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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-61
A12-78**

In the Matter of the Welfare of the Child of: M. J. K. and F. K. G., Parents

**Filed June 25, 2012
Affirmed
Larkin, Judge**

Olmsted County District Court
File No. 55-JV-11-4260

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Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and
Huspeni, Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellant-mother and appellant-father challenge the district court's termination of their parental rights. We affirm.

FACTS

Appellant-mother, M.J.K., and appellant-father, F.K.G., are the biological parents of Y.T.K.-G., who was born October 14, 2009. Mother and father lived together prior to Y.T.K.-G.'s birth. At the time of his birth, the family did not have permanent housing. They stayed with friends and mother's grandfather.

Because mother had voluntarily terminated her parental rights to a child born in 2007, the family began receiving child-welfare case-management services from Paula Ramp, a public health nurse, five days after Y.T.K.-G.'s birth. Ramp visited the family approximately once a week through December 2010. During that time, the family frequently changed housing, roommates, and caregivers for Y.T.K.-G. Ramp observed that mother frequently left Y.T.K.-G. in father's care, and although father wanted to co-parent, he lacked confidence in caring for the child. Ramp was concerned that Y.T.K.-G. was not properly or consistently fed. He suffered recurring upper respiratory symptoms and significant weight loss. Ramp spoke with mother and father regarding Y.T.K.-G.'s weight loss and presented multiple options for monitoring his feeding, but mother was indifferent to the suggestions and often blamed others for Y.T.K.-G.'s weight loss.

In March 2010, the family lived in an apartment with two adult roommates and a three-year-old child. Ramp found that Y.T.K.-G.'s feeding was not being monitored—no

one kept track of the amount or frequency of the formula bottles he was fed. Ramp expressed concern regarding Y.T.K.-G.'s safety and well-being based on the condition of the apartment, which was frequently cluttered and dirty. The apartment was also infested with bed bugs, and mother, both roommates, and the three-year-old child later developed scabies. In early April, Ramp became concerned with the volatility of the relationship between mother and father after witnessing an argument regarding Y.T.K.-G.'s care and learning that father was abusing alcohol. In addition, Y.T.K.-G. was taken to the emergency room and urgent care several times. The physicians expressed concerns regarding Y.T.K.-G.'s fluctuating weight and questioned whether he was failing to thrive. On April 26, Ramp made a child-neglect report based on her observations of mother and father's parenting deficiencies, Y.T.K.-G.'s failure to gain weight, the family's frequent moves, the condition of the apartment, and the potentially volatile relationship between the parents.

In May, mother and father ended their romantic relationship, but continued to live together. Mother began a relationship with J.L. On May 20, after consuming alcohol, father found mother, J.L., and Y.T.K.-G. in a bedroom together. Father reportedly threw mother against the wall twice and punched J.L. in the face four times, all while Y.T.K.-G. was present. Father was arrested and charged with two counts of fifth-degree domestic assault, one count of fifth-degree assault, and disorderly conduct. He was incarcerated until June 3.

On May 21, the district court issued an emergency ex-parte order for protection against father on mother's behalf, but father was not prohibited from having contact with

Y.T.K.-G. Respondent Olmsted County Community Services (OCCS) assigned a case manager from the child-protection domestic-abuse team, Louise Wallskog, to the case.

Following the domestic assault, mother failed to pay her rent and became homeless. Mother and Y.T.K.-G. moved into a mobile home with J.L. and his ex-girlfriend. Ramp found the mobile home unsafe because it was cluttered, dirty, infested with cockroaches, and had no running water or heat. OCCS purchased a “pack and play” so that Y.T.K.-G. would have a safe space in the mobile home. A weight check on May 25 showed that Y.T.K.-G. had lost weight.

OCCS provided the family with services intended to assist mother with her mental-health issues, establish safe and stable housing, and improve mother’s parenting skills. Mother resisted these services and did not follow the recommended safety measures. For example, mother refused to use an appropriate rear-facing car seat, despite being offered a new car seat and provided with an explanation of the child-restraint law.

