STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1458

In the Matter of the Welfare of the Children of:
R. T. and J. T., Parents.

Filed May 3, 2021
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge

Hennepin County District Court
File No. 27-JV-19-3406

Michael O. Freeman, Hennepin County Attorney, Elizabeth Johnston, Assistant County Attorney, Minneapolis, Minnesota (for appellant Hennepin County Human Services and Public Health Department)

Kassius Benson, Chief Hennepin County Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota (for respondents R.T. and J.T.)

Alex Brusilovsky, Eden Prairie, Minnesota (for guardian ad litem Catherine Stratton)

Considered and decided by Segal, Chief Judge; Bjorkman, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant county department challenges the denial of the petition to terminate respondents' parental rights to two children, arguing that the district court abused its discretion by determining that (1) respondent-parents are not palpably unfit, (2) appellant department did not make reasonable efforts to reunify the family, and (3) termination is not

in the best interests of the children. Appellant also contends the district court's findings of fact are inadequate. We conclude that the district court did not abuse its discretion by finding respondents are not palpably unfit to care for the children. But because the district court did not otherwise make sufficient findings for us to review, we affirm in part, reverse in part, and remand.

FACTS

Background

Respondent R.T. is the mother of three children—child 1, born in 2002; child 2, born in 2013; and child 3, born in 2017. Respondent J.T. is the father of child 2 and child 3. Both parents have mild-to-moderate cognitive disabilities. Mother has Persistent Depressive Disorder and a measured IQ of 71. Father has been diagnosed with an unspecified cognitive disability with a measured IQ of 68. The children also have developmental disabilities of varying severity.[1]

Mother has been involved with child protection agencies since 2004. In 2013, appellant Hennepin County Human Services and Public Health Department (the department) first investigated allegations of neglect and abuse. Since 2015, the department has found maltreatment occurred on five separate occasions.

[1] Child 1 has significant developmental disabilities, is wheelchair-bound, and relies on caregivers to meet her basic daily needs including feeding, bathing, and taking medication. Child 2 has significant mental, behavioral, and physical health issues. Child 3 has been meeting developmental milestones despite her disability.

2017 CHIPS Petition Filed

This termination-of-parental-rights (TPR) proceeding had its genesis in early 2017, with reports of medical neglect and unclean conditions in the home. The department found the family home littered with garbage, clutter, and animal waste; child 1 did not have necessary prescription medicine and medical equipment; and child 2 had unmet medical concerns. In April 2017, the department filed a petition alleging child 1 and child 2 needed protection or services (CHIPS). The two children were adjudicated CHIPS four months later, and legal custody was transferred to the department. The children have remained in court-ordered out-of-home placement since the CHIPS petition was filed.[2]

Intermittent CHIPS Case Plan Compliance from 2017-2019

The department developed case plans to reunite parents with the children. These plans required parents to maintain safe and suitable housing, complete parenting assessments and psychological evaluations, follow all treatment recommendations, and attend supervised visits with the children. Father's plan also required him to complete an anger-management program. The parenting assessments for both parents recommended parenting education as well as individual and couple's therapy. And mother's parenting assessment referred her to an adult rehabilitative mental health services (ARMHS) worker for assistance with daily tasks.

[2] Child 3 was born in November 2017. The department initiated a CHIPS proceeding and child 3 was adjudicated CHIPS in May 2018. She has been in court-ordered out-of-home placement since birth.

Parents made incremental progress on their case plans. Mother initially cooperated with her ARMHS worker to better maintain the family home, get to her therapy sessions, and stick to a budget. Father attended an initial anger-management session, but the service provider determined its program was not appropriate given his limited cognitive skills.

But both parents struggled to fully participate in the programming and gain insight from it. By November 2017, parents had not followed through on referrals for developmental disability (DD) services, and had lost their housing due to father's angry outburst in front of the property caretaker. Parents found an apartment in February 2018, but had trouble paying the security deposit. Mother refused assistance with creating a new budget, and parents experienced continued difficulties with paying rent. Mother stopped working with her ARMHS provider in February 2018, and did not follow through on the department's referral to another program to access similar services.

