STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0127

In the Matter of the Welfare
of the Children of:
J. M., Parent

Filed August 12, 2013
Affirmed
Cleary, Judge

Ramsey County District Court
File No. 62-JV-12-2848

Robert Lawton, St. Paul, Minnesota (for appellant mother J.M.)

John J. Choi, Ramsey County Attorney, Kathryn M. Eilers, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

Sophia Y. Vuelo, St. Paul, Minnesota (for respondent father E.P.)

Bryan B. Carroll, Tomsche, Sonnesyn & Tomsche, P.A., Minneapolis, Minnesota (for respondent children J.F. and D.M.)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Cleary, Judge.

U N P U B L I S H E D O P I N I O N

CLEARY, Judge

Appellant challenges the district court order terminating her parental rights, arguing that the record does not support the court's determination that she is a palpably unfit parent; that the county's efforts to reunite the family were inadequate; that the

record does not demonstrate that the children were neglected and in foster care; that the record does not support the conclusion that appellant refused or neglected to comply with her parental duties; and that the record does not demonstrate that termination is in the children's best interests. We affirm.

FACTS

Appellant J.M. is the mother of three children, D.M., J.F., and T.W. D.M. was born on September 21, 1998, J.F. was born on May 4, 2000, and T.W. was born on February 17, 2002. All three children have special needs. D.M. has been diagnosed with attention-deficit-hyperactivity disorder (ADHD), oppositional defiant disorder (ODD), depression, anxiety, and behavioral disorders. J.F. experiences seizures and has been diagnosed with bipolar disorder, ADHD, ODD, a learning disorder, and mild mental retardation. At the time of trial, he was taking seven different medications that were administered at specific times throughout the day. J.F. was placed in Northwood Children Services in Duluth, a residential treatment facility for children with emotional and behavioral disorders. T.W. has been diagnosed with significant asthma and has exhibited behavioral issues in school and at home.

J.M. first became involved with child-protection services in March 2004, after D.M. reported to his teacher and social worker at school that J.M. had "popped him on the back" with a belt after he had misbehaved. From 2004–2006, the Ramsey County Community Human Services Department (county) developed various case plans with J.M. to help her learn positive ways to deal with her children's behavior. J.M. was also receiving services through the county that included in-home parenting assistance, family

therapy, individual therapy for her and for the children, a children's mental-health worker, a nurse who went to J.M.'s home to administer medication, and Community Alternatives for Disabled Individuals (CADI) services for J.F. In August 2005, following an incident when the children were found on the roof of their home without J.M.'s knowledge, they were removed from J.M.'s home and placed in foster care. T.W. was returned to J.M.'s care within a few months, and J.F. and D.M. were returned to her care in March 2006. In April 2006, another case plan was developed and the county's services continued. Also in 2006, J.M. underwent a psychological assessment and was determined to be an adult with developmental disabilities. As a result, she was eligible to receive developmental-disability services. Christine McGonagle, a social worker with the county, started working with J.M. in January 2006, helping her to find employment, obtain housing, and manage her money.

In May 2011, another report alleged that J.M. had struck D.M. on the back with a clothes hanger. The county determined that J.M. could not manage D.M. and J.F.'s behavioral and mental-health needs and that her case plan goals would be to learn to "manage [the children's] mental health needs and also to develop ways of responding to them, the children and their behaviors, which are extreme, in a way that wasn't verbally or physically abusive." D.M. was removed from J.M.'s care in July 2011, and J.F. was removed from her care in October 2011. Although T.W. remained in J.M.'s care initially, she began displaying behavioral problems in school and at home. J.M. admitted to yelling and swearing at T.W. and generally not getting along with her. Due to safety concerns, T.W. was removed from J.M.'s care in January 2012. According to the county,

J.M. had until approximately October 2012 to successfully complete her case plan and reunify with her children, or a "backup" plan would be recommended. J.M.'s case plan included meeting with a therapist; working with professionals to manage her finances in order to afford her basic needs; learning to manage her children's behavior in a way that did not cause them physical or emotional harm; and participating and cooperating with the treatment team, which included all the various professionals involved in her children's care. J.M. was allowed to visit her children while they were in the out-of-home placements.

