STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1251

In the Matter of the Welfare of the Children of: C. P. T. and S. B. I. T., Parents.

Filed February 12, 2018
Affirmed
Reilly, Judge

Crow Wing County District Court
File No. 18-JV-16-4661

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Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and Reilly, Judge.

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

REILLY, Judge

Appellant Crow Wing County Community Services (the county) challenges the district court's denial of its petition to terminate respondent-father's parental rights. Because we conclude the district court did not abuse its discretion in concluding that the

county did not prove a statutory basis for termination of parental rights by clear and convincing evidence, we affirm.

FACTS

Respondent-father S.B.I.T. (father) married C.P.T. (mother) in March 2012, and they had two children together: S.S.T. was born in 2013, and D.N.T. was born in 2014.

Father has a history of driving while impaired (DWI) offenses: he was convicted of two DWI offenses occurring in 2011 and one DWI-test refusal in 2013. Although father missed the birth of S.S.T. in 2013 because he was in jail on his test-refusal offense, he did not stop drinking alcohol. In February 2014, a district court ordered father to intensive supervised probation (ISP) with random breath tests for a period of two years.

Mother and father had a strained relationship when S.S.T. was around 18 months old and D.N.T. was an infant. The two frequently argued, and yelling occurred when the children were present. On February 2, 2015, mother and father had a physical altercation at home. Mother alleged that father strangled her. Father denied the strangling and claimed that mother slapped him and that he pushed her when she blocked a doorway. The police were called, and because father was on probation he was required to take a breath test, which showed a 0.037 alcohol concentration (AC). He was arrested and charged with domestic assault—strangulation. Mother was cited for domestic assault and the children stayed with her. Both mother's and father's domestic assault charges were later dismissed.

Father was not able to have contact with the children for a period of time after the February 2, 2015 incident. In March, father commenced divorce proceedings. Due to father's pending assault case, a domestic abuse no contact order was in place. Although

the dissolution court allowed father visitation in April 2015 at a third party's residence in St. Cloud, mother moved to the Brainerd area, complicating father's ability to see the children.

In November 2015, father had his last visit with the children for a period of five months. Mother took the children to Colorado for three weeks around that time. She was living with a man who had a criminal history of felony drug possession, domestic assaults, and DWIs. During this time the children were exposed to domestic abuse and methamphetamine use. A January 2016 custody decree awarded mother sole legal and sole physical custody. Father was awarded weekly visitation.

On January 26, 2016, law enforcement responded to a welfare check due to concerns about mother's drug use and domestic violence in the home. Authorities took the children out of the home and placed them on a 72-hour hold. The children's hair tested positive for methamphetamine. The county filed a petition the next day to adjudicate the children in need of protection or services (CHIPS). The children were adjudicated CHIPS on March 22, 2016.

On February 3, 2016, father was successfully discharged from two years of ISP after having negative breath tests on each of the random breath tests. Father met the county social worker on February 10, 2016. She requested an alcohol test and father tested positive. After testing positive for alcohol once more in February 2016, father provided two diluted urine samples in March and April.

Father and the social worker created an out-of-home placement plan, which called for father to: (1) abstain from alcohol, (2) submit to random urine tests (UAs), (3) complete

a chemical-dependency (CD) assessment, (4) complete a domestic-violence assessment, (5) complete a psychological assessment, and (6) follow all recommendations of the assessments. At the time of his initial case plan, father had maintained independent housing, was a full-time college student, and was working full time holding various jobs.

On February 29, 2016, the children were placed in a foster home. S.S.T. was two years old, and D.N.T. was one.

In March 2016, after a conversation with father's probation officer, the social worker mistakenly thought that father's breath-test result on February 2, 2015, showed a 0.37 AC after the alleged domestic-assault incident, when the actual result was a 0.037 AC.

In March 2016, father completed a domestic-violence assessment, and the assessor had no safety concerns with father having supervised visits with the children. The domestic-assault charges against father were dismissed that month. The assessment recommended that father either attend individual therapy that was geared toward domestic-abuse issues or a men's domestic-violence program.

In mid-April 2016, father had two supervised visits with the children. The visits were not videotaped. The guardian ad litem (GAL) reported that at one visit, when father reached for D.N.T., she "reared back" in fear and that S.S.T. pushed his father's chin away with his fist. The foster parents reported that after the visits the children struggled emotionally and had nightmares. After the April visits, the social worker recommended that supervised visits with father be suspended because the children were "associating

[father] with prior trauma they have either experienced firsthand or witnessed." The district court at that time[1] suspended supervised visits.

