STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2049

In the Matter of the Welfare of the Child of:
T. B. and O. B., Parents.

Filed April 14, 2014
Affirmed in part and remanded
Cleary, Chief Judge

Carlton County District Court
File No. 09-JV-13-102

Terri Port Wright, Cloquet, Minnesota (for appellant T.B.)

Thomas H. Pertler, Carlton County Attorney, Jeffrey LH Boucher, Assistant County Attorney, Carlton, Minnesota (for respondent Carlton County)

O.B., Kettle River, Minnesota (pro se respondent)

Casey Brissett, Cloquet, Minnesota (guardian ad litem)

Considered and decided by Schellhas, Presiding Judge; Cleary, Chief Judge; and Klaphake, Judge.[*]

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

CLEARY, Chief Judge

Appellant-mother challenges the termination of her parental rights to her child, arguing that the district court failed to identify a statutory basis for termination, abused its

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

discretion when it determined that reasonable efforts were made to correct the conditions leading to the child's out-of-home placement, and failed to make findings regarding whether termination is in the child's best interests. We affirm the district court's conclusions regarding the statutory basis for termination and the reasonable efforts made to reunite the family and correct the conditions leading to the child's out-of-home placement. But we remand for findings on whether termination is in the child's best interests.

FACTS

In May 2012, Carlton County Public Health and Human Services (the county) filed a petition alleging that S.B., born March 10, 2008, was a child in need of protection or services. S.B. had been removed from her home after sheriff's deputies visited the home in response to a call and noted that both of S.B.'s parents, mother T.B. and father O.B., had slurred speech, were difficult to understand, and appeared to be heavily medicated or under the influence of some substance. The deputies became concerned about the ability of T.B. and O.B. to supervise and care for S.B. in their condition, especially when T.B. became unresponsive and could not be awakened until after an emergency-medical crew arrived and provided medical care. T.B. then refused to be transported to a hospital or to receive any further medical care. Additionally, S.B. was wearing only a diaper, clothing to fit S.B. could not be located in the home, and S.B. told a deputy that she did not have any clothing that fit. S.B. was placed in relative foster care with an aunt and uncle, who were an adoptive resource throughout the relevant proceedings.

Case plans created by the county contained various objectives that T.B. and O.B. would "need to accomplish or demonstrate for [S.B.] to return home." For T.B., those objectives included completing chemical assessments and following the recommendations of the assessments for treatment and aftercare services; submitting to random urinalyses; refraining from possessing or using mood-altering substances or alcohol; permitting the county to assist with management of her medications; completing a psychological evaluation and following the recommendations of the evaluation; obtaining and demonstrating the ability to maintain safe, sober, and stable housing for S.B.; identifying a reliable transportation resource; and maintaining contact with the social worker assigned to the case. The case plans identified numerous assessments that would be used and services that would be provided to assist T.B. and O.B. in achieving their objectives.

In April 2013, the county filed a petition to terminate the parental rights of T.B. and O.B. to S.B. The county alleged that "following [S.B.'s] placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to [S.B.'s] placement" and that termination of parental rights was thus warranted under Minn. Stat. § 260C.301, subd. 1(b)(5) (2012). O.B.'s parental rights were terminated by default after he failed to appear for a court hearing.

A trial on the subject of T.B.'s parental rights was held on August 23, 2013. On October 7, 2013, the district court issued an order granting the county's petition to terminate T.B.'s parental rights. The court determined that reasonable efforts were made to prevent S.B.'s out-of-home placement, to permit the reunification of T.B. and S.B.,

and to finalize a permanency plan for S.B., but that out-of-home placement continued to be necessary. The court held that "[r]easonable efforts, under the direction of the [c]ourt, have failed to correct the conditions leading to [S.B.'s] placement," that T.B. had "not substantially complied with the case plan and orders of this [c]ourt to comply with the case plan," and that the county had "demonstrated clear and convincing evidence that it is in the best interest[s] of [S.B.] to terminate [T.B.'s] parental rights." T.B. now challenges the termination of her parental rights.

D E C I S I O N

When considering an appeal from an involuntary termination of parental rights, this court reviews the district court's determination that a statutory basis for termination exists 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). The termination will be affirmed if "at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). This court must "study the record carefully" to determine whether the evidence supporting termination is clear and convincing. *Id.* (quotation omitted). We give considerable deference to the district court's decision because of that court's superior position to assess the credibility of witnesses, *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996), but we must also exercise great caution in a termination proceeding, "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.

