STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2247, A10-2248

In the Matter of the Welfare of the Child of:
S.A.K. and P.M.P., Parents (A10-2247)

and

In the Matter of the Welfare of the Children of:
S.A.K., P.M.P., M.A.W., and M.L.D., Parents (A10-2248).

Filed August 22, 2011
Affirmed
Wright, Judge

Aitkin County District Court
File Nos. 01-JV-09-627, 01-JV-10-373

Erik A. Christensen, Aitkin, Minnesota (for appellant P.M.P.)

Erica Austad, Grand Rapids, Minnesota (for appellant S.A.K.)

Raymond Horton III, Aitkin, Minnesota (for respondent Guardian ad Litem)

James P. Ratz, Aitkin County Attorney, Sarah Winge, Assistant Aitkin County Attorney, Aitkin, Minnesota (for respondent Aitkin County Health and Human Services)

Considered and decided by Wright, Presiding Judge; Shumaker, Judge; and Connolly, Judge.

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

WRIGHT, Judge

In these consolidated appeals, appellant-mother challenges the district court's termination of her parental rights to three of her children and appellant-father challenges the district court's termination of his parental rights to his child. Appellant-mother argues that the district court erred by (1) concluding that she is palpably unfit to be a party to the parent-and-child relationship, (2) failing to address the best interests of the children, (3) declining to reinstate the party status of the children's maternal grandparents, and (4) denying her motion to vacate the termination-of-parental-rights order based on her claim of ineffective assistance of counsel. Appellant-father argues that the district court erred by concluding that he abandoned his child and by failing to address the best interests of the child. We affirm.

FACTS

The three children of appellant-mother S.A.K., who are the subjects of this appeal, ranged in age from 5 to 10 years old when S.A.K.'s parental rights to the children were terminated. The children are J.M.K.-P., born September 12, 2000; C.M.K., born December 11, 2003; and G.A.K., born March 14, 2005. S.A.K. also has two younger children who are not subject to the parental-rights-termination decision; the father of these children is J.S. Appellant P.M.P. is the father of J.M.K.-P. The fathers of C.M.K. and G.A.K. had their parental rights terminated previously, and they are not involved in this case.

On March 17, 2009, S.A.K. contacted Aitkin County (county) and requested foster-care placement of her five children because she was the victim of domestic violence perpetrated by J.S., lacked housing, and suffered from untreated mental-health problems. The county placed all five children in foster care on that date under the terms of a Voluntary Placement Agreement. The county advised S.A.K. that she could request the return of her children but the county could initiate child-protection proceedings if appropriate.

S.A.K. resided with J.S. in a van until a domestic altercation occurred on March 31, 2009. She then moved to a women's shelter for approximately three weeks. During this time, S.A.K. requested the return of her children but agreed to obtain housing first. In late April, S.A.K. left the women's shelter and moved into an apartment. The county returned S.A.K.'s two youngest children to her custody in May 2009. During this time, S.A.K. maintained regular contact with J.S.

The county petitioned the district court on May 22 to declare J.M.K.-P., C.M.K., and G.A.K. in need of protection or services. S.A.K. subsequently admitted that J.M.K.-P., C.M.K., and G.A.K. were children in need of protection or services, and the district court granted the children in need of protection or services (CHIPS) petitions for those three children. On August 21, 2009, the district court adopted an out-of-home placement plan for each child that required S.A.K., among other things, to (1) maintain a stable residence free of physical or emotional abuse, (2) permit only caregivers who were preapproved by the county to supervise the children, (3) maintain employment or other consistent income, (4) maintain utility service without shutoffs or threatened shutoffs,

(5) refrain from the use or abuse of drugs or alcohol, and (6) attend to her own mental-health needs. The district court subsequently prohibited J.S. from having unsupervised contact with any of S.A.K.'s children.

S.A.K. and her two youngest children continued to see J.S. approximately twice weekly without supervision. In early 2010, the district court ordered J.S. to have no contact with S.A.K. and amended the out-of-home placement plans to prohibit all contact between J.S. and any children in S.A.K.'s household. But S.A.K. and J.S. did not comply with the order. S.A.K. and J.S. went to a casino together in August 2010; and on one occasion that month, J.S. dined at S.A.K.'s home with her two youngest children. Records from S.A.K.'s therapist reflect ongoing contact between S.A.K. and J.S. in violation of the no-contact order. In addition, S.A.K. permitted three caregivers who had not been pre-approved by the county to supervise her two youngest children, her utilities were shut off on one occasion and she received multiple shutoff notices for failure to pay her utility bills, she used marijuana daily, she provided false information to her service providers about her drug use until February 2010, and she was terminated from therapy with an individual counselor and twice required to restart dialectical behavioral therapy because of excessive absences.

