STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0038

In the Matter of the Welfare of the Children of:
S.S.H. and B.W.R., Parents

Filed June 25, 2018
Affirmed and remanded
Bratvold, Judge

Todd County District Court
File No. 77-JV-17-662

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Considered and decided by Schellhas, Presiding Judge; Reilly, Judge; and Bratvold, Judge.

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

BRATVOLD, Judge

Appellants-parents challenge the district court's termination of their parental rights after respondent-county provided over six years of protective services, during which time parents were sometimes compliant, but repeatedly relapsed into methamphetamine use. Parents argue that we must reverse for four reasons: (a) the district court erred in determining that additional services by respondent-county would be futile and therefore

unreasonable under the circumstances; (b) the district court erred in its determination that clear and convincing evidence established mother and father failed to satisfy the duties of the parent-child relationship; (c) the district court abused its discretion in receiving hair-follicle evidence without proper foundation; and (d) the district court erred in its determination that clear and convincing evidence established termination of mother and father's parental rights was in the children's best interests. We affirm the termination of mother and father's parental rights, but remand for the district court to review daughter's waiver of legal counsel.

FACTS

Appellant-mother S.S.H. (mother) and appellant-father B.W.R. (father) are the parents of A.L.R. (daughter) (born in 2006) and J.I.R. (son) (born in 2011). Mother and father began their relationship in 2003 and have lived together on and off, but never married.

The family has received protective services since 2011. Three child-in-need-of-protection-or-services (CHIPS) cases preceded the present termination proceeding. In August 2011, the children were adjudicated in need of protection or services after son was born with methamphetamine in his system. Mother admitted using methamphetamine for the first five months of her pregnancy and agreed to monitoring by respondent Todd County Health and Human Services (the county); mother cooperated with recommended services. The children were placed in foster care with their maternal grandmother, D.H. By June 2012, mother had substantially complied with her case plan, and the children were returned to her custody. But only a few months later, in September 2012, the district court

ordered out-of-home placements for the children, due to mother's relapse and use of methamphetamine. Mother regained custody of the children in December 2012, on the county's recommendation.

The district court described father's involvement in protective services in its later termination order. The district court found that father "ha[d] been a party throughout" the protective care proceedings, and that father "did virtually nothing that was recommended or outlined in his case plan nor did he actively utilize any services." Additionally, the district court found that, in 2013, the county recommended that father's contact with the children be supervised because of father's failure to complete the recommended services, including "anger management, couples therapy, a chemical dependency evaluation, or parental education courses."

In May 2014, the children were taken into emergency protective custody for the third time after father was arrested for fifth-degree possession of a controlled substance, second-degree DWI test refusal, possession of drug paraphernalia, and driving after suspension of his driver's license. Additionally, the county learned that mother had left the children in D.H.'s care, was reported to be using methamphetamine, and was subject to an arrest warrant. The court ordered protective custody and placed the children in foster care with D.H. The district court also ordered the family to submit to hair-follicle tests. Both parents tested positive for methamphetamine, as did son due to "secondhand exposure."

The county initially filed a CHIPS petition, but after determining that the children had been in out-of-home placements for over 12 months in the last five years, the county withdrew the CHIPS petition and filed a petition to terminate parental rights (TPR) in May

2014. Mother and father cooperated with the county, completed services, and worked toward sobriety. In December 2014, the county dismissed the termination petition. The county asked for and received a court order approving the dismissal based on the parents' cooperation with county services. In its subsequent termination order, the district court found that the guardian ad litem, Lori Hanson, "vehement[ly] object[ed]" to the 2014 dismissal because, if son and daughter "were to be reunified with their parents once again[,] the past history causes concern that exposure to drugs and alcohol would only continue." The district court also found that both parents "acknowledged [during trial] that dismissal of the 2014 TPR Petition was their 'last chance' and that maintaining custody of their children depended upon them remaining drug-free."