Father moved in with his parents and brother after he was released from jail on June 3. OCCS increased and extended father’s parenting time based on mother’s unstable housing and her resistance to services. Mother placed Y.T.K.-G. with father for significant periods during the summer and fall of 2010. Ramp visited father’s home and noted that although the residence was crowded due to the number of people living there, she did not have any significant concerns for Y.T.K.-G.’s safety. In fact, the child showed significant growth spurts and improved social and emotional behavior. But OCCS and Ramp were not aware that father was using alcohol.

In July, OCCS case manager Wallskog completed an assessment of the family's needs and available services. She identified the following child-protection concerns: Y.T.K.-G.'s exposure to domestic violence in the home; the parents' failure to meet Y.T.K.-G.'s basic needs, including safe, stable, and consistent housing; the parents' lack of parenting skills; mother's mental-health issues; and father's chemical dependency. Wallskog was concerned regarding mother's reluctance to follow through with services and the family's lack of progress despite their work with Ramp since days after Y.T.K.-G.'s birth. Wallskog and OCCS continued to provide mother with parenting education, living-skills services, and individual therapy. They offered mother assistance in obtaining social-security disability income, as well as safe and stable housing. They also assisted with Y.T.K.-G.'s medical and developmental needs: at ten months of age, Y.T.K.-G. showed signs of developmental delays in communication, fine motor skills, problem solving, and social behavior.

On August 18, father completed a chemical-health assessment and began outpatient chemical-dependency treatment. Father was diagnosed with cannabis dependence and alcohol abuse.

In September, mother and J.L. were evicted from the mobile home and mother was once again homeless. OCCS paid for temporary housing at a motel. OCCS also paid for three months of rent for mother's apartment. During mother's stay at the motel, Y.T.K.-G. rolled, or otherwise fell, from the bed on at least one occasion due to lack of supervision.

On October 5, father was placed on probation for the May 2010 felony domestic assault. The terms of probation included completing a chemical-dependency evaluation, which he had already completed; continuing to attend chemical-dependency treatment; completing domestic-abuse treatment and counseling; and obtaining a psychological evaluation.

In October, at Y.T.K.-G.'s one-year well-baby visit, the pediatrician recommended a referral to Early Childhood Special Education, but mother refused to cooperate with the referral. On November 2, Ramp completed an infant/toddler home inventory at mother's home to measure Y.T.K.-G.'s opportunities and experiences. The overall score was 8 out of 45; a score below 25 is considered to be in the lowest quadrant. On November 12, at 13 months of age, Y.T.K.-G. weighed below the 10th percentile for children his age. In mid-November, Y.T.K.-G. was placed with father. On November 24, father assaulted his girlfriend, V.E., in Y.T.K.-G.'s presence. V.E. reported that father pushed her down and kicked her right side three times. V.E. told police that she was afraid that father might kill her, she believed he had a gun or could easily get one, he had previously tried to choke her, he was violent or constantly jealous when he was not in control of most of her daily activities, and he often followed or spied on her. Father was arrested and incarcerated.

On December 3, OCCS took emergency protective custody of Y.T.K.-G. and placed him in foster care. A child-in-need-of-protection-or-services (CHIPS) petition was filed based on mother's lack of progress and father's assaultive behavior and incarceration. The district court determined that Y.T.K.-G's physical, emotional,

developmental, and social needs were not consistently met in his parents' care. The court found that father's anger and chemical-dependency issues affected Y.T.K.-G.'s safety and that mother and father's cognitive capacities negatively affected their ability to parent Y.T.K.-G. The court found that mother and father lacked knowledge of child development and parenting skills, and that Y.T.K.-G. had been cared for by multiple alternative caregivers.

On February 8, mother and father admitted that Y.T.K.-G. was in need of protection or services. On February 24, the court found that OCCS had made reasonable efforts to prevent placement of the child out of the home, but that placement was necessary and in the best interests of the child. The court ordered that mother and father complete out-of-home placement plans. Mother's tasks and goals included demonstrating a safe environment in the home, following the recommendations of a home-safety checklist, using safety planning upon recognizing a risk for domestic violence, and working on a plan to improve independent living skills, specifically focusing on financial and housing stability. Father's tasks and goals included successfully completing domestic-violence and chemical-dependency treatment, as well as demonstrating that he could provide a safe environment for Y.T.K.-G. and meet the child's basic needs.

