STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1348
A22-1361

In the Matter of the Welfare of the Children of:
R. T. and J. T., Parents.

Filed May 8, 2023
Affirmed
Jesson, Judge

Hennepin County District Court
File No. 27-JV-21-2621

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Considered and decided by Frisch, Presiding Judge; Bjorkman, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

After less than one year of living with appellant-parents after court-ordered reunification—and after about 18 additional reports of child neglect—the district court returned the two children of appellants R.T. (mother) and J.T. (father) back into

out-of-home placements. And respondent Hennepin County Health and Human Services Department (the county) filed its third termination-of-parental-rights petition against parents for these children.

After trial, the district court terminated the parental rights of mother and father. Parents appeal the termination on the basis that the district court abused its discretion in ruling that the county made reasonable efforts to rehabilitate and reunify their family; statutory conditions existed to support the termination; and termination was in the best interests of the children. Because the county made reasonable efforts tailored to parents' cognitive limitations, those reasonable efforts failed to correct the conditions that led to their children's approximately four years of out-of-home placement, and the best interests of the children are best served by termination of parents' rights, we affirm.

FACTS

For the entire lives of both children[1]—son, who was born in September 2013, and daughter, who was born in October 2017—their family has been enmeshed in the services of the county. From the beginning of that involvement, there have been recurring reports involving parents of verbal and physical abuse, unstable, unsafe, and uninhabitable living conditions for their children, and an inability to provide for the daily, medical, and emotional needs of their two children, partly due to their own cognitive delays. Both

[1] Mother has another older daughter with severe disabilities who no longer resides with mother.

parents have borderline cognitive and intellectual disabilities. And son and daughter have physical and mental disabilities.[2]

The children have spent most of their lives outside their parents' home. Between April 2017 and the third termination-of-parental-rights trial in May 2022,[3] son has been in eight out-of-home placements over approximately four and a half years. And between her date of birth and the trial, daughter has been in nine out-of-home placements over approximately four years.

In August 2018, the district court denied the first termination-of-parental-rights petition filed by the county against parents because the county had not made reasonable efforts toward reunification, and the case reverted to a Child in Need of Protection or Services (CHIPS) proceeding. And again, in October 2020, the district court denied the county's second termination-of-parental-rights petition specifically noting that, although Kindred Family Focus was a program that could meet the needs of both parents and the children, the county did not offer this option to the parents before trial. According to the district court, this demonstrated that the county failed to meet the reasonable-efforts

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[2] Specifically, son struggles to regulate his emotions on his own, transition between tasks, and control his impulses; he was diagnosed with a chromosomal deletion, which causes developmental delays and cognitive disabilities; he has a hormone deficiency for which he needs to receive daily shots; he needs prescription eyeglasses to correct optic nerve hypoplasia; he has speech and language delays for which he receives speech therapy; his coordination and sensory processing requires occupational therapy; and he has musculoskeletal dysfunction for which he receives physical therapy. And daughter is developing below her age level; has a speech and language articulation disorder; needs eyeglasses; and receives physical, speech, and occupational therapy.

[3] The third termination-of-parental-rights trial was held over four days in the summer of 2022—May 16, 2022, May 17, 2022, June 10, 2022, and July 26, 2022. A new district court judge was assigned to the family for this trial.

requirement. The children, who had been living in out-of-home placements since 2017, were returned to the care of parents in December 2020.

The county appealed the district court's decision. We affirmed in part, reversed in part, and remanded in a May 2021 opinion. *In re Welfare of Child. of R.T.*, No. A20-1458, 2021 WL 1733363, at *1-2 (Minn. App. May 3, 2021). We affirmed the district court's determination that the county failed to prove the statutory condition of palpable unfitness necessary to support termination. *Id.* at *7. But we reversed and remanded as to the district court's determinations that the county did not make reasonable efforts towards reunification, that no other statutory grounds existed, and that termination was not in the children's best interests. *Id.* at *7-10. In our opinion, we concluded that the district court's order lacked "any findings as to whether the myriad services the [county] did provide since 2017 were relevant, adequate, culturally appropriate, available, consistent, and timely," and that "the relevant findings the district court did make are incomplete." *Id.* at *8-9. In response, within the same month, the district court reopened the record to solicit submissions concerning the reasonable efforts of the county and best interests of the children.