Father's first CD assessment from May 2016 recommended that he abstain from alcohol and obtain outpatient treatment. That month, father graduated from college and he started to look for a full-time job in his field. He did not start a domestic-violence group or outpatient CD treatment. In June 2016, father began seeing an individual therapist, who also recommended that he attend domestic-violence programming. After a July 2016 meeting between father, his attorney, and the county, the parties agreed to extend the permanency deadlines.

Father obtained a second CD evaluation on August 1, 2016, and that assessment recommended that he abstain from alcohol, attend an alcohol education class, attend Alcoholics Anonymous (AA) meetings and maintain contact with an AA sponsor, and verify AA attendance with the county. The district court ordered an updated CD evaluation on August 2, 2016, because the May assessment expired after 90 days.

On August 22, 2016, father began domestic-violence programing and an alcohol-use education class. In late August 2016, because father obtained employment at the University of Minnesota in the Twin Cities, he was not able to make the 5:00 p.m. start time at his domestic-violence group. The next month he was discharged from the program. Father found a full-time job in St. Paul and started there in October. He began attending a new 24-week domestic-violence group in November.

[1] Two district court judges presided over this case file. The first judge recused himself on February 10, 2017.

On November 2, 2016, the county filed a petition to terminate father's parental rights. The petition alleged that father was not participating in CD or domestic-violence programming. It sought termination of father's parental rights on three statutory grounds: (1) failure to comply with the duties under the parent-child relationship, (2) failure to correct conditions that led to the out-of-home placement, and (3) that the minor children are neglected and in foster care.

Later in November, father completed a 16-hour alcohol-use education program, as recommended in his second CD assessment.

In January 2017, father had three supervised visits with the children, the first since April 2016. The first visit, which was videotaped, occurred on January 6 and the social worker was present. The social worker reported that the children were "reluctant" and that affection from father was not reciprocated. She criticized father as being controlling and stated he did not respect the children's boundaries. After the visit, the foster parents reported that S.S.T. was screaming the entire way home, and that for several days the children had night terrors, were refusing to eat normally, and were having "meltdowns."

Father also had a supervised visit on January 13, 2017. A family therapist observed the meeting in order to complete a parenting assessment. The therapist opined in her report that the children were afraid of their father, and that they were "traumatized" by their two-hour visit with him. The therapist wrote that father "does not demonstrate the capacity to successfully parent," and she recommended that permanency should be established outside of his custody. After this visit, the foster parents videotaped and recorded several "meltdowns" of the children crying and screaming after they visited with father.

Father and the children again had a videotaped supervised visit on January 20. The social worker and an early childhood therapist were present. The early childhood therapist stated that the children hesitated to interact with father and would not make eye contact with him. She wrote in a report that D.N.T. was "terrified" when father attempted to play with a small monster figure and that the children were afraid of their father. The social worker reported that the children's negative behaviors occurred after these visits as well. Visitations were again suspended.

A six-day termination-of-parental-rights (TPR) trial commenced on May 16, 2017. The main issues at trial concerned whether father: (1) complied with the CD programming in his case plan, (2) complied with the domestic-violence programming in his case plan, (3) could successfully parent the children, and (4) was the source of past trauma explaining the children's adverse behaviors after supervised visits.

On July 20, 2017, the district court denied the county's petition to terminate father's parental rights, concluding that it did not prove any of the statutory bases for termination of parental rights by clear and convincing evidence.

The county now appeals.

D E C I S I O N

I. Compliance with the Duties Imposed by the Parent-Child Relationship

The county argues that the district court erred in its determination that clear and convincing evidence did not exist to show that father did not or could not comply with the duties imposed on him by the parent and child relationship.

On review of a district court's determination on a termination of parental rights petition, this court examines "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). This court reviews the district court's determination of whether a particular statutory basis for termination 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). A finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012). We will not set aside factual findings unless a review of the entire record leaves us with a "definite and firm conviction that a mistake has been made." *Matter of Welfare of D.T.J.*, 554 N.W.2d 104, 107 (Minn. App. 1996).

