the district court's ultimate decision whether to terminate parental rights for an abuse of

discretion. *In re Welfare of Child of K.L.W.*, 924 N.W.2d 649, 653 (Minn. App. 2019), *rev. denied* (Minn. Mar. 8, 2019) (statutory basis); *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (decision to terminate).

The Minnesota Supreme Court has explained the standards to be used when reviewing a termination order as follows:

This court has adopted very stringent standards in reviewing orders for termination of parental rights. The burden of proof is upon the petitioner and is subject to the presumption that a natural parent is a fit and suitable person to be entrusted with the care of a child. We require that the [district] court make clear and specific findings which conform to the statutory requirements for termination adjudications. We further require that *the evidence relating to termination must address conditions that exist at the time of the hearing*, that the existence of a neglect order alone cannot be the basis for issuance of a termination order, and that *it must appear that the present conditions of neglect will continue for a prolonged, indeterminate period*. Finally, this court, while giving deference to the findings of the [district] court, will exercise great caution in termination proceedings.

In re Welfare of Chosa, 290 N.W.2d 766, 769 (Minn. 1980) (emphasis added) (citations omitted); *see In re Welfare of D.F.B.*, 412 N.W.2d 406, 410 (Minn. App. 1987), (“In addition to the statutory grounds, the petitioner must show that conditions justifying termination exist at the time of trial and will continue to exist for an indeterminate period.”), *rev. denied* (Minn. Nov. 18, 1987).

Mother challenges the district court’s termination order. She assigns error to the district court’s findings of fact regarding her compliance with the conditions of her case plan. She argues that the district court abused its discretion by determining (1) that the three cited statutory grounds for termination were met, (2) that the county made reasonable

efforts to reunite her with her child, and (3) that termination is in her child's best interests. Mother's arguments share a common thread: She asserts that the district court did not adequately consider the conditions existing at the time of the termination trial and that the record does not support a determination that her neglect of parenting responsibilities due to chemical dependency will continue for a prolonged, indeterminate period. We therefore focus on those assertions.

I.

This court recently reiterated that when reviewing a termination order, "we address conditions at the time of the termination hearing and whether they are expected to continue for the foreseeable future." *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 603 (Minn. App. 2021) (citing *Chosa*, 290 N.W.2d at 769), *rev. denied* (Minn. Dec. 6, 2021).

The district court found that mother did not cooperate with services offered to address the neglect resulting from her chemical dependency and did not responsibly exercise her visitation rights prior to the default proceeding. But the district court's findings show that mother made significant changes after the default proceeding. Mother testified that she had been sober for six months. She had completed a chemical-dependency evaluation, inpatient chemical-dependency treatment, and outpatient chemical dependency aftercare. She was residing in sober housing, searching for independent housing, working two jobs, cooperating with her social worker, and on a waitlist for individual therapy.

Nonetheless, the district court terminated mother's parental rights, concluding that despite her "recent success in treatment," she had "failed to establish she is capable of

maintaining long-term sobriety.”⁴ The district court appropriately found that mother had struggled with chemical dependency since the birth of her child and that she had completed chemical-dependency treatment in the past. *See J.H.*, 968 N.W.2d at 603 (stating that parent’s “history of inconsistency is relevant to determining whether he might maintain his current level of engagement”). But a comparison of caselaw to the facts of mother’s case indicates that at the time of the trial on remand, mother’s efforts to correct the neglect-causing conditions and to maintain her parental rights were adequate to preclude a second termination of her parental rights.

In *Chosa*, the supreme court reversed a termination because “[t]he record [did] not support the conclusion that the conditions which lead to the termination of . . . parental rights will be prolonged and indeterminate.” 290 N.W.2d at 767. Two years later, in *In re Welfare of R.M.M.*, the supreme court upheld a termination, concluding that the record established that the conditions of neglect would continue for a prolonged, indeterminate period. 316 N.W.2d 538, 542 (Minn. 1982). The mother in *R.M.M.* had “a long and sad history of chemical abuse and instability.” *Id.* at 539. She had been institutionalized many times, including 10 to 15 times at a state hospital, and had attempted suicide several times. *Id.* A psychiatrist testified that he did not anticipate a significant change in mother’s condition in the future and did not believe that chemical-dependency treatment would, by itself, cure her problems. *Id.* at 540.