This pattern of inconsistent case-plan compliance continued into 2019. Mother's cooperation with DD and ARMHS services was intermittent. Father struggled to find anger-management services despite several subsequent department referrals. And their home alternated between being relatively clean and being cluttered and unsafe.

Parents consistently attended visits with the children. Teresa Menti of Family in Transition Services supervised the visits. From the outset, Menti reported concerns about parents' ability to safely care for the children on their own. She frequently needed to guide parents on how to meet the children's basic needs during visits, and parents did not demonstrate they could retain and implement this guidance between visits. During in-home visits, Menti did not observe consistent progress in maintaining cleanliness and safety

without prompting. At Menti's suggestion, the department eventually retained her to also provide parenting-education services to parents.

TPR Petitions Filed

The department first petitioned for TPR in June 2018. Following the admit/deny hearing, the district court concluded the petition did "not support a prima facie" case for termination. The district court specifically found that the department had "not made reasonable efforts towards reunification," largely based on its failure to adequately access and provide services to meet child 2's "mental, behavioral, and special health care needs." The case reverted back to a CHIPS proceeding.

The department filed the present petition in August 2019, seeking to terminate parents' rights to child 2 and child 3.[3] The department cited parents' inconsistent compliance with their case plans, noting they still struggled to maintain a clean and safe home for the children, faced eviction on multiple occasions, and have either refused to attend or canceled appointments with referred service providers. The department also noted the significant needs of the children, citing concerns that parents will be unable to meet these needs due to their own challenges. The department alleged three statutory bases for termination: (1) that the parents are "palpably unfit" to parent the children, (2) that "reasonable efforts . . . have failed to correct the conditions leading" to the children's out-

[3] Around the same time, the biological father of child 1 petitioned for legal custody. The department supported his petition. The district court denied that petition. Child 1's biological father did not appeal the denial.

of-home placement, and (3) that the children are "neglected and in foster care." *See* Minn. Stat. § 260C.301, subds. 1(b)(4), (5), (8) (2020).

The district court held two hearings on August 14, 2019—a permanency review hearing, and an admit/deny hearing on the TPR and custody-transfer petitions. In its permanency review order, the district court found that the department was making reasonable efforts to reunite child 2 and child 3 with parents.[4] At the hearing, parents moved to dismiss the TPR petition on the ground that the department was not making reasonable efforts to reunite the family. The district court denied the motion, finding the petition stated a prima facie case for termination.[5]

TPR Trial Conducted

The district court conducted a trial on the petition on March 11 and 12, August 26, and September 1, 2020. Mother testified that she was not told why her children were placed in foster care and could not recall why the department became involved with her family. She disputed the reported conditions of their home in 2017, stating she "would never live like that." She denied having any mental-health issues, except for being diagnosed with ADHD as a child. And she reported that she did not need assistance with her daily tasks, saying that she "can do a lot of things on [her] own." When questioned about receiving

[4] The district court found these efforts included referrals for mental-health services, psychological or therapeutic services, housing assistance, parenting classes/assessments, home-based services, home visits by the social worker, child services and evaluations, and visitation.

[5] A different district court judge presided over the permanency and initial TPR hearings. This proceeding was then transferred to the judge who handled the CHIPS case.

ARMHS services, mother stated she was "not really sure what they do," and that she stopped working with her ARMHS worker because "[h]e was not really helping me very well." She also testified that she has not been able to get a consistent DD worker, because "they kind of all quit after the first month."

With respect to the children, mother said she is aware of their developmental delays. She acknowledged their need to attend medical appointments and take certain medications, stating she would administer the medications if trained to do so. Mother also stated she has learned parenting skills from Menti, that she and father did not "really need a lot of help from her anymore," and that she believes she is a better parent now than when the children were removed from her care.

As to parents' ability to provide a clean and safe home for the children, mother testified that they were evicted at the end of 2019 because their landlord did not like them. She agreed that living with father's mother and sister is not a permanent housing option. But she explained that there is no timeline for moving into their own home, and that their efforts to work with the assigned housing-assistance worker have not been successful.

