STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1053

In the Matter of the Welfare of the Children of: K. L. D., J. T., Jr. and C. J. H., Parents.

Filed January 17, 2023
Affirmed
Reilly, Judge

Pine County District Court
File No. 58-JV-21-102

Anne M. Carlson, Anne M. Carlson Law Office, PLLC, St. Paul, Minnesota (for appellant K.L.D.)

Reese Frederickson, Pine County Attorney, Sydney Silko, Assistant County Attorney, Pine City, Minnesota (for respondent Pine County Health and Human Services)

Elizabeth M. Hiljus, North Branch, Minnesota (for Child 1)

Jim Clune, Pine City, Minnesota (guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant-mother challenges a district court order terminating her parental rights to her minor children. Because the record supports the district court's determination that a statutory ground for termination exists, that respondent-county made reasonable efforts to reunify the family, and that termination of mother's parental rights is in the children's best interests, we affirm.

FACTS

This appeal arises out of the termination of mother K.L.D.'s parental rights to Child 1, born in 2009; and Child 2, born in 2013.[1] Since 2012, Pine County Health and Human Services has received 37 maltreatment reports involving the children. The county completed nine investigations or assessments and offered services to the family on two previous occasions.

In January 2021, law enforcement officers searched mother's home pursuant to a search warrant. Officers found piles of trash and dirty clothing throughout the home, dirty dishes in the kitchen, an inoperable stove, cat feces on the floor, and flies swarming throughout the home. In the children's closet, officers found a pipe and other drug paraphernalia which tested positive for methamphetamine. These items were within reach of the children. The county determined the home was unsuitable for the children and placed them on a 72-hour law enforcement emergency hold. The children were at school during the police search. When a county social worker picked up the children from school, she noticed they had poor hygiene, had a strong odor, and appeared not to have bathed recently. The county petitioned the district court to adjudicate the children in need of protection or services (the CHIPS petition). In March 2021 the district court adjudicated the children in need of protection or services.

The county filed a case plan with the district court in February 2021, and an updated case plan in October 2021. The district court ordered mother to comply with the case plans.

[1] Mother is the sole custodial parent for the children. The fathers, J.T. Jr. and C.J.H., are not parties to this appeal.

The updated case plan required mother to complete chemical-dependency programming and follow all aftercare recommendations; abstain from mood-altering chemicals; submit to random drug testing; participate in individual therapy and family therapy; remain law abiding; maintain a clean, safe, and appropriate home for the children; and maintain home visits and meetings with the county, the guardian ad litem (the GAL), and service providers; among other things. The district court approved the case plans and ordered mother to comply.

Mother did not make progress on her case plans. Mother completed multiple chemical-use assessments, each of which recommended that she participate in a chemical-dependency treatment program. Mother did not complete treatment and was unsuccessfully discharged from two different treatment programs. Mother failed to abstain from mood-altering substances and continues to use drugs. Between April 2021 and March 2022, mother tested positive many times for illegal drugs, including methamphetamine, amphetamine, and fentanyl. Mother also failed to make progress in individual therapy and in family therapy. There is no indication that mother maintained safe and stable housing or allowed the county to conduct home visits as required by the case plans. The condition of the home seemed to improve in March 2021, but mother did not permit the county to conduct home visits between July 2021 and March 2022 to confirm that it was suitable for the children. There is no evidence in the record about the overall condition of the home at the time of trial. Mother also continues to allow her boyfriend, a purported methamphetamine user, to live in her home.

In November 2021, the county petitioned the district court to involuntarily terminate mother's parental rights to the children (the TPR petition). The district court held a two-day trial on the TPR petition in June 2022. As of the first day of trial, the children had been in out-of-home placement for 517 days.[2] The district court heard testimony from six witnesses: mother, a mental-health therapist who provides therapeutic services to mother and the children, the county case manager, maternal grandmother, mother's current chemical-dependency counselor, and the GAL.