The burden of proof is on the petitioner and "is subject to the presumption that a natural parent is a fit and suitable person to be entrusted with the care of a child." *J. R.B.*, 805 N.W.2d at 901-02 (citation omitted). The evidence relating to the termination must address the conditions that existed at the time of trial. *Id.* "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 Children of B.M.*, 845 N.W.2d 558, 563 (Minn. App. 2014) (citation omitted).

For a district court to terminate parental rights, one statutory ground for termination must be supported by clear and convincing evidence, and termination must also be in the

child's best interests. *Id*. at 562-63. One such statutory ground allows a district court to terminate parental rights when 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." Minn. Stat. § 260C.301, subd. 1(b)(2) (2016). To terminate parental rights under this statutory basis the district court must find that "at the time of termination, the parent is not presently able and willing to assume his responsibilities and that the parent's neglect of these duties will continue for a prolonged, indeterminate period." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 90 (Minn. App. 2012) (quotation omitted).

The district court determined that although it was "far from certain that [father] will ever be able to demonstrate that he has capability to parent the children," the evidence was not sufficient to support termination on this basis. The county argues that the district court's findings regarding father's ability to parent his children are clearly erroneous, and manifestly contrary to the weight of evidence, which shows that father "has not demonstrated and may never demonstrate an ability to parent his children."

Here, the record contains conflicting evidence regarding father's present ability to parent the children and whether any such inability will be for a "prolonged, indeterminate period." For example, the family therapist opined that father has a "limited understanding of [the children's] immediate and long-term needs" due to their medical and mental-health issues requiring numerous therapies and appointments. She thought father will have difficulty bringing the children to appointments because he feels like he cannot miss work, has had difficulty in keeping his own appointments, and has shown himself to be a "rigid and paternalistic" person and highly resistant to criticism. The family therapist was not

confident that father could incorporate any parenting skills taught to him, and she opined that he "did not demonstrate the capacity to successfully parent," that the children were "afraid of their father," and that they were "traumatized" by their visits with him.

But conflicting evidence also existed. For example, father testified that he has full-time employment with benefits that would allow him to take multiple sick days or use his vacation to take his children to medical appointments. Father agreed that family therapy would be important and time consuming, requiring him to take work off. Father also wished to engage in play therapy with his son. The family therapist admitted that father's strengths were that he was active, engaged, wants to be affectionate and nurturing, is working full time, and wants the children to be clean and well fed. She also stated that the children had the ability to form attachments. Finally, the county had not provided father with parenting classes at the time of the TPR trial.

Additionally, the county points to the professionals' observations at the April 2016 and January 2017 visitations that the children were fearful of father during visits, and argues this is evidence that father has "neglected the children's psychological and emotional needs." Based on the family therapist's parenting assessment, the county argues that the evidence shows that father is "unable to read the cues of his children, including the signs of distress" and this shows father has neglected to comply with his parental duties.

As for the professionals' observations at the April 2016 and January 2017 visitations, the district court generally found their accounts not credible. Regarding the first visit in January 2017, the district court was "completely mystified" that the social worker's description of the children being "reluctant and reserved" about engaging with

father and not reciprocating affection did not accord with the court's impression. After viewing the video, the district court observed the children and father being appropriately affectionate with each other, and father being attentive, polite, and friendly. The district court did not credit the family therapist's account of the second January 2017 visitation and some of her criticism of father's parenting. As for the third January 2017 visit, based on the district court's own observation of the video, it did not credit the early childhood therapist's account of D.N.T. being "terrified" during one incident with father, or the social worker's account that father was "controlling," "micro-managing" and not respecting the children's boundaries. The district court stated that it was "hard-pressed to be critical in any way" of father's behaviors.

Finally, the county points to evidence in the record showing the children's adverse behaviors after visitation with their father, as well as the foster parents' and the social worker's reports of the children regressing after visitations with father.

But the evidence was unclear as to whether it was father who had traumatized the children in the past, causing these reactions. The district court did not credit mother's allegations of domestic assault regarding father and found little evidence that father engaged in "trauma-inducing" behaviors prior to the CHIPS proceeding. It also found that by the spring of 2015 there was no evidence the children suffered from posttraumatic stress, which is significant because after that point father had limited contact with the children. Instead, the district court found that, from mid-November 2015 to the time the children went into protective care, they were exposed to domestic abuse and methamphetamine use when they lived with mother. Also, reports that the children suffered a setback after their

April 2016 visits with father were contradicted by other reports that the children were already dysregulated due to recent methamphetamine exposure. The district court had a basis in the record to not credit reports that the children were fearful of father at the videotaped visitations and to conclude that any attempt to link the children's behavior after the visits with any past trauma caused by father was "speculative."