In August 2012, the county filed a petition to terminate J.M.'s parental rights. The county alleged that J.M. had been "physically abusing [J.F.] and [D.M.] and admitted to the child protection worker that she hit both of them when she got angry." The county also alleged that J.M. struggled to manage her children's behaviors during visits, that she talked inappropriately and negatively to the children during visits, and that she did "not have any sense of what is developmentally appropriate or take into account the children's mental health issues" when she spoke to them. There were no allegations that J.M. physically abused T.W., but the county claimed that J.M. routinely cursed at her, called her names, and threatened her, and that T.W.'s behavior in school and at home deteriorated as a result, leading to her suspension from school. The county detailed the services provided to J.M. and her children to correct the conditions that led to the out-of-home placements, which included child-protection services, foster care, child and adult mental-health services, in-home parenting assistance, family therapy, psychiatric services, CADI services, All Children Excel program services, and residential treatment.

Finally, the county alleged that it was in the children's best interests that J.M.'s parental rights be terminated. J.M. denied the petition, and a bench trial was held in November 2012.

At trial, J.M. testified that she had learned how to discipline her children at a parenting class that she attended in 2005. She explained that she had learned to "stop hollering and cussing and screaming and yelling." She denied that she ever hit or "whooped" her children with a belt or a clothes hanger, and she denied ever admitting that she had done so. When asked about the incident in May 2011, she explained that she and D.M. were in an argument over the remote control and that D.M. grabbed her and slammed her against the wall. J.M. stated that she took her anger out on D.M. and that she "whack[ed] him in the back" with a piece of the window blinds. She stated, "That's how he got the bruise on his back. I didn't hit him with the clothes hanger. And I didn't know the thing was going to put a bruise on his back."

Jennifer Keppers, the program director at Robert E. Miller Minnesota Community Services (REM), also testified at trial. REM provides services to people with disabilities, and from 2004 to 2006, the agency worked with J.M. on parenting skills and communication during in-home parenting-assistance sessions. During that time, Keppers's concerns about J.M.'s parenting included the lack of routine and structure and J.M.'s failure to talk or interact with her children. Keppers explained that J.M. would listen to instructions about how she could improve her parenting skills, but that she would not retain the lessons and could not apply the skills when situations arose again.

Keppers explained that, when REM became involved with J.M. again in 2012, the agency's goals were similar to the goals set when the agency worked with J.M. from 2004 to 2006. REM was working with J.M. on communication so that she would not physically or verbally abuse her children to gain their compliance. At the time of the trial, J.M. had not met any of the goals that Keppers had set for her in February 2012. Keppers testified that she did not believe that J.M. had changed her parenting style or that J.M. would be an appropriate care provider for her children.

Carmen Ella Schempp, a supervisor at Northwood Children Services, worked with J.F. and testified that she had frequently talked with J.M. on the telephone and had met J.M. in person approximately eight to twelve times. Although J.M. would ask questions about how J.F. was doing or how his medications were working, Schempp testified that she would have to remind J.M. about things that they had discussed during prior conversations. Schempp also testified that J.M.'s understanding of J.F.'s needs and behaviors was simplified and that J.M. had a difficult time tracking the nature of his emotional health. Schempp explained that, when J.M. visited J.F., the visits were difficult because staff members needed to supervise J.M. and J.F. to make sure that their conversations remained appropriate and contained information that was appropriate for a child of J.F.'s age. Staff members also supervised J.F.'s telephone conversations with J.M., and they eventually required the conversations to be held over speakerphone so that both sides of the conversations could be more closely monitored.

McGonagle, J.M.'s social worker, also testified at trial. She explained that, although she worked primarily with J.M., she was often involved in meetings and

interactions with or about J.M.'s children so that she could learn about the family situation in order to support J.M. in her decision-making. McGonagle testified that she did not see any change in J.M.'s parenting style or ability during her six years of working with J.M. McGonagle also testified that she did not see J.M. use any methods other than "whooping and yelling" to control her children and that J.M. was not able to put her children's needs ahead of her own. McGonagle admitted that she had grave concerns about J.M.'s ability to parent her children.