After the dismissal, the county continued to provide services to the family including random drug testing, "referrals to [chemical dependency] counselors and treatment," "individual therapy for the children as needed," supervised visits, and assistance with transportation services. The parents' file was closed in June 2015, and the county had very little contact with the family for two years.

On June 28, 2017, the Staples Police Department received a report of a domestic altercation at the parents' home. The responding officer spoke with father, daughter, and son. The officer described daughter, then age ten, as "very distraught"; daughter told officer that father had been "verbally abusive" and called her "a b-tch and a c-nt." In response, father told the officer that daughter was "being one." The officer noted that father seemed "agitated" and "behaving as if he might be under the influence of a controlled substance." The officer noted the incident as a "noise issue," but contacted father's probation officer.

When father met with his probation officer, he admitted methamphetamine use over the weekend. Father also submitted to a drug test, which was positive for methamphetamine. After learning of father's test result, the county attempted to locate the children, but was unable to do so for several days. Accordingly, the county obtained a court order for parents to "produce the children for interviews" and drug testing. Mother later testified that she and the children were on a "pre-planned vacation" and that she had problems with her cell phone.

The family submitted to hair-follicle testing. Mother, father, and son tested positive for methamphetamine; daughter's test was negative. The county sought and received protective custody of the children on August 1. On August 3, 2017, the county filed a petition to terminate mother and father's parental rights. The county asserted that mother and father's parental rights should be terminated on the following statutory grounds: Minn. Stat. § 260C.301, subd. 1(b)(2) (2016) (parents failed to satisfy the duties of the parent-child relationship); Minn. Stat. § 260C.301, subd. 1(b)(7) (father failed to register as the children's parent); and Minn. Stat. § 260C.301, subd. 1(b)(8) (children were neglected and in foster care).[1]

[1] The termination petition asserted two additional grounds for termination: Minn. Stat. § 260C.301, subd. 1(b)(4) (parents are palpably unfit to be a party to the parent and child relationship) and Minn. Stat. § 260C.301, subd. 1(b)(5) (reasonable efforts failed to correct the conditions leading to the out-of-home placement). Subsequent events led the county to dismiss both of these grounds. In November 2017, the county determined that the children had been in out-of-home placement for less than 12 months over the last five years. As a result, the county withdrew Minn. Stat. § 260C.301, subd. 1(b)(5), as an alleged basis for termination. At trial, the county amended the petition and withdrew Minn. Stat. § 260C.301, subd. 1(b)(4), as an alleged basis for termination.

At an emergency placement hearing on August 3, 2017, the county asked the district court to determine that providing any further services to parents would be futile, arguing that many services had been provided over several years and that "the parents knew what they needed to do and what would happen in the future." The district court granted the county's request and found that the county had "made reasonable efforts." The court also found that "additional services at this point would be futile," citing Minn. Stat. § 260.012(a) (2016). The district court concluded that the county was not required "to develop a case plan for these parents [or] for these children."

On August 17, 2017, mother and father requested, via certified letter, additional county services to reunify the family. Mikayla Wolbeck, a county child protection worker and the family's case manager, met with mother to discuss available services and recommended that parents submit to voluntary random drug testing. Mother told Wolbeck that the family did not need county services, because "they were doing just fine." Following this meeting and before trial commenced, mother submitted to three out of ten random drug tests; father submitted to one out of ten random drug tests.

The county also scheduled supervised visits for the children and the parents. In its termination order, the district court found that these visits "did not go well" and that parents "discussed inappropriate topics such as their feelings on the CHIPS case and [county] employees in front of the children." The district court also found that parents displayed a "lack of effort" in responding to the children's needs. For example, regarding daughter, the district court found that on two occasions, daughter told mother she wanted "to commit suicide or harm herself," and on one occasion, "[m]other did not respond." On another

occasion, the district court found that daughter told mother about self-harm and also described her "16-year-old online 'boyfriend' named Phoenix who lives in Arizona." Mother responded that daughter should "seek support from her 'boyfriend.'"