The county argues the district court's findings were erroneous because (1) the professionals were in a better position to observe faces and feelings during the videotaped visits, and (2) the district court did not have videotapes of the April 2016 visits or the second visit in January 2017. While it is true the district court did not view the visitations not videotaped, the district court chose not to credit those descriptions due to the disparity between its own observations of the videotaped visits and the professionals' impressions. After reviewing the visitation videos, we are persuaded that the district court's findings and credibility determinations have a basis in the record. A reviewing court defers to the district court's credibility determinations because it 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).

Additionally, the county argues that the district court erred in its findings because it (1) attributed the GAL's observation about the children being traumatized to the wrong video clip, and (2) determined that father may have appeared like mother's boyfriend and that the children were confusing the two. But even assuming error, the county must still demonstrate that the error was prejudicial. *In re Welfare of D.J.N.*, 568 N.W.2d 170, 176 (Minn. App. 1997) (finding error in a juvenile-protection case but not reversing because appellant was not prejudiced). Here, any such error was harmless. The district court made

extensive findings regarding the videotaped visits. Its findings were made in contrast not only to the GAL's reports, but also to the reports of the social worker, family therapist, and early childhood therapist. As for mother's boyfriend's appearance, the district court's point was that it could just as well speculate on the source of the children's trauma. It found "overwhelming evidence" that mother engaged in trauma-inducing behaviors prior to the CHIPS proceeding. Disregarding the similarity in appearances, the record contains ample evidence supporting the district court's findings that it was unclear whether father was the source of the children's trauma.

Appellant relies on *J.K.T.*, 814 N.W.2d at 90, to argue that the district court's finding that father "may never demonstrate an ability to parent" demonstrates that he was not presently able to assume his parental responsibilities. But in *J.K.T.*, the evidence established that the parent "repeatedly failed to fulfill the exacting demands" of a child's complex medical needs by refusing to obtain a court-ordered therapeutic device for the child, not following safety precautions that could have been fatal, and failing to cooperate with in-house services. *Id*. at 90-91. In contrast, at the time of the TPR trial, father (1) had stable housing, (2) was employed full time, (3) had substantially engaged in his case plan by completing an alcohol-use education class and domestic-violence group, and (4) had negative UAs for over one year. Father attended supervised visitations in April 2016 and January 2017, but visits were suspended twice, wrongly in the district court's determination, preventing father from building attachment with the children and obtaining parenting skills. Therefore, the district court did not abuse its discretion by ultimately concluding that appellant did not prove by clear and convincing evidence that father was

not able and willing to assume parental responsibilities and that any such inability would continue for a "prolonged, indeterminate period." *Id.* at 90.

In sum, the district court's findings and conclusion are based on credibility determinations, and its interpretation of the record is reasonable and not against the weight of the evidence. Because the evidence was conflicting, we are not left with a firm conviction that a mistake was made. The district court did not abuse its discretion in denying the petition on this statutory basis.

II. Correction of Conditions Leading to Foster Care

The county argues that clear and convincing evidence shows that father failed to correct the conditions leading to the children's placement in foster care. When in a child's best interest, a district court may terminate parental rights when "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) (2016). A presumption is created that reasonable efforts have failed when: (1) a child has resided outside the home for a cumulative period of 12 months within the preceding 22 months, (2) the district court approved an out-of-home placement plan, (3) the conditions leading to the out-of-home placement have not been corrected, and (4) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family. *Id.*, subd. 1(b)(5)(i)-(iv).

The parties do not dispute that the children resided outside of the home for more than 12 months before trial or that the district court approved an out-of-home placement

plan. The parties do dispute whether the county provided reasonable efforts and whether father corrected the conditions leading to foster care.

Reasonable Efforts

Subject to several exceptions that are not applicable here, the social services agency must make "reasonable efforts" to rehabilitate the parent and reunite the family before a district court can order an involuntary termination of parental rights. Minn. Stat. § 260C.301, subd. 1(b)(5). "Reasonable efforts encompass more than just a case plan." *J.K.T.*, 814 N.W.2d at 88. Such efforts are defined as "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) (2016). "The county's efforts must be aimed at alleviating the conditions that gave rise to out-of-home placement, and they must conform to the problems presented." *J.K.T.*, 814 N.W.2d at 88.