Chantel Houg, a child-protection social worker for the county, was assigned to J.M.'s case in November 2011. Houg testified that all three of J.M.'s children "have behavioral issues, and [J.M.'s] response to that historically has been to either hit them or yell at them or scream [at] them." Houg also stated that she wanted J.M. to "learn new ways of dealing with the children when they were doing things that they shouldn't and to be able to kind of keep control of herself in trying to manage those behaviors." Houg explained that J.M. had not been successful at internalizing the parenting skills that she learned from REM. Houg testified that she finally initiated the petition to terminate J.M.'s parental rights because she could not think of another service that the county could add to facilitate reunification and she did not think that reunification would be successful. She also testified that she did not believe that J.M. would be capable of providing appropriate parenting care in the near future and that it was in the children's best interests for the court to terminate J.M.'s parental rights.

Ruby Payne, the guardian ad litem for the children, was the last witness to testify. She stated that J.M. had not exhibited the ability to handle the daily responsibility of

caring for her children and that she did not believe that J.M. would be able to appropriately parent the children if they were returned to her in the reasonably foreseeable future.

In January 2013, the district court issued an order terminating J.M.'s parental rights to the children under Minn. Stat. § 260C.301, subd. 1(b)(2) (2012) ("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"), subd. 1(b)(4) (2012) (the "parent is palpably unfit to be a party to the parent and child relationship"), subd. 1(b)(5) (2012) ("reasonable efforts . . . have failed to correct the conditions leading to the child's [out-of-home] placement"), and subd. 1(b)(8) (2012) (the children are "neglected and in foster care"). Additionally, the court held that the county had provided J.M. with reasonable efforts to rehabilitate her and reunite her with her children; that additional services were not likely to "bring about lasting parental adjustment" enabling the return of her children within a reasonable period of time; and that termination of J.M.'s parental rights was in the children's best interests. This 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). In an "appeal from a district court's decision to terminate parental rights, we will review the district court's findings of the underlying or basic facts for clear error, but we review its determination of

whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "We affirm the district court's termination of parental rights 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, provided that the county has made reasonable efforts to reunite the family." *S.E.P.*, 744 N.W.2d at 385 (citation omitted).

I.

J.M. argues that the district court abused its discretion by determining that she is palpably unfit under Minn. Stat. § 260C.301, subd. 1(b)(4), because it failed to give her testimony adequate weight and because it placed too much emphasis on physical abuse.

"The juvenile court may upon petition, terminate all rights of a parent to a child" if it finds

> that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be 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). "[T]he county must prove a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that, it appears, will continue for a prolonged, indefinite period and that are permanently detrimental to

the welfare of the child." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008).

J.M. first argues that the district court failed to give adequate weight to her testimony and that her testimony was contradictory to the court's findings. This court neither reconciles conflicting evidence nor decides issues of witness credibility, as those determinations are exclusively the province of the district court as fact-finder. *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). District courts "stand in a superior position to appellate courts in assessing the credibility of witnesses." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 374–75 (Minn. 1990). At trial, J.M. testified about the parenting skills that she learned and how her parenting style had changed. She also testified that she is perfectly capable of parenting her children without anyone else's involvement. The other witnesses testified that J.M. had not made changes to her parenting style and that she would not be a suitable caretaker for her children. The court specifically found the county's other witnesses to be credible.

J.M. next argues that the court placed too much emphasis on physical abuse when it determined that she was palpably unfit to parent her children. The court did not rely solely, or even primarily, on physical abuse as its basis for finding that J.M. was palpably unfit, but rather the court focused on J.M.'s inability to meet her children's special needs. The court noted that J.M. could not adequately testify about what special needs her children had. The court also found that J.M. did not work cooperatively with the service providers that addressed her children's mental-health issues and special needs and that her inability to do so adversely affected her children's health and well-being. The court

noted that J.M. was easily frustrated and would become enraged, aggressive, and emotionally abusive to her children. Finally, the court found that J.M. was unable to provide her children with stability, appropriate discipline, or structure and that she could not adequately meet their basic or special needs.

The district court's findings demonstrate evidence of a consistent pattern of specific conduct relating to the parent and child relationship that is of a duration or nature that renders J.M. unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, and emotional needs of her children. The court did not abuse its discretion by determining that J.M. is palpably unfit to parent under Minn. Stat. § 260C.301, subd. 1(b)(4).

II.