As of March 2011, mother had made little progress toward the tasks and goals in her out-of-home-placement plan. Mother postponed two of the six scheduled home visits. During the visits that did occur, mother was not interested in budgeting and was resistant to assistance with the social-security-disability-income process; instead she

would lie on the couch and state that she felt extremely tired and ill. Mother showed no interest in parenting topics or developing independent living skills. And she failed to obtain safe and stable housing. She missed two group interviews for possible housing options and failed to give adequate income or household size on the related applications. Rather than work to develop consistent financial support, mother relied on monetary gifts from others to maintain her lifestyle. During supervised visits with Y.T.K.-G., mother was often preoccupied with her own issues and did not show empathy towards Y.T.K.-G. and his needs. The quality of these visits was described as “poor.” Father remained incarcerated during this time. During his incarceration, father completed a series of anger-management classes.

Mother continued to make little progress on her out-of-home-placement plan in April 2011. She repeatedly refused to work with social workers on developing independent-living and budgeting skills, or gaining economic and housing stability. She also refused assistance with her social-security-disability-income application and was behind on her rent despite receiving housing assistance. She continued her individual therapy, but reported that she did not believe she had “anything to work on.” Ramp made several home visits to mother’s home but found that mother had not met the safety standards required for home visits with Y.T.K.-G. OCCS expressed concerns that mother often ignored Y.T.K.-G. during her supervised visits with him. During one visit, mother was preoccupied and working on her laptop rather than playing with Y.T.K.-G. Mother cancelled one visit because she was not feeling well but nonetheless took her dog to the veterinarian the same day.

As of April, Y.T.K.-G. could not use words to communicate, and he did not babble or use consonants, as was age appropriate. Y.T.K.-G.'s service plan focused on increasing his verbal skills with the help of his caretakers. Nonetheless, mother repeatedly told Ramp that she did not believe Y.T.K.-G. had any developmental delays. Mother participated in at least two teaching sessions with early-childhood services but continued to struggle with implementing the teaching techniques and would often become frustrated, shut down, and refuse to participate in the activities and services offered. Mother also reported that she was pregnant and that J.L. was the father.

At a review hearing on April 25, the district court continued Y.T.K.-G. in protective care and found that reasonable efforts had been made to prevent out-of-home placement, but that placement of the child in foster care was necessary. The guardian ad litem requested that the court cease reunification efforts with mother. The district court reserved a ruling on this request.

In May 2011, mother continued to minimally cooperate with her case-plan tasks and to make little progress. Mother still had no consistent means of financial support, she refused to work on independent-living skills, including her budget, and she refused to sign releases allowing OCCS to contact the Social Security Administration on her behalf. Mother continued to have difficulty implementing teaching techniques designed to address Y.T.K.-G.'s developmental delays and often became frustrated. Y.T.K.-G. also became frustrated, and mother often did not know how to cope with his resulting tantrums. OCCS was concerned regarding Y.T.K.-G.'s behavior at daycare and in foster

care following his visits with mother. Y.T.K.-G.'s visits with mother were reduced to twice weekly due to this behavior.

A home-safety check was completed in May. At that time, most of the safety concerns in mother's home had been resolved, as mother had installed window screens and safety latches. But it took four months for mother to complete the tasks necessary to create a safe home environment for Y.T.K.-G.

On May 5, father was sentenced and placed on probation for the November 2010 assault. The conditions of his probation included completing and following the recommendations of a chemical-dependency assessment and treatment, domestic-violence programming, and a psychological evaluation. He was released from custody on May 16, and the district court awarded him weekly supervised visits with Y.T.K.-G. On May 19, father discussed his living situation at his parents' home with his probation officer. He indicated that there was tension within his family and described his home as a "quasi-hostile environment." Father reported that he was working on obtaining affordable housing.

By the end of May 2011, Y.T.K.-G.'s weight had increased by 35% over the previous three months. He continued to receive services to improve his speech and communication based on his failure-to-thrive diagnosis. At a review hearing on May 31, OCCS advised the court that Y.T.K.-G. had been in court-ordered foster care for six months and that it was OCCS's intent to file a permanency petition. The district court ceased all reunification efforts, but allowed the parents to continue visitation with

Y.T.K.-G. On June 13, OCCS filed a petition to terminate mother and father's parental rights.