On May 11, 2010, the county filed termination-of-parental-rights (TPR) petitions, seeking to terminate S.A.K.'s parental rights to J.M.K.-P., C.M.K., and G.A.K. and to terminate P.M.P.'s parental rights to J.M.K.-P. The county considered placing the children with their maternal grandparents in Arizona. But the children's maternal grandparents did not complete a required home study and were not approved through the

Interstate Compact for the Placement of Children (ICPC). The county also considered placing J.M.K.-P. with his father, P.M.P., in Arizona. But P.M.P. failed to contact the social-services agency, did not respond to inquiries from the county, and was not approved through the ICPC. Although P.M.P. initially agreed to meet with a county supervisor in Arizona, he did not return the county supervisor's voicemail messages to schedule an appointment.

Because a statewide policy change in Minnesota reduced the number of guardians ad litem, the initial guardian ad litem (GAL) involved in this case was no longer employed by the state after July 1, 2010. For this reason, the district court appointed a new GAL in July 2010. The new GAL initially supported placement of the children with their maternal grandparents, as recommended by her predecessor. But the grandparents stopped responding to communications from the GAL and later refused to participate in any evaluations to determine whether placement of the children with them would be appropriate. The new GAL also learned that the children's maternal grandfather had several outstanding arrest warrants from Maryland for charges including assault and eluding law enforcement. These factors led the GAL to withdraw her support for transferring custody of the children to their maternal grandparents.

On August 24, 2010, S.A.K. moved the district court to appoint substitute counsel. But she withdrew her motion approximately one week later. The county subsequently moved the district court to determine whether S.A.K. was receiving effective assistance of counsel. At a September 20, 2010 hearing on that motion, at S.A.K.'s request, S.A.K. testified in camera on the record without her attorney present. S.A.K. testified that her

attorney, Jennifer Cummings, was "a good attorney and she's done her job and I just, I tend to freak out and I take things . . . a little too far." S.A.K. did not seek substitute counsel, and the district court took no further action on this issue. Also at the September 20 hearing, S.A.K. moved the district court to appoint counsel for J.M.K.-P. The district court denied this motion, finding that, as a participant rather than a party, J.M.K.-P. would not be permitted to examine witnesses or present evidence; J.M.K.-P.'s preferences would be effectively conveyed through the GAL and social worker; and the appointment of counsel for J.M.K.-P. would not be in the child's best interests because it likely would delay the proceedings.

On the first day of trial, attorney John Chitwood appeared on behalf of the children's maternal grandparents, who had intervened as parties in the TPR case. Chitwood advised the district court that his clients did not plan to appear, they wished to "express their frustration with [the] entire process," and they had instructed Chitwood "not to participate" in the proceedings. Chitwood also advised the district court that his clients advised him the previous evening that "they are aware of the ramifications and they have expressed their desire to simply remove themselves from this process." The district court dismissed the maternal grandparents as parties to the TPR case. Three days later, Chitwood advised the district court that the grandparents would like to "rejoin or reintervene as parties." The district court denied the motion.

On November 29, 2010, the district court terminated S.A.K.'s parental rights to J.M.K.-P., C.M.K., and G.A.K., and terminated P.M.P.'s parental rights to J.M.K.-P. The district court concluded that the county established by clear and convincing evidence that

S.A.K.'s parental rights should be terminated because (1) she has continuously or repeatedly refused or neglected to comply with the duties imposed on her by the parent-and-child relationship, (2) she is palpably unfit to be a party to the parent-and-child relationship because of a consistent pattern of specific conduct, (3) the county's reasonable efforts under the direction of the district court have failed to correct the conditions leading to the children's out-of-home placement, and (4) the children are neglected and in foster care. The district court also concluded that the county established by clear and convincing evidence that P.M.P.'s parental rights to J.M.K.-P. should be terminated because (1) P.M.P. has continuously or repeatedly refused or neglected to comply with the duties imposed on him by the parent-and-child relationship and (2) he abandoned J.M.K.-P. The district court also concluded that the county made reasonable efforts to rehabilitate or reunite the family and that the termination of S.A.K.'s and P.M.P.'s parental rights is in the best interests of the children. The district court denied S.A.K.'s motion for a new trial as untimely.

Subsequently, S.A.K. advised a county social worker that she provided prescription medication to her attorney, Cummings, before and during the trial. S.A.K. told the social worker that she suspected that Cummings had been stealing S.A.K.'s prescription medication since February 2010. And S.A.K. stated that she obtained methamphetamine for Cummings after the trial at Cummings's request. The district court appointed new counsel for S.A.K., who subsequently moved the district court to vacate the TPR order because S.A.K. received ineffective assistance of counsel. S.A.K. filed an affidavit regarding Cummings's alleged misconduct, including an allegation that

the police arrested Cummings in January 2011 after a controlled-buy operation was conducted at S.A.K.'s home.