Father acknowledged that they had difficulty paying rent in the past, but that they tried to budget accordingly. He also confirmed that there is no timeline for moving out of his mother and sister's home, but that they are actively looking for their own place. Father testified that he is not fully aware of how much care the children need, but that he and mother would learn to meet their needs. He also described how he has used the skills he learned through parenting education. And although he admitted that he will occasionally

"[b]low up and yell," father denied having "any mental health or cognitive diagnoses" or needing assistance to care for himself and the children.[6]

The foster-care provider for the two youngest children testified that it requires "a lot of coordination" to attend to child 2's special needs. She detailed child 2's propensity for tantrums and other behavioral issues, and his extensive medical needs—including a nightly human-growth-hormone injection and regular endocrinologist appointments; wearing an eye patch every day for two hours and associated eye-care appointments; weekly speech, physical, and occupational therapy appointments; dental appointments; and behavioral-health services. The foster-care provider described child 3 as "especially difficult" due to her own behavioral issues, and testified that she receives speech therapy and attends a weekly program to improve her social development. The foster-care provider—whose eldest child has challenges—also explained that she is not a permanency option because she cannot meet the children's significant special needs.

Child 1's foster-care provider detailed child 1's extensive needs as well as the attention and equipment required for her day-to-day care. Child 1 has "seizures"[7] and is "developmentally delayed" and "[n]onverbal." She requires a wheelchair but practices

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[6] Father testified over two days that were several months apart. He reported in August that he had attended one anger-management counseling session since he last testified in March.

[7] Her foster-care provider described these seizures as "drop seizures, where her body just falls." The seizures place child 1 at risk of hitting her head if she is not appropriately strapped in to her wheelchair or car seat. Her foster-care provider stated that because of these seizures, she must pay constant "close attention" to child 1, as the seizures "come on real quick" and are "gone within seconds." But if a seizure persists for "over three minutes," child 1 must be administered a "rescue seizure med[ication]."

standing and walking with a "gait trainer" and "[f]oot orthotics" in her shoes. For bathing, she requires a "bath chair" and an "elevated" bathtub combined with a lift system. She sleeps in an enclosed "medical bed." She is on medication that she must take twice per day to help control her seizures, and she also takes antidepressants and sleep medication. She attends neurological and endocrinal appointments regularly. She attends speech therapy, sees a psychiatrist, and must attend appointments with a physical rehabilitation specialist following surgery to correct her scoliosis. She must also do daily standing exercises and use the gait trainer "a few times a week." Ultimately, child 1 needs "total care for all her daily needs," including feeding, "changing her brief, bathing, getting her dressed, in and out of bed," etc. To provide this care for child 1 in addition to the care three other foster children require, the foster-care provider relies on the assistance of her husband and six personal-care assistants assigned to her home on various days of the week.

Menti—who has worked with the family since January 2018—testified about the numerous services she provided to parents.[8] She described several instances where father's behavior became obstructive or created an unsafe environment. She also testified that the

[8] Menti described these services as:

> Mainly parenting education, in-home parenting coaching, modeling, demonstrating. It has evolved into more basic needs for the family. I've helped them with basic household chores, activities for them to do. In addition we came up with visit schedules, routines, for the children during their visits with the parents so the parents could stay on track with what they were doing. It's also evolved some into financial managing—trying to help them budget. I've done some other work with making sure their medication is put away in a locked prescription box for them.

family home was often "unhealthy" due to animal waste and extreme clutter, and that parents made only minimal progress toward maintaining a safe home.[9]

Ultimately, Menti concluded that she "would be very concerned for [mother and father] to parent on their own, independently, without someone there to help them 24/7 with prompting and reminders." She stated that additional time to work on their case plans would not alleviate her concerns.[10] But she declined to opine whether the children should be permanently removed from parents' care, stating instead "I do feel that at this point in time the parents have not shown enough, demonstrated enough insight and awareness . . . to be able to provide for their children."