In July, father left the visitation center after his visit with Y.T.K.-G. and realized he had forgotten his cell phone. Father became upset when he learned that the building was locked and that staff was unable to open the building. He began yelling and shouting at his mother in Y.T.K.-G.'s presence. Y.T.K.-G.'s foster parent removed Y.T.K.-G. from the situation. Father's visits with Y.T.K.-G. were supervised following this incident. Although father initially denied the incident, he later admitted that he lost his temper. But he failed to demonstrate an awareness of why this behavior was inappropriate. On July 26, father entered primary chemical-dependency treatment. He was diagnosed with alcohol and cannabis dependence upon admission.

In July, mother was evicted from her apartment and again became homeless. She completed a psychological examination with her individual therapist. Mother's therapist diagnosed her with antisocial personality disorder, borderline intellectual functioning, and ADHD. He opined that mother's diagnosis would last a lifetime. He noted that mother struggled to learn and to manage verbal information, that she processed information slowly, and that she would have difficulty maintaining employment. Mother missed more therapy appointments than she attended. Mother completed a second psychological evaluation and parenting assessment. At the time, mother was homeless, did not have stable employment, and allegedly made poor decisions regarding her associates. The evaluator diagnosed mother with adjustment disorder with disturbance of conduct, depressive disorder, a history of ADHD, bi-polar disorder, dysthymia, learning

disability, personality disorder with narcissistic and antisocial traits, and borderline intellectual functioning. The evaluation revealed that mother's full scale IQ score was 80, which was in the 9th percentile. In the domestic-violence inventory, mother scored in the "problem risk range" indicating that either mother did not take the test seriously or was deceptive in her answers. She scored in the "problem risk range" on the violence scale, indicating that mother is capable of committing acts of physical, emotional, or verbal violence. Mother denied extensive use of alcohol or chemicals and scored in the low-risk range for alcohol and drug use. But the evaluator believed the answers and scores were inaccurate based on a review of collateral information. He noted that it was highly unlikely that mother's positive urine screen for marijuana was caused by second-hand smoke. Mother also reported that she was heavily intoxicated for her birthday and missed a visit with Y.T.K.-G. due to a hangover.

During the parent-child interactions portion of the evaluation, mother had difficulty managing both of her children¹ at the same time and observers found her parenting skills were limited. Mother noticeably lacked nurturing behavior and had difficulty picking up cues from the children regarding their basic needs, such as changing and feeding. Mother struggled to identify harmful situations for the children and did not grasp that parents must watch their children and be ready to intervene before harmful situations occur. Mother did not focus on her children; she was distracted and anxious to finish the tasks so she could leave. The evaluator recommended that mother complete

¹ Mother gave birth to her third child on May 26, 2011. The child was placed in foster care the next day, and a separate child-protection proceeding was commenced.

outpatient chemical-dependency treatment, an anger-management program, individual therapy to address issues of self-worth and self-esteem, and follow all recommendations of aftercare.

In mid-August, at his chemical-dependency-treatment facility, father participated in group activities, attended an outside support group, completed his assignments, and submitted to two urine screens. The urine screens were negative for marijuana and alcohol. On August 22, father was discharged from the treatment program with staff approval, but his prognosis was only “fair.” The staff reported to probation that father had more issues with anger than chemical dependency.

The district court held a trial on OCCS’s termination-of-parental-rights (TPR) petition on September 13–15, 2011. At the time of trial, mother continued to be homeless and was staying at a shelter. The district court terminated mother and father’s parental rights to Y.T.K.-G., and this consolidated appeal follows.

D E C I S I O N

“[Appellate courts] review the 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.” *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We “closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing.” *Id.*; *see also* Minn. R. Juv. Prot. P. 39.04, subd. 2(a) (“[I]n a termination of parental rights or other permanency matter involving a non-Indian child, the standard of proof is clear and convincing evidence.”). “Considerable deference is due to the district court’s

decision because a district court is in a superior position to assess the credibility of witnesses.” *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

“The [district] court must make its decision based on evidence concerning the conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period.” *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007) (quotation omitted). When at least one statutory ground for termination is supported by clear-and-convincing evidence and termination is in the best interests of the child, we will affirm the district court’s termination of parental rights so long as the county made reasonable efforts to reunite the family, if required. *S.E.P.*, 744 N.W.2d at 385; *see also* Minn. Stat. § 260C.301, subd. 1(b) (2010) (listing grounds for involuntary termination of parental rights). An appellate court “exercises great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result.” *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996).

