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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0599
A20-0820**

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

**Filed October 26, 2020
Affirmed
Ross, Judge**

Lyon County District Court
File No. 42-JV-19-129

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Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Bjorkman,
Judge.

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

ROSS, Judge

Child-protection workers in Texas and later in Minnesota removed two children
from their parents' care after learning the parents were using illegal drugs and neglecting
the children. The district court determined that the children needed protection or services,

and it adopted case plans to curb drug and alcohol misuse and child neglect. Lyon County human services petitioned the district court to terminate parental rights based on the parents' alleged failure to comply with the plans, after which the district court terminated mother's rights voluntarily and father's rights involuntarily. Because the record supports the district court's finding that undue duress did not cause mother to voluntarily terminate her rights and also demonstrates that it acted within its discretion by terminating father's rights, we affirm.

FACTS

This parental-rights case involves B.T. (mother) and D.A. (father), who are the unmarried parents of two children born in Texas in 2013 and 2014. Texas child-protection officials learned that the parents were misusing drugs and alcohol, and they therefore removed the children in July 2014. The officials returned the children after a period unclear from the record following the parents' participation in chemical-dependency treatment and parenting classes.

The parents moved between states and faced criminal charges leading to their serial incarceration. They first relocated to Chicago, where police arrested mother on warrants. Then father moved back to Texas with the children and eventually to North Dakota, where he turned himself in on arrest warrants at about the time of mother's release from jail. Mother's crimes included domestic assault, while father's included child endangerment and felony drunk driving. Mother moved with the children to Minnesota, and father remained in prison.

Acting on behalf of Lyon County, Southwest Health and Human Services removed the children from mother's care in May 2019 following reports of her drug and alcohol misuse, child neglect, and child maltreatment. The district court concluded that the children were in need of protection or services and placed them into foster care. The county's human-services staff developed separate case plans for mother and father, and the district court adopted each plan. Mother's case plan directed her to services to address chemical dependency and mental-health issues, while father's directed him to prison services available to address parenting deficiencies and chemical dependency.

The county petitioned the district court to terminate both parents' parental rights about eight months into their case plans. The county based its petitions on four statutory grounds: that mother and father refused to comply with their parental duties, that mother and father are palpably unfit to parent, that reasonable efforts had failed to correct the conditions that led to out-of-home placement, and that the children were neglected and in foster care. *See* Minn. Stat. § 260C.301, subds. 1(b)(2), (4), (5), (8) (2018). Mother submitted an affidavit voluntarily terminating her parental rights, and father challenged the petition in a termination trial. The district court received testimony from mother, a social worker, and the children's guardian ad litem. Father, still imprisoned, also testified.

Mother orally confirmed her written consent to voluntarily terminate her parental rights without a trial, adding her preference "that the relatives are first to adopt." The district court responded by advising mother that, although relatives will be considered first, "there may or may not be circumstances that would it make inappropriate to allow [a] relative to adopt the children." Mother then replied that she wanted to "go ahead" with the

voluntary termination of her rights anyway. She acknowledged expressly that, in agreeing to the district court's terminating of her parental rights, she was "not promised anything as far as the children and where they're ultimately placed." The district court accepted mother's voluntary termination.

Mother also testified about the county's petition to terminate father's parental rights. She said that she had spoken with him "from time to time" during his imprisonment but that the children had not seen or spoken with him. She also said that he had provided no child support.

The social worker assigned to the case corroborated mother's accounting that father had no contact with the children between his imprisonment and their removal from mother's care. She opined that it would not have been in the children's best interest for father to contact the children directly under the circumstances. And she explained that father had not asked her to send the children any cards, gifts, or money through her. The social worker expressed her doubts that father could properly care for the children in light of his criminal convictions, including child endangerment.

The children's guardian ad litem testified similarly. And she added that she doubted that father could parent the children or meet their daily needs. She opined that terminating his parental rights served the children's best interests.

Father testified opposing termination of his parental rights. He disputed the county's allegations that he failed to participate in parental and chemical-dependency classes while incarcerated. He also disputed whether it is in the children's best interests to terminate his parental rights. He claimed that he had been in contact with the children while incarcerated

but conceded that he had not seen the children since September 2016. He also stated he planned to return to North Dakota after his release in July 2020 to live with a relative.

The district court issued two termination orders. It terminated mother's parental rights based on her voluntary decision. It terminated father's parental rights, finding that he is palpably unfit to parent and that reasonable efforts failed to correct the reasons for out-of-home placement, but it rejected the other two statutory bases alleged by the county. The district court concluded that the county made reasonable efforts to reunify the children with father and that termination is in their best interests.

Mother then sought to rescind her voluntary termination decision. She moved the district court to amend its findings to conclude that duress caused her to agree to terminate her parental rights, arguing primarily that she had believed that termination of her rights would result in a family member adopting the children. She argued alternatively that the county had failed to make reasonable efforts to reunify the children with her.

The district court denied the motion. Both parents have separately appealed, and we now answer their consolidated appeals in this opinion.

D E C I S I O N

We first address mother's challenge to the voluntariness of her decision to terminate her parental rights. The district court could not properly terminate mother's parental rights on her agreement unless clear and convincing evidence established that, for good cause, mother desired to terminate her rights and termination is in the children's best interests. *See* Minn. Stat. § 260C.301, subds. 1(a), 7 (2018). Mother challenges the district court's finding that termination is in the children's best interests only in conclusory fashion without

argument. She argues instead that the district court should have granted her motion to amend the findings so as to conclude that she did not really voluntarily terminate her parental rights because she agreed to the termination only under duress. She also argues that, notwithstanding the ruling on her motion for amended findings, the district court clearly erred by originally finding that her decision to voluntarily terminate her parental rights was of her own accord rather than based on duress. Her argument fails.