Two mental-health professionals who were engaged to assess and treat child 2 similarly testified at trial that when they engaged with mother and father as part of child 2's treatment plan, parents struggled to retain and apply information they received about effectively parenting and providing for children. One of these professionals noted in particular that mother and father "had difficulty reading and responding to [child 2]'s cues," and noted that parents only made "slight progress" in the treatment objectives over the course of a year.

The social worker expressed doubts about parents' ability to follow through on services necessary for them to parent independently, including their ability to maintain

[9] Menti did report that the conditions of the home improved when parents moved in with father's mother and sister.

[10] Menti further expressed concern that parents lack "the insight and awareness" to make effective use of proffered services to improve their mastery of parenting and daily tasks.

housing. The social worker testified that parents had not corrected the conditions that led to the out-of-home placement in 2017, and that it is in the children's best interests to be permanently removed from their care. And the guardian ad litem for child 2 and child 3 agreed that "terminating . . . the rights of both parents" would serve the children's best interests.

On the final day of trial, the social worker testified that the department considered the Kindred Family Focus program as part of their efforts to reunite the family.[11] The social worker explained that this program operates as "kind of like a host home" to provide "24-hour support" for parents and their children. But the social worker testified this potential placement "did not work out" because the parents were not amenable. Upon being recalled to testify, mother stated that she did not remember being offered placement with Kindred Family Focus, and that she would have been interested in such a service. Father testified that the first time he heard about the program was during trial. And he confirmed that he and mother would have been interested in the program had it been offered to them.

[11] Kindred Family Focus is referenced twice in reports submitted prior to review hearings. In a September 2018 report, the department states it had contacted the program and was "awaiting information." A follow-up report in November 2018 provided no further information, and the program is not referenced again until trial.

District Court Orders

The district court denied the petition, and ordered that the permanency proceedings revert to CHIPS proceedings. The district court found that the department failed to prove by clear and convincing evidence that (1) the statutory bases for TPR existed, (2) the department made "reasonable efforts given [parents'] need for reasonable accommodations under the ADA," and (3) TPR is in the children's best interests. The district court specifically noted Kindred Family Focus is a program that could meet the needs of both parents and the children, and found the department did not offer this program to them prior to trial. It then directed the department to "take appropriate steps to establish services for the entire family of five with Kindred Family Focus."

Following the district court's order, the department contacted Kindred Family Focus. The department then moved the district court to amend its findings. Specifically, the department asserted that placement options with the program are severely limited, and that the program is generally designed for minor parents and their children—not adult parents and children with significant mental and physical challenges. The district court denied the motion. The department appeals the permanency order and the order denying its motion for amended findings.[12]

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[12] The guardian ad litem filed a purported respondent's brief in which she challenges the district court's decision. But she is neither a respondent nor an appellant. *See* Minn. R. Civ. App. P. 143.01 (defining the "party appealing" as appellant and "the adverse party" as respondent); *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 672-73 (Minn. App. 2020) (concluding that guardian ad litem who submitted purported respondent's brief was neither an appellant nor a respondent, adverse to the appellant, and declining to address her arguments). To the extent she advances arguments distinct from the department's arguments, they are not properly before us and we decline to address them.

DECISION

Natural parents are presumed to be suitable to care for their children. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). Parental rights may only be terminated for "grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). To terminate parental rights, at least one statutory ground for termination must be supported by clear and convincing evidence, and termination must be in the best interests of the child. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008); *see also* Minn. R. Juv. Prot. P. 58.03, subd. 2(a) (stating "the standard of proof" for termination "is clear and convincing evidence"). District courts must "make clear and specific findings which conform to the statutory requirements for termination adjudications." *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980). In every termination proceeding, the child's best interests "remain the paramount consideration." *M.D.O.*, 462 N.W.2d at 375.

