

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0798**

In the Matter of the Welfare of the Children of:
J. J. F., II, and M. J. B., Parents.

**Filed November 28, 2022
Affirmed
Slieter, Judge**

Washington County District Court
File No. 82-JV-21-445

Gregory J. Schmidt, Gregory J. Schmidt Law Offices, P.A., Afton, Minnesota (for appellant-mother M. J. B.)

Victoria M. Herr, Plymouth, Minnesota (for father J. J. F.)

Kevin Magnuson, Washington County Attorney, Richard D. Allen, Assistant County Attorney, Stillwater, Minnesota (for respondent Washington County Community Services)

Nancy Cottrell, Stillwater, Minnesota (guardian *ad litem*)

Considered and decided by Reyes, Presiding Judge; Slieter, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the termination of her parental rights to two of her children. Because the district court was within its discretion in concluding that the county made reasonable efforts to reunite the family and termination of appellant's parental rights is in the children's best interests, we affirm.

FACTS

Appellant M.J.B. is the mother of three children. This termination-of-parental-rights (TPR) case involves twins born in 2017 (the children). Mother had recently graduated from in-patient chemical-dependency treatment when the children were born. Mother participated in the treatment program as part of a child-protection matter for her oldest child and she was, at the time the children were born, living with her sister and her sister's husband. The previous child-protection matter was initiated because of mother's methamphetamine use and domestic abuse by J.J.F, the children's father.¹

In July 2018, mother had moved out of her sister's house with the children, and she obtained an order for protection (OFP) against father after he "punched [her] in the side of the face" causing her to accidentally butt the head of one of the children. Mother sought to dismiss the OFP in late August after father agreed to enter chemical-dependency treatment and take anger-management classes. In September, mother called the police after father assaulted her again, which included wrapping an extension cord around her neck.

First Child-Protection Petition

In October 2018, law enforcement searched mother's house and found methamphetamine and a gun. This prompted Dakota County Social Services to take the children into custody and initiate a child-protection proceeding. The children were initially placed in nonrelative foster care, and later placed with father's sister. In November 2018,

¹ Father's parental rights were terminated in the same proceeding, and he separately appealed in *In re Welfare of the Children of J.J.F., II and M.J.B.*, A22-0828 (Minn. App. Nov. 28, 2022).

a child-protection case manager met with mother to discuss a case plan, which required mother to complete a chemical-dependency evaluation, follow its recommendations, and demonstrate sobriety through random drug testing. In early January 2019, when the children were placed with father's sister, mother had not submitted to random drug tests and a hair drug test as required in her agreed-upon case plan. Dakota County also had difficulty arranging a consistent visitation schedule for mother and, when visitation was arranged, mother was consistently late.

Mother entered residential outpatient chemical-dependency treatment in May 2019. After her successful discharge from this program in June, mother relapsed, missed a court hearing, and tested positive for alcohol. In August, mother was admitted to a 13-month residential treatment program at Minnesota Adult & Teen Challenge and completed an additional comprehensive chemical assessment. This program allowed visitation with the children, which mother utilized.

In September 2019, as the children neared one year of being placed away from mother, Dakota County petitioned to transfer sole legal and sole physical custody of the children to father. With mother's agreement, the district court transferred custody to father in October 2019. The district court terminated the child-protection proceeding, and the children began living with father at their grandfather's house.

Second Child-Protection Petition

In October 2020, father's sister began to have concerns about father's behavior and its effect on the children. In the first quarter of 2021, father stopped regularly living at grandfather's house and at least once forgot to pick the children up from daycare. In April

2021, at father's request following his arrest, the children returned to his sister's full-time care. The children continued to live with the sister, and the placement became official in July 2021, when Washington County Community Services initiated a second child-protection proceeding.

After initiating the child-protection proceeding, Washington County prepared and updated case plans for mother. In December 2021, after a scheduled pretrial hearing, the district court adjudicated the children in need of protection or services.

In February 2021, mother was sentenced to 100 months' imprisonment for first-degree possession of a controlled substance, based on the evidence obtained in the October 2018 search of her house. She remained incarcerated at the time of the TPR trial and is scheduled to be released in 2026.

Washington County petitioned to terminate the parental rights of both parents in September 2021, and the district court conducted a five-day TPR trial between March and May 2022. In June, the district court issued its order terminating mother's and father's parental rights to the children pursuant to Minn. Stat. § 260C.301, subds. 1(b)(2) (parental neglect), (4) (palpable unfitness), (5) (failure to correct conditions leading to placement), (8) (neglected and in foster care) (2020). Mother and father appealed separately. This is mother's appeal.