When determining whether reasonable efforts have been made, a district 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) (2016).[2]

[2] Reasonable-efforts findings are required in a TPR order pursuant to Minn. Stat. §§ 260.012(h), 260C.301, subd. 8 (2016). The district court never made factual findings explicitly addressing whether the county provided reasonable efforts. We are puzzled by the court's conclusion of law stating that the county "has not proven by clear and convincing evidence that following the children's being put into foster care, [father]—*despite having been assisted by reasonable efforts by [the county] under the direction of the court*—has failed to correct the conditions." (Emphasis added.) It is unclear whether this is a finding that the county made reasonable efforts or a statement of the applicable

Here, the district court in its TPR order implicitly found that the county's efforts fell short. Its order implies that the county's actions advocating the suspension of supervised visitation in April 2016 and January 2017 were unreasonable because the county erroneously believed that father was the cause of the children's trauma and adverse behaviors after visits. The district court was highly critical of the county's acceptance of mother's claims that father domestically assaulted her, because mother "has a proclivity to make all kinds of outrageously false claims." According to the district court, it should have been obvious to the county from the start of the case that almost any claim that mother made should be viewed with skepticism. The district court also found that the county's erroneous belief that father had a 0.37 breath test caused the county to believe mother's accounts alleging domestic abuse over father's accounts and was a large reason why the county afforded father only a few visits with the children, and that the county conveyed this wrong information to every assessor with whom father met, significantly affecting the assessors' views of father.

The court determined that father's visitation should not have been suspended because "the circumstances were not compelling enough." The district court believed that

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law. In such a case, remand for additional findings or clarification may be appropriate because appellate courts will not consider an issue "not passed on by the [district] court," even when raised below. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But, as explained, the district court's order as a whole implies that the county's efforts were not reasonable, and it gives specific examples of where the county fell short. Because the district court made findings that concerned the county's efforts, the parties briefed this court on the issue, and remanding for additional findings would unduly extend the timeframe in a case where the children need permanency, we will review the reasonable-efforts issue on appeal.

the county should have provided father "the ongoing opportunity to reunite and build attachments with the children," and suspending visitations was "going to all but assure that [father] was never going to build an attachment with his children."

The implication in the district court's order is that suspension of the visits was not relevant to the safety and protection of the children, and did not meet the needs of the family. Furthermore, by not directing father to parenting classes or therapy visits between father and the children, the county's efforts were not "aimed at alleviating the conditions that gave rise to out-of-home placement," or conforming to the problems presented. *J.K.T.*, 814 N.W.2d at 88.

In short, there is a basis in the record to conclude that the county's efforts to rehabilitate father and reunite the family were not reasonable.

Failure to Correct Conditions

Even assuming that the county made reasonable efforts, we are not convinced that the district court abused its discretion in concluding that the county did not show by clear and convincing evidence that father failed to correct the conditions leading to out-of-home placement.

A presumption is created that reasonable efforts have failed when a parent fails to correct the conditions leading to the out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5)(iii). Furthermore, "[i]t 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." *Id*. However,

the converse—substantial compliance with a case plan showing a correction of conditions—is not true. *J.K.T.*, 814 N.W.2d at 89.

The conditions related to father that led to the children's out-of-home placement were reports of his alcohol abuse and domestic violence. The county argues that father failed to correct these conditions and that the district court failed to make any findings related to the components of father's case plan and whether he complied with or completed the plan. However, the district court found that father took substantial steps to address his chemical use. This finding is not clearly erroneous because (1) no evidence existed that father used alcohol after April 1, 2016, more than a year before trial; and (2) father completed an alcohol-use education program, as recommended. While father's compliance with the CD portions of his case plan were not perfect, the record supports a finding that he substantially complied with his case plan and that he corrected his alcohol-use problems.

The district court also found that father took substantial steps toward addressing his domestic-violence issues. It found that, even though mother's allegations were "very questionable," father cooperated and completed a 24-week domestic-violence intervention program. While the level of father's cooperation with the programming was disputed at trial, father presented evidence that he was engaged in the group. The district court's finding regarding the domestic-violence programming is not clearly erroneous as it had a basis in the record.