The district court denied S.A.K.'s motion, observing that the allegations are "extremely troubling" but that S.A.K. exhibited a "complete lack of credibility" during previous proceedings and provided no evidence corroborating her allegations. The district court also concluded that S.A.K. "has not met her burden of showing that the result of her termination proceeding would have been different but for the unprofessional errors of her attorney." This appeal followed.

D E C I S I O N

I.

S.A.K. and P.M.P challenge the district court's decision to terminate their parental rights. Our review of the district court's decision to terminate parental rights is limited to determining whether the district court's findings address the statutory criteria and whether they are supported by substantial evidence. *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997). Although the district court terminated S.A.K.'s and P.M.P.'s parental rights on multiple statutory grounds, we will not disturb the district court's decision to terminate parental rights if there is clear and convincing evidence establishing at least one of the grounds for termination of parental rights set forth in Minn. Stat. § 260C.301, subd. 1(b) (2010), and if termination of parental rights is in the child's best interests. Minn. Stat. § 260C.301, subd. 7 (2010); *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

The best-interests analysis in a TPR proceeding requires the district court to balance the child's interest in preserving the parent-and-child relationship, the parent's interest in preserving the parent-and-child relationship, and any competing interests of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include . . . a stable environment, health considerations and the child's preferences." *R.T.B.*, 492 N.W.2d at 4. In a termination proceeding, the child's interests are the paramount consideration, provided that at least one statutory basis for termination is present. Minn. Stat. § 260C.301, subd. 7. When there is evidence supporting the district court's best-interests determination, it is not our province to substitute our judgment for the district court's balancing of best-interests considerations. *See In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003) (citing *Schmidt v. Schmidt*, 436 N.W.2d 99, 105 (Minn. 1989)) (stating that district court's best-interests determination "is generally not susceptible to an appellate court's global review of a record" and that "an appellate court's combing through the record to determine best interests is inappropriate because it involves credibility determinations").

A.

1.

S.A.K. challenges the district court's determination that there is clear and convincing evidence that she is palpably unfit to be a party to the parent-and-child relationship.[1] A district court may terminate the parental rights of a parent who is "palpably unfit to be a party to the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(4). A parent is palpably unfit if "specific conditions directly relating to the parent and child relationship" are of such a duration or nature that they render the parent "unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child." *Id.* A parent's mental illness or chemical dependency may support a determination of palpable unfitness if it contributes to the parent's present and foreseeable inability to care appropriately for the child. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 663 (Minn. 2008).

The district court found, and the record reflects, that S.A.K. has psychological and chemical-dependency problems that contribute to her inability to recognize and remedy her parenting deficiencies. S.A.K. failed to comply with case-plan requirements prohibiting the use of drugs and alcohol. She testified that she used marijuana almost daily from May 2009 until February 2010 while her two youngest children were in her

[1] S.A.K. does not challenge the three additional statutory grounds that the district court relied on to terminate her parental rights. We will not disturb the district court's decision to terminate parental rights if there is clear and convincing evidence establishing at least one of the grounds for termination of parental rights set forth in Minn. Stat. § 260C.301, subd. 1(b). Nonetheless, we will address S.A.K.'s challenge to the district court's palpable-unfitness determination.

care, she lied to her service providers about her drug use until her county case manager confronted her, and she kept drug paraphernalia in locations accessible to the children. S.A.K. also testified that, between February 2010 and September 2010, she consumed alcohol about four or five times in her home, and S.A.K.'s Adult Rehabilitative Mental Health Services (ARMHS) worker's notes from approximately one month before the TPR trial reflect that S.A.K. "reports being hung over" and "[p]artied last night." S.A.K. also was discharged from an individual counselor and had to restart dialectical behavioral therapy twice because of excessive absences.

S.A.K. testified that J.S. has committed domestic abuse in the presence of the children, and she suspects that J.S. has abused some of the children. But S.A.K. permitted J.S. to have unsupervised contact with her and her two younger children approximately twice a week during 2009. The district court also found, and the record reflects, that despite a court order and out-of-home placement plans prohibiting J.S. from having contact with S.A.K. or any of the children in S.A.K.'s household, S.A.K. and J.S. went to a casino together and on another occasion dined together at S.A.K.'s home with her two youngest children. Records from S.A.K.'s therapist, which the district court found credible, also indicate ongoing contact between S.A.K. and J.S. in violation of the district court's no-contact order.