Meanwhile, after the children's return home during the pendency of the appeal, about 18 reports were filed against parents alleging abuse or neglect due to the unclean appearance of the children, environmental hazards in the home, and physical and domestic abuse. And the children's guardian ad litem reported in January 2021 that son was not engaging in school or therapy, daughter had an increase in aggressive behaviors, and daughter reported to a therapist that she was sleeping on the floor in a basement.

Approximately two months after the district court reopened the record, one of the social workers reported that parents were not fully engaging in services, they lack insight and awareness into the consistent parenting practices needed to meet the extensive needs of the children, and they would need parenting support for 24 hours all seven days of the week to be able to safely parent their children.

In August 2021, the district court ordered the children removed from parents' care, ruling that the county had made reasonable efforts to prevent foster-care placement and that it was not in the children's best interests to remain in parents' care. Subsequently, in November 2021, the county filed its third termination-of-parental-rights petition. Both mother and father sought to maintain rights to their children. A termination-of-parental-rights trial was set and a new district judge appointed. At trial, the district court heard testimony from son's and daughter's occupational, speech, and physical therapists; the manager of the clinic the children attend for their therapies; four child-protection-services social workers, who collectively have worked on the family's case between early 2017 to summer 2022; the most recent guardian ad litem; and mother and father.[4]

The testimony revealed that both parents had case plans with the county for at least six years. The case plans required both parents to maintain safe and suitable housing, complete a combined parenting and psychological assessment and follow

[4] The district court made credibility determinations within its order and found that mother's and father's testimony would receive limited weight because parents lack "reasonable insight" into the reasons why child protection is needed for their family, the needs of their children, the efforts the county has put forth, and the efforts they have put forth.

recommendations, participate in supervised visitation with the children, and cooperate with the county and guardian ad litem. Father additionally was ordered to participate in anger management programming and follow all recommendations.

To help parents comply with their case plans, according to the testimony at trial, the county provided services through Children's Theraplay, which monitors parents' visits with children and offers physical therapy, occupational therapy, and speech therapy to son and daughter; St. David's, which provides parenting education; Family Partnership, which provides parenting education tailored toward adults with cognitive disabilities; Families in Transition Services, where a parenting educator worked with the family from January 2018 to June 2022; developmental disabilities waivered services; and Adult Rehabilitative Mental Health Services, which helps adults with budgeting, cleaning, and appointment reminders. Parents received approximately 300 parenting-education sessions that ranged from 45 minutes to two-and-a-half hours. The parenting educator tailored her sessions to the parents' cognitive limitations by providing videos in addition to hands-on, in-home lessons.

Parents were also assigned child-protection-services social workers who worked with them throughout their cases. In total, four social workers worked with parents between early 2017 and their third termination-of-parental-rights trial. And all four consistently testified that the parents did not engage meaningfully in any of the county's programming and were not able to correct the conditions that led to the CHIPS petitions and the children's out-of-home placements.

In September 2022, the district court ordered that the parents' rights to their son and daughter be terminated. The district court summarized its findings as follows:

> Reunification with [parents] from whom the children were removed was not possible at the time of this trial and will not be possible for the reasonably foreseeable future. Despite being offered and provided with numerous services to address their issues with mental health, lack of parenting skills, and inability to maintain safe and suitable housing, [parents] have failed to address the conditions that led to the original out of home placement of the children. . . . [Parents] fail to recognize their own cognitive limitations and mental health needs, and thus fail to understand why ongoing services to help them parent their children is necessary. . . . To parent successfully, [parents] will need assistance 24 hours per day for 7 days a week, and this is not a current option for the family. . . . Even if it was an option, [parents'] history of inconsistency in accepting services over the last several years indicates that they would not be willing or able to continue supportive services in the future.

Each parent appealed, and this court consolidated the appeals.

DECISION

"Parental rights are terminated only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). Whether to terminate parental rights is discretionary with the district court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). We will affirm the district court's termination of parental rights when three elements are met: the county made reasonable efforts toward reunification, at least one statutory condition—proved by clear and convincing evidence—exists to support termination, and termination is in the children's best interests. *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

We review an order terminating parental rights to determine whether the district court's findings address the statutory criteria and are supported by substantial evidence. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). And we review factual findings for clear error and whether there was a statutory condition for abuse of discretion. *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 600-01 (Minn. App. 2021), *rev. denied* (Minn. Dec. 6, 2021). In conducting our review, we give "[c]onsiderable deference" to the district court's decisions due to its "superior position to assess the credibility of witnesses." *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009) (quotation omitted).

