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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1028**

In the Matter of the Welfare of the Child of:
R. H. and P. R. F., Parents.

**Filed February 22, 2021
Affirmed
Smith, Tracy M., Judge**

Stevens County District Court
File No. 75-JV-20-47

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Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Smith Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

On appeal from the termination of his parental rights (TPR), appellant-father argues that the record does not support the district court's determinations that (1) reasonable efforts by the county failed to correct the conditions leading to the out-of-home placement

of father's daughter (the child), (2) the child was neglected and in foster care, and (3) TPR is in the child's best interests. We affirm.

FACTS

The child is the only joint child of mother and father. As further described below, when this child-protection case began, mother and father had split up and the child had not resided with father since she was very young.

This child-protection case began in March 2019, when the child was removed from the care of her older half-sister (sister), who was living in Morris, Minnesota. The child was 13 years old at the time. The child was adjudicated in need of protection or services (CHIPS) within the meaning of Minn. Stat. § 260C.007, subd. 6(8) (2018), and legal custody of the child was transferred to Stevens County. The county petitioned for TPR in February 2020 pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5), (8) (2018). The child has remained in court-ordered out-of-home placement since her removal in March 2019.

In June 2020, the district court held an adjudicatory hearing on the TPR petition. The county presented testimony from the case manager, the psychologist who conducted a psychological evaluation and parenting assessment of father, and the guardian ad litem. The child, sister, mother, and father also testified at the hearing. At the close of evidence, the district court accepted mother's request for voluntary termination of her parental rights.

Family history before Minnesota

The child was born during mother and father's three-year relationship. During that time, mother, father, the child, and sister regularly resided together in Indiana. Sister is the daughter of mother; she is three years older than the child and has lived with the child most

of the child's life. At the time of trial, the child was 14 years old. She had recently received diagnoses of autism spectrum disorder and post-traumatic stress disorder.

Mother testified that she fled from Indiana and father's home when sister told her that father had sexually abused her. Mother sent both the child and sister to Missouri and followed soon after. Mother stated that she did not report father to Indiana authorities at that time because of her own negative experience reporting sexual abuse to law enforcement. Mother then relocated to California with her children. There, mother felt safe to report sister's sexual abuse to law enforcement and did so.

Missouri's and Minnesota's social-services contact with the child

Several years later, mother, the child, and sister returned to Missouri, where the child and sister lived with their maternal grandparents. In 2018, sister was married—with mother's consent—at the age of 15 and left with her husband to live in Minnesota. Missouri social services became involved with mother in early 2019 after discovering significant health, safety, and neglect concerns regarding the child's environment at the grandparents' home. A Missouri social worker oversaw a process in which mother signed two power-of-attorney documents authorizing sister and her husband to become the child's primary caregivers.¹ At that time, sister was pregnant and 16 years old, and her husband was 18 years old. In February 2019, sister retrieved the child from Missouri and brought her to live with sister and her husband in Minnesota.

¹ Mother's actions to assign custody to sister and her husband were evidently valid under Missouri law.

In March 2019, the county received a welfare report concerning the child's supervision. The report stated that sister had power of attorney over the child and that sister was in the hospital having a baby. The case manager met with the child the same day that she received the report and confirmed that the child was staying by herself without an adult or supervision. A petition for emergency protective care (EPC) was filed and granted, and the county obtained custody of the child. A CHIPS petition was filed soon after. At first, the case manager hoped that the child could still be placed with sister, but, by July, the county also had custody of sister and both children were placed in the same foster home.

Father's contact with the child

Father testified that, until he was contacted by the county in 2019, he had not seen the child since 2009 despite efforts by him to locate mother and child. Father was living in Indiana. He had served in the military and had various deployments over the years, including to Iraq. Father was honorably discharged from the United States Army in 2012. In April 2019, after hearing from the county, father expressed his interest in reuniting with the child. Father traveled to Minnesota for a court appearance in April 2019 and had his first of several in-person visits with the child. During father's second or third visit, he and the child exchanged phone numbers. Father and the child's initial phone contact was not supervised. However, the phone conversations became supervised when the foster parent told the case manager her concerns about the effect that father's communication had on the child. The foster parent explained that the child was always nervous to talk on the phone with father and that she did not want to be alone on those phone calls. After a phone call with father, the child would withdraw and not engage with others, an indicator that she is

stressed. The foster parent also testified that father raised several inappropriate topics with the child that extremely agitated her.

Sexual-abuse investigation of father

In June 2019, sister disclosed to the case manager that father had sexually abused her. The county began a maltreatment investigation of father. The case manager interviewed mother, who said that sister had previously disclosed the abuse to her, and father, who denied the allegations. The case manager contacted Indiana and California law enforcement to obtain records in order to corroborate sister's allegations. The case manager contacted California several times to procure the records. In September 2019, California authorities responded that it would take 12 to 14 weeks to send the records.