Before terminating parental rights, the district court also must find that the responsible social services agency made reasonable efforts to reunite the child and the parent. Minn. Stat. § 260C.301, subd. 8 (2010); *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). "Reasonable 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 specific needs of the child and the child's family in order to reunite the family. Minn. Stat. § 260.012(f)(2) (2010); *see In re Welfare of M.A.*, 408 N.W.2d 227, 235-36 (Minn. App. 1987) (describing reasonable-efforts requirements), *review denied* (Minn. Sept. 18, 1987). Whether services constitute "reasonable efforts" depends on the nature of the problem, the duration of the county's involvement, and the quality of the county's effort. *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990); *see also* Minn. Stat. § 260.012(h) (2010) (listing considerations). "Services must go beyond mere matters of form so as to include real, genuine assistance." *H.K.*, 455 N.W.2d at 532.

The district court found that the county provided more than 50 services to the children and S.A.K., including medical, dental, and psychiatric services; transportation; foster-care placement; food and clothing; supervised visitation with S.A.K. and the children's siblings; child-protection case management; consultation with service providers; referrals for medication management, a chemical-use assessment, and counseling; telephone cards; daycare assistance; parenting education; and relative search efforts, including contact with the fathers of C.M.K. and G.A.K. Although the record supports these undisputed findings, S.A.K. contends that the county should have done more. Given S.A.K.'s extensive noncompliance with her case plan, any additional efforts by the county likely would have been futile. *S.Z.*, 547 N.W.2d at 892 (observing that reasonable efforts do not include efforts that would be futile). The record reflects that S.A.K. testified that she could think of no additional efforts that the county should have

made to assist her. And the district court found, as the record demonstrates, the only service that S.A.K. requested that the county did not provide was financial assistance to obtain a vehicle.

Our careful review establishes that there is substantial evidence supporting the district court's determinations that S.A.K. is palpably unfit to parent her children and that the county made reasonable efforts to reunite S.A.K. with her children.[2]

2.

S.A.K. also argues that the district court failed to address the best interests of the children. The district court considered several factors supporting the children's and S.A.K.'s interests in preserving the parent-and-child relationship. S.A.K.'s ARMHS worker testified that S.A.K. is able to handle having all five children in her care, and a child psychologist and county social worker both testified that the children express affection for and attachment to S.A.K. The GAL testified that J.M.K.-P. advised her in August and October 2010 that he wished for his siblings and himself to return home to S.A.K. The district court adopted these facts. Moreover, although S.A.K. contends that the district court erroneously denied her pretrial motion to appoint counsel to represent J.M.K.-P., the record supports the district court's determination that appointing counsel for J.M.K.-P. would have delayed the proceeding, which was not in J.M.K.-P.'s best

[2] S.A.K. also raises several challenges to the district court's evidentiary rulings, which we review in a civil proceeding only if the rulings have been assigned as error in a motion for a new trial. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 309-10 (Minn. 2003). The district court dismissed S.A.K.'s motion for a new trial because her attorney, Cummings, filed the motion 16 days after the TPR order was filed, which is untimely under Minn. R. Juv. Prot. P. 45.01, subd. 1. Thus, these evidentiary challenges are not preserved for appellate review.

interests, and that J.M.K.-P.'s preferences were effectively conveyed through the GAL and social worker.

The district court also considered the competing interests of the children. The district found that all three children have special needs arising from behavioral problems, including a reduced capacity to trust and engage with adults caused by inconsistent, unreliable, and harmful caregiving. The district court also considered S.A.K.'s noncompliance with her case plan, including such factors as her inability to provide financially for her household or to pay for and maintain utility services, her use of drugs and alcohol, her untruthfulness about that conduct, her use of child caretakers who had not been preapproved by the county, her failure to comply with court orders prohibiting contact between J.S. and herself or her children, and her failure to consistently attend therapy. The district court found that, despite S.A.K.'s stated belief that she can safely parent her five children at the same time, S.A.K. has shown an inability to manage and safely parent J.M.K.-P., C.M.K., and G.A.K. at the same time, as made evident by reports from county social services workers and two GALs. In addition, the district court found that J.M.K.-P. advised the GAL that his life is better in foster care and that the GAL recommended against returning the children to S.A.K.'s custody.[3]

[3] S.A.K. contends that the district court erred by appointing a new GAL three months before trial. But the record reflects that the previous GAL was no longer employed by the state after July 1, 2010, because a statewide policy change resulted in reducing the number of GALs. Thus, the district court could not retain the previous GAL, and the district court did not err by appointing a new GAL. Moreover, the record reflects substantial similarities between the observations of the two GALs.

The district court addressed the competing interests of S.A.K. and her children and made ample findings in support of its conclusion that termination of S.A.K.'s parental rights to J.M.K.-P., C.M.K., and G.A.K. is in the children's best interests.

B.

1.