T.B. first argues that the district court failed to identify a statutory basis for terminating her parental rights. Before involuntarily terminating the rights of a parent to a child, a court must find by clear and convincing evidence that one or more of the nine conditions set out in Minn. Stat. § 260C.301, subd. 1(b) (2012) exist. Minn. Stat. § 260C.317, subd. 1 (2012). One of those nine conditions is "that following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). In its order granting termination of T.B.'s parental rights, the district court stated that "[r]easonable efforts, under the direction of the [c]ourt, have failed to correct the conditions leading to [S.B.'s] placement." The court did not include a direct citation to section 260C.301, subdivision 1(b)(5), but it used the precise language contained in that section of the statute. The district court clearly identified a statutory basis for terminating T.B.'s parental rights.

II.

A district court may involuntarily terminate the rights of a parent to a child if it finds "that following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." *Id.*

> It is presumed that reasonable efforts under this clause have failed upon a showing that:
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> (i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at

> the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;
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> (ii) the court has approved the out-of-home placement plan required [by statute] and filed with the court . . . ;
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> (iii) conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan; and
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> (iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

Id. On appeal, T.B. does not dispute that S.B. resided out of the parental home under court order for more than a year and that the district court approved an out-of-home placement plan. T.B. also does not challenge the district court's conclusion that she did not substantially comply with the case plan and court orders. T.B. challenges only the determination that the county made reasonable efforts to permit the reunification of T.B. and S.B. and to correct the conditions that led to S.B.'s out-of-home placement. The district court found that the reasonable efforts made by the county included case-plan management, chemical and psychological assessments, chemical-dependency treatment, urinalyses, chemical-use monitoring, medication management, mental-health services, housing and transportation assistance, foster care, and supervised visitation.

"Reasonable efforts are made upon the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family." Minn. Stat. § 260.012(f) (2012).

When determining whether reasonable efforts were made, a court must consider whether the services provided to the family were relevant to the safety and protection of the child, adequate to meet the needs of the child and family, culturally appropriate, available and accessible, consistent and timely, and realistic under the circumstances. *Id.* (h) (2012). The nature of the services that constitute reasonable efforts depends on the problems presented in the case. *S.Z.*, 547 N.W.2d at 892. "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 H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). The services provided "must go beyond mere matters of form so as to include real, genuine assistance." *Id.*

The circumstances leading to S.B.'s out-of-home placement were that sheriff's deputies arrived at the home to find that T.B. and O.B. appeared to be heavily under the influence of some substance or medication and unable to appropriately supervise and care for S.B. To address the concern of T.B.'s substance abuse, the case plans recommended chemical assessments, chemical-dependency treatment and aftercare services as necessary, random urinalyses, restraint from use or possession of mood-altering substances, and medication management. The county arranged for, and T.B. completed, two chemical assessments and in-patient chemical-dependency treatment. The social worker also arranged for 16 random urinalyses, but T.B. failed to appear for ten of the random screenings. Of the six screenings for which T.B. appeared, four tested positive for controlled substances. T.B. was instructed to attend regular chemical-use meetings and to show proof of her attendance. T.B. claimed that she was attending Alcoholics

Anonymous meetings at least sporadically, but she never showed the social worker proof of her attendance. T.B. has been diagnosed with bipolar disorder, attention-deficit-hyperactivity disorder, and depression, and she was on a substantial list of medications. She had a doctor and a nurse to assist her with management of these medications, but she admitted that she has at times disagreed with her prescriptions and has stopped taking medications without talking to a medical professional.

To address the concern that T.B. was unable to appropriately parent and care for S.B., the case plans recommended, among other things, safe, sober, and stable housing, a psychological evaluation, assistance with mental-health needs and parenting skills, a reliable source of transportation, and regular contact with the social worker. The county arranged for, and T.B. completed, a psychological evaluation, and the report from that evaluation states that T.B. has significant cognitive difficulties and that her level of intellectual functioning falls in the "[e]xtremely [l]ow range." T.B. has an eighth- or ninth-grade education level and is illiterate. T.B. was assigned a mental-health worker and an individual counselor. T.B. argues that one of the ways in which the county failed to make reasonable efforts was by failing to arrange for her to take a neuropsychological assessment. As part of the recommendations of the psychological evaluation, T.B. was urged to seek a neuropsychological assessment to evaluate whether she suffers from postconcussional syndrome as a result of a head injury sustained in a car accident in 2000. The record does not indicate what, if any, additional services may have been provided to T.B. based on results of a neuropsychological assessment, and the social

worker testified that a neuropsychological assessment was not necessary for T.B. and S.B. to be reunited.