The county argues that the district court erred as a matter of law in concluding that father has not "failed so dismally as to warrant that his parental rights should be terminated." The county is correct that not being a "dismal failure" at completing a case

plan is not the legal standard in a TPR case—even substantial compliance with a case plan may not be enough to avoid termination. *J.K.T.*, 814 N.W.2d at 89. Furthermore, "[t]he critical issue is not whether the parent formally complied with the case plan, but rather whether the parent is *presently able to assume the responsibilities of caring for the child*." *Id*. (emphasis added). On this point, the district court determined that it had "great concerns about whether [father] will ever be able to demonstrate the ability to successfully parent the children." But having a great concern about whether a parent will successfully parent in the future is not necessarily proof by clear and convincing evidence that the parent is unable to assume the responsibilities of caring for a child.

We read the district court's order as a whole to mean that the county did not provide clear and convincing evidence that father was unable to assume parental responsibilities and that because father's contact with the children was suspended in error, going forward with the CHIPS proceeding, father will need to demonstrate this ability. *See* Minn. Stat. § 206C.312 (providing that when a court denies a petition to terminate parental rights, it need not immediately return the children home and the children may be re-adjudicated CHIPS).

Because evidence in the record exists showing that father made substantial steps in addressing concerns regarding his alcohol use and domestic-violence issues, the district court did not abuse its discretion in concluding that the county did not prove by clear and convincing evidence that father failed to correct the conditions leading to the children's placement in foster care.

III. Neglected and in Foster Care

The county argues that clear and convincing evidence exists that father's parental rights should be terminated because the children are neglected and in foster care.

When in the best interest of the children, a district court may terminate parental rights if the children are "neglected and in foster care." Minn. Stat. § 260C.301, subd. 1(b)(8) (2016). "Neglected and in foster care" means a child:

> (1) who has been placed in foster care by court order; and
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> (2) whose parents' circumstances, condition, or conduct are such that the child cannot be returned to them; and
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> (3) 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 (2016). In determining whether a child is "neglected and in foster care" a district court must consider:

> (1) the length of time the child has been in foster care;
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> (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;
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> (3) whether the parent has visited the child within the three months preceding the filing of the petition, unless . . . 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;
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> (4) the maintenance of regular contact or communication with the agency or person temporarily responsible for the child;
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> (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
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> (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 (2016). A court need not specifically mention each factor so long as its findings show consideration of them. *In re Welfare of J.S.*, 470 N.W.2d 697, 704 (Minn. App. 1991), *review denied* (Minn. July 24, 1991).

The district court's extensive findings touch on these factors. On the first factor, the fact that the children were in foster care nearing 16 months by the time of the TPR trial weighs in favor of a neglect finding. Second, while the record shows that father was difficult and at times uncooperative, evidence also exists that by the time of trial father gave a substantial effort at adjusting the circumstances, conduct, or conditions that necessitated the removal of the children by abstaining from alcohol and attending various programming. Third, father had limited visitation of the children because visitations were suspended. Fourth, father frequently communicated with both the social worker and the GAL about his case and the children. Fifth, the district court found that supervised visits should not have been suspended because the county's belief that father caused the children's trauma was speculative. Sixth, father expressed a desire to attend parenting courses and attend S.S.T.'s therapy, and these services could enable reunification in an ascertainable amount of time. Seventh, as previously discussed, some of the county's

efforts at reunification were not reasonable because father was prevented from having supervised visits with the children.

On balance, the factors show that the district court did not abuse its discretion in determining that the evidence was not clear and convincing that the children were neglected and in foster care. The evidence was conflicting as to whether father's "circumstances, condition, or conduct are such that the child[ren] cannot be returned to [him]," and evidence exists showing that father made efforts to "adjust [his] circumstances, condition or conduct."

While we affirm the district court's order, we are concerned that the TPR trial and order in this case occurred outside of the permanency timelines provided by rule and statute. *See* Minn. Stat. §§ 260C.503, .507, .509, .515 (2016) (providing an admit/deny hearing must occur by 12 months after the children are removed from home; TPR trial must commence 60 days after admit/deny hearing, and findings and adjudication must occur after 15 days of the conclusion of testimony); *accord* Minn. R. Juv. Prot. P. 4.03, subd. 3(c), 33.05, subd. 2, 34.02, subd. 1(b), 39.02, 39.05. The children are young in this case and have spent a large portion of their lives outside of the home. Courts at all times must be aware of these deadlines and strive to follow them.

Affirmed.