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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0375**

In the Matter of the Child of:
B. A. N. and W. J. K., Parents.

**Filed August 12, 2024
Affirmed
Larkin, Judge**

Wright County District Court
File No. 86-JV-23-5081

Kimberly Stommes, Jeddeloh Snyder Stommes, St. Cloud, Minnesota (for appellant mother)

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Considered and decided by Larkin, Presiding Judge; Smith, Tracy M., Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant mother challenges the district court's termination of her parental rights, arguing that the evidence was insufficient to sustain the termination, that respondent county did not make reasonable reunification efforts, and that termination is not in her child's best interests. We affirm.

FACTS

In October 2023, Wright County Health and Human Services (the county) petitioned to terminate the parental rights of appellant BAN (mother) to her child, MK, born in October 2022, based on mother's ongoing methamphetamine addiction and its previous impact on her children.¹ In February 2024, following a two-day trial, the district court terminated mother's parental rights based on the following circumstances, which were either proved at trial or are undisputed.

In October 2021, mother voluntarily terminated her parental rights to two other children: KK, born in 2017, and EK, born in 2020. She had exposed both children to her methamphetamine use. EK's meconium² tested positive for methamphetamine, and a hair-follicle test performed on KK when she was approximately three years old showed the presence of methamphetamine.

In July 2022, the county received a report that mother was pregnant with MK. Mother admitted that she did not receive prenatal care. MK's meconium tested positive for methamphetamine. The county informed mother that MK could remain in her care if she submitted to drug testing and complied with a safety plan. Mother agreed to do so. The county asked mother to submit to a drug test on October 15, 2022. She did not test until October 18, but the test was negative. Mother signed a safety plan and agreed to submit to future testing requests. The county told mother that if she provided a negative

¹ MK's father is not a party to this appeal.

² Meconium is a newborn's first stool.

hair-follicle test, the county would “close the case.” Mother failed to submit to a hair-follicle test and repeatedly failed to submit to random testing.

On November 23, 2022, the county filed a petition alleging that MK was a child in need of protection or services (CHIPS). On December 5, following an emergency-protective-care hearing, MK was placed outside of the home with his paternal grandmother, who had adopted KK and EK. On January 4, 2023, the county began discussing an out-of-home placement plan with mother. The county signed the plan on January 9, and filed it with the district court on January 13, but mother repeatedly refused to meet with the county and never signed the plan. Nonetheless, at a May 8, 2023 hearing, the district court adopted the plan because mother indicated that she had received it more than once and had no specific objections.

The out-of-home placement plan addressed mother’s chemical-dependency and mental-health issues and offered chemical-dependency and mental-health assessments, as well as any recommended treatment or therapy. The plan prohibited mother from using mood-altering substances and required her to submit to random drug testing.

On April 28, 2023, the district court adjudicated MK a child in need of protection or services. The court ordered mother to provide a hair-follicle test within seven days and to cooperate with random testing. Mother failed to complete the hair-follicle test and failed to cooperate with random testing. On May 8, 2023, the district court ordered mother to immediately submit to a hair-follicle test, and the test was positive for methamphetamine. In July 2023, the district court was informed that mother again tested positive for methamphetamine and had missed numerous tests.

On July 12, 2023, seven months after MK was removed from her care, mother completed a chemical-dependency evaluation, reported using methamphetamine, and indicated that she had no treatment obstacles. The assessment provided a diagnosis of methamphetamine dependence and recommended, in part, that mother abstain from using mood-altering substances, submit to random testing, and complete residential treatment “consisting of 24-hour care for multidimensional co-occurring services and group treatment.”

Mother failed to follow the assessment’s recommendations. She submitted to urinalysis tests that were positive for methamphetamine and amphetamine on October 23, October 26, and December 4, 2023. Two of her tests were also positive for Ecstasy. She missed approximately 90 tests, some of which were to occur on or around the time of her supervised visits with MK. Additionally, she failed to complete chemical-dependency treatment. She missed numerous intake appointments for inpatient treatment, and although the county arranged for her admission to two different inpatient-treatment facilities, she left both within days of admission.

On July 19, 2023, mother completed a mental-health assessment, which provided diagnoses of methamphetamine dependence, persistent adjustment disorder with anxiety, and post-traumatic stress disorder. The assessment recommended that mother participate in individual therapy and undergo chemical-dependency inpatient treatment. It also stated that mother might potentially benefit from “trauma specific therapy.”

The record indicates that mother attended some therapy sessions. But the extent of mother’s participation was unclear because she did not sign a valid release of information,

and the county was therefore unable to confirm mother's participation or review her therapy records.