I.

The district court based its termination of mother’s parental rights on two statutory grounds: failure to satisfy the duties of the parent-child relationship and failure to correct the conditions leading to the out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (5) (2010). The district court also concluded that OCCS had made reasonable efforts to reunite the family and that it is in the child’s best interests to terminate mother’s parental rights. Mother challenges the sufficiency of the evidence regarding each statutory ground, as well as the district court’s best-interests finding.

Failure to Satisfy the Duties of the Parent-Child Relationship

Minn. Stat. § 260C.301, subd. 1(b)(2) provides that 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, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable.

The district court found that mother failed to nurture the child, as well as meet the child's needs for necessary food, a safe and stable home, and physical and mental health. These findings are supported by substantial evidence. OCCS and medical staff expressed serious concerns regarding Y.T.K.-G.'s weight, feeding, and nutrition. These concerns were addressed by providing mother with the education and the tools necessary to monitor the child's feeding and improve his weight before it negatively affected his development. But mother was uncooperative, indifferent to the suggestions, and blamed others. As a result, Y.T.K.-G. did not gain adequate weight in mother's care. On the other hand, Y.T.K.-G.'s weight increased by 35% during the first three months after he was removed from mother's care. In addition, mother refused to cooperate with early-intervention referrals that were made based on Y.T.K.-G's developmental delays and failure-to-thrive diagnosis.

Moreover, the evidence shows that mother has been homeless on several occasions since Y.T.K.-G.'s birth despite financial, education, and material assistance. Mother's homelessness was often a result of her failure to follow through with obtaining assistance and mismanaging her finances. Mother did provide Y.T.K.-G. with shelter, but that shelter was often unsafe due to conditions such as no running water, no heat, bed bugs, and cockroaches.

Lastly, the evidence shows a lack of attachment between mother and Y.T.K.-G. On one visit, Y.T.K.-G. referred to three women in the room as "mom." And mother has repeatedly shown an inability to respond to Y.T.K.-G.'s cues and was often inattentive and distracted during her visits with him.

In sum, substantial evidence clearly and convincingly demonstrates that mother "has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon [her] by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development." *Id.*

As to whether mother was "physically and financially able" to comply with the parental duties, *id.*, the district court also found that "there is no evidence that mother lacks the physical ability or financial ability to provide her child with necessary food, shelter or other care. . . . The record amply supports that mother's failure to meet her child's needs is attributable to her untreated mental illness, unwillingness to learn basic parenting skills and refusal of recommendations and services, not to physical or financial

impediments.” Mother argues that this finding is not supported by substantial evidence because “witness after witness testified that mother was not financially able, nor had the mental stability, to provide for her child.” This argument ignores the fact that mother continually refused or failed to cooperate with OCCS’s efforts to obtain social-security disability benefits on her behalf. OCCS also provided mother with financial assistance, yet she was still unable to maintain consistent, safe housing. The evidence substantially supports the district court’s finding that “[m]other was unable to provide basic food, clothing, or housing on a consistent basis as she failed to turn in paperwork in a timely or complete manner for public assistance, refused Ms. Wallskog’s offers of help, and spent her money on phone and internet services and loans to her friends.” Because clear-and-convincing evidence demonstrates that mother’s financial impediments were of her own making, the district court did not err in concluding that mother failed to satisfy the duties of the parent-child relationship.

Failure to Correct the Conditions Leading to the Out-of-Home Placement

A district court may also terminate parental rights upon a determination that reasonable efforts have failed to correct the conditions that led to a child’s out-of-home placement. *Id.*, subd. 1(b)(5). When determining whether reasonable efforts have been made, the court shall consider whether services to the child and family 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) (2010). Whether the county has met its duty of reasonable efforts requires consideration of the length of the

time the county was involved and the quality of effort given. *In re Welfare of M.G.*, 407 N.W.2d 118, 122 (Minn. App. 1987).

The district court concluded that reasonable efforts failed to correct the conditions leading to Y.T.K.-G.'s out-of-home placement. The record includes substantial evidence that mother did not create a safe home environment for the child, because she was resistant to, and delayed implementation of, the recommendations of a home-safety checklist. In addition, mother failed to meaningfully engage in services to improve her independent-living skills, specifically, her housing and finances. Mother was given the opportunity to address her mental-health, housing, and child-safety issues, but she chose not to or her participation was poor.