DECISION

“[O]n appeal from a district court's decision to terminate parental rights, we will review the district court's findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily

terminating parental rights is present for an abuse of discretion.” *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). “We affirm the district court’s termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family.” *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted).

I. Reasonable Efforts

When the district court terminates parental rights, it “shall make findings and conclusions as to the provision of reasonable efforts.” Minn. Stat. § 260.012(h) (2020). “[P]rovision of reasonable efforts must be evaluated by the court in every case.” *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). However, a detailed analysis of the factors set out in Minn. Stat. § 260.012(h) is not always required. *J.R.B.*, 805 N.W.2d at 904. “[W]hat constitutes reasonable efforts depends on the facts of each case.” *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 (Minn. App. 2021) (quotation omitted), *rev. denied* (Minn. Dec. 6, 2021). “[A]n agency fails to make reasonable efforts when it fails to prepare a case plan with an incarcerated parent or otherwise identify any potentially suitable programming available to an incarcerated parent.” *In re Welfare of Children of A.D.B.*, 970 N.W.2d 725, 730 (Minn. App. 2022) (citing *In re Welfare of A.R.B.*, 906 N.W.2d 894, 900 (Minn. App. 2018)).

We review the district court’s determination that the county has made reasonable efforts to reunite the family for an abuse of discretion. *See In re Welfare of Child of D.L.D.*,

865 N.W.2d 315, 323 (Minn. App. 2015) (concluding that the district court’s “reasonable-efforts finding was not an abuse of discretion”), *rev. denied* (Minn. July 20, 2015). “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)).

Mother argues that Washington County “failed to provide reasonable efforts by failing to provide and implement an out of home placement plan” for her. We are not persuaded.

Most critically, the record supports the district court’s determination that Washington County made reasonable efforts to reunite the family and, as part of those reasonable efforts, implemented multiple case plans with mother. When Washington County initiated the second child-protection matter, the assigned child-protection case manager “reached out to [mother’s] case manager through the prison, . . . and arranged to have a phone call with [mother].” The child-protection case manager reviewed the case plan with mother telephonically because COVID-related prison restrictions prevented in-person visits. And the child-protection case manager told mother she could contact her “if she had any questions or changes.” During this phone call, mother indicated that she was familiar with case plans from her previous child-protection matters. The child-protection case manager signed every case plan, as did mother after the child-protection case manager provided them to mother through her prison case manager.

Mother's case plan was updated in November 2021 and February 2022, and each time the child-protection case manager provided mother a copy through her prison case manager and "offered her [at] any point to contact [the child-protection case manager] if she had questions about it." The child-protection case manager also asked mother if there was any programming available to her in prison and learned that the usual programming was not being offered because of COVID.

Due to COVID-related prison restrictions, mother's only option for visits with the children was via video, which the child-protection case manager helped arrange. The child-protection case manager helped prepare mother and the children for video visits and followed up with mother after the visits. When COVID restrictions disrupted what had been regular video visits, the child-protection case manager worked with the prison to reinstitute visits.

Thus, contrary to mother's argument, the present case is easily distinguishable from *A.R.B.* and *A.D.B.*, where this court reversed termination of a parent's rights because the responsible agency provided *no* written case plan and made *no* efforts to identify resources to remedy the relevant conditions. *See A.R.B.*, 906 N.W.2d at 900; *see also A.D.B.*, 970 N.W.2d at 732, 734.

Moreover, mother misunderstands what must be included in the written case plan, which is a required part of the responsible agency's reasonable efforts. "Case plan" is statutorily defined as "any plan for the delivery of services to a child and parent or guardian, or, when reunification is not required, the child alone." Minn. Stat. § 260C.007, subd. 3 (2020). In the termination-of-parental-rights context, "The purpose of a case plan is to give

parents written guidelines for correcting the conditions resulting in child protection proceedings.” *A.D.B.*, 970 N.W.2d at 731. Here, that purpose was met.