On September 11, 2023, the district court denied requests to extend the permanency deadlines and ordered that the county file a permanency petition within 30 days. On October 9, 2023, the county filed a termination-of-parental-rights (TPR) petition.

At the time of the TPR trial in January 2024, MK had been placed outside the home for approximately 403 days. But to her credit, mother had consistently engaged in supervised visits with MK twice per week. At the termination trial, the district court heard testimony from mother, MK's father, a social worker, a public-health nurse, a visit supervisor, and the guardian ad litem (GAL).

On February 29, 2024, the district court filed an order terminating mother's parental rights to MK on three statutory grounds: (1) Minn. Stat. § 260C.301, subd. 1(b)(2) (2022) (parental neglect); (2) Minn. Stat. § 260C.301, subd. 1(b)(4) (2022) (palpable unfitness); and (3) Minn. Stat. § 260C.301, subd. 1(b)(5) (2022) (failure of reasonable efforts).

The district court found that mother "has chronic, severe, and unaddressed chemical dependency issues, which did not improve over the pendency of this case" and that mother "wavered between categorically denying any use of methamphetamine to admitting use and requesting chemical dependency treatment, while not following through on treatment or testing." The court further found that the county made reasonable efforts to reunify mother with MK and that it was in MK's best interests for mother's parental rights to be terminated.

Mother appeals.

DECISION

I.

Mother contends that the district court improperly terminated her parental rights because the county failed to prove a statutory ground for termination by clear and convincing evidence.

“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). A district court’s decision in a termination proceeding must be based on conditions existing at the time of the termination. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007), *rev. denied* (Minn. July 17, 2007). There must be evidence that “the present conditions of neglect will continue for a prolonged, indeterminate period.” *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980).

The petitioner must produce “clear and convincing evidence that one or more of the statutory termination grounds exists.” *In re Welfare of C.K.*, 426 N.W.2d 842, 847 (Minn. 1988); *see* Minn. Stat. § 260C.301, subd. 1(b) (2022) (listing multiple grounds). This court will affirm a termination order if at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, so long as the county made reasonable efforts to reunite the family or reasonable efforts were not required. *In re Welfare of Child. of T.A.A.*, 702 N.W.2d 703, 708-09 (Minn. 2005).

The district court’s determination that a statutory ground for termination exists and its decision to terminate parental rights are reviewed for an abuse of discretion. *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 600 (Minn. App. 2021), *rev. denied* (Minn. Dec.

6, 2021). A district court abuses its discretion if it makes findings of fact that lack evidentiary support, misapplies the law, or resolves discretionary matters in a manner contrary to logic and the facts on record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022). The district court’s findings of fact are reviewed for clear error. *J.H.*, 968 N.W.2d at 600. Under a clear-error standard of review, “we view the evidence in a light favorable to the findings.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). We do not reweigh the evidence, engage in fact-finding, or reconcile conflicting evidence. *Id.* at 221-22.

Under Minn. Stat. § 260C.301, subd. 1(b)(5), a ground on which the district court relied, a district court may terminate parental rights if the child has been placed outside the home and “reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child’s placement.” There is a presumption that reasonable efforts have failed if: (1) the child was under age eight when the CHIPS petition was filed and “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,” (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) “reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.” Minn. Stat. § 260C.301, subd. 1(b)(5).

Here, the district court determined that there was a presumption that reasonable efforts had failed because (1) MK “was approximately two months old when the [child-protection] petition was filed” and, at the time of trial, MK had resided out of the parental

home for over six months; (2) the district court adopted the county’s signed out-of-home placement plan on May 8, 2023; (3) mother failed to resolve her mental-health and chemical-dependency issues and failed to comply with her case plan; and (4) the county made reasonable efforts to rehabilitate mother and reunite the family.³ The court also determined that despite the “many resources” provided by the county, mother failed to make progress on her severe chemical-health problems.

In challenging the district court’s termination under Minn. Stat. § 260C.301, subd. 1(b)(5), mother argues that the county did not make reasonable efforts to rehabilitate her and to reunite her with MK. In any termination proceeding, the district court must find that “reasonable efforts to finalize the permanency plan to reunify the child and the parent were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family,” unless reasonable efforts for reunification are not otherwise required under statute. Minn. Stat. § 260C.301, subd. 8 (2022). Mother challenges the district court’s reasonable-efforts finding both in the context of the general reasonable-efforts requirement of section 260C.301, subdivision 8, and in the context of the statutory basis for termination under section 260C.301, subdivision 1(b)(5).

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

³ The district court ordered MK’s out-of-home placement in December 2022, and the TPR trial was in January 2024. Thus, by the time of trial, MK had been in out-of-home placement for nearly 12 months.