Whether to terminate parental rights "is always discretionary with the [district] court." *R.D.L.*, 853 N.W.2d at 136. The decision involves two distinct steps—the district court first "finds the underlying facts regarding the statutory criteria" for termination, and then "exercises its judgment to address whether that basis for terminating parental rights is present" in light of those underlying facts. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). We apply different standards of review to each of these steps—we review "findings of the underlying or basic facts for clear error," but we review the "determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *Id.*

at 901. "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 Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (quotation omitted). A district court abuses its discretion if it misapplies the law. *Id*. (citing *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997)).

The department argues that the district court made numerous findings of fact that are clearly erroneous and abused its discretion by determining that the department had not met its burden on any of the asserted statutory grounds for termination and that termination is not in the children's best interests. We address these arguments below.

I. The district court did not abuse its discretion by finding that termination is not warranted based on palpable unfitness.

Parental rights may be terminated if clear and convincing evidence shows 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 . . . which are . . . 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). A parent is palpably unfit if their "behavior is likely to be detrimental to the children's physical or mental health or morals." *In re Children of Vasquez*, 658 N.W.2d 249, 255 (Minn. App. 2003).

A parent's mental impairment is not, in and of itself, a sufficient basis for terminating parental rights. *In re Children of B.M.*, 845 N.W.2d 558, 563 (Minn. App.

2014). Rather, the statute requires that the impairment directly affect the ability to safely parent the child. *Id.* But a parent who is unable "to learn to parent," creating issues of child safety that "are not expected to improve for an indefinite period of time," may be palpably unfit. *See In re Welfare of D.I.*, 413 N.W.2d 560, 565 (Minn. App. 1987) (affirming TPR based on palpable unfitness where parent required "ten years" of interventions from social services, the children experienced "repeated hospitalizations," and the children became "both physically and emotionally ill" when in parent's care).

The department contends that clear and convincing evidence demonstrates parents are palpably unfit because they require constant assistance with parenting tasks and skills, without which they are unable to appropriately care for the children now and in the reasonably foreseeable future. We are not persuaded that the district court abused its discretion by finding otherwise.

It is undisputed that parents have difficulty living and parenting on their own. This is particularly true in light of the children's significant special needs. While, as we discuss below, the district court's findings of fact are inadequate, the record shows parents have attempted to comply with their respective case plans. They have engaged with services, and located suitable temporary housing—one of the major concerns that prompted the 2017 CHIPS petition. And they have prioritized the children, consistently attending supervised visits during which they display love and care for them. Notably, parents have not been afforded unsupervised visits in their home or anywhere else. And Menti—who has provided hands-on parenting training and assistance to parents since 2018—stopped short of recommending TPR.

The bare fact that parents need assistance to care for themselves and the children does not make them unfit to parent. *See B.M.*, 845 N.W.2d at 565 (stating that father's "need for services does not require the termination of his parental rights"). Indeed, "[t]he law encourages [a] county to provide additional services to parents whose children have been the subject of a TPR petition when the petition is dismissed." *Id.*; *see* Minn. Stat. § 260C.312 (2020) (providing that if the court does not terminate parental rights, the court may enter a new CHIPS order).

We acknowledge that our jurisprudence suggests that a parent may be palpably unfit if they are unable to parent without the assistance of "24-hour-a-day backup." *In re Welfare of A.V.*, 593 N.W.2d 720, 722 (Minn. App. 1999), *review denied* (Minn. Aug. 25, 1999). But in *A.V.*, the parents "simply ha[d] no capacity to parent or to engage in constructive efforts to improve their ability to parent" and "'can not be trusted with the care of these children.'" *Id.* This case presents no such findings.

On this record, we discern no abuse of discretion in the conclusion that the department failed to establish by clear and convincing evidence that parents are palpably unfit now and in the reasonably foreseeable future to safely care for these children.

II. The district court's findings are insufficient to review whether termination is warranted based on failure of reasonable efforts or the children's status as neglected and in foster care.