We can address both arguments at once. Mother's assertion that the district court should have amended its findings by accepting her duress claim is unconvincing, and so is her assertion that the district court clearly erred by originally finding that her decision was voluntary. We will not reverse a district court's order denying a posttrial motion for amended findings absent a clear abuse of discretion. *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006). And we will not reverse its original fact-finding absent clear error. *In re Welfare of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). The record belies mother's implied claim of abuse of discretion and clear error. The record reveals that she informed the district court by affidavit that she was consenting to terminate her parental rights voluntarily. She informed the district court that she did not condition her consent on the children being adopted by a family member. And she confirmed her consent to the district court, expressly aware that the children might be adopted by a nonrelative. Mother identifies no fact on which the district court must have, let alone might have, originally found that she was acting under duress. And she identifies no circumstance on which the district court was compelled to accept her after-the-fact claim of duress. Having been advised by mother

through her sworn affidavit and oral testimony that she was terminating her parental rights voluntarily, the district court did not clearly err by so finding or abuse its discretion by leaving the challenged finding intact.

Mother also contends that the county failed to take appropriate account of cultural circumstances when it placed the children in foster care. Because this contention is irrelevant to the later termination of mother's parental rights, we do not address it in this termination appeal. We turn to father's arguments.

Father contests the district court's decision to terminate his parental rights involuntarily. We will affirm a district court's termination decision if clear and convincing evidence supports the statutory ground for termination and termination is in the best interests of the children, 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); *see also* Minn. Stat. § 260C.301, subd. 7 (2018). We focus our discussion on father's only argument, liberally construed, which is that the district court errantly found that the county made reasonable efforts to reunify him with the children. We say liberally construed because one might read father's argument as a challenge to the content of the case plan for allegedly having failed to satisfy the statutory requirements—an argument that father would have forfeited for having failed to raise it below. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But we are satisfied that he more broadly challenges whether the county undertook reasonable efforts to reunify him with the children, and the responsive briefing corroborates our understanding.

So understood, father's limited challenge faces a deferential review standard. We generally review a district court's order terminating parental rights for an abuse of discretion. *In re Welfare of Child R.D.L.*, 853 N.W.2d 127, 136–37 (Minn. 2014). But we review only for clear error a district court's finding that the county made reasonable reunification efforts. *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995). Father's argument has some merit, but under this standard it fails to lead us to reverse.

Father argues that the county should have arranged for at least telephonic visits between him and the children during his imprisonment. The argument has surface appeal because it is self-evident that contact between parent and child is necessary for reunification. The only reason given by the county for not having arranged this contact is the social worker's belief that father's lack of recent contact with the very young children would have made new contact with them improper, and the district court accepted this conclusion as a matter of fact. But no one testified why this is so, and neither the district court's termination order nor the county's brief on appeal offers any explanation for the conclusory assertion. Father's argument is ultimately unavailing, however, because it is not the county's duty to create a relationship between father and children where none exists, *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004) (explaining that the county must preserve *existing* relationships that are in the children's best interests), and no evidence suggests that father took the initiative during his imprisonment to locate or communicate with the children in any fashion. The record establishes that father had no relationship with the children after his incarceration at any point before or after the county removed them from mother's care. Father therefore has failed to identify any ground on

which the district court was bound to find unreasonable the county's failure to initiate the contact that he had failed to establish on his own.

The county did make some effort toward reunification. For those efforts to be reasonable, they 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). And for a noncustodial parent, like father, the county must assess the parent's ability to provide day-to-day care for the child and, if necessary, provide services to enable him to provide that care. Minn. Stat. § 260.012(e)(2) (2018). Although a parent's incarceration by itself does not warrant termination of parental rights or eliminate the county's duty to provide reasonable reunification efforts, incarceration creates complications that may affect what qualifies as reasonable. *In re Welfare of A.R.B.*, 906 N.W.2d 894, 899 (Minn. App. 2018). It is true, as father maintains, that the county's efforts here were not overwhelming. But we believe the record supports the district court's finding that they were reasonable under the circumstances.

The district court identified the county's efforts and found them reasonable. The district court found that the county had discussions with father about the case plan and his future plans upon release from prison. It also found that the county researched online parenting classes for father and discussed them with father's caseworker. In addition to finding these efforts reasonable, the district court also implicitly found that additional efforts would be futile, stating that “there was nothing else [the county] could do to foster reunification.” On his part, father had not described for the county or identified for the

district court any factually supported plan to secure stable and safe housing for the children or otherwise provide for their needs on his eventual release from prison. He had suggested that he might live with a relative and that the children could join him there, but the district court was unpersuaded because he had failed either to explain how those living conditions would be suitable for the children or to demonstrate that he had developed this possibility into an actual plan corroborated by the named relative. Aside from complaining about the county's failure to initiate contact between father and the children, father identifies no omitted, reasonable effort that would have made reunification feasible.

Father raises other arguments on appeal, but he raised none of them in the district court. We generally will not consider issues neither presented to nor considered by the district court. *Thiele*, 425 N.W.2d at 582. Because father presented these arguments for the first time on appeal, we will not address them.

Affirmed.