P.M.P. argues that the district court's determination that he abandoned J.M.K.-P. lacks sufficient evidentiary support. Abandonment under Minn. Stat. § 260C.301, subd. 1(b)(1) (2010), requires both actual desertion and an intention to forsake parental duties. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 398 (Minn. 1996). To satisfy the statute, the abandonment must be intentional rather than the result of misfortune or misconduct. *Id.* A parent's failure to have contact with the child, failure to show consistent interest in the child's well-being, and failure to offer help with child-rearing expenses are factors that support a district court's conclusion that the parent has abandoned the child. *Id.* at 398-99. Inferences as to a parent's intentions are best made by the district court and will not be disturbed on appeal. *Id.* at 399.

P.M.P. contends that the district court's finding that he intentionally abandoned J.M.K.-P. is clearly erroneous because his failure to maintain contact with J.M.K.-P. is the result of financial hardship and his lack of knowledge about where J.M.K.-P. resided. Parental abandonment is presumed when, without a showing of good cause, "the parent has had no contact with the child on a regular basis and [has] not demonstrated consistent interest in the child's well-being for six months." Minn. Stat. § 260C.301, subd. 2(a)(1) (2010). A showing of good cause may include an extreme financial hardship, an extreme

physical hardship, or treatment for a mental disability or a chemical dependency that has "prevented the parent from making contact with the child." *Id.* Absent the statutory presumption of parental abandonment, such abandonment may be found when a parent has deserted the child and intends to forsake the duties of parenthood. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

Regarding the presumption of abandonment, the record reflects that, in the six months before the TPR trial, P.M.P. did not have regular contact with J.M.K.-P. or demonstrate consistent interest in J.M.K.-P.'s well-being. P.M.P. did not visit or otherwise communicate with J.M.K.-P. during that six-month period, he did not pay child support for J.M.K.-P. during that period, he failed to respond to inquiries from the county, and he spoke with the GAL for the first time approximately two weeks before the TPR trial. Moreover, the financial hardship that P.M.P. asserts does not explain his failure to call J.M.K.-P., correspond with the county, or make other efforts to maintain contact with J.M.K.-P. The record demonstrates that P.M.P. has been employed for two years and has no physical or mental disability or chemical-dependency problems affecting his ability to contact J.M.K.-P. The district court acknowledged that the county denied P.M.P.'s request to visit J.M.K.-P. several months before the TPR trial. But it concluded, based on the entire record, that P.M.P. had not maintained a consistent interest in J.M.K.-P.'s well-being. This conclusion is amply supported by the record and the district court's findings. Thus, the district court correctly determined that the presumption of abandonment applied.

In addition, the district court found that P.M.P. has not seen J.M.K.-P. in person since 2007, he has not attempted to visit J.M.K.-P., he owes approximately $13,000 in unpaid child support for J.M.K.-P., and J.M.K.-P. has never received cards or gifts for his birthday or holidays except for the birthday card he received approximately one month before trial. The findings also establish that P.M.P. failed to complete a home study arranged by the county in early 2010, he declined to return telephone calls from the county or to meet with a county social worker in March 2010, and he has requested contact with J.M.K.-P. or services from the county on only two occasions. These findings amply support the district court's conclusion that P.M.P. abandoned J.M.K.-P. even absent a presumption of abandonment.

Before terminating parental rights, the district court must find that the responsible social services agency made reasonable efforts to reunite the child and the parent. Minn. Stat. § 260C.301, subd. 8; *S.Z.*, 547 N.W.2d at 892. The nature of the problem, the duration of the county's involvement, and the quality of the county's effort inform the determination of whether "reasonable efforts" were made. *H.K.*, 455 N.W.2d at 532; *see also* Minn. Stat. § 260.012(h) (listing considerations). "Services must go beyond mere matters of form so as to include real, genuine assistance." *H.K.*, 455 N.W.2d at 532.

The district court concluded that the county's reasonable efforts have either failed or would be futile. A county's reasonable efforts need not include efforts that would be futile. *S.Z.*, 547 N.W.2d at 892. P.M.P. contends that the county failed to develop a case plan for him, as it did with S.A.K. But the district court found that P.M.P. failed or refused to correspond with the county or cooperate with the county's attempts to conduct

evaluations of P.M.P. Indeed, the record demonstrates that the county attempted to contact P.M.P. on multiple occasions, left voicemail messages, made referrals to an Arizona social services agency, and attempted to meet with P.M.P. in Arizona. But P.M.P. failed to communicate or cooperate with the county. Thus, the record and the district court's findings amply support the district court's conclusion that the county's reasonable efforts to reunite P.M.P. and J.M.K.-P. either failed or would be futile.

For these reasons, we conclude that the district court's determinations that P.M.P. abandoned J.M.K.-P. and that the county made reasonable efforts to reunite P.M.P. with J.M.K.-P. are supported by substantial evidence.[4]

2.