Parental rights may be terminated if a child is placed out of the home and court-directed "reasonable efforts . . . have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). Reasonable efforts are "services that go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare*

of Children of S.W., 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Mar. 28, 2007). The "nature of the services which constitute 'reasonable efforts' depends on the problem presented," meaning that whether the services provided constitute reasonable efforts is heavily case-specific and fact-dependent. *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). Termination is appropriate when providing additional services would be futile. *Id*.

In determining the reasonableness of a department's efforts, the district court must make findings as to whether the services provided 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) (2020). And the district court must make specific findings about the department's "reasonable efforts to finalize the permanency plan to reunify the child and the parent," including "individualized and explicit findings regarding the nature and extent of efforts made" by the department. Minn. Stat. § 260C.301, subd. 8 (2020).

The district court found the department's efforts were unreasonable because the department "did not adequately explore reasonable accommodations to reunify this family" and "failed to engage the parents at their level of understanding and intellectual functioning." The department argues that the district court's findings of fact underlying this TPR ground are inadequate and incomplete. And the department contends that certain

findings "fail to acknowledge the entirety of the evidence" or are clearly erroneous. These arguments have merit.

We agree with the department's initial observation that the majority of the district court's findings of fact recite the witness testimony and other evidence, and conclude with a statement that the witness was generally credible. This pattern persists throughout the order; the district court expressly found that every witness was credible. Findings of fact "must be affirmatively stated." *Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App. 1989); *accord Hassing v. Lancaster*, 570 N.W.2d 701, 703 (Minn. App. 1997) (reversing and remanding custody-modification decision based on child endangerment and citing *Dean*, 437 N.W.2d at 764, for the proposition that "the trial court's recitation of what others have observed is not a finding of fact that those observations are true"). The district court's failure to do so makes it difficult to review whether the court abused its discretion in determining TPR is not warranted based on the failure of reasonable efforts to correct the conditions that led to the children's lengthy out-of-home placement.

The more troubling aspect of the district court's findings is that they do not comply with the requirements of Minn. Stat. § 260.012(h) or Minn. Stat. § 260C.301, subd. 8. The district court found that the department failed to prove that its efforts to reunite the family were realistic because "it failed to provide reasonable accommodations adequate to meet the needs of the family based on the parents' limitations." The court then went on to discuss the Kindred Family Focus program. Wholly absent are any findings as to whether the myriad services the department did provide since 2017 were relevant, adequate, culturally appropriate, available, consistent, and timely. Accordingly, we must remand for the court

to make these findings. *See Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (holding that failing to make findings on relevant statutory factors requires remand to the district court); *accord In re Welfare of the Child of D.L.D.*, 771 N.W.2d 538, 547 (Minn. App. 2009) (remanding TPR decision for the failure to make required best-interests findings).

Moreover, the relevant findings the district court did make are incomplete. For example, the district court made findings regarding the components of father's case plan and found that he completed all but two—those related to housing and anger-management programming. But the district court does not identify whether or how father's failure to complete these portions of the case plan weighs into its ultimate decision. And even though the district court found that "[b]oth parents have complied substantially with the majority of their case plan tasks," it made no findings as to the individual components of mother's case plan. Again, the absence of such findings does not permit us to adequately review whether the department's efforts were reasonable and whether they corrected the conditions that prompted the out-of-home placements.

We are also concerned that the district court's reasonable-efforts finding is premised in large part on the department's failure to offer one particular service—the Kindred Family Focus program. First, we are not persuaded that failure to offer one particular service—especially one that is not feasible—constitutes failure to make reasonable efforts. *See, e.g.*, *A.V.*, 593 N.W.2d at 723 (concluding that reasonable efforts do not require pursuing 24-hour in-home care that is not feasible). Second, the record does not support the district court's finding that Kindred Family Focus is an appropriate and available service for this

family. Indeed, the evidence the department submitted in support of its posttrial motion suggests Kindred Family Focus is neither.

In concluding that the district court failed to make adequate reasonable-efforts findings to permit appellate review, we do not suggest that the district court's expressed concerns are unwarranted. Certainly, whether the department provided services that parents could access given their disabilities is important and relevant to the reasonable-efforts analysis. The department's failure to offer Kindred Family Focus is relevant to whether its efforts were reasonable. And the availability of Kindred Family Focus to this family is relevant to whether the provision of additional services would be futile. But we are unable to review the district court's exercise of discretion in the absence of clear findings that comply with the statute.