Here, the district court found that (1) the county made reasonable efforts to reunify the family, (2) three statutory conditions existed—parents are palpably unfit, reasonable efforts by the county failed to correct the conditions that led to the children's out-of-home placements, and the children are neglected and in foster care—and (3) that the termination of parental rights was in the best interests of the children.

Father argues that the district court erred in ruling that the county made reasonable efforts to reunify his family. And mother asserts that the district court erred in concluding that statutory conditions existed to support termination of her rights because if the county had made reasonable efforts, those statutory conditions would not have been met. Further, mother contends that the district court abused its discretion in determining that terminating her parental rights was in the best interests of the children.

We address both parents' arguments on the county's reasonable efforts together, and then turn to mother's two additional arguments on statutory conditions and the best

interests of the children. In so doing we are mindful that, while we give deference to the findings of the district court, we exercise great caution in termination-of-parental-rights proceedings. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 902 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012).

I. The district court properly exercised its discretion by ruling that the county made reasonable efforts to reunify the family before terminating the parents' rights.

Parents contend that the county did not make reasonable efforts toward reunification because the efforts were not tailored toward parents with cognitive limitations. For the county to have satisfied its burden, the county's efforts must have reasonably served to prevent placement of the children outside the home and to rehabilitate and reunify the family. *See* Minn. Stat. § 260.012(a) (2022). 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). For the county's efforts to be reasonable, the services offered must be:

> (1) selected in collaboration with the children's family and the children;
> (2) tailored to the individualized needs of the children and the children's family;
> (3) relevant to the safety and protection and well-being of the children;
> (4) adequate to meet the individualized needs of the children and family;
> (5) culturally appropriate;
> (6) available and accessible;
> (7) consistent and timely; and
> (8) realistic under the circumstances.

Minn. Stat. § 260.012(h) (2022). But termination of parental rights is appropriate when providing additional services to parents would be futile and therefore unreasonable. *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996); *see also* Minn. Stat. § 260C.301, subd. 1(b)(2) (2022).

On this record, the district court's reasonable-efforts determination was not an abuse of its discretion. Substantial evidence supports that the parents were unsuccessful in complying with their case plans. And it was not due to the county's lack of effort. For example, the record establishes that the county would help schedule parents' intake appointments for services, but after mother and father would complete their initial testing, parents would not follow through with services. Mother claimed on more than one occasion that she was "too busy" or was not interested in the county's services. And father has declined services entirely because he "didn't feel that they would be helpful for him."

Additionally, the county—taking into account parents' cognitive limitations—tailored its efforts to aid parents. For example, the county, through its social workers and a Families in Transition parenting educator:

- Worked with father on his anger management and outbursts in front of the children through psychiatric help;
- Helped parents fold clothes, clean dishes, and create a household chore chart to make their home cleaner;
- Taught parents about healthy food options for the children;
- Helped with financial concerns by creating a chart to track and monitor parents' expenses so they could pay rent on time;

- Purchased wall calendars and marked down the children's appointments;

- Scheduled transportation to and from children's therapy appointments;

- Showed videos—instead of providing verbal instruction—to parents to mirror nonphysical disciplining methods for their children;

- Provided 300 parenting education sessions, each with a length of between 45 minutes and two and a half hours; and

- Provided resources to parents for parenting education with Family Partnership and developmental disabilities waivered services.

The record further supports that even with the tailored programming, parents struggled to identify what they have learned in their years of parenting education. And, according to the parenting educator, social workers, and therapists, parents were generally uninterested, on their cell phones, and minimally receptive to their parenting lessons. Or the parents did not show up to the appointments at all.

Finally, all four of the family's social workers shared the same outlook on the parents at trial: they did not believe that there was, as one worker stated, "some miracle service that could come in and change the trajectory of [parents'] ability to provide appropriately for both the kids." The parenting educator, who has been on the case for over four years, testified that she has witnessed "no change [in the parents' ability to parent]. Nothing is getting better. I don't see it getting better." And the guardian ad litem echoed these statements when she testified that she did not believe that there was a service

that could be offered that would change the circumstances, because if there was, she would have advocated for it.

