

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1218**

In the Matter of the Welfare of the Children of:
A. R. B. and D. T. R., Parents

**Filed January 26, 2018
Reversed and remanded
Ross, Judge**

Hennepin County District Court
File No. 27-JV-16-52

Mary F. Moriarty, Chief Hennepin County Public Defender, David W. Merchant, Assistant Public Defender, Minneapolis, Minnesota (for appellant D.T.R.)

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Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Johnson, Judge.

S Y L L A B U S

A county does not satisfy its obligation under Minnesota Statutes, section 260C.219(a)(2)(i) (2016), to make reasonable efforts to reunite a family before terminating a father's parental rights when the county fails to produce a written case plan as described in section 260C.212, subdivision 1 (2016), and the county is not excused of the obligation by a father's brief opposition to participating in developing a case plan.

O P I N I O N

ROSS, Judge

The district court terminated a father's parental rights after it found that he failed to complete a case plan to correct the conditions that led to his son's out-of-home placement. But the county's social-services agency never prepared a written case plan as required by statute, even after the father, who was incarcerated, requested one. And it made no effort to assist him in identifying any potentially suitable programming available to him while he was in prison that may have facilitated his opportunity to reunify with the child. Because the county failed to make reasonable efforts to reunite father and son, we reverse the decision terminating parental rights and remand for the district court to direct the county to provide a case plan and allow a reasonable period for the father to complete it.

F A C T S

D.T.R. and A.R.B. are the father and mother of M.W.R., who was born in January 2015. After the couple began their relationship in September 2013, D.T.R. became the stay-at-home father to A.R.B.'s other children. The romantic relationship was physically volatile and included methamphetamine use. Police responded to the couple's home several times to reports that D.T.R. abused A.R.B. or that the two were fighting. Soon after M.W.R.'s birth, the Hennepin County Human Services and Public Health Department filed a petition alleging that all of A.R.B.'s children were in need of protection or services. Beginning in early March 2015 and for the duration of the case, the children were placed in foster care.

A county social worker (the first in a string of six or seven different social workers who would be assigned to manage this case) met with D.T.R. in May 2015 about developing a reunification case plan for him. But this was before the court adjudicated any of the children to be in need of protection or services, and D.T.R. told the social worker that he would work a case plan only after one was court-ordered. The next month, D.T.R. was jailed for unrelated criminal conduct involving theft.

The following month, July 2015, the district court adjudicated the children to be in need of protection or services. D.T.R. was still incarcerated for his theft offense. At that time, the next in the series of social workers assigned to the case met with D.T.R. in the county jail. D.T.R. then told her that he realized the importance of working on a case plan to facilitate his reunification with the child, and he expressed his desire to do so. But the county did not immediately develop any case plan for D.T.R.'s consideration or for court approval.

Six months into D.T.R.'s incarceration period, in January 2016, the county petitioned the district court to terminate D.T.R.'s and A.R.B.'s parental rights. During that six months, the county still had not developed a case plan for D.T.R. or for the district court's approval. In fact, the July 2015 jailhouse meeting was the last time any county social worker even met with D.T.R. about the possibility of a case plan, and the county never developed a case plan for him to complete at any point. One other social worker (the sixth in the series of social workers assigned to the case) eventually did once telephone D.T.R. during his incarceration, but the social worker never discussed the creation of or D.T.R.'s progress in any case plan.

Meanwhile, the county did immediately initiate a case plan for A.R.B., and the district court approved it. And the record shows that the county provided A.R.B. various services to help her complete the case plan. The district court would later find that A.R.B. failed to make any significant progress on the issues that led to the out-of-home placement of the children, including A.R.B.'s domestic-violence and anger-management issues, chemical dependency, mental-health issues, parenting-deficiency issues, and home instability or homelessness. But not only did the county develop no case plan for D.T.R. to address any of these things, the record includes no evidence that the county attempted to explore any possible reunification-oriented services available to him during his incarceration before or after the county petitioned to terminate his parental rights.

The district court conducted a termination trial beginning in November 2016 and ending in April 2017. The state released D.T.R. from prison in May 2017. In June 2017, the district court terminated D.T.R.'s parental rights, finding, "In order to correct [issues that led to the child's out-of-home placement] and reunify the family, the [county] developed a case plan for [D.T.R.]." The court found also, "Despite the case plan and the reasonable efforts of the [county], . . . [D.T.R.] did not correct the issues that led to the out-of-home placement," which include domestic violence, chemical dependency, and the failure to provide a safe and stable home.

D.T.R. appeals.