The district court's findings are likewise inadequate for us to review whether the children are "neglected and in foster care." Minn. Stat. § 260C.301, subd. 1(b)(8). "[N]eglected and in foster care" means the child is in foster care by court order; the parents' "circumstances, condition, or conduct are such that the child cannot be returned to them"; and the parents have failed to make reasonable efforts to adjust these circumstances despite available rehabilitative services, or have "willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support." Minn. Stat. § 260C.007, subd. 24 (2020). Factors that must be considered include how long the child has been in foster care, the "appropriateness and adequacy of services provided or offered to the parent to facilitate a reunion," and whether "additional services" would be likely to enable the return of the child "within an ascertainable period of time." Minn. Stat. § 260C.163,

subd. 9 (2020). Whether an agency's efforts were reasonable is measured by the factors in Minn. Stat. § 260.012(h).

The district court did not make independent findings on this statutory basis for termination. Instead, the district court relied on the same findings it made as to the reasonable-efforts termination ground—that the services provided to the parents were not realistic and that failing to fully consider placing the family in Kindred Family Focus renders the department's efforts unreasonable. The court's failure to make the requisite statutory findings—especially when child 2 has been in out-of-home placement for more than three years—requires remand. *See Stich*, 435 N.W.2d at 53.

III. The district court's best-interests findings are insufficient to review whether termination is in the best interests of the children.

We first observe that because the district court did not find the department had proven a statutory ground for termination, it was not required to consider whether termination serves the children's best interests. *See S.E.P.*, 744 N.W.2d at 385 (stating termination first requires the existence of statutory grounds and then that termination is in the best interests of the child). But the district court elected to do so. Because we are remanding for further consideration of two asserted statutory grounds for termination, we choose to briefly address the district court's best-interests findings.

Before terminating a parent's rights, a district court must make express findings as to "all relevant factors" that touch upon the child's best interests. Minn. Stat. § 260C.511(a) (2020). When addressing a child's best interests in a TPR proceeding, the district court must balance and make express findings as to: "(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 interests of the child." *In re Welfare of A.M.C.*, 920 N.W.2d 648, 657 (Minn. App. 2018) (quotation omitted); see Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). Ultimately, the child's interests take precedence when they conflict with those of the parent. Minn. Stat. § 260C.301, subd. 7 (2020).

We review a best-interests determination for an abuse of discretion. *A.M.C.*, 920 N.W.2d at 657. But we rely on the district court's findings of fact to do so. We generally do not conduct a "global review of a record" because it involves determinations of credibility that are outside our province. *D.L.D.*, 771 N.W.2d at 546 (quotation omitted). Where a district court does not make the requisite best-interests findings, we must remand. *Id.* at 547; *see In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003) (stating that "the district court, in a termination proceeding, must consider a child's best interests and explain its rationale in its findings and conclusions," and remanding for the failure to do so).

Here, the district court found that the children's best interests "are served by being raised by [parents], who have been a constant presences in their lives and consistently express that their children's well-being is their top priority." The district court does not otherwise identify the children's interests or explain how they would be advanced in parents' care. Rather, the court's findings primarily focus on parents' interests in preserving their relationship with the children, and place great stock in the lack of a permanency option in a current foster home. The department correctly argues that whether a foster home is a permanency option is not a relevant factor in the best-interests analysis. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 58 (Minn. 2004) (stating "the district

court was not required to consider long-term foster care . . . as part of its best interests analysis"). On remand, the district court should make additional findings that assess and balance the children's interests against parents' interests.

In sum, we affirm the district court's determination that parents are not palpably unfit to parent these children. But because the court did not make adequate findings to permit review of the two other statutory bases for termination, we reverse in part and remand. We leave the decision whether to reopen the record to the district court's discretion.

Affirmed in part, reversed in part, and remanded.