In July 2022, the district court filed an order terminating mother's parental rights to the children. The district court determined that the county satisfied its burden of proving by clear and convincing evidence that: (1) mother failed to satisfy the duties of the parent and child relationship; (2) mother was palpably unfit to be a party to the parent and child relationship; (3) reasonable efforts failed to correct the conditions leading to the out-of-home placement; and (4) the children were neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2022). The district court also concluded that the county made reasonable efforts to reunify the family. Lastly, the district court held that there was clear and convincing evidence that it was in the children's best interests to terminate mother's parental rights. Mother appeals.

DECISION

Parental rights may only be terminated for "grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). A district court may involuntarily

[2] The children are currently placed together in the same, nonrelative foster placement.

terminate a parent's parental rights if (1) at least one of the statutory bases for terminating parental rights under Minn. Stat. § 260C.301, subd. 1(b) (2022) exists; (2) reasonable efforts toward reunification were either made or were not required; and (3) the proposed termination is in the child's best interests. *See* Minn. Stat. §§ 260C.301, subds. 1(b), 7, 8; .317, subd. 1 (2022); *see also In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). The county bears the burden of proving the grounds for termination, *In re Welfare of Child of H.G.D.*, 962 N.W.2d 861, 869-70 (Minn. 2021), and must do so by clear and convincing evidence, Minn. R. Juv. Prot. P. 58.03, subd. 2(a).

Appellate courts review a district court's involuntary termination of parental rights "to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous[,]" and, in doing so, "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *S.E.P.*, 744 N.W.2d at 385. We also "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 Child. of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). As for whether a finding of fact is clearly erroneous, the supreme court stated:

> [F]indings are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. In applying the clear-error standard, [appellate courts] view the evidence in a light favorable to the findings. We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are

> left with a definite and firm conviction that a mistake has been committed.

In re Civ. Commitment of Kenney, 963 N.W.2d 214, 221 (Minn. 2021) (citations and internal quotation marks omitted); *see In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* on appeal from a district court's termination of parental rights), *rev. denied* (Minn. Dec. 6, 2021). Additionally,

> [the] clear-error review does not permit an appellate court to weigh the evidence as if trying the matter *de novo*. Neither does it permit [an appellate court] to engage in fact-finding anew, even if the court would find the facts to be different if it determined them in the first instance. Nor should an appellate court reconcile conflicting evidence. Consequently, an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court. Rather, because the factfinder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding, an appellate court's duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.

Kenney, 963 N.W.2d at 221-22 (citations and internal quotation marks omitted).

As a result, an appellate court must "fully and fairly consider [the] evidence, but so far only as is necessary to determine beyond question that [the evidence] tends to support the findings of the factfinder." *Id.* at 223 (quotation omitted). Thus, "[w]hen the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* (quotation omitted). When the prerequisites for an involuntary termination are present, appellate

courts review a district court's decision to terminate parental rights for an abuse of discretion. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136-37 (Minn. 2014).

I. A statutory basis exists to involuntarily terminate mother's parental rights.

The district court may terminate parental rights if "the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(2). Such duties include providing food, clothing, shelter, education, and other care and control necessary for healthy child development. *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." *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 655 (Minn. App. 2018); *see also In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) (instructing district court to "address conditions that exist at the time of the hearing").

The district court determined the county proved by clear and convincing evidence that mother failed to comply with the duties and responsibilities imposed on her as a parent and did not have plans in place to assume those duties in the future. The county provided multiple case services to assist mother. But the district court found that

> [a]t the conclusion of trial, Mother had not maintained any period of sobriety, had not successfully completed even one chemical dependency treatment program, had not consistently attended individual therapy, had engaged in only one family therapy session, and had refused to allow the [case manager] into her home for several months.

The district court found that "[a]t the conclusion of trial, Mother did not have a plan to continue the children's medical and therapeutic services that were resumed or started while the children were in [foster] placement." The district court also found that mother testified "she would continue to parent [the children] while under the influence [of chemicals]." Mother did not have a safety plan in place for the children if she continued using drugs while the children were in the home. Based on these findings, the district court determined there was clear and convincing evidence that mother neglected to comply with the duties imposed on her by the parent and child relationship.