ISSUE

Did the district court clearly err by finding that the county made reasonable efforts to reunite D.T.R. with his son before the district court terminated D.T.R.'s parental rights?

ANALYSIS

D.T.R. appeals from the district court's order terminating his rights to parent his son, M.W.R, arguing that the county failed to provide reasonable rehabilitative efforts to reunify him with M.W.R. We review an order terminating parental rights to determine “whether the trial court’s findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether those findings are clearly erroneous.” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). While we give considerable deference to the district court’s decision to terminate a person’s parental rights, we closely inquire into the sufficiency of the evidence to determine whether the evidence was clear and convincing. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We will affirm the district court’s termination of parental rights when a statutory ground for termination is supported by clear and convincing evidence, termination is in the best interests of the child, and the county has made reasonable efforts to reunite the family. *Id.* We decide this appeal on the last element—the county’s obligation to make reasonable efforts to reunify D.T.R. with his son.

D.T.R. argues that we must reverse the district court’s order terminating his parental rights because the county never prepared a written case plan defining the steps that he needed to take to address the conditions that led to his son’s placement. Whether a written case plan is required is a question of statutory interpretation, which we review de novo. *In re Welfare of J.J.P.*, 831 N.W.2d 620, 264 (Minn. 2013). When a statute is unambiguous, we apply its plain language. *Id.*

The operative statute here is plain and clear in every relevant particular. One provision states that if a social-services agency determines that a child must be removed from a parent, the agency “shall . . . prepare an out-of-home placement plan addressing the conditions that [the] parent must meet before the child can be in that parent’s day-to-day care.” Minn. Stat. § 260C.219(a)(2)(i) (2016). Another section says that “[a]n out-of-home placement plan means a written document . . . prepared . . . jointly with the parent or parents of the child.” Minn. Stat. § 260C.212, subd. 1(b) (2016). The plan “shall be” signed by the parent, submitted to the court for approval, and explained to all persons involved in its implementation. *Id.* at subd. (1)(b)(1), 3(c). And the plan must describe “the specific reasons for the placement of the child in foster care, and when reunification is the plan, a description of the problems or conditions in the home of the parent or parents which necessitated removal of the child from home and the changes the parent or parents must make for the child to safely return home,” as well as the “services offered and provided to prevent removal of the child from the home and to reunify the family.” Minn. Stat. § 260C.212, subd. 1(c)(2), (3). Based on this statutory expression of the mandatory nature of a case plan and the statute’s plain description of its necessary components, we have no difficulty answering whether the county was required to provide D.T.R. with a court-approved, written case plan: it was.

The district court indeed found that the county developed a case plan and that D.T.R. failed to meet the plan’s requirements. But D.T.R. reasonably calls these findings into doubt. We will determine a finding to be clearly erroneous, and reject it, if we examine the record and are left with a definite and firm conviction that the finding is a mistake.

Rasmussen v. Two Harbors Fish Co., 832 N.W.2d 790, 797 (Minn. 2013). We are certain that the findings that the county developed a case plan and that D.T.R. failed to meet that plan are mistakes. No statutorily described, court-approved case plan for D.T.R. appears anywhere in the record. And while the county does argue that D.T.R. failed to meet the “initial case plan,” the county is not referring to a statutory case plan but to the district court’s preliminary order adjudicating the children to be in need of protection or services. That order instructed the various fathers of A.R.B.’s children to cooperate with the county in its recommended programming, to establish paternity, and to obtain safe and suitable housing. The initial order does not constitute the statutorily required “case plan” we have outlined because it lacks any of the critical elements imposed by statute. For example, that order nowhere explains with any specificity the changes D.T.R. had to make for the child to return home, and it did not describe any “services offered and provided to . . . reunify the family.” Minn. Stat. § 260C.212, subd. 1(c)(3). We hold as clearly erroneous the district court’s finding that, “In order to correct [issues that led to the child’s out-of-home placement] and reunify the family, the [county] developed a case plan for [D.T.R.],” and its finding that, “Despite the case plan and the reasonable efforts of the [county], . . . [D.T.R.] did not correct the issues that led to the out-of-home placement.”