In the meantime, in July, the county filed a motion requesting that the district court rescind an order requiring an expedited Interstate Compact on the Placement of Children (ICPC) procedure, which would relieve the county from assessing father as a permanency-placement option for the child. The district court did not rule on that motion. And so, until the case manager could corroborate sister's allegations, the county moved forward with father's case plan and the child's permanency-placement options.

Placement suitability

The case manager created an out-of-home placement plan for father in October 2019. The out-of-home placement plan recommended that father obtain a parental assessment, known in Indiana as a "clinical interview and assessment" (CIA). Father completed the CIA in January 2020. The psychological evaluator who performed father's CIA indicated that father was dismissive of the child's autism-spectrum-disorder diagnosis.

She also recommended that father undergo a full psychological evaluation to determine the severity of his PTSD symptoms and degree of his intellectual functioning. Father testified that his PTSD symptoms stem from his military service. The psychological evaluator stated that a full psychological evaluation would be important to determine whether father can successfully parent a child with autism-spectrum-disorder and trauma diagnoses.

The county offered father services, including the CIA, the follow-up referral for a full psychological evaluation, initiating the ICPC process with Indiana, scheduling in-person visits as well as weekly phone calls, and discussing individual therapy with him. Father did not ask for other services. Father complied with most of his case plan. He completed the CIA and the psychological evaluation and attended weekly phone calls.² But the district court determined that he violated his case plan in three major respects. Father did not share his Department of Veterans Affairs records with the psychological evaluator, as ordered by the district court; he did not maintain regular contact with the county from June to September 2019; and he failed his home assessment during the ICPC process.

The county completed an ICPC request with Indiana. The case manager sent the ICPC request on a non-expedited basis at the recommendation of an official from the Minnesota Department of Human Services' ICPC Unit. In January 2020, an Indiana ICPC worker conducted a home visit at father's residence. The Indiana ICPC worker found that father's residence was not suitable for a child because it was in extreme disrepair. The

² From June 2019 to sometime in September 2019, before the implementation of the case plan, father did not have contact with the child. He attributes the loss of contact to child's getting a new phone, but father did not contact the county during this time in order to obtain the new phone number.

Indiana ICPC worker gave father three weeks to remedy the issues. When the Indiana ICPC worker returned, the issues were not corrected and so father's ICPC request was denied.

It is possible to resubmit an ICPC request in Indiana. To do so, the county would have to find that it is in the child's best interests to live with father. Here, the county determined that it is not in the child's best interests to live with father. It did so in mid-February 2020. At that time, the county received the sexual-abuse report from California authorities, which concluded that the allegation was unsubstantiated but confirmed that mother had reported the sexual-assault allegation that sister had earlier disclosed to her. The same day that the county received the California report, the county determined, based on its investigation, that sister's allegation was substantiated. Because of the county's ongoing concerns regarding father's parenting abilities and the maltreatment determination against him, the county denied father's request to resubmit an ICPC request for the child's placement in Indiana. The county then filed a TPR petition.

The child's current foster-care placement and improvements since her placement

The county introduced into evidence the child's history in foster care, showing that, at the start of her foster-care placement, the child was unable to ask for what she wanted or, when offered help, to accept that someone wanted to help her. She could not communicate that she was hungry or thirsty, and she would hoard food in her room for fear that she would be unable to eat again. At 14 years old, the child did not know how to brush her hair, brush her teeth, or wash her body.

Since her placement, the child has received many services, including a diagnostic assessment, children's mental health case management, individual therapy, speech and occupational therapy, living skills, an individualized education plan, and mentoring.

All the county's witnesses testified that the child's behavior and health has improved significantly during her placement in foster care. She enjoys her school and she is involved in many activities including piano, speech team, and local university theater productions. She lives with sister and sister's son in her foster care placement, and she is particularly fond of sister's son. The child has repeatedly expressed her fervent desire to remain near sister. The foster parent testified that sister and the child are very bonded now that sister no longer needs to assume the role of parenting the child and they can just be sisters to each other. As soon as sister was placed in the same foster care, the child's self-injurious behavior decreased dramatically and she can verbalize her feelings and the reason behind her feelings.

The child is well-adjusted to her life now and expressed to the district court that she would be "[f]urious, very, very furious" if she were forced to move to Indiana to live with father. The child testified that she feels that she gave father a chance to visit her and communicate with her but that she does not see the point in continuing to talk with him if he does not listen to her. In particular, the child is angry at father for refusing to agree to a contact agreement with the child and pursuing court action when she has asked him repeatedly to avoid court.