The termination trial took place on November 15-16, 2017. At trial, the district court heard testimony from the following witnesses on behalf of the county: Jennifer Lowe, a county child protection worker; Lisa Grossinger, a county child protection worker; Wolbeck, the family's case manager; and an employee of Mid-Minnesota Drug Testing, who testified about son's hair-follicle test from July 2017. Additionally, the guardian ad litem testified that she believed parents' rights should be terminated because of "the continued methamphetamine use of the parents."

In Wolbeck's testimony, which the district court found credible, she stated that when the children were brought into county custody in August 2017, daughter "had lice that was—had gone untreated and . . . [mother] had known about the lice but never informed Todd County." Further, other record evidence demonstrated that the children were in need of mental health services, a well-child checkup, eye appointment, dentist appointment, and new glasses, all of which they had not been provided while in parents' care. The district court subsequently determined that parents "refused to secure medical insurance for the children," although they were eligible for public health insurance, and that children had not received necessary mental and physical health services.

The parents offered testimony from the following witnesses: mother's supervisor from her job at Central Lakes College; father's mentor from Alcoholics Anonymous; father's probation officer; the police officer who responded to the family's home on

July 28; and son's case manager and therapist. In addition, maternal grandmother, D.H., testified that mother and father had positive interactions with the children and were able to comply with the duties of a parent. Also, paternal grandmother, D.S., testified that mother and father had positive, happy interactions with the children.

Father testified that, after the incident on June 28, he had completed an updated chemical assessment and had followed all recommendations. Father testified that he attends Alcoholics Anonymous/Narcotics Anonymous meetings regularly, and despite his "little slip" in June, he believes he is a good parent and able to care for his children.

Mother testified that she attends "AA/NA, Al-Anon" meetings when she can. Mother admitted using methamphetamine in the home in 2014, but denied doing so in 2017. Mother testified that she is able to "provide and comply with the duties imposed upon a parent."

Through the testimony of several witnesses and various exhibits received by the district court, the record evidence established that both children have special needs and individualized education plans (IEPs). The district court found that son "has behavioral problems," mental health issues, and struggles with "'dysregulation,' characterized by hypervigilance, obsessive talking, and a general lack of control of his body and his emotions." The district court stated that son was removed from "mainstream school" because he "was unable to succeed in that setting," and now attends a "Level 4 school with greater safety measures and service intensity."[2] The district court also noted that, although

[2] Son's therapist described a Level 4 educational setting as specializing in "emotional and behavioral disorders." She testified that a Level 4 setting offers "more frequent services,"

only six years old, son has tested positive for methamphetamine three times, including at his birth. The district court found that, following dismissal of the 2014 TPR petition, the son's "emotional and behavioral struggles appreciably worsened without [the county's] protective supervision."

The district court found that daughter was diagnosed with fetal alcohol syndrome and a "generalized anxiety disorder." And the record evidence indicated that mother admitted she had used methamphetamine until she was three months pregnant with daughter. Also, the district court found that mother actively used methamphetamine while she was the "primary parent" for daughter. Record evidence portrayed daughter as struggling with disruptive behaviors throughout the time she has received services. The district court found that daughter's behavioral issues sometimes made it difficult for her paternal grandmother to spend time with her. The district court also found that daughter had a "pattern of throwing away her homework" and that parents worked with daughter's teacher to manage this issue. Finally, the district court found that daughter was awarded the student-of-the-month award, was interested in raising rabbits, enjoyed music, and was involved in 4-H.

On December 15, 2017, the district court issued findings of fact, conclusions of law, and ordered termination of mother and father's parental rights to both children. The district court found that the county had made reasonable efforts to rehabilitate the parents and reunify the family, and future efforts would be futile. Specifically, the district court

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a case manager, and "a children's mental health case manager because there is a more severe emotional disturbance happening."

determined that the county had provided relevant services since 2011, and that there were no services "left to try." The district court found that clear and convincing evidence supported several grounds for termination: parents failed to satisfy the duties of the parent-child relationship; father failed to register as the children's parent; and the children are neglected and in foster care. The court also concluded that termination was in the children's best interests. Both parents appeal.