The county argues that the lack of a written case plan is excusable because its absence is directly attributable to D.T.R. It is true that, although a written case plan is required in every case, the county’s failure to provide one does not automatically warrant reversal if the circumstances render the lack of a case plan excusable. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004). But the lack of a case plan is excusable

only in extreme circumstances, like when a parent repeatedly abandons her child and states that she wishes to relinquish her parental rights, *In re Welfare of R.M.M.*, 316 N.W.2d 538, 542 (Minn. 1982), or when efforts to “reunite” the family would be “futile” because, for example, no parent-child relationship ever existed, *R.W.*, 678 N.W.2d at 56. Neither of these exceptions to the case-plan requirement applies here. As the supreme court explained, requiring a case plan “would put an impossible burden on counties to provide services” when an incarcerated person “has chosen not to respond to a CHIPS petition despite being given the opportunity to do so.” *R.W.*, 678 N.W.2d at 56. But D.T.R. never expressed any intent to forfeit his parent-child relationship or his parental rights, and the district court did not find that efforts to reunite D.T.R. with his son would be futile. The closest thing to evidence that efforts to reunify D.T.R. and his son would be futile is D.T.R.’s statement early on that he would follow a case plan only after the court ordered one. But D.T.R.’s resistance was extremely short-lived, and the county seems to have done nothing to develop a case plan after D.T.R. expressly invited one.

The county also argues that, even in the absence of a written case plan, D.T.R. knew the steps he needed to take to correct the conditions that led to his son’s placement and therefore failing to complete a plan was a harmless error. We do not believe the county’s proposed exception squares with the statute. And we are persuaded by D.T.R.’s counter that it was impossible for him to know what steps he needed to take to correct the conditions in the absence of a case plan. The testimony in the record concerning the contents of D.T.R.’s alleged case plan is limited and inconsistent. When asked what D.T.R.’s alleged case plan included, the supervising county official was unsure:

For him to participate in domestic violence programming, for supervised visits – or, actually, I apologize. No. There was no contact because of an OFP. Chemical dependency treatment, and I believe there might be another one, but I’m completely blanking on that at the moment, so I apologize.

When asked whether any social workers spoke with D.T.R. about his chemical dependency, she said, “I can’t recall from the notes specific conversations, but it would have been – should have been [a] topic of conversation if it was a case plan item and partially due to the fact that he had self-reported some chemical dependency use.” We conclude that pointing to a deficient parent’s personal awareness of his significant issues that triggered out-of-home placement is no substitute for the case-plan process, which includes the directive document required by statute.

We recognize that D.T.R. was incarcerated and that this circumstance might change what qualifies as “reasonable” under the county’s duty to make “reasonable efforts” to reunite father and child. But the statute nowhere excuses the county of making reasonable efforts in this situation, and it is well established that “[i]ncarceration alone does not necessarily preclude a person from acting in a parental role.” *In re Welfare of Children of A.I.*, 779 N.W.2d 886, 892 (Minn. App. 2010) (citing cases). The county identifies nothing in this situation that prevented it from creating a case plan for D.T.R. and attempting to coordinate with prison officials about the availability of potentially suitable programming during D.T.R.’s incarceration period. The supervisor responsible for managing the series of social workers assigned to this case conceded at trial that the social workers failed to meet the agency’s own policy to connect with parents while they are in prison to coordinate

services pending their release. The county does not support its assertion that its lack of control over prison services would have rendered futile a case plan directing D.T.R. to complete chemical-dependency and domestic-abuse programming. And at no point did the county ask the district court to dispense with the need for reasonable efforts because of futility. *See* Minn. Stat. § 260.012(a) (“Reasonable efforts . . . for rehabilitation and reunification are always required *except upon a determination by the court that*” specified circumstances exist.) (emphasis added).

We appreciate the district court’s difficulty in addressing the parental rights of a father who has not addressed the presenting issues. The evidence at trial supports the district court’s conclusions that D.T.R. has not overcome his issues of domestic violence, chemical dependency, and failure to provide a safe and stable home. We therefore do not suggest that the district court should unsettle any ongoing custody arrangement unless and until it is satisfied that D.T.R. has in fact overcome the conditions that led to the placement. We hold only that, on this record, because the county did not prove that it made reasonable efforts to reunite father and child, the district court abused its discretion by terminating D.T.R.’s parental rights.

We therefore reverse the district court’s termination of D.T.R.’s parental rights. We remand for the district court to allow the county to prepare jointly with D.T.R. a written case plan as defined by statute and to allow D.T.R. the opportunity to complete it.

D E C I S I O N

Because the county did not provide D.T.R. with a written case plan as described by Minnesota Statutes, section 260C.212, subdivision 1 (2016), particularly after he requested

one, or even attempt to determine whether any prison programming might have been available to D.T.R. and suitable to include in a case plan to correct the conditions that led to his son's out-of-home placement, the county failed to make reasonable efforts to reunite the family as required by section 260C.219(a)(2)(i) (2016).

Reversed and remanded.