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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1723**

In re the Matter of the Welfare of the Child of:
S. J. K. and D. J. L., Jr., Parents.

**Filed March 30, 2020
Reversed and remanded
Hooten, Judge**

Big Stone County District Court
File No. 06-JV-19-110

Jeremy Blackwelder, Holmstrom & Kvam, PLLP, Granite Falls, Minnesota (for appellant,
D.J.L., Jr.)

Krystal M. Lynne, Stermer & Sellner, Chtd., Montevideo, Minnesota (for respondent
S.J.K.)

Joseph P. Glasrud, Big Stone County Attorney, Ortonville, Minnesota (for county)

Susan Marsolek, Ortonville, Minnesota (guardian ad litem)

Considered and decided by Reilly, Presiding Judge; Rodenberg, Judge; and Hooten,
Judge.

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

HOOTEN, Judge

Appellant-father challenges the termination of his parental rights. Because the record does not support the district court's finding that the county made reasonable efforts to reunite appellant-father with his child, we reverse and remand for further proceedings.

FACTS

Appellant-father, D.J.L., Jr., challenges the termination of his parental rights to his child, B.D.L., born in 2016. Prior to the child protection case, the child's mother was granted an order for protection (OFP) against father on behalf of herself and the child in May 2018, which was effective for two years. Father was ordered not to have contact with mother or the child, except for electronic communication with mother for the sole purpose of discussing child-related matters.

In September 2018, Big Stone County Family Services (the county) filed a child-in-need-of-protection (CHIPS) petition on behalf of the child. The petition stated that the county had received a report from law enforcement that the child was living in a home containing methamphetamine and where the sale of methamphetamine was taking place. At the time, the child was living periodically with mother and the remainder of the time with his maternal grandfather. Mother admitted to the county that she occasionally used methamphetamine. She also told the county that father was physically abusive towards her and that during one incident, the child was pushed to the ground by father. Mother indicated that, even after the issuance of the OFP, father had visits with the child every other week at a local park during the summer under the supervision of the child's maternal grandfather, but that she had no face-to-face contact with father. Father was not charged with violating the OFP for these visits.

Later in September 2018, father was charged with first-degree burglary, among other crimes. On October 3, 2018, father was arrested for violating the OFP by having contact with mother. Father remained in jail for over three months.

While father was incarcerated, the county's social work supervisor met with father to inform him that the child had been placed in foster care. Father agreed to participate in DNA testing to establish paternity and signed authorizations for the county. This was the only time father met with any representative from the county.

Over the course of the next several months, the county sent father three letters while he was in jail. The first letter notified father that he was ordered to participate in DNA testing and informed him that he would receive information about providing a DNA sample. Father participated in DNA testing. The second letter asked father to complete a relative search form. Father completed the form and returned it by mail. In the form, he indicated that he believed the best place for the child was with the current foster care placement. The third letter informed father that the DNA test results showed that he was the child's father. The letter also stated, "At this time, the agency is limited in the services it can provide to you, due to your on-going criminal matters. We will continue to monitor the status of your criminal case and if you are released from jail, please contact me to begin services in this case." These three letters were the only additional contact the county had with father. The county never prepared a case plan for father or offered him any services. The county never asked the district court to relieve it of its duty to ensure reasonable efforts were put forth towards rehabilitation and reunification (Minn. Stat. § 260.012(a)(1), (2) (2018)) or to make a finding that reasonable efforts would be futile (Minn. Stat. § 260.012(a)(7) (2018)).

Father was released from jail in December 2018. At the end of February 2019, he was convicted of the first-degree burglary charge and sentenced to 39 months in prison,

stayed for 10 years. The next month, on March 6, 2019, he violated the terms of his probation and was held in jail until March 18, 2019. On April 16, 2019, father was arrested for trying to break into an apartment. Father was incarcerated, and in May 2019, he was transferred to prison to serve his 39-month sentence. The district court found that, with good behavior, father could be released from prison in early 2021.

On May 22, 2019, the county petitioned to terminate father's parental rights.¹ Just before trial, the county filed an amended termination-of-parental-rights (TPR) petition, which alleged that father abandoned his child under Minn. Stat. § 260C.301, subd. 1(b)(1) (2018), he refused or neglected to comply with his parental duties under Minn. Stat. § 260C.301, subd. 1(b)(2) (2018), reasonable efforts failed to correct the conditions leading to the child's out-of-home placement under Minn. Stat. § 260C.301, subd. 1(b)(5) (2018), the child experienced egregious harm under Minn. Stat. § 260C.301, subd. 1(b)(6) (2018), and the child was neglected and in foster care under Minn. Stat. § 260C.301, subd. 1(b)(8) (2018).

The district court did not appoint an attorney to represent father until June 2019. The TPR trial took place in September 2019.

Following trial, the district court terminated father's parental rights. The district court concluded that the county made reasonable efforts to reunify the family and found that: (1) reasonable efforts failed to correct the conditions that led to out-of-home

¹ Mother voluntarily terminated her parental rights.

placement, (2) father had abandoned the child, and (3) the child was neglected and in foster care.²

Father appealed the termination of his parental rights. The county did not respond.

DECISION

We review a district court's TPR order for an abuse of discretion. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136–37 (Minn. 2014). We review whether the district court's factual 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).

Counties are required to make reasonable efforts at reunification before the district court can terminate a parent's rights.³ Minn. Stat. § 260.012(a). “We affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family.” *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted). “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

² The district court found that the statutory ground for egregious harm was not met.