The record amply supports the district court's findings. Mother failed to comply with the requirements of her case plans. "Failure to satisfy requirements of a court-ordered case plan provides evidence of a parent's noncompliance with the duties and responsibilities under section 260C.301, subdivision 1(b)(2)." *In re Welfare of Child. of K.S.F.*, 823 N.W.2d 656, 666 (Minn. App. 2012); *see also In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003). Here, the county filed a case plan in February 2021 and an updated case plan in October 2021. The district court approved the case plans and ordered mother to comply. Mother did not satisfy the requirements of her case plans because she failed to abstain from mood-altering substances; did not complete chemical-dependency treatment; failed to participate in individual therapy and family therapy; and did not maintain safe, stable, and sanitary housing. Mother challenges the district court's findings that she failed to comply with these requirements. We address each requirement in turn.

Failure to Abstain from Mood-Altering Substances

The district court found that mother failed to abstain from mood-altering substances or maintain sobriety as required by her court-ordered case plans. The record shows that between April 2021 and March 2022, mother tested positive for illegal drugs, including methamphetamine, amphetamine, and fentanyl. Mother admitted during her own testimony that since March 2021, she has "used more drugs . . . than [she] ever thought [she] would use in [her] life." Mother also testified that she does not believe her drug use hurts the children and believes she can parent the children while using drugs. Mother's mental-health therapist testified that mother lacks insight into the reasons why the children were removed from the home and believes she can "parent on drugs." The GAL also expressed safety concerns about returning the children to mother's care because mother "feels that she can use drugs and still parent effectively." The GAL testified he does not believe mother can meet the social, medical, or emotional needs of the children because of her continued drug use, and he does not believe mother will be able to provide this care in the foreseeable future. On this record, we cannot say that the district court clearly erred in finding that mother cannot parent her children if she is using drugs.

Failure to Complete Chemical-Dependency Treatment

Mother argues that the district court's findings about her failure to complete chemical-dependency treatment are flawed because she is engaged in outpatient chemical-dependency treatment. The record does not support mother's argument. Mother completed a chemical-use assessment in April 2021, which recommended intensive outpatient treatment at Ascertain Recovery Centre. Mother refused to enter the program because she

was "adamant" she did not need treatment. After mother continued to test positive for controlled substances, the district court ordered her to complete an updated assessment. This assessment required mother to engage in inpatient chemical-dependency treatment. Mother entered inpatient treatment at Marty Mann but was unsuccessfully discharged when she left the program after one day without staff approval. Marty Mann recommended that mother attend a medium-intensity residential treatment program. Mother did not comply with this recommendation and instead opted to participate in outpatient treatment. Mother completed another assessment in September 2021. The assessment recommended that mother attend intensive outpatient treatment at Ascertain two to three times per week. Mother did not attend treatment regularly and Ascertain suspended her when she threatened to "go on a f---ing killing spree." In December 2021, mother entered inpatient treatment at Meadow Creek. Mother left against staff advice and was considered unsuccessfully discharged. Meadow Creek recommended that mother complete high-intensity residential treatment, but she declined to do so. Mother completed an assessment in February 2022, which recommended intensive outpatient treatment. Mother began participating in treatment, but she was suspended in April 2022 due to her behavior. Mother began group programming in May 2022, just before trial. But she has not successfully completed a treatment program.

Failure to Engage in Individual and Family Therapy

Mother also failed to consistently participate in therapy. The assessment recommended that mother engage in individual and family therapy; take parenting classes; work with an adult rehab mental-health services (ARMHS) worker; and participate in eye

movement, desensitization and reprocessing (EMDR) therapy; among other recommendations.[3] Mother did not schedule an intake session with the ARMHS worker. The mental-health therapist reached out to mother in October 2021, but she did not respond. Mother did not contact the therapist until April 2022. Mother and Child 1 attended one session for family therapy, but the next three sessions were cancelled. Mother did not make any progress during family therapy because of her lack of consistency and attendance.