Following her chemical-dependency treatment, it was recommended that T.B. enter a half-way house, but there was no space available in the half-way house. It was then recommended that T.B. enter adult foster care to "assist her with daily living skills." T.B. adamantly refused to reside in adult foster care, testifying that "I've been on my own for so long, I ain't doing it now." T.B. claims that the social worker failed to make reasonable efforts to assist T.B with housing by failing to sufficiently explain the housing options. The record does not reflect how different housing options were explained to T.B., nor does it reflect that T.B. did not understand her housing options. T.B.'s testimony indicates that she at least understood that adult foster care would be a group-home setting where she would receive assistance with daily living. At the time of trial, T.B. was staying temporarily with friends and relatives and was looking for housing of her own, although she testified that she had been repeatedly turned down for housing.

T.B. maintains that the county failed to make reasonable efforts to assist her with transportation and to ensure that she would be able to attend her appointments. T.B. did not have a driver's license or a vehicle and lived in a location where public transportation was not available. There was a volunteer transportation service in the area, but the social worker testified that the service had "a history of working with [T.B.] and so they would not work with her." The social worker and T.B.'s mental-health worker transported T.B. on a few occasions, but they were not always available to provide transportation. The county frequently provided T.B. with gas vouchers so that friends or relatives could

transport her, but T.B. was then responsible for locating someone to provide transportation. The social worker noted that T.B. was able to attend supervised visits with S.B. on a fairly consistent basis and did not seem to have trouble getting to those visits, but that T.B.'s attendance at other appointments was a problem. The record does not indicate what additional resources or services existed to ensure that T.B. would attend her appointments.

T.B. argues that the county failed to make reasonable efforts to have her attend a parenting class, but the trial testimony indicates that the county provided T.B. with parenting information and helped her to locate a parenting class, which she did complete. T.B. also argues that the county failed to provide services appropriate to her family's culture, but the record does not indicate what culturally appropriate services were available that were not provided. T.B. asserts that the county should have requested that a guardian ad litem be appointed to assist her and to make recommendations on her behalf.

> [T]he court may sua sponte or upon the written or on-the-record request of a party or participant appoint a guardian ad litem for a parent who is a party or the legal custodian if the court determines that the parent or legal custodian:
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> (a) is incompetent to assist counsel in the matter or understand the nature of the proceedings . . . .

Minn. R. Juv. Prot. P. 26.02, subd. 1. While it is possible that a guardian ad litem for T.B. would have been of assistance, T.B.'s argument that the county had a duty to request the appointment of a guardian ad litem is without merit, as any party or participant, including T.B. through her counsel, could have made such a request. The record does not

reflect whether a request for a guardian ad litem was ever made by any of the parties or participants or whether the district court ever considered the appointment of a guardian ad litem for T.B.

T.B. argues that the social worker failed to make reasonable efforts to meaningfully communicate with her about the case plans and the services that were available. The social worker testified that she would call T.B. and leave voice messages, but that sometimes she would not hear from or be able to reach T.B. for up to two months at a time, making it difficult to monitor T.B.'s progress with the case plans and to determine whether T.B. needed additional services or assistance. T.B. testified that she intentionally would not contact or meet with the social worker because she felt that the social worker had an attitude and was disrespectful and rude. She also testified that she would "rather have a different social worker" and that "I don't deal with females, 'cause I don't get along with females." T.B. claims that she may have had difficulty understanding how to retrieve voice messages, but the record does not indicate whether this was difficult for T.B. When T.B. was asked whether being reachable by phone was a challenge, she responded, "No, I just don't like phones. I'm being honest, I don't like them." T.B. also argues that the county tried to communicate with her in writing and sent her written information, which is illogical when she is illiterate. The social worker testified that she tried to communicate with T.B. in person or over the telephone, but that when she could not reach T.B. she had no choice but to send information through the mail. The social worker also testified that, even when she did meet with T.B., T.B.

requested information in writing so that she would be able to go over it again with someone later.