³ Only under limited circumstances may a district court relieve a county from this requirement by a determination that reasonable efforts are not required. Circumstances include “the parent has subjected a child to egregious harm” or the parent's rights to another child have been involuntarily terminated. Minn. Stat. § 260.012(a). The district court may make this determination upon petition by the county before permanency proceedings commence. Minn. Stat. § 260.012(b) (2018). No such determination of futility or egregious harm was made by the district court.

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 child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances.” Minn. Stat. § 260.012(h) (2018).

Counties are also statutorily required to prepare a case plan “addressing the conditions that [the] parent must meet before the child can be in that parent’s day-to-day care.” *In re Welfare of Children of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018) (alteration in original) (quoting Minn. Stat. § 260C.219(a)(2)(i) (2016)). The case plan must be “a written document,” prepared “jointly with the parent or parents or guardian of the child.” Minn. Stat. § 260C.212, subd. 1(b) (2018). “The plan ‘shall be’ signed by the parent, submitted to the court for approval, and explained to all persons involved in its implementation.” *A.R.B.*, 906 N.W.2d at 897 (quoting Minn. Stat. § 260C.212, subd. 1(b)(1), 3(c)). The plan must describe “the specific reasons for the placement of the child in foster care, and . . . 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.” Minn. Stat. § 260C.212, subd. 1(c)(2) (2018).

The county was statutorily mandated to provide father with a case plan, *A.R.B.*, 906 N.W.2d at 898, but the county failed to do so. Within 30 days of the child’s out-of-home placement, the county was required to jointly create the case plan with father. *See* Minn. Stat. § 260C.212, subd. 1(a), (b) (2018) (requiring the social services agency to prepare, within 30 days of an out-of-home placement, a case plan jointly with the parent). The

county never discussed creating a case plan with father and did not discuss with father what changes he would need to make for reunification to be possible.

Not only did the county fail to prepare a case plan for father, the county had very limited contact with father. The entirety of the county's contact with father includes one meeting with a social worker when the child was first removed from the home and the three letters that were sent to father while he was in jail. The county made no other efforts to contact father.

In spite of these findings made by the district court, the district court found that the county made reasonable efforts to reunify father with his child. The district court noted (in a separate section of its termination order) that the county never prepared a case plan for father, but did not discuss the lack of a case plan when addressing whether the county's efforts were reasonable.

The district court characterized the county's lack of contact as father's fault. But this finding contradicts what the child protection statutes require—that the *county* must make reasonable efforts to reunify the family. The burden is on the county; it does not shift to father because his incarceration makes it more difficult for the county to contact him. The district court's findings are further undermined because father complied with the county's requests despite the minimal contact from the county. In the first two letters sent to father, the county requested that he participate in DNA testing and complete a relative search form. Father complied with both of these requests. The third letter sent by the county then informed father that the county would not provide him with any services while he was incarcerated.

We conclude that the record here does not support the district court's finding that the county provided reasonable efforts to reunify father with his child. The county failed to jointly prepare a case plan for father and made minimal efforts in contacting him. The county essentially refused to provide father with any services. Therefore, the record lacks any evidence to support the district court's finding that the county made reasonable efforts to reunite father with his child.⁴

We are further concerned with the district court's determination that a statutory basis for termination exists because father was not represented by counsel until a few months before the TPR trial. Parents have a right to be represented by counsel in child protection proceedings. Minn. Stat. § 260C.163, subd. 3(a) (2018). District courts are required to appoint counsel to represent parents if a parent cannot afford it and the district court "feels that such an appointment is appropriate." Minn. Stat. § 260C.163, subd. 3(c) (2018); *see also In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 659 (Minn. App. 2018) (confirming the statutory requirement for appointment of counsel). In this case, father did not have counsel for nine months during the child protection case before the county petitioned to terminate his rights. The trial took place three months after he was appointed counsel. Had an attorney represented father, counsel presumably would have advocated

⁴ While the district court made other findings in terminating father's parental rights, reasonable efforts of the county is a threshold issue relative to the grounds for termination.

for the creation of a case plan and a determination of what services could be provided to father while incarcerated.

In making its findings, the district court relied heavily on *In re Welfare of Children of R.W.* for support. 678 N.W.2d 49, 56 (Minn. 2004). In that case, R.W.’s parental rights were terminated after he failed to respond to the CHIPS petition and had “minimal interest” in reunification with his children. *Id.* R.W. was incarcerated for the entire child protection case and did not have a prior relationship with his children. *Id.* The supreme court noted that “nothing in state law required the county to facilitate contact between [R.W.] and the children to assist [R.W.] in *establishing* a relationship with the children.” *Id.*

The record reveals that the case before us is distinguishable from *R.W.* Importantly, an OFP prohibited father from contacting the child. Despite this, and with mother’s knowledge, father had short, supervised visits with the child at a park prior to his incarceration. Before the OFP was issued, father lived with mother and the child until the child was a year and a half old. Unlike the situation in *R.W.*, father had a relationship with the child and showed much more than “minimal interest” in his child. *See id.* Father also expressed his opinion that the child was being well taken care of while he was incarcerated in the child’s current foster placement with relatives.

Father claims that the district court considered his failure to contact the child while he was incarcerated as evidence of a lack of relationship with the child. But, as father argued, had father contacted the child, he would have directly violated the OFP and would be subject to further criminal proceedings. The district court did not seem to appreciate

this predicament, finding that father “did not establish an excuse for failing to take efforts to contact his child.”

For these reasons, we hold that the district court’s finding that the county provided reasonable efforts to reunify father with his child is unsupported by the record. We therefore reverse and remand for proceedings consistent with this opinion. The district court shall reopen the CHIPS file, if necessary, for the provision of reasonable services to father and further handling. Because we reverse and remand based on the county’s failure to provide reasonable efforts, we need not address father’s additional arguments.

Reversed and remanded.