⁴ We note that the county had the burden of proof at trial. *See Chosa*, 290 N.W.2d at 769 (stating that the “burden of proof is upon the petitioner”). Mother does not allege that the district court misapplied the burden of proof in terminating her parental rights.

In upholding the termination in *R.M.M.*, the supreme court compared the parent's circumstances in *R.M.M.* to those in *Chosa* as follows:

[Witnesses in *R.M.M.*] testified that [mother's] condition is prolonged and indeterminate. [One witness] testified that he did not see the possibility of change in the foreseeable future, and [it was argued] that [mother] is not going to change. [Mother's] own behavior compels such conclusions. She has not undertaken a serious effort to treat her chemical dependency and has repeatedly broken commitments to go into treatment. She has been unable to resolve her relationship with [the father] and has been ambivalent in her attitude toward parenting her [child]. Even at trial, when pressed to make a commitment to go into treatment, she responded that she "hopefully" would go. Unfortunately, the crucial factor in this case is that there is no evidence to support [mother's] hope that her behavior will change.

In *Chosa*, we vacated an order terminating the parental rights of a young Indian mother because the record suggested that, with the assistance of child-rearing services, she would be able to demonstrate ability to care for her child. Unfortunately, the record in this case suggests no such solution. Whereas *Chosa* was 18 years old at the time of the hearing on termination of her rights to her first child, [the *R.M.M.* mother] is now 31 and has voluntarily terminated her rights to three older children. Moreover, *Chosa*'s behavior had shown some improvement before the hearing, and *Chosa* indicated at trial her willingness to try a new parenting program. [The *R.M.M.* mother], on the other hand, has shown no improvement and has taken no steps toward working out the problems which threaten [her child's] welfare.

Id. at 542.

In *In re Welfare of A.D.*, the supreme court once again affirmed the termination of a mother's parental rights, noting that "[i]n a termination case, the court relies not primarily on past history, but to a great extent upon the projected permanency of the parent's inability

to care for his or her child.” 535 N.W.2d 643, 649 (Minn. 1995) (quotations omitted). As to that issue, the supreme court relied on a social worker’s testimony that “[i]t’s my belief that there is no foreseeable time when [mother could provide parenting for her child]. I don’t see a point where she could do that for [her child].” *Id.*

In *In re Welfare of S.Z.*, the supreme court affirmed termination of a father’s parental rights, after rejecting his argument that the district court failed to address the conditions that existed at the time of the termination hearing. 547 N.W.2d 886, 893-94 (Minn. 1996). The supreme court noted that there had been a court order committing father as mentally ill and reasoned that

[t]he commitment order was stayed on specific conditions, including that he remain at Hennepin County Medical Center, take all prescribed medications, refrain from the use of alcohol and other nonprescribed drugs, and cooperate with his aftercare plan and the county social worker. The stayed order included findings by the court that [father] was ill with chronic schizophrenia and that, as a consequence of his mental illness, he engaged in grossly disturbed behavior and posed a substantial likelihood of causing physical harm to himself and others. [Father] did not comply with the conditions of the stayed order, the court revoked the stay, and at the time Hennepin County petitioned to terminate his parental rights, [father] was in Hennepin County Medical Center Psychiatric Unit awaiting transfer to [a state hospital].

The specific conditions of the commitment order directly relating to the parent and child relationship include [father’s] long-term mental illness and polysubstance abuse. These conditions resulted in multiple hospitalizations and commitments to short- and long-term care facilities. [Father] has been unable to stop drinking, has reported auditory hallucinations, has attempted suicide, and has been detained by police after exhibiting behavior which indicated that he was a danger to himself. If [father] cannot care for himself on a sustained basis, it follows that he cannot care for a child.

Furthermore, his inability at the termination hearing to state activities which he would do with his son and his misapprehension about the child's age indicate that his mental state at the time of the hearing was not conducive to adequate child rearing. Finally, [father] stated at the hearing that he would, if required by the court, visit a psychiatrist, but he did not intend to take his medication. These facts, viewed in the aggregate, address the . . . specific conditions which existed at the time of the hearing. . . . The district court's findings conform to these statutory requirements and are supported by the evidence.

Id.