D E C I S I O N

A natural parent is generally presumed to be fit and suitable to care for his or her children. *In re P.T.*, 657 N.W.2d 577, 583 (Minn. App. 2003), *review denied* (Minn. Apr. 15, 2003). We presume that it is in the children's best interests to remain in the natural parent's care. *Id.* Nevertheless, "parental rights are not absolute" and will not be "enforced to the detriment of the child[ren]'s welfare and happiness." *Id.* (quotation omitted). This court will affirm a district court's termination of parental rights where there is clear and convincing evidence that (1) the county made reasonable efforts to reunite the family, (2) a statutory ground for termination exists, and (3) termination is in the children's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

We review "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." *Id.* "A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted). We review for abuse of discretion the district court's determinations on whether a particular statutory

basis for terminating parental rights is present and whether termination of parental rights is in the best interests of a child. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

I. The district court did not err in its determination that the county has made reasonable efforts to rehabilitate the parents and reunite the family and that additional services would be futile and therefore unreasonable.

In a termination of parental rights proceeding, the district court must determine whether the county has provided reasonable efforts to rehabilitate the parent and reunite the children and parent. *Children of T.R.*, 750 N.W.2d at 664. "Reasonable efforts at rehabilitation 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) (quotations omitted), *review denied* (Minn. Mar. 28, 2007). For efforts to be reasonable, the services the county offers must be: (1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the children 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). The district court must make "specific findings" that the county made reasonable efforts. Minn. Stat. § 260C.301, subd. 8 (2016).

Statutory requirements regarding parental rehabilitation and reunification are met if the court determines that (1) the county made reasonable efforts; or (2) the provision of further services is "futile and therefore unreasonable under the circumstances"; or (3) reasonable efforts are not required under one of certain circumstances provided by statute. Minn. Stat. § 260.012(h). Here, at the county's request during an emergency placement hearing, the district court determined that the county had made reasonable

efforts to rehabilitate mother and father and to reunite the family, but that no other efforts were practical or likely to remedy the underlying problems. The court concluded that "there are no services or efforts available which could allow the children to safely remain in the home."

The parents challenge the district court's finding, arguing that, while father had a "meth slip" in June 2017, the responding officer was not "sufficiently" concerned to remove the children. Moreover, they argue that from December 2014 until August 2017, they successfully parented the children with no interaction by the county. The county argues that despite extensive services provided to the parents from 2011, and even following the 2014 termination proceedings, "[a]ppellants [are] still using methamphetamine—and still exposing their youngest child to methamphetamine." The county also argues that the parents' continued use of drugs, after years of services, "clearly supports the [t]rial [c]ourt's conclusion" that further services would be futile, and therefore, unreasonable.[3]

We conclude that the district court did not erroneously determine that future services were "futile and therefore unreasonable under the circumstances." First, the district court

[3] Parents also argue that because the county withdrew Minn. Stat. § 260C.301, subd. 1(b)(5) as a basis for termination, there was no longer a presumption that reasonable efforts had failed, and the county was required to provide reasonable efforts to correct the conditions leading to the children's out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5)(i). The district court determined that it was satisfied with its previous finding that, pursuant to Minn. Stat. § 260.012, the provision of additional services would be futile, and therefore unreasonable. We agree with the district court that the county's decision to withdraw subdivision 1(b)(5) as a basis for termination does not affect the futility analysis because the district court did not presume that reasonable efforts had failed.

determined that the county had undertaken reasonable efforts to reunite parents and the children. Since 2011, the county provided services and made extensive efforts to rehabilitate and reunite the family, including use of the following services: "chemical dependency referral, chemical dependency treatment, [Narcotics Anonymous/Alcoholics Anonymous], random [urinalysis], parent education, individual and family therapy, psychological evaluations, transportation, and case management."