(Minn. App. 2007) (quotation omitted), *rev. denied* (Minn. Mar. 28, 2007). In determining whether the county’s efforts were reasonable, a court should consider whether the services provided were: (1) “selected in collaboration with the child’s family and, if appropriate, the child”; (2) “tailored to the individualized needs of the child and child’s family”; (3) “relevant to the safety, protection, and well-being of the child”; (4) “adequate to meet the individualized needs of the child 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).

Whether the county made reasonable efforts is a factual finding that we review for clear error. *See In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 387 (Minn. 2008). The district court found that the county made reasonable efforts, including:

the out of home placement plan, contact via in-person, phone, and email; attempted safety planning, rapid response meeting, chemical dependency evaluation, referrals for chemical dependency treatment, drug testing, referrals for diagnostic assessment, assistance with scheduling mental and chemical health appointments, referral to Four County Crisis Response Team, parenting education, housing resources, transportation assistance, including fuel cards, and assistance with maintaining county financial benefits.

In addition, the county “scheduled parenting time visits, organized transportation for [MK], arranged a supervisor for visits, and provided foster care placement, medical care, kinship placement, sibling connections, foster care therapeutic support services, and a kinship search.”

Mother argues that the chemical-dependency programming that she was offered was not appropriate because the programming did not contain a mental-health component and

her mental-health assessment stated that she might benefit from trauma-specific therapy. But the county social worker testified that she recommended a co-occurring program to mother and had discussed that option with mother since the time of mother's chemical-dependency evaluation. And the GAL testified that there was an attempt to get mother into "Recovering Hope, which is a joint mental health and chemical dependency treatment" program.

Although the county made efforts to get mother into inpatient treatment, as recommended by her mental-health assessment, she simply failed to make any progress or complete treatment. Likewise, the county offered mother mental-health services, and she failed to utilize those services. The record indicates that mother discontinued her individual therapy services in June or July of 2023, and prior to that, had only been attending monthly. The record also indicates that mother declined to pursue therapeutic services as recommended when she was experiencing anxiety over entering inpatient treatment programs.

Mother also argues that despite her consistent participation in supervised visitation with MK, the county "never offered an increase in the duration or amount of supervised visits, unsupervised visits, or a trial home visit during the pendency of this termination of parental rights case." That argument is unpersuasive because it ignores the fact that mother never meaningfully addressed the chemical-dependency and mental-health issues that necessitated supervised visitation.

At trial, mother testified that she felt supported by the county and that her social worker had "done the best that she can" and had done "all the right things" to try to help

her. But mother stated that she is her own “biggest barrier.” On this record, mother has not shown that the district court’s reasonable-efforts finding is clearly erroneous.

In addition to challenging the district court’s reasonable-efforts finding, mother argues that the district court failed to address the conditions existing at the time of the termination trial, noting that at the time of trial she “was striving to meet both her mental health and chemical dependency needs by having reached out to Mayo Clinic’s co-occurring inpatient program” and that her last positive drug test was on December 4, 2023, “which was over a month prior to the start of trial.” She claims that she “was meeting her mental health needs, was not using drugs, . . . had corrected the conditions that led to the out-of-home placement of her child,” and that there was no evidence her drug use would continue for a prolonged, indeterminate period.

The record refutes mother’s argument. As the district court found, her “history of addiction is extensive,” mother’s chemical-use assessment in the case involving her other children “rated the severity of her substance use disorder as ‘severe,’” and during the prior case, mother “did not take a single drug test.” The district court also found that in this case, “[o]n at least seven occasions, [mother] stated that she was admitting [herself] to a treatment program and failed to do so.” For example, the district court found that the county secured inpatient treatment for mother at Recovering Hope in July 2023. On August 15 and 17, mother informed the county social worker that she would enter treatment at Recovering Hope the following day; she failed to do so. On October 5, 2023, mother asked for assistance getting into Recovering Hope and as of October 10, mother had entered treatment there. But on October 11, mother left Recovering Hope against staff advice.

Mother repeated that pattern in November 2023. On November 30, the county social worker contacted New Beginnings on mother's behalf, and New Beginnings agreed to accept mother into its treatment program. Mother once again told the social worker that she would enter treatment the next day; she failed to do so. On December 4, mother told the social worker that she would enter treatment at New Beginnings the following day. Mother was admitted to the program on December 5, but she had left the program as of December 7. Mother later claimed that she left because she had completed another assessment and that her level of dependency did not require inpatient treatment so long as "she participates in a high intensity outpatient program that is five days a week." But mother never sought further treatment.