J.M. next argues that the court abused its discretion when it determined that reasonable efforts had failed to correct the conditions leading to her children's out-of-home placements. She specifically contends that the county did not make reasonable efforts to rehabilitate her and reunite her with her children. She claims that the county's efforts "were not reasonable because they were not successful," emphasizing that she demonstrated her ability to successfully comply with the county's case-plan requirements in the past.

The court may terminate a parent's rights if it finds "that following the child's placement out of the home, reasonable efforts, under the discretion of the court, have failed to correct the conditions leading to the child's placement. It is presumed that reasonable efforts under this clause have failed upon a showing that[,]" among other

things, "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). In determining whether reasonable efforts have been made in a termination proceeding, the district court must consider whether services to the 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) (2012).

The court found that J.M.'s case plan addressed her parenting deficits, her needs as a person with developmental disabilities, her mental-health issues, and the need to provide consistent services for her children. The court noted that J.M. received extensive parenting services and instruction from the county; she received assistance from her social worker in finding appropriate housing, managing her money, finding employment, and working on her mental-health issues; and she was required to be involved with her children's mental-health case management services, therapy, and psychiatric services.

These findings are not clearly erroneous. Keppers, the program director at REM, testified that J.M. had been receiving in-home parenting instruction for three years. McGonagle, J.M.'s social worker, testified that she had tried to help J.M. obtain suitable housing, manage her money, and maintain a job. Houg testified that the county had provided various services to help J.M. manage her children's needs, including family therapy, a children's mental-health worker, and a nurse who went to J.M.'s home to administer medication to J.F.

Based on this evidence, the district court found that the "efforts made by [the county] to rehabilitate [J.M.] and reunify her with [her children] were reasonable under the circumstances of this case." The county provided services on a weekly basis to assist J.M. with various tasks including managing her money, finding suitable housing, managing her children's needs, and finding ways to parent her children without resorting to verbal or physical abuse. The county provided these services in an attempt to help J.M. meet the goals of her case plans. The county had been providing these services to J.M. for an extended period of time, in some instances up to six years, and yet she did not meet the goals of her case plans. The court determined that continuing to provide the same services or providing further services would be futile. Because the county is not required to provide services if that provision would be futile, Minn. Stat. § 260.012(h), a lack of success does not make the county's efforts unreasonable. The court did not abuse its discretion by determining that the efforts to rehabilitate J.M. and reunify her with her children were reasonable.

III.

J.M. next argues that the court erred when it determined that her children were neglected and in foster care under Minn. Stat. § 260C.301, subd. 1(b)(8). J.M. concedes that her children were in foster care, but argues that they were not neglected because J.M. maintained frequent contact with her children and made an effort to adjust her circumstances.

The court may terminate a parent's rights if it finds that "the child is neglected and in foster care." Minn. Stat. § 260C.301, subd. 1(b)(8). Termination of parental rights is

appropriate under Minn. Stat. § 260C.301, subd. 1(b)(8), when: (1) the children have been placed in foster care by court order; (2) the parent's circumstances, condition, or conduct are such that the children cannot be returned to the parent; and (3) the parent, despite the availability of needed rehabilitative services, has failed to make reasonable efforts to adjust her circumstances, condition or conduct, or has 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 (2012).

> In determining whether a child is neglected and in foster care, the court shall consider, among other factors, the following:
>
> (1) the length of time the child has been in foster care;
>
> (2) the effort the parent has made to adjust circumstances, conduct, or conditions that necessitates the removal of the child to make it in the child's best interest to be returned to the parent's home in the foreseeable future, including the use of rehabilitative services offered to the parent;
>
> (3) whether the parent has visited the child within the three months preceding the filing of the petition, unless extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevented the parent from visiting the child or it was not in the best interests of the child to be visited by the parent;
>
> (4) the maintenance of regular contact or communication with the agency or person temporarily responsible for the child;
>
> (5) the appropriateness and adequacy of services provided or offered to the parent to facilitate a reunion;
>
> (6) whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time, whether the services have been offered to the parent, or, if services were not offered, the reasons they were not offered; and

> (7) the nature of the efforts made by the responsible social services agency to rehabilitate and reunite the family and whether the efforts were reasonable.