Further, it is not material that the responding police officer on June 28, 2017, did not remove the children from the home because no chemical testing had been performed at that time, and, when testing was completed and methamphetamine use confirmed, the children were removed. More importantly, after the district court made its futility determination and the parents requested additional services, Wolbeck met with mother to discuss the services available to the county in 2017. On appeal, parents argue that mother was not "articulate enough to respond" to Wolbeck. Yet the record reflects that mother told Wolbeck that the family did not need county services, because "they were doing just fine." Moreover, neither mother nor father complied with random drug testing in the months leading up to the termination trial. In short, the record supports the district court's determination that "[a]t times" the parents "accepted and cooperated with services designed to assist the children" and "[a]t other times, the parents have declined offered services."

Next, the district court determined that there were "no [additional] services or efforts available which could allow the children to safely [return] home." The district court further explained, as follows: "without perpetual monitoring and support to ensure that the parents are not further impairing the children's [physical] or emotional health and development by

using methamphetamine or failing to take advantage of services that would assist them with their children's respective behavioral and emotional issues, the children cannot be safely returned to them."

This finding is also supported by the record. As stated, the county provided relevant and appropriate services for almost seven years, tailored to the children's needs and the parents' chemical dependency. Indeed, the district court found there were no services "left to try." Additionally, following detailed testimony at the termination trial, the district court found that parents' chemical dependency was ongoing and prevented them from providing necessary and adequate care for the children. The parents' long-term chemical dependency problems, "poor prognosis for recovery," father's failure to engage with county services, and mother's failure to recognize methamphetamine use as a cause of the children's behavioral and mental health issues, support the district court's futility determination. Thus, we conclude that the district court's determination that providing additional services would be futile is supported by clear and convincing evidence.

II. The district court did not abuse its discretion in terminating mother and father's parental rights.

A district court may terminate parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and the court determines that termination is in the children's best interests. Minn. Stat. § 260C.301, subd. 1 (b)(1)-(9); *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014). "Only one ground must be proven for termination to be ordered." *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). We "review the district court's findings of the underlying or basic facts

for clear error, but [] review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *Children of J.R.B.*, 805 N.W.2d at 901. An abuse of discretion has occurred if the district court improperly applied the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). We may affirm the district court's decision to terminate parental rights if, after careful review, we conclude that at least one statutory basis for doing so is supported by the district court's determinations and clear and convincing evidence. *See In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005) ("Only one ground must be proven for termination to be ordered.").

The district court determined that parents substantially, continuously, or repeatedly refused or neglected to comply with their duties as parents, within the meaning of Minn. Stat. § 260C.301, subd. 1(b)(2). Parents argue that the county "wholly failed to prove" this statutory basis, contending that the district court's findings on this issue were "historical," and that "the only event reflecting on the parenting of either [mother or father] was the event of June 28, 2017." Parents downplay the June 28 event, asserting that no weapons were involved, daughter did not report abuse, and "some name calling" by father "was described." Parents argue that, since June 28, father admitted to using methamphetamine, responded positively to probation sanctions, complied with an updated chemical assessment, and has actively participated in group meetings to manage his dependency.

The county argues that the children's exposure to the parents' continued methamphetamine use and the parents' related inability to provide for the children's needs was the primary reason for the county's long-term involvement with the family and

supports the district court's conclusion that parents have not satisfied the duties of the parent-child relationship and are unlikely to do so in the future. The county argues that both parents lack insight into the children's needs and tend to blame the county for the children's struggles. The county also contends that both parents lack insight into how their own chemical dependency affects the children and are unable to articulate how they will meet the children's needs going forward.