Other county witnesses—the guardian ad litem, the foster parent, and the case manager—all agreed that terminating father's parental rights was in the child's best

interests for her safety needs, as well as her physical, mental, and emotional health. Mother also testified that she voluntarily terminated her parental rights because she believed the child's current foster care placement is in the child's best interests.

The district court granted the TPR petition pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5), (8), finding that the county had made reasonable efforts at rehabilitation and that, despite these efforts, father failed to correct the conditions, and that the child was neglected and in foster care. The district court also concluded that termination of father's parental rights was in the best interests of the child. In evaluating the best-interest factors, the district court specifically found that sister's testimony of sexual abuse by father was credible and that the child's safety would therefore be at risk if she were in father's care.

Father appeals.

DECISION

Father argues that the record does not support the district court's findings that two statutory bases exist for terminating his parental rights. "[O]n appeal from a district court's decision to terminate parental rights, we will review the district court's findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012). If a statutory basis to terminate parental rights exists, we give considerable deference to a district court's decision regarding whether to actually terminate parental rights. *See In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We will affirm a district court's TPR "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.” *Id.* “A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Welfare of Children of S.R.K.*, 911 N.W.2d 821, 830 (Minn. 2018) (quotation omitted). We defer to the district court’s “determinations of witness credibility and the weight to be given to the evidence.” *In re Welfare of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007).

I. The child was neglected and in foster care.

Father argues that the district court abused its discretion by ruling that the child was neglected and in foster care. The TPR statute defines “neglected and in foster care” as follows:

“Neglected and in foster care” means a child:

- (1) who has been placed in foster care by court order;
- and
- (2) whose parents’ circumstances, condition, or conduct are such that the child cannot be returned to them; and
- (3) whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child.

Minn. Stat. § 260C.007, subd. 24. (2018).

The statute also sets forth factors that the district court must consider in determining whether the child is neglected and in foster care:

In determining whether a child is neglected and in foster care, the court shall consider, among other factors, the following:

- (1) the length of time the child has been in foster care;

(2) the effort the parent has made to adjust circumstances, conduct, or conditions that necessitates the removal of the child to make it in the child's best interest to be returned to the parent's home in the foreseeable future, including the use of rehabilitative services offered to the parent;

(3) whether the parent has visited the child within the three months preceding the filing of the petition, unless extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevented the parent from visiting the child or it was not in the best interests of the child to be visited by the parent;

(4) the maintenance of regular contact or communication with the agency or person temporarily responsible for the child;

(5) the appropriateness and adequacy of services provided or offered to the parent to facilitate a reunion;

(6) whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time, whether the services have been offered to the parent, or, if services were not offered, the reasons they were not offered; and

(7) the nature of the efforts made by the responsible social services agency to rehabilitate and reunite the family and whether the efforts were reasonable.

Minn. Stat. § 260C.163, subd. 9 (2018).

The district court addressed all of these factors in its order and concluded that the child was neglected and in foster care. Father challenges all of the district court's findings except the finding on factor three, which was favorable to father. We first address father's arguments related to the county's efforts and services offered before turning to his arguments related to the length of time the child was in foster care, father's parental efforts, and father's contact with the county.

The county's reasonable efforts and appropriate services provided to father

The district court found that the county made reasonable efforts to reunify the family and that “at this stage in the child’s life[,] no additional services offered or efforts by [father] would be likely to change the fact that it is not currently . . . in her best interests to be in his custody.” Father contends that the county failed to make reasonable efforts. In particular, he argues that, if the county had expedited the ICPC request or resubmitted his denied ICPC request, created a contact agreement, offered reunification therapy, or provided assistance for the child to meet her paternal relatives, the family could reunify.

“Whether the county has met its duty of reasonable efforts requires consideration of the length of time the county was involved and the quality of effort given.” *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). To determine whether efforts were reasonable, the district court must determine whether the services offered were: “(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). Whether the county made reasonable efforts is an underlying factual finding that is reviewed for clear error. *See S.E.P.*, 744 N.W.2d at 387. We first address father’s arguments related to the ICPC process.

Father argues that county unduly delayed the ICPC process; the record supports a different finding. The record reflects that the ICPC process was initiated in December 2019, and that it was not initiated sooner because the county had hoped that the child could be placed with sister or mother—placement options that were both unsuccessful. By the time

that the county had determined that the child's placement with sister or mother was not possible, sister had disclosed the sexual abuse against father to the case manager. The county did not believe that it was in the child's best interests to be placed with father during its investigation into sister's sexual-abuse allegations. Father has not shown that this was an unreasonable delay given the seriousness of the allegations against him.