This court has similarly affirmed termination orders after rejecting arguments that current circumstances did not support termination. For example, in *In re Welfare of H.K.*, this court affirmed a termination after concluding that there was "clear and convincing evidence that the present conditions of neglect will continue for a prolonged and indeterminate time." 455 N.W.2d 529, 533 (Minn. App. 1990), *rev. denied* (Minn. July 6, 1990). In doing so, this court reasoned that the mother in *H.K.*

did not complete the goals outlined in the placement plan. [She] was to maintain contact with [her child] but no visits occurred between February 1988 and January 1989, when she requested that the visits resume. The court ordered her to attend and finish a program for battered women in the hope of ending the cycle of violence, oppression and abuse she experienced with her husband. She did not complete the program. Further, after completing a chemical dependency evaluation, [she] started an inpatient chemical dependency program in October 1988, but failed to finish it. In addition, she did not, at any time since the dependency hearing, keep a stable environment by living in one place for more than six months. Finally, she did not finish the required parenting classes. [Her] unwillingness to complete any of the goals of her placement plan provides clear and convincing evidence that the present conditions of neglect will continue for a prolonged and indeterminate time.

Id.

More recently, in *In re Welfare of Child of J.H.*, this court once again affirmed the termination of a father's parental rights despite his recent progress in chemical-dependency treatment. 968 N.W.2d at 603. The circumstances leading up to the termination trial were as follows:

[Father's] in-person chemical dependency treatment also resumed in August 2020. But father missed two sessions and was then discharged from the program. The discharge summary stated that father was unamenable to further interventions. The second social worker tried to get father back into treatment, but he refused. From October to December 2020, father inconsistently complied with the random urinalyses program and tested positive for methamphetamine at least once. Additionally, in November, father at the last minute told his social worker that he could not attend the parenting capacity evaluation scheduled for him. And although he had requested a visit with C.S. around Christmas, he later refused visitation during the week of Christmas. Father's last reported methamphetamine use was December 25.

After the county informed the district court and father that it would move forward with a termination-of-parental-rights petition, the district court relieved the county of making reasonable efforts toward reunification. But it stated that the county should nevertheless help father if he asked for services. The county then filed a petition to terminate father's parental rights on January 15, 2021. By that time, C.S. had been out of father's care for 374 days. But after the county filed its petition, father's efforts toward reunification changed. At father's request, the county provided a parenting capacity evaluation in February 2021. He voluntarily resumed chemical dependency treatment, and his provider noted that his prognosis was "more promising than [it] was the first time around." And he consistently tested negative for methamphetamine and started a faith-based recovery program. Although visits had been suspended when the county decided

to file its termination petition, father was able to resume visitation with C.S., having five visits in February.

Id. at 598-599 (footnote and section heading omitted).

The termination trial in *J.H.* commenced on March 22, 2021, only two months after the county filed its termination petition and father's efforts towards reunification improved.

Id. at 599. In rejecting father's claim that he showed recent progress on his chemical dependency and his participation in services at the time of trial, this court noted that "the district court's finding that father's chemical health remained unaddressed *until recently* is not disputed." *Id.* at 604.

Mother's circumstances are very different from those that justified termination of parental rights in the above-described cases. The record shows that in the six months leading up to the trial and termination order that is before us in this appeal, mother obtained a chemical-dependency assessment, completed inpatient treatment, completed outpatient treatment, maintained stable housing, and maintained jobs with two different employers. Mother also cooperated with chemical testing, and there is no evidence that mother used illegal chemicals during that period. Thus, this case is unlike others in which the supreme court and this court rejected "current-conditions" arguments because the parents had not complied with their case plan services at the time of trial. And this case is unlike this court's most recent case, *J.H.*, in that mother's efforts to address her chemical health began six months, and not two months, before trial.

Mother's circumstances are also different in that mother does not present with a constellation of issues leading to neglect. The allegations of neglect stem from mother's

chemical dependency and more specifically, her use of methamphetamine. There is no allegation that she suffers from a major mental illness, that she had engaged in or was subject to domestic violence, or that she was incapable of maintaining employment and housing. In addition, there is no evidence that mother was not a competent parent when she was not using chemicals. In fact, at trial, mother's assigned social worker AB testified that the county was not concerned about mother "when she's in a highly structured environment like inpatient. The [county] isn't necessarily concerned about [mother] when she's in outpatient. The [county] isn't really concerned about [mother] when she's in sober living because she has built-in supports. She has the checks and balances to help keep her sober." AB further testified that when she visited mother at sober living in January 2022, mother "was communicative, she was cooperative, she was more than willing to show me what she's accomplished. She was answering my questions, she was signing releases of information."