To correct the conditions leading to S.B.'s out-of-home placement and permit the reunification of T.B. and S.B., T.B. was provided, among other things, chemical and psychological assessments; in-patient chemical-dependency treatment; random urinalyses; chemical-use meetings; medication management; a mental-health worker and individual counselor; and housing, transportation and parenting assistance. As the district court found, T.B. was unable to demonstrate an ability to remain chemical-free and stable on her medications, and she was unwilling to follow a recommendation that would have provided her with a stable residence where she would have received assistance with her daily needs. T.B. demonstrated resistance to working with the county and to complying with the case plans, and this negatively impacted her ability to be reunited with S.B. The district court did not abuse its discretion by concluding that the county made reasonable efforts to permit the reunification of T.B. and S.B. and that reasonable efforts, under the direction of the court, failed to correct the conditions leading to S.B.'s out-of-home placement.

III.

"In any [termination] proceeding . . . the best interests of the child must be the paramount consideration, provided that . . . at least one [statutory] condition [for termination is] found by the court." Minn. Stat. § 260C.301, subd. 7 (2012); *see also* Minn. Stat. § 260C.001, subd. 2(a) (2012) ("The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child."). A child's

best interests may preclude termination of parental rights, even when a statutory basis for termination exists. *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009).

> Before ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze:
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> (i) the child's interests in preserving the parent-child relationship;
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> (ii) the parent's interests in preserving the parent-child relationship; and
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> (iii) any competing interests of the child.

Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *see also* Minn. R. Juv. Prot. P. 42.08, subd. 1 (stating that a court's order granting or denying a petition to involuntarily terminate parental rights "shall include . . . findings regarding how the order is in the best interests of the child"). "Competing interests [of the child] include such things as a stable environment, health considerations[,] and the child's preferences." *J.R.B.*, 805 N.W.2d at 905 (quotation omitted).

The district court concluded that the county "demonstrated clear and convincing evidence that it is in the best interest[s] of [S.B.] to terminate [T.B.'s] parental rights." T.B. argues that the court failed to make the findings necessary to support this conclusion and that the termination order should therefore be vacated. The county contends that the district court did make sufficient findings regarding S.B.'s best interests, but asserts that if this court concludes otherwise, the case should be remanded to permit the district court to make more specific findings regarding S.B.'s best interests.

A decision as to whether termination is in a child's best interests rests within the discretion of the district court, *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008), but a termination order "must explain the district court's rationale for concluding why the termination is in the best interests of the child[]." *In re Welfare of D.T.J.*, 554 N.W.2d 104, 110 (Minn. App. 1996). "Determination of a child's best interests is generally not susceptible to an appellate court's global review of a record, because of the credibility determinations involved, and because of the multiple factors that must be weighed." *In re Welfare of Children of M.A.H.*, 839 N.W.2d 730, 744 (Minn. App. 2013) (quotation omitted); *see also In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003) (noting that it is generally inappropriate for an appellate court to comb through the record to determine best interests). When the district court's findings do not adequately address best interests, they are insufficient to facilitate effective appellate review. *See In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990) (stating that the district court's findings were inadequate to facilitate review when the court concluded that the best interests of the child would be advanced by placement without referencing its basis for such a conclusion).

The district court's findings regarding S.B. consist of her date of birth, the names of her parents, the fact that she is not enrolled or eligible for enrollment in an Indian tribe, and the fact that she was in relative foster care with her aunt and uncle, who were an adoptive resource. These findings do not address the factors listed in rule 39.05, subdivision 3(b)(3), and are wholly inadequate to facilitate effective review of the district court's conclusion that termination of T.B.'s parental rights is in S.B.'s best interests.

There are no findings regarding issues such as S.B.'s needs and whether T.B. can provide for those needs, the extent or quality of the relationship between S.B. and T.B., and S.B.'s foster-care environment. We therefore must remand for the district court to make the necessary "findings regarding how [its] order is in the best interests of [S.B.]" *See* Minn. R. Juv. Prot. P. 42.08, subd. 1.

Affirmed in part and remanded.