Failure to Maintain Safe, Stable, and Sanitary Housing

The record also shows that mother failed to maintain safe and stable housing. The county removed the children from the home because it was unsafe and unsanitary. Officers found piles of trash and dirty clothing throughout the home, dirty dishes in the kitchen, an inoperable stove, cat feces on the floor, flies swarming throughout the home, and drug paraphernalia in the children's bedroom. The condition of the home improved in March 2021. But mother did not allow the case manager into the home from July 2021 until March 2022 and refused the county's repeated requests to conduct home visits. The case manager saw one room of the home in March 2022 and noted that it "looked better," but she could not assess the condition of the rest of the home because mother would not permit it. The case manager also noted that mother did not have a lock on the front door. Mother did not allow the case manager to conduct additional home visits from March 2022 until the time of trial. Thus, there is no evidence in the record related to the overall condition of mother's home at the time of trial.

[3] EMDR emulates rapid-eye sleep movements to help resolve "stuck" trauma memories.

Mother claims the district court's findings are flawed because she has "always provided her children with food, shelter, clothing and other necessary care for their wellbeing." Mother also asserts she resolved the county's concerns because she has maintained a safe, stable, and sanitary home. The district court found no support for mother's claims. The children were removed from the home because it was unsafe and unsanitary. Mother did not permit the case manager to conduct a complete home visit and limited the case manager to one room of the home. Mother also refused to allow the case manager to visit her home for nine months and again in the months before trial. There is no support in the record for mother's contention that her home is now suitable for the children.

Failure to care for the children's physical, mental and dental needs

The district court also found that mother failed to care for the children's physical, mental, and dental needs. When the children were removed from the home, they had poor hygiene, had a strong odor, and appeared not to have bathed. The mental-health therapist diagnosed Child 1 with post-traumatic stress disorder and depression, and Child 2 with post-traumatic stress disorder and dyslexia. Child 1 had a tonsillectomy while in foster care. Child 2 required oral surgery to remove decayed teeth in his mouth. Child 2 has an eye problem and requires an eye patch.

Mother has not supported Child 2's medical procedures. For example, Child 2 was wearing an eye patch during one of mother's visits. Mother told Child 2 that he could remove his eye patch. Child 1 informed mother that Child 2 needed to wear his eye patch. Mother also questioned the need for mental-health services for the children, claiming that

the county was trying to persuade the children they were "supposed to be hurt." The evidence does not show that mother can provide the necessary care for the children's wellbeing.

Moreover, even assuming mother did respond to the county's concerns, "[a] parent's substantial compliance with a case plan may not be enough to avoid termination of parental rights when the record contains clear and convincing evidence supporting termination." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012). "The critical issue is not whether the parent formally complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child." *Id.* For the reasons discussed above, we conclude that the record supports the district court's determinations that mother both did not comply with her case plans and is unable to assume the responsibility of caring for the children.

Substantial evidence in the record supports the district court's factual findings. We thus conclude that the district court did not abuse its discretion by determining that mother refused or neglected to comply with the duties imposed on her by the parent and child relationship.[4]

[4] The district court determined the county proved four statutory bases for termination by clear and convincing evidence. Based on our determination that clear and convincing evidence supports the district court's conclusion on one statutory basis, we do not address the remaining grounds for termination. *See In re Welfare of Child. of R.W.*, 678 N.W.2d 49, 55 n.2 (Minn. 2004) (recognizing that only one statutory ground must be proven to support termination of parental rights).

II. The county made reasonable efforts to reunify mother and the children.

To terminate parental rights, the district court must analyze whether a county made reasonable efforts to reunite the parent with the children. *In re Welfare of Child. of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008). Reasonable efforts are "services that go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of Child. of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *rev. denied* (Minn. Mar. 28, 2007). To determine whether efforts were reasonable, the district court considers, in relevant part, whether the services offered were: (1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances. Minn. Stat. § 260.012(h) (2022). Finally, the district court considers "the length of the time the county was involved and the quality of effort given." *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *rev. denied* (Minn. July 6, 1990). We review a district court's reasonable-efforts determination for an abuse of discretion. *In re Child. of A.D.B.*, 970 N.W.2d 725, 730 (Minn. App. 2022).