Minn. Stat. § 260C.163, subd. 9 (2012). The court found that the county offered and provided J.M. "services to assist her in addressing the issues that led to [her children's] child protection involvement and out of home placements." The court also found that, despite the county's efforts, J.M. failed to correct the conditions that led to her children's out-of-home placements. The court determined that J.M.'s "level of cooperation with and treatment of the children's service providers has not improved." Finally, the court found that, if the county provided additional services or efforts, those efforts would be "futile and unrealistic under the circumstances of this case" and would be "unlikely to bring about lasting parental adjustment" enabling the return of the children to J.M.'s care.

The court's findings are not clearly erroneous. McGonagle testified that J.M. refused or failed to follow through with services that the county offered, including securing appropriate housing, learning to manage her money, and attending individual therapy. Houg testified that J.M. failed to meet the goals of her case plans and that she could not think of any other services that the county could offer to facilitate reunification. Keppers testified that, from February 2012 until the time of trial, J.M. had not made any changes to her parenting style. Keppers also noted that J.M. still needed parenting help and that continuing to provide parenting services to J.M. would not lead to successful reunification.

Although the court did not make specific references to the factors under Minn. Stat. § 260C.163, subd. 9, its detailed findings of fact demonstrate that it considered

them. J.M. concedes that her children were in foster care. She refused or failed to follow through with the services offered to her to facilitate reunification with her children, and multiple witnesses testified that further efforts would be futile. The record demonstrates that she did not make reasonable efforts to change the circumstances that led to her children's out-of-home placements, despite the many services offered by the county. The court did not abuse its discretion by determining that J.M.'s children were neglected and in foster care under Minn. Stat. § 260C.301, subd. 1(b)(8).

IV.

J.M. contends that the district court abused its discretion by concluding that she had not complied with the duties imposed by the parent-child relationship under Minn. Stat. § 260C.301, subd. 1(b)(2). Because J.M. does not support this allegation with argument or citation to legal authority, we do not address it. *See State v. Meldrum*, 724 N.W.2d 15, 22 (Minn. App. 2006) ("If the brief does not contain an argument or citation to legal authority in support of the allegations raised, the allegation is deemed waived."), *review denied* (Minn. Jan. 24, 2007).

V.

J.M. argues that the district court abused its discretion by determining that termination of her parental rights is in the best interests of the children. J.M. argues that she loves her children and that she wants to be reunified with them. She contends that it is not in their best interests to separate them from the mother they love.

In a termination proceeding, "the best interests of the child must be the paramount consideration, provided that . . . at least one condition in subdivision 1, clause (b), [is]

found by the court." Minn. Stat. § 260C.301, subd. 7 (2012). "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 of the child can include things such as a stable environment, health considerations, and the child's preferences. *Id.* "During the balancing process, the interests of the parent and child are not necessarily given equal weight." *Id.*

"We review a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion." *J.R.B.*, 805 N.W.2d at 905 (citing *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008)). The law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *In re Child of Evenson*, 729 N.W.2d 632, 635 (Minn. App. 2007) (alteration in original) (quotation omitted), *review denied* (Minn. June 19, 2007).

The district court balanced the best-interests considerations, finding that the children do not have an interest in preserving the parent-child relationship with J.M. and that any interest that J.M. has in preserving the parent-child relationship is outweighed by the children's competing interests. The competing interests that the court considered were the children's need for a safe, stable, and consistent home with a parent who is willing and able to protect them from abuse and neglect; their need to be in the care of a person who will meet their basic and special needs on a daily and consistent basis; and their need to be in the care of a person who will make their health and well-being a

priority and place their needs above her own. The court found that J.M. could not meet those needs at the time of trial or in the reasonably foreseeable future. The court also noted that it is not in the children's best interests to give J.M. additional time to correct her parenting deficiencies or to delay permanency any further.

The court weighed J.M.'s interests and the children's interests and concluded that the best interests of the children favored terminating J.M.'s parental rights. The court did not abuse its discretion by determining that it is in the children's best interests to terminate J.M.'s parental rights.

Because multiple statutory grounds for termination are supported by clear and convincing evidence, termination is in the best interests of the children, and the county made reasonable efforts to reunite the family, we affirm the district court's decision.

Affirmed.