Finally, this is not a case in which mother's child has special needs or did not want contact with mother. Indeed, in a report to the district court, the county noted that "[t]he transition leaving [mother] appears to be difficult on [the child]. [Mother] gave him several hugs and kisses while [the child] was in his car seat. [Mother] said she will see him later and that she loves him. . . . [The child] was crying for his mommy on the ride back." Accordingly, AB testified that she observed a bond between mother and child during their visits. The child's GAL testified at the August pretrial hearing that the child had a relationship with his mother.

To be clear, mother’s conduct prior to the default hearing did not inspire faith in her ability to put the needs of her child and the demands of parenting above her drug use. But as noted above, an appellate court exercises “great caution” in termination proceedings. *Chosa*, 290 N.W.2d at 769. After a cautious review of the record in this case, including the steps mother took to correct the conditions that led to the termination action, we cannot uphold the district court’s conclusion that the county proved, by clear and convincing evidence, that the neglect-causing condition—uncontrolled chemical dependency—“will continue for a prolonged, indeterminate period.” *Id.*

II.

Under Minnesota’s permanency laws, “[a] permanency or termination of parental rights petition [generally] must be filed at or prior to the time the child has been in foster care or in the care of a noncustodial or nonresident parent for 11 months.” Minn. Stat. § 260C.505(a) (2020). The permanency laws set forth expedited deadlines for an admit/deny hearing and a trial on a permanency petition. *See* Minn. Stat. §§ 260C.507 (addressing admit/deny hearings) and 260C.509 (addressing trials) (2020). The National Council of Juvenile and Family Court Judges describes the key principle of permanency for children as follows:

All children are entitled to a safe, permanent and nurturing home in order to reach their full potential as human beings. It is preferable that permanency be accomplished within a child’s own family, but if that is not possible, it should be accomplished in a family setting. From the time a child enters the child welfare system, all participants in that system and all levels of the judicial system must strive to achieve permanency for the child.

Minn. Judges Juvenile Prot. Benchbook 5–2 (Minn. State Ct. Adm’r Office, Nov. 2011).

Here, the county and the district court recognized their obligation to efficiently process the underlying case, consistent with Minnesota’s permanency laws. In fact, the record indicates that the county’s and district court’s decisions in this matter were heavily influenced by the permanency deadline in this case.

In requesting relief from reasonable efforts in January 2022 and in its current brief to this court, the county stressed that the permanency timeline had expired by the time of the August 2021 default proceeding. In its brief to this court, the county argues that mother “failed to correct the conditions within the permanency timelines” and that although mother’s case plan efforts prior to trial were “noteworthy,” those efforts occurred significantly after the 12-month permanency timeline had lapsed. The county argues that mother “wasted a lot of precious time that should have been used to work her case plan,” and that “[s]he chose drugs over [her child].”⁵

⁵ The county makes other arguments in its brief to this court, which we do not address because they are based on information that is not contained in the record. *See* Minn. R. Civ. App. P. 110.01 (stating that the appellate record consists of “[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings”); *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) (holding that we generally do not consider matters not produced and received in the district court.); *see In re Welfare of Child of J.P.–S.*, 880 N.W.2d 868, 874 (Minn. App. 2016) (applying this aspect of *Thiele* in a child-protection-related appeal). The county also argues that mother has “failed to maintain *independent* sobriety, which is measured and commences *after* all structured treatment is completed, and *after* that parent begins providing UAs and regularly testing clean.” The county asserts that “independent sobriety” is “required,” explaining that “many parenting capacity assessments dictate that a child not be returned to the home until the using parent can demonstrate a period of at least six months of *independent* sobriety” and that mother “has failed to demonstrate such.” The county does not cite authority to support its assertion that six months of “independent” sobriety after completion of structured treatment is a required benchmark.

The district court similarly emphasized that the permanency timelines had expired before mother embarked on her current course of chemical-dependency treatment. In relieving the county of reasonable efforts on remand, the district court reasoned, in part, that “[c]ontinuing to make reasonable efforts to reunify the child with his mother would be futile based upon . . . the timelines having run.” In its order terminating mother’s parental rights, the district court noted that

36. March 31, 2021, marked where the one-year permanency timeline clock resumed. This was day 271 of 365 days allotted per the permanency timeline for the custodial parent to be reunified with her child. [Mother] had until July 3, 2021, or approximately three months remaining to follow and substantially comply with the court ordered case plan before she encroached on day 365.