In sum, as of the trial date in the underlying TPR proceeding, mother had not completed treatment and had missed approximately 90 urinalysis tests from October 2022 through January 2024. Mother's two other children tested positive for methamphetamine in the prior case, MK tested positive for methamphetamine in this case, and mother failed to complete treatment to address her chemical dependency in either case. Contrary to mother's argument, there was evidence—as reflected in the district court's findings—that her drug use would continue for a prolonged, indeterminate period.

Accordingly, the district court did not abuse its discretion by terminating mother's parental rights to MK on the ground that reasonable efforts under the direction of the court had failed to correct the conditions leading to MK's out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5). Because we ultimately affirm the termination on this

ground, we do not address the other statutory grounds on which the district court relied. *See T.A.A.*, 702 N.W.2d at 708.

II.

Mother contends that the district court abused its discretion in determining that termination of her parental rights was in MK's best interests.

If at least one statutory basis to terminate parental rights exists, the paramount consideration in determining whether parental rights should be terminated is the child's best interests. Minn. Stat. § 260C.301, subd. 7 (2022). Thus, if a district court determines that a statutory ground for termination exists, it must also determine that termination is in the child's best interests before terminating parental rights. *See In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). "The 'best interests of the child' means all relevant factors to be considered and evaluated." Minn. Stat. § 260C.511(a) (2022).

The district court must explain its rationale for concluding that termination is in the child's best interests after balancing three factors: "(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." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); *see* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) (enumerating the best-interests factors outlined in *R.T.B.*). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *R.T.B.*, 492 N.W.2d at 4. "Where the interests of parent and child conflict, the interests of the child are

paramount.” Minn. Stat. § 260C.301, subd. 7. A district court’s best-interest determination is reviewed for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

The district court found that MK’s “needs for a sober home with a mentally healthy parent, stability, and safety outweigh[ed] the interest in preserving the parent-child relationship.” It noted that MK had “been in foster care for most of his life and needs permanency,” that MK “is doing well in his current placement,” and that MK’s “medical needs are being met and he is meeting his developmental milestones.”

In considering mother’s interest in maintaining the parent-child relationship, the court noted mother’s testimony that she is a “good mom” and evidence that supervised visits were “going well.” However, the court noted mother’s acknowledgment of her own mental-health struggles, her acknowledgment that it is important for MK to have a sober caregiver, and her acknowledgment that it was in MK’s best interests to “remain where he is right now.”

Lastly, the district court thoroughly considered the competing interest of the child. Largely relying on the GAL’s testimony, the district court explained:

Though [the GAL’s] preferred disposition is a transfer of custody, the foster parent would not agree. [The GAL] testified that she has concerns regarding the negative impact of terminating [mother’s] parental rights; however, to effectuate a transfer of legal custody, [MK] would have to be removed from his siblings, which would be detrimental to [MK]. [The GAL] indicates that the most important negative impact of termination is that it will affect the bond between [mother] and [MK]; however, the foster parent has indicated [that] she would support future contact. While there is some harm to [MK], it is outweighed by the harm [MK] would face if separated from his siblings. [The GAL] testified that [the county] provided reasonable efforts to [mother] and [MK], but

that [mother] failed to successfully complete the case plan. [Mother] has had numerous attempts to address her ongoing mental health issues and methamphetamine use. Even if [mother] enrolled in an in-person treatment setting immediately, [MK] has been in out of home placement for so long [that] the GAL would not support more time. [The GAL] testified that she thought carefully about the best interest factors and how they relate to [MK]. Due to [MK's] age, he is not able to express a preference. He needs an attentive, sober, responsive caregiver who can ensure his safety. [The GAL] does not believe [mother] is in a position now or in the foreseeable future to meet [MK's] needs. She demonstrates parenting capabilities in a controlled environment, but [the GAL] has lasting safety concerns.

(Footnote omitted.)

Mother focuses on the fact that she engaged in visitation with MK and maintained a loving relationship. But the district court considered mother's relationship with the child and ultimately determined that MK's need for a safe and sober caregiver outweighed any interest in maintaining the parent-child relationship. *See* Minn. Stat. § 260C.301, subd. 7 ("Where the interests of parent and child conflict, the interests of the child are paramount.").

In sum, the district court thoroughly and thoughtfully applied the best-interests factors and did not abuse its discretion in determining that termination of mother's parental rights was in MK's best interests.

We have no doubt that mother loves MK, as the district court recognized. And we appreciate that MK is placed with family, including the child's siblings. But the district court did not err in reasoning that mother's love does not outweigh the need for MK to have a stable, secure, and safe home, in which the child is not exposed to neglect resulting

from mother's clearly demonstrated inability to recover from her methamphetamine addiction in the indeterminate future.

Affirmed.