Mother argues that OCCS's reunification efforts were not reasonable because she needed psychiatric treatment and medication. She asserts that OCCS's "efforts towards reunification therefore did not address the problem presented, i.e. [mother's] mental health." But the district court implicitly determined, based on the record presented, that additional mental-health services would have been futile. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004) (stating that reasonable efforts do not include efforts that would be futile); *S.Z.*, 547 N.W.2d at 892. The district court found that "[m]other's claim that she was not given the opportunity to address her mental-health issues is unpersuasive in light of her repeated failures to take advantage of said services." Moreover, Wallskog, whom the district court found credible, testified that mother simply does not have the capacity to parent. *See Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (appellate courts defer "to the district court's opportunity to evaluate

witness credibility”). This record supports the conclusion that additional mental-health services would have been futile and unreasonable. Moreover, the record clearly and convincingly supports the district court’s conclusion that mother failed to correct the conditions that led to Y.T.K.-G.’s out-of-home placement.

Best Interests

In a TPR proceeding, a child’s best interests are paramount so long as a statutory ground for termination is met. Minn. Stat. § 260C.301, subd. 7 (2010). “In analyzing the best interests of the child, the court must balance 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). “Competing interests include such things as a stable environment, health considerations and the child’s preferences.” *Id.*

The district court found that it is in Y.T.K.-G.’s best interests to terminate mother’s parental rights. Mother argues that she and her son are bonded and that the district court “failed to credit and appreciate . . . the constant and consistent contact that [mother] has maintained with her son.” The record belies this assertion. Mother often ignored Y.T.K.-G. during supervised visits, which the district court found demonstrates a lack of attachment between mother and Y.T.K.-G. In fact, at one point, Y.T.K.-G. referred to three different women in the room as “mom.” And mother missed a visit with Y.T.K.-G. because she was hung over and spent another visit using her laptop. The district court correctly considered mother’s inability to provide a safe and stable home for Y.T.K.-G., his need for special education and health services due to his developmental

delays, as well as his need for permanency. The record clearly and convincingly supports the district court's conclusion that termination of mother's parental rights was in Y.T.K.-G.'s best interests.

II.

The district court terminated father's parental rights because reasonable efforts failed to correct the conditions leading to Y.T.K.-G.'s out-of-home placement and because Y.T.K.-G. is neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(5), (8) (2010). The district court also concluded that OCCS made reasonable efforts to reunite the family and that it is in Y.T.K.-G.'s best interests to terminate father's parental rights. Father challenges the district court's conclusion that Y.T.K.-G. is neglected and in foster care, as well as the district court's reasonable-efforts determination. Father does not challenge the district court's best-interests determination.

Neglected and in Foster Care

A district court may terminate all rights of a parent to a child if it finds "that the child is neglected and in foster care." *Id.*, subd. 1(b)(8). Neglected and in foster care means a child who has been placed in foster care by court order; and whose parents' circumstances, condition, or conduct are such that the child cannot be returned to them; and whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child. Minn. Stat. § 260C.007, subd. 24 (2010). In determining whether a child is neglected and in foster care, the court shall consider seven

statutory considerations, including but not limited to, the length of time the child has been in foster care, the parents' efforts to adjust the circumstances leading to the child's removal from the home, the parents' visits in the three months prior to the filing of the TPR petition, and the county's efforts to reunite the family. Minn. Stat. § 260C.163, subd. 9 (2010).

Father argues that “[t]here is nothing in this record . . . upon which the Court could properly make a finding that the return of the child to father . . . would not have been feasible or appropriate.” The record belies this assertion. The district court found that father's efforts to remedy the conditions that led to Y.T.K.-G.'s removal were minimal. Although domestic violence was a primary concern due to the child's exposure to two acts of domestic violence by father² during his young life, father did not complete domestic-violence treatment prior to the trial. Father argues that he attempted to complete domestic-violence treatment but did not have enough time to do so. At trial, father testified as follows:

FATHER: The domestic class I've been waiting to get scheduled since I got released because of scheduling conflicts

....

ATTORNEY: When were you supposed to go — when did you think you were going to go through that domestic violence program in Oakdale?