Parental rights may be terminated if "the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed . . . by the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(2). Those duties include providing food and "other care and control necessary for the child's physical, mental, or emotional health and development." *Id.* To support termination on this basis, the district court must determine that, at the time of termination, the parent is not presently able and willing to assume his or her responsibilities and that the condition will continue for the reasonably foreseeable future. *See In re Welfare of J.K.*, 374 N.W.2d 463, 466-67 (Minn. App. 1985), *review denied* (Minn. Nov. 25, 1985); *see also In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 90 (Minn. App. 2012).

Our caselaw is clear that a parent's chemical dependency does not alone support termination of parental rights, but termination has been found to be appropriate when a parent's chemical dependency "was likely to be detrimental to the child" or "directly affects the ability to parent" or otherwise "renders the parent unable, for the reasonably foreseeable future, to care appropriately for the child's ongoing needs." *See Children of T.R.*, 750 N.W.2d at 661-63 ("substance or alcohol abuse alone does not render a parent

palpably unfit"); *see also In re Welfare of P.J.K.*, 369 N.W.2d 286, 290-91 (Minn. 1985) (same regarding mental disability).

The district court cited to a number of factors in finding that mother and father had neglected their parental duties. First, the court expressly found that the children's physical, mental, and emotional health or development had been impaired by parents' continued methamphetamine use. Second, the district court found that although mother complied with case plans in the past, she had done so "only when she has been closely monitored" by the county. The district court found that father "generally did not follow case plans nor did he actively utilize services." Based on the parents' failure to meaningfully engage with important services for themselves or their children without direct supervision and their repeated methamphetamine relapses over more than six years, the district court determined that the parents had a "poor prognosis for recovery and a present inability to recognize [the] children's needs." The record supports these findings.

There was ample testimony regarding the children's mental, emotional, and developmental needs. Both children have significant special-needs diagnoses, require ongoing services, and have IEPs. Son's therapist testified that son struggles with "emotional and behavioral dysregulation," and the guardian ad litem testified that dysregulation is common in children "[who] are exposed to methamphetamine." In addition, son has tested positive for methamphetamine three times throughout his short life. Most importantly, the district court found that, since 2016, "it objectively appears that [son's] emotional and behavioral struggles appreciably worsened without [the county's] protective supervision."

Daughter has fetal alcohol syndrome and "generalized anxiety disorder"; mother also admitted that she used methamphetamine during the first three months of her pregnancy with daughter. Yet, at one point, mother discontinued daughter's therapy "because of the price of gasoline." While we recognize the significant barriers families face in obtaining health services in many parts of our state, the district court found that, at the time son and daughter were placed into protective services in August 2017, both children lacked medical insurance, even though they were eligible for public health insurance, both children required immediate attention for physical, dental, and vision needs, and daughter required a new mental health diagnostic assessment. Moreover, the supervised conversations between daughter and mother as this case was proceeding toward trial indicate that the parents have failed to appropriately respond to daughter's mental health needs.

The district court found that father did not comply with his case plan in the past, but this finding is not a sufficient basis to terminate his parental rights. *See Child of J.K.T.*, 814 N.W.2d at 89 ("The 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."). On the other hand, the district court's finding that father failed to provide for the children's physical, mental, or emotional health and development, supports termination of his parental rights. Although father provided positive testimony regarding his relationship with the children and that he supports daughter's musical interests, he did not address either child's mental or emotional needs. In addition, during supervised visits in 2017, both parents discussed inappropriate topics, such as their feelings about the

county's termination petition. While father criticized the small room as not "conducive to quality family interaction," the district court found that both parents showed a lack of effort. The district court's finding that father had very little involvement with the county and the children is fully supported by the record.

Mother has had greater involvement with the children's care and support. The district court found that there is "little doubt that the parents and children love each other," and mother proudly testified about the children's achievements in school and in other activities. The district court found, however, that without county involvement, mother (and father) failed to provide mental and physical health services for the children. For example, Wolbeck testified that when the children were brought into county custody in 2017, daughter had lice that had gone untreated, even though mother acknowledged being aware of the problem.