To persuade us otherwise, mother argues that because the district court twice found that the county did not make reasonable efforts after their prior termination-of-parental-rights trials and their case plans did not change, the county is still not making reasonable efforts. This argument fails. The county continued to consistently work with the parents after the October 2020 district court order that concluded that the county did not make reasonable efforts. And in our May 2021 opinion after the county appealed the district court's order, this court called into question the district court's reasonable-efforts determination, concluding that its findings were insufficient. *R.T.*, 2021 WL 1733363, at *7. We remanded for the district court to reevaluate the evidence. *Id.* at *9. And after approximately nine months of the children being back in the parents' care—and three months after remand—the district court removed the children from the parents' home, ruling that reasonable efforts *had* been made by the county to prevent foster-care placement. Accordingly, the October 2020 district court order does not persuade us that the subsequent district court determination of the county's reasonable efforts is clearly erroneous.

In sum, the district court acted within its discretion because the record supports its determination that the county provided reasonable efforts to reunify parents with children, including efforts tailored to parents with cognitive limitations. But parents have chosen not to fully utilize these services to achieve their case-plan goals and reunify their family. And even if there were services the county could provide parents, this record supports the

district court's determination that those efforts would be futile. *See S.Z.*, 547 N.W.2d at 892.

II. The district court properly exercised its discretion in ruling that at least one statutory condition existed to support the termination of mother's rights.

Mother argues that the district court abused its discretion in finding that a statutory condition was met to support its decision to terminate her parental rights. Because a district court may terminate parental rights if at least one statutory ground for termination is supported by clear and convincing evidence, and because we conclude that the district court did not abuse its discretion in ruling that parents failed to correct the conditions leading to the children's out-of-home placement under Minnesota Statutes section 260C.301, subdivision 1(b)(5) (2022), we address only that statutory condition for termination. *S.E.P.*, 744 N.W.2d at 385.

This statutory condition is presumably met when four factors are present: (1) the children have resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months;[5] (2) the court has approved the out-of-home placement plan; (3) the conditions leading to the out-of-home placement have not been corrected; and (4) the county has made reasonable efforts to rehabilitate the parent and reunite the family. Minn. Stat. § 260C.301, subd. 1(b)(5)(i)-(iv). Since mother is the only

[5] This statute further outlines that if the child is under eight years old, like daughter here, "the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan." Minn. Stat. § 260C.301, subd. 1(b)(5)(i). But because the duration daughter spent outside of the parents' home satisfies both time requirements, we primarily apply the 12-month requirement to both children in our analysis.

parent who argues that the prerequisites for invoking the presumption are not satisfied, we analyze her actions here.

Turning to the record before us, the district court properly exercised its discretion in concluding that this statutory condition was met. First, the record supports that both factors (1) and (2) were satisfied: in the preceding 22 months from the date of the termination trial, between July 2020 to May 2022, son and daughter have been in out-of-home placements from July 2020 to December 2020 and August 2021 to May 2022, which equals approximately 14 months, which exceeds the 12-month period required for son's age and the six-month period required for daughter's age. *Id.* subd. 1(b)(5)(i). And court-approved out-of-home placement plans were filed with the court and in place. *Id.* subd. 1(b)(5)(ii).

Next, the record provides substantial evidence that factors (3) and (4) were also met because the conditions leading to the out-of-home placement—uninhabitable living conditions of the home and unstable housing, allegations of physical and verbal abuse, and parents' inability to provide for the medical, emotional, and daily needs of the children—have not been remedied by mother despite reasonable efforts by the county.

It is presumed that the conditions leading to the children's out-of-home placement have not been corrected if mother has not substantially complied with the court's orders and her reasonable case plan. *Id.* subd. 1(b)(5)(iii). In mother's case plan, the key concerns to be fixed included completing psychological and parenting assessments and following all recommendations, cooperating with Adult Rehabilitative Mental Health Services, maintaining safe and suitable housing, and cooperating with supervised visitations with the

children. The record firmly supports the district court's determinations that mother has not substantially complied with *any* of those case-plan items. And, as addressed above, the county has made reasonable efforts to help mother do so, such as provide transportation, organize appointments, conduct parenting-education lessons tailored to her cognitive limitations, arrange housing, and help with the children's medical needs. The social workers and parenting educator on mother's case helped her pay rent and security deposits for more suitable apartments. But the district court found that mother was unable to keep the apartments safe for her children. And she stopped attending supervised visits with the children after father was suspended from supervised visits due to repeated absences, claiming she was too busy with her new job to attend. Thus, even with the efforts of the county, mother has failed to fulfill the three primary tenets of her case plan: progress in her parenting, safe and stable housing, and supervised-visit attendance with her children.

As a result, because at least one of the district court's statutory conditions was supported by substantial evidence, the district court did not abuse its discretion in ruling this element was met to support its conclusion to terminate mother's parental rights.