FATHER: I was — I was supposed to do it in August, and then they gave me a call and cancelled. They've called and cancelled the appointment four different times because they didn't have a coordinator that could run it.

² Father has struggled with assaultive and violent behavior since adolescence. Between December 2002 and May 2004, father was adjudicated delinquent on five occasions for assaultive behavior: twice for disorderly conduct and three times for fifth-degree assault. The victims included father's mother and brother.

The district court questioned father about his failure to complete domestic-violence treatment:

DISTRICT COURT: And then we've also been talking about the DVI, the domestic violence programming.

FATHER: I'm — I've been calling around to find out where I can take it, and I'm just hitting dead ends.

DISTRICT COURT: So a lot really hasn't happened since you were released.

FATHER: I've been hitting a lot of dead ends.

Father was aware, before he was incarcerated in November, that he needed to complete domestic-violence treatment. And after his release in May, he still had several months before trial to schedule treatment. The district court was not persuaded by his assertion that he kept hitting “dead ends” or that he demonstrated a sincere attempt to complete domestic-violence programming. The district court found that father’s testimony was not “persuasive,” concluding that father “did not attempt to complete treatment prior to the trial.” We defer to this credibility determination. *See L.A.F.*, 554 N.W.2d at 396. Moreover, the permanency statute simply does not provide father with unlimited time to complete his case plan. *See Minn. Stat. § 260C.201, subd. 11a(a) (2010)* (“If the child was under eight years of age at the time the petition was filed alleging the child was in need of protection or services, and the child continues in placement out of the home of the parent or guardian from whom the child was removed, no later than six months after the child’s placement the court shall conduct a permanency hearing to review the progress of the case, the parent’s progress on the out-of-home placement plan, and the provision of services.”).

Although father completed outpatient chemical-dependency treatment, the treatment staff reported that he had more issues with anger than chemical dependency. It is undisputed that father did not complete a domestic-violence program. And even though father visited Y.T.K.-G., the visits had to be supervised because of his anger issues. Meanwhile, the child had been in foster care for almost a year at the time of trial. The record clearly and convincingly supports the district court's conclusion that Y.T.K.-G. is neglected and in foster care.

Reasonable Efforts to Reunite the Family

As noted above, a district court may terminate parental rights upon a finding that reasonable efforts have failed to correct the conditions that led to the out-of-home placement of the child. Minn. Stat. § 260C.301, subd. 1(b)(5). With regard to the agency's reasonable efforts, a social services agency's efforts toward reunification must be designed to address "the problem presented," *S.Z.*, 547 N.W.2d at 892, and must "include real, genuine help to see that all things are done that might conceivably improve the circumstances of the parent and the relationship of the parent with the child," *In re Welfare of M.A.*, 408 N.W.2d 227, 236 (Minn. App. 1987) (quotation omitted), *review denied* (Minn. Sept. 18, 1987). Reasonable efforts do not include efforts that would be futile. *R.W.*, 678 N.W.2d at 56; *S.Z.*, 547 N.W.2d at 892. "[A] case plan that has been approved by the district court is presumptively reasonable." *S.E.P.*, 744 N.W.2d at 388.

Father argues that OCCS's reunification efforts were unreasonable because the efforts did not take into account his incarceration. Father also argues that the efforts

failed to take into account his “history of providing an appropriate level of care to the child, in his home, in apparent sharp contrast to the mother’s efforts.”

As to the care that father provided in his home, the record undisputedly shows that father committed an act of domestic violence in the child’s presence. This incident resulted in father’s arrest and incarceration, and it rendered him unavailable to care for Y.T.K.-G. for approximately six months. This is hardly an appropriate level of care. And although it is inappropriate for different reasons, it is not “in apparent sharp contrast” to mother’s efforts. Moreover, the district court found that father was incarcerated from November 24, 2010, until May 16, 2011, and that “[f]ather did not intend to engage in programming until after his release.” Father’s argument that reunification efforts were unreasonable due to his incarceration is unpersuasive where father made the choice not to engage in services during his period of incarceration. For these reasons, we reject father’s challenge to the district court’s reasonable-efforts determination.

In conclusion, the district court did not err in terminating the parental rights of appellant mother and appellant father to Y.T.K.-G.

Affirmed.