The district court also found that social worker AB “testified she believes it is in [the child’s] best interest that [mother’s] parental rights be terminated because her timeline to address the issues that led to [the child’s] removal expired July 3, 2021.” And the district court noted that the GAL believed that termination is in the child’s best interest because mother had failed to comply with her case plan and the child had “lingered” in the system for well over 365 days.

Admittedly, there is tension between the “current-conditions” principle in caselaw and the requirement that permanent-placement decisions be made promptly in child-protection cases. But we discern no support for the implication—in the county’s arguments and the district court’s findings—that a parent’s successful efforts to address conditions of neglect should be discounted solely because those efforts occurred after the expiration of a permanency deadline in a case *that is still pending resolution* in district court. We question

why we would ignore documented compliance with programming intended to correct conditions of neglect simply because the efforts occurred after expiration of a permanency deadline in a case that has not been resolved before that deadline. Indeed, ignoring favorable steps a parent has taken to correct conditions of neglect in a pending child-protection case seems punitive and inconsistent with a determination of the child's best interests, which "must be the paramount consideration" in a termination proceeding if the district court finds the existence of a statutory basis to terminate parental rights. Minn. Stat. § 260C.301, subd. 7 (2020).

We recognize that mother's efforts to improve her circumstances did not begin until after the default termination in August 2021. And we acknowledge that if the default termination order had not been reversed for insufficient notice, mother would not have had additional time to correct the conditions leading to the termination action. But the county does not cite, and we are not aware of, any caselaw suggesting that the current-conditions principle does not apply to a termination decision that was made after expiration of the permanency deadline. Moreover, expiration of the permanency deadline in itself is not a recognized ground for termination of parental rights. *See* Minn. Stat. § 260C.317, subd. 1 (2020) ("If, after a hearing, the court finds by clear and convincing evidence that one or more of the conditions set out in section 260C.301 exist, it may terminate parental rights."). We therefore rely on the current-conditions principle in our review of this case and hold that because the record does not clearly and convincingly establish that the neglect-causing condition in this case will continue for a prolonged, indeterminate period, the district court

abused its discretion in terminating mother's parental rights. We therefore reverse and remand for further proceedings in this matter.

III.

Given our lack of information regarding the circumstances of mother and the child at this time, our decision to reverse is not an easy one. We in no way suggest that the child should be removed from father's care (if that is where the child remains) or that the child should be placed with mother. The district court obtained jurisdiction over the underlying proceedings when the county alleged that the child was in need of protection or services, and the child's placement has been under the district court's jurisdiction and control since that time, including during the pending appeals. *See* Minn. Stat. § 260C.101, subd. 1 (2020) (stating that "[t]he juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be in need of protection or services"); *In re Welfare of C., Child.*, 348 N.W.2d 94, 99 (Minn. App. 1984) (stating that "[j]uvenile courts have continuing jurisdiction over matters not directly involved in or essential to the appeal" and that, pending an appeal, they retain "a residuum of jurisdiction to handle issues involving the child's welfare.") The district court's jurisdiction over the underlying child-protection matter will continue on remand.

If the county believes that efforts to reunify mother and the child are not appropriate on remand, it may continue proceedings on the underlying termination petition or file a new permanency pleading. To be clear, the district court has discretion to reopen the record for the presentation of additional evidence regarding the underlying termination petition. *See In re Child of E.V.*, 634 N.W.2d 443, 450 (Minn. App. 2001) (authorizing the district

court to reopen the record for the presentation of additional evidence on remand after reversal of a termination order). Reopening the record would be consistent with the principle that termination must be based on current conditions of neglect. But if the county elects to proceed with termination of mother's parental rights, it must prove the current existence of a statutory basis to terminate parental rights, that any conditions supporting termination will continue for a prolonged and indeterminate time, and that termination of mother's parental rights is in the child's best interests.

If the county cannot carry its burden to prove those matters by clear and convincing evidence, but nonetheless believes that the child's best interests are served by permanent placement outside of mother's home, the county may file a permanency petition seeking another form of relief. *See* Minn. Stat. § 260C.511(b) (2020) ("In making a permanency disposition order or termination of parental rights, the court must be governed by the best interests of the child, including a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact."); Minn. Stat. § 260C.513(a) (2020) ("For a child who cannot return home, a permanency placement with a relative is preferred. A permanency placement with a relative includes . . . a transfer of permanent legal and physical custody to a relative.").

Reversed and remanded.