

*This opinion is nonprecedential except as provided by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
A22-1596**

In the Matter of the Welfare of the Child of:
T.E.W. and J.J.S., Parents.

**Filed May 22, 2023
Affirmed
Klaphake, Judge***

Stearns County District Court
File No. 73-JV-22-50

Jennifer L. Thompson, JLT Law, Litchfield, Minnesota (for appellant-mother T.E.W.)

Janelle P. Kendall, Stearns County Attorney, Elizabeth A. Lee, Assistant County Attorney,
St. Cloud, Minnesota (for respondent Stearns County Human Services)

Stephanie Schwegel, Sauk Rapids, Minnesota (guardian ad litem)

Considered and decided by Johnson, Presiding Judge; Larson, Judge; and Klaphake,
Judge.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant T.E.W. challenges the district court's involuntary termination of her parental rights to her child. She argues that the district court (1) erred by concluding that she failed to rebut the presumption of palpable unfitness, (2) abused its discretion by

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

concluding that the county proved by clear and convincing evidence that appellant is palpably unfit to parent, and (3) abused its discretion by concluding that it is in the child's best interests to terminate appellant's parental rights. Because the district court did not abuse its discretion by concluding that the county met its burden by clear and convincing evidence that appellant is palpably unfit and that termination of appellant's parental rights were in the best interests of the child, we affirm.

FACTS

Appellant is the mother of L.J.S., born in December 2021. L.J.S. is appellant's ninth child. Appellant's parental rights have been involuntarily terminated to her eight other children in seven court files.

On January 4, 2022, the county filed a petition to terminate appellant's parental rights to L.J.S. The county alleged that appellant was "palpably unfit to be a party to the parent and child relationship," pursuant to Minnesota Statutes section 260C.301, subdivision 1(b)(4) (2022). The same day, the district court held an emergency protective care hearing whereby L.J.S.'s custody was transferred to the county and the court ordered suspension of the county's duty to make reasonable efforts to reunify because the TPR petition made a prima facie case that appellant's parental rights to another child had been involuntarily terminated. *See* Minn. Stat. § 260.012(a)(2) (2022)¹ (concluding that a

¹ We cite the most recent version of Minn. Stat. § 260.012(a)(2) because, while the statute was amended after the emergency protective care hearing occurred, *see* 2022 Minn. Laws Ch. 98, art 8, § 2, at 818, those amendments are not relevant to our analysis here. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

county may be relieved of its duty to provide reasonable services if the district court determines “that a petition has been filed stating a prima facie case that . . . the parental rights of the parent to another child have been terminated involuntarily”).

The district court held a termination of parental rights (TPR) trial on September 22, 2022. Appellant testified, as did L.J.S.’s father, the social worker assigned to L.J.S.’s child-protection investigation, the case worker assigned to L.J.S.’s child-protection case, and the guardian ad litem (GAL) assigned to the case.

In an order, the district court determined that appellant had not met the burden of production to rebut the presumption of palpable unfitness. But, it continued, even if mother had met that burden, the county proved by clear and convincing evidence that mother was palpably unfit to parent pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4). The district court then independently found that the termination of appellant’s parental rights was in the best interests of the child, as required by Minn. Stat. § 260C.301, subd. 7 (2022).

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). On appeal from a district court’s termination of parental rights, appellate courts review whether the district court’s findings “address the statutory criteria for termination.” *In re Welfare of Child. of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008). Appellate courts look at the “sufficiency of the evidence to determine whether it was clear and convincing.” *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). And appellate courts give “[c]onsiderable deference” to

the district court's decision given its "superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

We review the district court's factual findings for clear error, but we review the district court's "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). This means "[appellate courts] view the evidence in a light favorable to the findings. [Appellate courts] will not conclude that a fact[-]finder clearly erred unless, on the entire evidence, [the court is] 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) (quotation and citation omitted). We must "fully and fairly consider the evidence, but so far only as is necessary" to determine if the evidence "reasonably tends to support the findings." *Id.* at 223 (quotation omitted). "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." *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted).

Appellate courts will affirm the district court's decision to terminate parental rights when (1) "at least one statutory ground for termination is supported by clear and convincing evidence," (2) "the county has made reasonable efforts to reunite the family," and (3) "termination is in the best interests of the child." *S.E.P.*, 744 N.W.2d at 385.

On appeal, appellant argues that she rebutted the statutory presumption of palpable unfitness, that the county failed to establish by clear and convincing evidence that she was

palpably unfit, and that terminating her parental rights was not in L.J.S.’s best interests. We decline to address appellant’s first argument—that she rebutted the presumption of palpable unfitness—because we conclude that the county presented clear and convincing evidence that at least one statutory ground for termination existed and that termination was in the best interests of L.J.S.

I. The district court did not abuse its discretion by determining that at least one statutory basis for termination was supported by clear and convincing evidence.

The district court found one statutory ground supporting termination of appellant’s parental rights, that appellant is palpably unfit to parent. *See* Minn. Stat. § 260C.301, subd. 1(b)(4). Again, appellate courts will affirm the district court’s termination decision when “at least one statutory ground for termination is supported by clear and convincing evidence.” *S.E.P.*, 744 N.W.2d at 385.