Mother’s case plans identified two key goals for mother: demonstrate an ability to safely and consistently protect the children from harm and provide for the children, and put the children’s needs ahead of her own. To accomplish these, mother had to demonstrate sobriety and stability and participate in mental health, chemical health, and parenting skills programming as they were available. Thus, the case plans provided “written guidelines for correcting the conditions resulting in [the] child protection proceeding[.]” *Id.*

II. Best Interests

Once a statutory basis for terminating parental rights has been met (which is not contested by mother), “the best interests of the child must be the paramount consideration.” Minn. Stat. § 260C.301, subd. 7 (2020). We review a district court’s best-interests determination for an abuse of discretion. *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 657 (Minn. App. 2018). “In determining a child’s best interests, the district court must balance ‘(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.’” *J.H.*, 968 N.W.2d at 604 (quoting *A.M.C.*, 920 N.W.2d at 657); *see also* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) (requiring same). “[D]etermination of a child’s best interests ‘is generally not susceptible to an appellate court’s global review of a record,’ and . . . ‘an appellate court’s combing through the record to determine best interests is inappropriate because it involves credibility determinations.’” *In re Welfare of Child of*

D.L.D., 771 N.W.2d 538, 546 (Minn. App. 2009) (quoting *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003)).

The district court made extensive factual findings regarding the children’s mental, emotional, and physical health, educational and physical needs, and their parents’s “consistent pattern of substance abuse, domestic violence, and mental health concerns, all resulting in instability to [the children’s] detriment.” It noted that “generally children have an interest in preserving the parent/child relationship,” and the children, who were four years old at the time of trial, were too young to form a distinct preference. With respect to mother, the district court found that she had been the children’s “day to day caregiver for slightly less than the first year of their lives.” In that year, she failed to take advantage of services offered to her, resumed an abusive relationship with father, and ultimately had the children removed from her care after methamphetamine and a gun were found in the house with the children. The district court found that, during the children’s second and third year of life, mother “failed to make use of offered reasonable efforts and had inconsistent contact with her children,” leading to a voluntary transfer of physical and legal custody to father. Finally, the district court noted that mother is currently incarcerated but “[m]ore importantly . . . look[ed] at the brief time she has actually parented her children” and her inability to maintain a safe and stable home when she was not incarcerated. In balancing the interests of mother and the children, the district court ultimately determined that, “The children’s competing interests in the need [for] a safe and stable life outweighs any competing interests of the parents.”

Mother does not argue that these findings are erroneous. Rather, she offers an alternative set of facts, from her own testimony, emphasizing the efforts she did make to maintain a relationship with the children. However, the guardian *ad litem* and the child-protection case manager, whom the district court found credible, testified that terminating mother's parental rights was in the children's best interests and provided reasons for their opinions. Thus, mother's argument is essentially a request for us to reweigh the evidence and credibility of the witnesses, which is not our role. *See D.L.D.*, 771 N.W.2d at 546; *see also In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (emphasizing that the clear-error standard does not permit reweighing of evidence); *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* in a juvenile-protection appeal), *rev. denied* (Minn. Dec. 6, 2021).

Mother also argues that the basis for the guardian *ad litem*'s testimony—that termination of mother's parental rights is in the children's best interest—is “woefully weak” because of insufficient interviews during her investigation and her purported misunderstanding of the best-interests standard. The district court found the guardian *ad litem*'s testimony “credible in all respects,” and mother's argument again amounts to an impermissible request for this court to reweigh the credibility of witnesses. *See D.L.D.*, 771 N.W.2d at 546; *see also Kenney*, 963 N.W.2d at 221-22; *J.H.*, 968 N.W.2d at 601 n.6. Moreover, the guardian *ad litem* testified that she understood the best-interests standard, and nothing in the record suggests otherwise.

In sum, mother does little more than disagree with the district court's credibility determinations and weighing of the required factors. The district court balanced the

interests of the children and parents as it is required to do, determined that terminating mother's parental rights is in the children's best interests, and the record supports this conclusion.

Thus, the district court acted within its discretion to terminate mother's parental rights.²

Affirmed.

² Mother also argues that the district court erred by adopting Washington County's proposed findings *verbatim*. The supreme court has expressed a "preference . . . 'for a court to independently develop its own findings,'" but "ha[s] declined to adopt a blanket prohibition on" adoption *verbatim* of proposed findings. *In re Children of T.A.A.*, 702 N.W.2d 703, 707 n.2 (Minn. 2005) (quoting *Pederson v. State*, 649 N.W.2d 161, 163 (Minn. 2002)). And the record shows that the district court made changes, albeit minor, throughout the proposed findings before adopting them.