The district court, after conducting a comprehensive and careful analysis of the record, concluded the county made reasonable efforts to reunify the family. The district court made detailed findings of fact on the county's efforts to alleviate the conditions that gave rise to the need for the children's out-of-home placement. The district court determined that the services offered by the county were "relevant to the safety and protection of the children, adequate to meet the needs of the children and family, culturally appropriate, available and accessible, consistent and timely, and realistic under the

circumstances." These services included: chemical-dependency services for mother, supervised visitation, regular contact with mother, contact with the foster home and foster parents, ongoing communication with the GAL, transportation services, individual therapy for mother and the children, family-based therapy, diagnostic assessments, and regular drug tests. The district court found that the case manager

> attempted frequent communication with Mother by telephone, text message, in person at home visits, and in person at supervised visitation. [The case manager] met with Mother weekly once she took over case management services for the first few months with the intent to provide support to Mother to obtain services. The agency put forth more than reasonable efforts to attempt to keep Mother engaged in the case, whereas Mother's communication with the [case manager] was inconsistent and unproductive.

The district court credited the case manager's testimony about the county's reunification efforts. The district court found that "[the case manager's] testimony was compelling and demonstrated a genuine desire to provide Mother with the services that would allow the children to be reunified with Mother." The district court recognized the case manager for going "over and above providing reasonable efforts in this case."[5]

The record supports the district court's reasonable-efforts findings. The county provided mother with opportunities to attend both inpatient and outpatient chemical-

[5] We underscore the district court's comments. Mother failed to maintain contact with the case manager as required by the case plans, was confrontational toward her, and threatened physical harm against her several times. Despite this treatment, the case manager worked with the family and continuously offered county services to mother and the children. We commend the case manager for her patience and professionalism in this case. We also commend the district court for making thorough and detailed findings of fact and conclusions of law in a well-written order.

dependency treatment. Mother admitted she did not successfully complete any of her treatment programs. Mother was unsuccessfully discharged from two treatment programs. Mother tested positive for illegal drugs multiple times between April 2021 and March 2022. The county offered mental-health services to mother and the children, including individual therapy and family-based therapy. The children are regularly attending therapy. Mother at first declined to attend therapy, stating she "didn't even want to start seeing a therapist to begin with." Mother has not consistently engaged in individual therapy. Mother also has not made progress in family therapy.

Mother argues the county failed to make reasonable efforts to reunify the family because there was a "long delay" before the county provided maternal grandmother with paperwork to become a licensed foster-care provider. The case manager conducted a relative search to identify potential placement options for the children. The case manager sent a letter to grandmother, but she did not receive the letter because it was sent to the wrong address. The case manager sent a second letter and also spoke to grandmother directly about setting up a home visit. After speaking with grandmother, the case manager determined she could not recommend grandmother as a permanency option for the children. The case manager noted that grandmother was "involved with child protection when [her children] were younger" and that grandmother's family "had a CHIPS matter." The case manager testified that she did not believe grandmother had "any insight" into these issues. The case manager also expressed concern that mother had "a lot of trauma from her childhood and that's because of parental neglect." For these reasons, the case

manager and county understandably did not consider grandmother to be a permanent placement option for the children. Thus, we do not consider mother's argument persuasive.

We conclude that the district court did not abuse its discretion by determining that the county made reasonable efforts to reunify mother and the children.

III. Termination of mother's parental rights is in the children's best interests.

Mother does not challenge the district court's best-interests findings or its analysis of the best-interests factors on appeal. We discern neither clear error in the district court's best-interests findings nor an abuse of discretion in its balancing of those factors to arrive at its ultimate best interests decision. The district court balanced the competing interest of mother and the children and found that "[t]he children's competing interests of permanency, stability, safety, adequate care, the risk of future trauma, and having their needs met override Mother's interest in preserving the parent-child relationship." *See J.R.B.*, 805 N.W.2d at 905 (instructing district courts to balance three factors when considering a child's best interests); *see also* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). The record supports the district court's findings. Based on these findings, the district court found that termination was in the children's best interests. Because the district court identified the best interests of mother and the children, weighed those interests, and determined termination was in the children's best interests, the district court did not abuse its discretion.

In sum, because a statutory ground for termination of parental rights is supported by clear and convincing evidence, the county made reasonable efforts to reunify the family,

and termination is in the children's best interests, we conclude that the district court did not abuse its discretion by terminating mother's parental rights.

Affirmed.