The district court found that mother also lacked insight regarding the harmful effects of her drug use on the children. The record evidence supports this finding. In a county interview in September 2017, daughter described frequent drug-related interactions between her parents and their friends in the home and said she did not feel safe. Mother blamed the county for the children's mental and behavioral problems, testifying that the children's behaviors were due to "having been in and out of placement," and not because of her own drug use. Mother also underestimated the children's needs and the extensive services that they require for their mental health care; she testified that in 2016 and 2017, daughter had turned around her behavior problems, "was functioning above 80 percent," and may no longer need her IEP. The diagnostic assessment documented, however, that

daughter continues to need mental health services, which she has received since her removal from parents' care.

The district court found not only that the children have had significant exposure to drugs, but also that the parents' continued drug use has caused them to neglect the children and this neglect is likely to "continue for a prolonged, indefinite period." *See Children of T.A.A.*, 702 N.W.2d at 708. The district court found that parents offered "essentially no testimony about what would be different if they were given *another* 'last chance.'" Thus, we conclude that clear and convincing evidence supports the district court's conclusion that father and mother neglected the duties imposed by the parent-child relationship.

III. The district court did not abuse its discretion by admitting the results of son's hair-follicle test.

On appeal, parents argue that son's hair-follicle test result, Exhibit 20, which was received over their objection, was not properly admitted into evidence. As a preliminary matter, the county argues that parents may not raise this evidentiary issue on appeal because they failed to assert it in a timely, post-trial motion to the district court.[4] *See Sauter v. Wasemiller*, 389 N.W.2d 200, 201-02 (Minn. 1986) (holding that evidentiary rulings not challenged as erroneous in a post-trial motion are not reviewable on appeal). We recognize the general rule requiring preservation of evidentiary challenges in a post-trial motion

[4] On January 12, 2018, this court filed an order questioning jurisdiction, stating that "[b]ecause appellants did not file a motion for amended findings or a new trial, it is unclear whether appellants' proposed issue challenging the admission of the drug test is within our scope of review." Both parties submitted briefing on the issues, and on January 30, 2018, this court filed an order accepting jurisdiction and referring the admissibility of the drug test to this panel to consider on the merits.

applies to termination-of-parental-rights proceedings. *See Matter of Welfare of D.D.G.*, 558 N.W.2d 481, 485 (Minn. 1997). But we may consider issues in the interests of justice. *See* Minn. R. Civ. App. P. 103.04 (providing that an appellate court may review any matter as the interests of justice may require); *see also Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002) (stating appellate courts can take "any action as the interests of justice may require") (quotation omitted). In this case, we note that parents' private legal counsel was discharged in the district court's termination order, as requested in the county's proposed order. Because the county was not prejudiced by parents' failure to raise this evidentiary issue in a post-trial motion, and the issue was fully briefed on appeal by both parties, we will consider the merits of the issue.

On appeal, parents contend that the county failed to "show appropriate foundation and chain of custody of the record" for Exhibit 20. "Evidentiary rulings concerning . . . foundation . . . are within the trial court's sound discretion and will only be reversed when that discretion has been clearly abused." *Johnson v. Washington County*, 518 N.W.2d 594, 601 (Minn. 1994) (quotation omitted). Here, the district court determined that the county provided foundation for the hair-follicle test, relying on the testimony of a test company employee, who established "what their procedure is, how these samples were collected, and [whose] testimony establishes sufficient chain of custody to establish reliability for admission." We discern no abuse of discretion. Further, in light of the other record evidence demonstrating son's declining condition while in his parents' care, we discern no reversible prejudicial error in admitting the hair-follicle evidence.

IV. The district court did not abuse its discretion when it determined that termination was in the children's best interest.