P.M.P. also argues that the district court failed to address the best interests of J.M.K.-P. Germane to P.M.P.'s interests in preserving the parent-and-child relationship, the district court found, and the record reflects, that P.M.P. has rarely visited or attempted to make contact with J.M.K.-P., P.M.P. stopped paying child support for J.M.K.-P. and owes approximately $13,000 in unpaid child support for J.M.K.-P., and P.M.P. had no knowledge of J.M.K.-P.'s special needs until hearing the testimony at trial. J.M.K.-P. received a birthday card from P.M.P. approximately one month before trial, and he recognized a picture of P.M.P.'s daughter in the card. The district court found, based on the GAL's testimony, that this was the first card or gift that J.M.K.-P. had ever received

[4] Because the district court's decision to terminate P.M.P.'s parental rights to J.M.K.-P. is supported by clear and convincing evidence establishing abandonment, we need not address whether P.M.P. failed to comply with or neglected the duties imposed by the parent-and-child relationship. *See* Minn. Stat. § 260C.301, subd. 1(b) (providing that district court need only establish one statutory ground for termination of parental rights).

from P.M.P. Thus, P.M.P.'s interest in preserving the parent-and-child relationship was considered by the district court and rejected as de minimus. The district court also found that J.M.K.-P. requires structure, consistency, and vigilant supervision. According to the district court's findings, J.M.K.-P. has special needs arising from behavioral problems that include a reduced capacity to trust and engage with adults caused by inconsistent, unreliable, and harmful caregiving. Our review establishes that the district court's findings are more than sufficient to support its conclusion that it is in J.M.K.-P.'s best interests to terminate P.M.P.'s parental rights.

II.

S.A.K. argues that the district court abused its discretion by declining to reinstate the party status of the children's maternal grandparents. As a threshold matter, we must determine whether S.A.K. has standing to seek relief on this issue on behalf of the children's maternal grandparents. "Standing to appeal may be conferred by a statute or by the appellant's status as an aggrieved party." *In re Custody of D.T.R.*, 796 N.W.2d 509, 513 (Minn. 2011); *see also* Minn. Stat. § 260C.415, subd. 1 (2010) (providing that "[a]n appeal may be taken by the aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person"). Whether an appellant is an aggrieved party depends on whether the appellant has suffered an injury to a legally protected right. *D.T.R.*, 796 N.W.2d at 513. A party may not raise an issue on behalf of an aggrieved third party that is not a party to the case. *See In re Estate of Mealey*, 695 N.W.2d 143, 147 (Minn. App. 2005) (holding that appellant lacked standing on appeal because appellant cannot "step into the shoes" and defend the interests of a third party

that declined to intervene); *State by Cooper v. Sports & Health Club, Inc.*, 438 N.W.2d 385, 390 (Minn. App. 1989) (holding that appellant "failed to show how *he* has standing to raise [an] issue on behalf of [a third party]" when that third party did not intervene).

The district court initially granted party status to the grandparents and rescinded it at their request. S.A.K. does not allege, and we do not identify, an injury to any legally protected right of S.A.K. caused by the district court's decision not to reinstate the party status of the children's grandparents. Neither the party status of the grandparents nor the fact that the grandparents may have presented a permanency option for the children had any bearing on S.A.K.'s parental rights or the termination thereof. Accordingly, S.A.K.'s legally protected rights were not injured, and she lacks standing to seek relief on appeal on behalf of the children's maternal grandparents.

III.

A.

S.A.K. argues that the district court erred by denying her motion to vacate the TPR order based on her claim of ineffective assistance of counsel. Minnesota law provides a parent a "right to effective assistance of counsel in connection with a proceeding in juvenile court." Minn. Stat. § 260C.163, subd. 3(a) (2010); *In re Welfare of Child of S.L.J.*, 772 N.W.2d 833, 839 (Minn. App. 2009), *aff'd*, 782 N.W.2d 549 (Minn. 2010); *accord* Minn. R. Juv. P. 25.01. To prevail on a claim of ineffective assistance of counsel, S.A.K. must demonstrate that (1) her counsel's performance fell below an objective standard of reasonableness and (2) she was prejudiced by her counsel's performance. *See State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998) (citing *Strickland v. Washington*, 466