III. The district court properly exercised its discretion in determining that termination of mother's rights was in the best interests of the children.

Finally, mother asserts that the district court abused its discretion when it concluded that the termination of her parental rights was in the children's best interests because she loves her children, she wants them to be in her care, and a strong bond exists between her and her children. The district court found mother's testimony on these three contentions credible but also found that the children's competing interests—needs for permanency,

safety, and stability—outweigh mother's interest in preserving the parent-child relationship. We review this best-interests determination for an abuse of discretion. *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 669 (Minn. App. 2020).

In any termination proceeding, when a statutory basis for terminating parental rights is present, "the best interests of the child[ren] must be the paramount consideration." *See* Minn. Stat. § 260C.301, subd. 7 (2022) (stating further that if the parents' and children's interests conflict, the children's interests control). In determining what is in the best interests of the children "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 (quotation omitted). But the district court is not required to give the parent's and the children's interests equal weight. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). Because a child's need for stability, health considerations, and preferences may constitute compelling interests, the district court is permitted to weigh children's interests over their parents. *Id.*

Here, the district court properly exercised its discretion in weighing the children's competing interests over the mother's credible testimony on her love for her children and the bond she has with them. Because the mother's interest in preserving the parent-child relationship is only one factor to consider, and the district court found that these children are too young to give their input on their interests in preserving the parent-child relationship, we look to the district court's findings addressing the children's competing

interests—stability, health considerations, and preferences[6]—to determine whether the district court abused its discretion. *See J.H.*, 968 N.W.2d at 604.

Turning to the first of the children's competing interests, of paramount concern is the children's stability. The following instances from the record illustrate the children's complete lack of stability under mother's care and support the district court's well reasoned best-interests determination:

> - At the time of the termination-of-parental-rights trial, son had been in out-of-home placement for about 1,640 days (since April 17, 2017) which is about four and a half years;
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> - At the time of the termination-of-parental-rights trial, daughter had been in out-of-home placement for about 1,482 days (since about five days after her date of birth), which is over four years;
>
> - Parents have not maintained stable housing while children were in their care: within three years—between 2018 to 2021—parents were evicted from their apartment, lived in father's mother's basement where they were asked to leave due to incidents of domestic violence, lived in a motel before moving to the People Serving People shelter, and then moved to an apartment in northeast Minneapolis, which mother moved out after further incidents of domestic violence by father; and
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> - Parents have not maintained safe housing: social workers and therapists testified that the living situations parents were in had constant health concerns, were dirty and cluttered, one of their apartments had bed bugs, and the basement they lived in had exposed ductwork and wires.

[6] The district court found that the children were too young to inquire into their preferences at trial. As such, we do not specifically analyze that interest here.

These instances support the district court's determination that the children's stability is best served outside of mother's care.

Next, the record also supports the district court's finding that the children's competing interest of their personal health also favored termination of mother's parental rights. The social workers on the family's case consistently testified that under parents' care, they had concerns that the children's significant medical needs, educational needs, and general hygiene and nutritional needs were not being met.

And the children's needs are extensive. Both children need to attend physical, occupational, and speech therapy and need individualized help with regulating their strong emotional responses to trauma from their upbringing. The record supports the district court's findings that mother has failed to address her children's needs. The children, in mother's care, regress physically and emotionally—testimony by the children's therapists revealed that the children are in a constant stress-response while in mother's care. And the children are subjected to physical and verbal abuse. Social workers and therapists testified that they witnessed mother screaming at the children and yanking on their arms and noticed marks and bruises on the children's bodies.

In contrast, the children's needs are being met in their out-of-home placements. Social workers and therapists observed that the children's overall health and progress in their therapies was better when in their foster-care placements. The guardian ad litem also testified that of the 100 times she has met with the children and parents, the children were doing better in their placements because they were getting the consistency and structure that they need. Based on this record, the district court did not abuse its discretion in

weighing the children's competing interests for stability, safety, permanency, and health, in favor of terminating mother's parental rights, even given the love and bond the children have with mother.

In sum, the district court did not abuse its discretion in ruling that the county made reasonable efforts to reunify the children with parents, that a statutory basis for termination existed—because reasonable efforts failed to correct the conditions that led to the children's out-of-home placements—and that the termination of the parents' rights were in the best interests of the children. As a result, we affirm the district court's determination to terminate the parental rights of both mother and father for their two minor children.

Affirmed.