A parent is palpably unfit to be a party to the parent and child relationship when the county demonstrates that the parent engaged in “a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship” and that the conditions were “of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.” Minn. Stat. § 260C.301, subd. 1(b)(4). The district court found the county proved by clear and convincing evidence that appellant was palpably unfit because appellant had not overcome her chemical dependency for a length of time sufficient to demonstrate that she would be able to adequately care for L.J.S. in the future. The district court’s reasoning was as follows:

A month after her previous termination, [appellant] learned she was pregnant with [L.J.S.] in July 2021. [Appellant] continued to use methamphetamines, amphetamines, THC, and alcohol during her pregnancy. Since March 2022, [appellant] has been attending treatment and living in sober housing. Given [appellant]’s previous 25 treatment programs and pattern of relapsing when not in treatment, [appellant] has made progress in addressing her chemical dependency but has not demonstrated that she has overcome her chemical dependency.

These conclusions are supported by record evidence. The county case worker assigned to L.J.S.’s child-protection matter testified that the “overarching” conditions or conduct behind each of appellant’s terminations of parental rights was chemical dependency. The case worker was concerned that appellant’s seven months of sobriety at the time of trial was not as long as her lengthiest period of sobriety in the past—ten months—or even her “average period of sobriety”—seven or eight months. The case worker expressed concern that appellant had not completed outpatient treatment and had not shown that she could maintain long-term sobriety.

The GAL also testified about concern over appellant’s near-seven-month sobriety as not being as long as her prior lengthiest ten months of sobriety. The GAL testified to appellant’s 11-year history of 25 different chemical-dependency-treatment programs that consistently ended in relapse. The GAL also testified to concerns over both appellant and L.J.S. being exposed to people relapsing in sober housing and that this was “risky” for appellant and “unhealthy” for L.J.S.

Appellant herself testified that her immediately previous termination occurred in June 2021 and that she discovered that she was pregnant with L.J.S. one month later in July

2021. Appellant testified that she did not receive prenatal care and that she used methamphetamine, marijuana, and alcohol during her pregnancy with L.J.S.

We therefore conclude that the record supports the district court's determination that the county proved by clear and convincing evidence that appellant is "palpably unfit to be a party to the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(4).

II. The district court did not abuse its discretion by determining that it is in the child's best interests to terminate appellant's parental rights.

A district court "must consider the child's best interests and explain why termination is in the best interests of the child." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009); *see* Minn. Stat. § 260C.301, subd. 7 (requiring a district court to consider the child's best interests). The district court must consider three factors: (1) the child's interest in preserving the relationship, (2) the parent's interest in preserving the relationship and (3) "any competing interests of the child." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012); *see* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) (requiring a district court's best-interests analysis to address these factors). Even when a statutory basis for termination exists, "the best interests of the child must be the paramount consideration." Minn. Stat § 260C.301, subd. 7.

The district court considered each of the best-interest factors before determining that termination was in L.J.S.'s best interests. In considering L.J.S.'s interest in preserving the parent-child relationship, the district court noted that the child has not been with or been parented by appellant since birth. The district court noted that L.J.S. has been with the same foster care providers since being released from the hospital and that the child has

bonded with the providers, who meet L.J.S.'s needs and are an adoptive placement option. In essence, the district court concluded that L.J.S.'s interest in preserving the parent-child relationship is limited.

In considering appellant's interest in preserving the parent-child relationship, the district court credited appellant's expressed "willingness and desire to parent" L.J.S.

In considering the competing interests of appellant and L.J.S., the district court again highlighted that appellant "has failed to differentiate her current circumstances from her past pattern of relapses as she is still in treatment, living in sober housing, and has not overcome her longest period of sobriety." The district court also concluded that appellant's plans to live long-term in sober housing "would be harmful to the child's health and safety" due to "an environment where individuals are relapsing." The district court continued, "[i]t is in the child's best interest to live in a safe, stable, and drug-free environment."

Based on these considerations, the district court determined that termination is in L.J.S.'s best interests. Because the district court identified the best interests of both L.J.S. and mother, weighed those interests, and determined that termination was in L.J.S.'s best interests, we conclude that the district court did not abuse its discretion.

We briefly highlight two additional concerns raised by appellant. First, at the emergency protective care hearing the district court suspended the county's responsibility to provide reasonable efforts at reunification based on the prior involuntary terminations and did not order any visitation between appellant and L.J.S. *See* Minn. Stat. § 260.012(a)(2). We are concerned by the county's minimal activity to reconsider whether to provide reasonable efforts and its requests to deny visitation after learning of appellant's

sobriety. We understand that the court must look to the future and what is best for the child, but that does not restrain the county from offering services to the family.

Second, and relatedly, there was too little time for appellant to establish her sobriety for over her average period of approximately seven months before the TPR trial. It would not have been inappropriate to change the proceedings to a child in need of protection or services petition from a TPR petition to provide appellant more time to establish her sobriety. We do not decide the case on these two concerns because of the district court's detailed findings and because the evidence supports those findings. But we want to highlight these concerns so that the county is aware and can better support parents and families.

Affirmed.