U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)); *Beaulieu v. Minn. Dep't of Human Servs.*, 798 N.W.2d 542, 550 (Minn. App. 2011) ("If a person claims that he was denied [a] statutory right to counsel, this court analyzes the claim by borrowing the [*Strickland*] analytical framework ordinarily used in criminal cases when applying the Sixth Amendment right to counsel); *see also In re Welfare of L.B.*, 404 N.W.2d 341, 345 (Minn. App. 1987) (applying *Strickland* standard in juvenile delinquency context); *State v. T.L.*, 751 N.W.2d 677, 685 (N.D. 2008) (applying *Strickland* standard in TPR context); *In re M.S.*, 115 S.W.3d 534, 544-45 (Tex. 2003) (same); *In re M.D.(S).*, 485 N.W.2d 52, 55 (Wis. 1992) (same). The burden of proof on this claim rests with the appellant, who must overcome the "strong presumption that counsel's performance fell within a wide range of reasonable assistance." *Gail v. State*, 732 N.W.2d 243, 248 (Minn. 2007); *see also Strickland*, 466 U.S. at 689, 104 S. Ct. at 2065 (noting that judicial review should be "highly deferential" to counsel's performance). When the appellant fails to prove either counsel's deficient performance or resulting prejudice, the appellant's claim of ineffective assistance of counsel fails. *State v. Blanche*, 696 N.W.2d 351, 376 (Minn. 2005); *see also Strickland*, 466 U.S. at 687, 104 S. Ct. at 2064 (requiring proof of both prongs).

S.A.K. moved the district court to vacate the TPR order based on ineffective assistance of counsel. With her motion, S.A.K. filed an affidavit alleging that S.A.K. provided prescription medication to Cummings before and during the trial; S.A.K. suspected that Cummings had been stealing S.A.K.'s prescription medication after the trial; and S.A.K. obtained methamphetamine for Cummings after trial at Cummings's

request, which culminated in Cummings's arrest in January 2011. S.A.K.'s affidavit also alleges that Cummings suffered from mood swings throughout the trial, Cummings directed S.A.K. to pretend to be sick to obtain a continuance, Cummings failed to return S.A.K.'s telephone calls, and Cummings supplied S.A.K. with samples of Cummings's urine so that S.A.K.'s drug use would not be detected through drug testing. If true, this conduct is unreasonable and satisfies the first prong of the test for ineffective assistance of counsel.

In its findings, the district court observed that S.A.K. reported some lack of communication between herself and Cummings before trial; Cummings filed untimely written arguments after trial, which the district court nonetheless "read and carefully considered" with the arguments of the other parties; and the police arrested Cummings for possession of a controlled substance following a controlled buy in January 2011. But the district court explained that, in rendering its TPR decision, it relied heavily on the testimony of the GAL and two social services professionals, which is evidence that would not have been different if S.A.K. had different counsel. The district court also found that it received and relied on a wealth of evidence addressing S.A.K.'s progress with her case plan and her fitness as a parent.

"We neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder." *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). Rather, we defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). The district court credited Cummings with being "extremely thorough in presenting her client's cause,"

finding that "throughout the [TPR] trial, Attorney Cummings was prepared and had a well thought out trial strategy. She conducted meaningful and thorough cross-examinations of each of [the county's] witnesses and the GAL. She also offered numerous exhibits and presented several witnesses who testified on [S.A.K.'s] behalf." Based on its observations of Cummings during the trial proceedings, the district court rejected S.A.K.'s allegation that Cummings exhibited behavior consistent with mood swings. The district court reasoned that S.A.K.'s allegations are "extremely troubling" but that S.A.K. demonstrated a "complete lack of credibility" throughout her involvement with the county by lying to social services providers and other professionals, by admitting that she previously committed perjury to obtain an order for protection against P.M.P., and by providing inconsistent testimony. In rejecting S.A.K.'s motion, the district court also relied on the absence of any evidence corroborating most of her allegations. The district court concluded that S.A.K. did not meet her burden of showing that the TPR proceeding would have resulted in a different outcome but for the unprofessional conduct of her attorney.

On appeal, one aspect of prejudice that S.A.K. alleges from Cummings's representation is the failure to have the children placed with their maternal grandparents. The record does not support S.A.K.'s contention that this outcome is attributable to her counsel's representation or unprofessional conduct. The district court observed that, even if Cummings had filed an alternative petition to place the children with their maternal grandparents, "it is highly unlikely the outcome would have been different" because the grandparents "stopped cooperating with [the county] to get the necessary ICPC approval

for placement." Indeed, the grandparents did not participate in the TPR trial, they did not file an alternative-placement petition, they failed to cooperate with the county, and they did not receive ICPC approval. Because these circumstances are unrelated to the effectiveness of S.A.K.'s counsel, S.A.K. has not demonstrated that the children would have been placed with their maternal grandparents but for Cummings's errors.

To support the prejudice prong of her ineffective-assistance-of-counsel claim, S.A.K. also relies on Cummings's failure to preserve the issues raised in her untimely motion for a new trial. But S.A.K. does not establish how any of the issues forfeited by that error would have affected the outcome of the case.[5] S.A.K. has failed to demonstrate that, but for Cummings's failure to file a timely motion for a new trial, the results of the TPR proceeding would have been different. Accordingly, the district court did not err by rejecting S.A.K.'s claim of ineffective assistance of counsel on this basis.