Once a district court has determined that there is a statutory basis for termination of parental rights, it must consider whether termination is in the children's best interests. *Children of J.R.B.*, 805 N.W.2d at 905. The court balances three factors: "(1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *Id.* "Competing interests include such things as a stable environment, health considerations and the child's preferences." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). The district court can consider such things as "the children's need for stability and predictability, [and a parent's] limited bond with the children." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 668 (Minn. App. 2012).

Parents assert on appeal that the district court was incorrect in determining that it was in the children's best interest to terminate their parental rights. The district court found that parents have a strong desire to parent the children, and that there is "little doubt that the parents and children love each other." But the district court noted that the children did not have an interest in preserving the parent-child relationship. The district court specifically found that the children's need for permanency in a "safe, stable, drug free home outweighs any interests the parents or the children have in maintaining the parent-child relationship."

The district court's findings addressed the children's need for access to services that will promote their physical, mental, and emotional health, and the district court also

concluded that the "past six years have shown that these critical needs have not been met in the parents' home." As previously discussed, the children have special needs and mental health issues. And, while the children were in the parents' care, they did not receive adequate mental and physical health care. Because we conclude that the district court made adequate findings with regard to each of the three required best-interest factors, and that the court's findings were supported by the record, we conclude that the district court did not abuse its discretion in concluding that termination of mother and father's parental rights was in the best interests of the children. *See R.T.B.*, 492 N.W.2d at 4.

In conclusion, we note that, while son is doing well in grandmother's care, daughter continues to struggle with her mental health, including threats of self-harm, and has been removed from grandmother's home and placed in a group home. The record further reflects that daughter objects to the group home and would like to return to her grandmother's home. In contrast, the guardian ad litem concurs with the county's decision to place daughter in a group home. This conflict may indicate that further review by the county or the district court is appropriate and that daughter may be entitled to separate legal representation.[5] On August 21, 2017, the district court appointed an attorney for daughter. Based on our review of the record, daughter met with counsel. The district court conducted

[5] At the emergency placement hearing on August 3, 2017, the district court indicated that daughter, who was ten years old, should attend the next hearing so the court could inquire whether she wanted to exercise her right to legal counsel. *See* Minn. Stat. § 260C.163, subd. 3(d) (Supp. 2017) (providing that "where the subject of a [CHIPS petition] is ten years of age or older" the social services agency shall inform "the child of the child's right to be represented by appointed counsel").

a hearing on September 19, during which daughter was sworn, questioned, and waived her right to counsel. In a subsequent written order, the district court found that daughter's waiver of counsel was voluntary and intelligent.[6] While we recognize that daughter waived legal representation before the termination trial commenced, she is older now and her circumstances have changed substantially.[7] *See* Minn. Stat. § 260C.163, subd. 3(g) (providing that "in any proceeding where the subject of a [CHIPS petition] is not represented by an attorney, the court shall determine the child's preferences regarding the proceedings, including informing the child of the right to appointed counsel and asking whether the child desires counsel, if the child is of suitable age to express a preference"). Thus, we remand for the district court to revisit the appointment of legal representation for daughter.

Affirmed and remanded.

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[6] The appellate record does not include the relevant hearing transcript, but does include the hearing notes. And, for reasons that are unclear, the record constructed for this appeal included an unsigned copy of this order but lacked a signed copy of the order. Review of the district court's register of actions, however, shows that the district court file does, in fact, include a signed copy of this order. For purposes of this appeal, we consider the signed copy of the order.

[7] We urge the district courts to cautiously evaluate a child's waiver of right to counsel; in this case, we note concerns about the daughter's young age, her diagnoses, and the difficult emotional circumstances. Minn. Stat. § 260C.163, subd. 10(b) (Supp. 2017) (providing that waiver must be "voluntarily and intelligently" made, and to "determin[e] whether a child has voluntarily and intelligently waived the right to counsel, the court shall look to the totality of the circumstances which includes but is not limited to the child's age, maturity, intelligence, education, experience, and ability to comprehend, and the presence and competence of the child's parents, guardian, or guardian ad litem").