[5] For example, in the motion for a new trial, S.A.K. argued that diagnostic assessments of her children lacked foundation. But the record establishes who prepared each assessment, that a county social worker received the assessments in the course of her duties as case manager, and that the assessments were kept in the social worker's case file. *See In re Welfare of Brown*, 296 N.W.2d 430, 433, 435 (Minn. 1980) (holding that psychologist's report concerning child's emotional condition is admissible as business record under Minn. R. Evid. 803(6) when kept in social worker's file as regular business practice). S.A.K. also sought a new trial on the ground that the district court erred by admitting in evidence a document reflecting the purported amount of time and money the county expended on matters relating to S.A.K.'s children. But such evidence is relevant to the requisite determination of whether reasonable efforts were employed by the county. Moreover, even without that relevant evidence, there is ample evidence establishing the reasonable efforts of the county. Thus, the forfeiture of these issues on appeal is not prejudicial. *See In re Welfare of S.R.A.*, 527 N.W.2d 835, 838 (Minn. App. 1995) (refusing to reverse termination of parental rights for harmless evidentiary error), *review denied*, (Minn. Mar. 29, 1995).

B.

S.A.K. also argues that she was deprived of effective assistance of counsel during critical stages of the TPR proceeding, which constitutes a structural error that warrants automatic reversal. "[S]tructural errors are defects in the constitution of the trial mechanism, which defy analysis by harmless-error standards." *State v. Dorsey*, 701 N.W.2d 238, 252 (Minn. 2005) (quotation omitted). For example, the complete denial of counsel at a critical stage of a criminal proceeding is a structural error that warrants reversal "without inquiring into counsel's actual performance or requiring the defendant to show what effect counsel's representation had at trial." *State v. Edwards*, 736 N.W.2d 334, 338 (Minn. App. 2007) (citing *United States v. Cronic*, 466 U.S. 648, 659-62, 104 S. Ct. 2039, 2047-48 (1984)), *review denied* (Minn. Sept. 26, 2007). The burden is on the party asserting structural error to demonstrate circumstances that warrant inclusion in this "narrow exception" to *Strickland*. *State v. Dalbec*, ___ N.W.2d ___, ___, 2011 WL 3111891, at *3 (Minn. July 27, 2011).

Prejudice need not be shown when a party has been denied counsel at a critical stage because such error affects a constitutional right. *Cronic*, 466 U.S. at 659-60, 104 S. Ct. at 2047. But the right to effective assistance of counsel in a TPR proceeding arises from Minnesota Statutes, not the Minnesota Constitution or the United States Constitution. Minn. Stat. § 260C.163, subd. 3(a); *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 31-32, 101 S. Ct. 2153, 2162 (1981) (holding that a parent has no federal constitutional right to counsel in TPR proceedings); *In re Welfare of the Children of J.B.*, 782 N.W.2d 535, 540 (Minn. 2010) (observing that constitutional right to counsel exists

in criminal proceedings, but in other contexts the right to counsel is based on statutory provisions rather than the constitution). S.A.K. has not cited any legal authority in support of a Minnesota constitutional right to counsel in a TPR proceeding that could give rise to the application of a critical-stage analysis or structural-error analysis in a TPR proceeding.

Indeed, the critical-stage analysis is used in a criminal proceeding or in a proceeding that is inextricably intertwined with a criminal proceeding. *See, e.g.*, *Friedman v. Comm'r of Pub. Safety*, 473 N.W.2d 828, 832-33 (Minn. 1991) (holding that defendant has right to counsel at chemical-testing stage of DWI proceeding because chemical testing is "inextricably intertwined with an undeniably criminal proceeding" (quotation omitted)); *State v. Kouba*, 709 N.W.2d 299, 304 (Minn. App. 2006) (observing that "[t]raditionally, the Sixth Amendment right to counsel attaches at the critical stages of criminal proceedings" (quotation omitted)). A TPR proceeding is neither a criminal proceeding nor "inextricably intertwined" with a criminal proceeding. *See In re Welfare of G.L.H.*, 614 N.W.2d 718, 722 (Minn. 2000) (observing that "[u]nlike criminal proceedings, TPR proceedings cannot deprive the parent of her physical liberty"). Moreover, even in criminal proceedings, the Minnesota Supreme Court has declined to extend the critical-stage analysis or structural-error analysis to circumstances when a defendant lacked the assistance of counsel for closing argument. *See Dalbec*, 2011 WL 3111891, at *3 (holding that "defense counsel's failure to submit a written closing argument does not implicate the justification for the [structural-error analysis]"). S.A.K.'s structural-error argument, based on her counsel's representation in the TPR

proceeding generally or based on her counsel's failure to file a timely motion for a new trial, therefore, fails.

Affirmed.