Father also asserts that the county should have resubmitted an ICPC request after father failed his first ICPC home assessment. If a possible placement fails a home assessment, the county may resubmit an ICPC request once the placement has complied with the assessment's recommendations. But, after father had failed his first home assessment, the county made a maltreatment determination of sexual abuse of sister by father. Given this determination, the county did not resubmit an ICPC request for the child's placement with father. Father's complaint that the ICPC request was not resubmitted is essentially a challenge to the finding of sexual abuse. We address the district court's finding of sexual abuse in part II of this opinion, concluding that the finding is supported by the record.

The record contains evidence of other services offered by the county. These services included finding appropriate foster-care placement for the child, searching for and obtaining records from California, Missouri, and Indiana, initiating the ICPC process for father's home in Indiana, sending out kinship letters, facilitating visits and phone calls between father and the child, and investigating the sexual-abuse allegations against father.

In addition, father was offered a psychological evaluation, a parenting assessment, discussion with father about where he could obtain individual therapy, and an out-of-home

placement plan. The child also participated in individual therapy and mental-health services and has an individualized education plan at school.

The district court found that the services offered to father were adequate and appropriate to facilitate a reunion between father and the child and that there were no other services that could be provided to father that would “bring about a lasting adjustment” and allow the child to go to father’s care within an ascertainable amount of time. The district court found that father had tried; it observed that the barriers to reunification may not be entirely father’s fault as “[t]he child is who she is, needs what she needs, and knows what she wants.” Although father has identified other efforts that he believes should have been made, we conclude that the district court did not clearly err by finding that the county’s efforts were reasonable, the services provided to father were adequate and appropriate, and additional services would not have led to reunification.

The length of time the child was in foster care, father’s efforts, and father’s contact with the county

Regarding the length of time the child was in foster care, the district court found that the child was in foster care for 454 days as of trial. Father does not argue that this figure is incorrect; rather, he argues that the child’s time in foster care could have been reduced if the county had initiated the ICPC process sooner. But, as discussed above, a sexual-assault investigation was ongoing and ultimately resulted in a maltreatment determination, making father’s argument unpersuasive.

As to father’s parental efforts, the district court found that while father made efforts to correct the conditions leading to the denial of the ICPC, father had not addressed sister’s

sexual abuse or demonstrated that he is able to successfully care for a child who has autism and has experienced trauma. Father's challenge to this factor does not address the district court's findings regarding sister's sexual abuse or the child's autism and trauma diagnoses. Rather, father reiterates that he corrected the conditions leading to the denial of the ICPC by repairing his home and that he underwent a psychological evaluation. Because father does not address the district court's findings, father has failed to meet his burden showing that the district court erred. *See Horodenski v. Lyndale Green Townhome Ass'n*, 804 N.W.2d 366, 372 (Minn. App. 2011) (stating that, on appeal, "the burden of showing error rests on the party asserting it").

Lastly, the district court determined that father did not maintain regular communication with the county. Father asserts that the district court erred by its determining that he did not maintain contact with the county because the case manager testified that, during the three months that father and child were not in contact, she had not reached out to father. The statute states that the factor is whether the parent maintains regular contact with the county, not whether the county maintains regular contact with the parent. Minn. Stat. § 260C.163, subd. 9(4). The record establishes that father had the case manager's contact information and knew how to contact her. Because father has not pointed to any evidence showing that he maintained regular contact with the county throughout the process, father failed to meet his burden in establishing error. *See Horodenski*, 804 N.W.2d at 372.

In sum, the district court did not clearly err by finding that clear and convincing evidence established that the child was neglected and in foster care. We need not address

father's arguments regarding the other statutory basis relied upon by the district court because only one statutory basis is necessary to terminate parental rights. *See* Minn. Stat. § 260C.301, subd. 1(b) (allowing termination of parental rights upon satisfaction of "one or more" statutory conditions).

II. Termination of father's parental rights is in the child's best interests.

Even when the district court finds that a statutory ground for termination is met, "the district court must separately find that termination is in the child's best interests." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012). When terminating a parent's rights to a child, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2018).

"In analyzing the best interests of the child, the court must balance three factors: (1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *Id.* If the district court finds the existence of a statutory basis for terminating parental rights but "the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7. We review "a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion." *J.R.B.*, 805 N.W.2d at 905.

Here, in determining that TPR was in the child's best interests, the district court explained:

The Court cannot find it is in the child's best interests for [father] to have custody of the child. The child's older sibling testified credibly about the sexual abuse allegations she has against [father]. Although the California records found these allegations to be unsubstantiated, [the county] made a maltreatment determination. The child testified credibly she would not feel safe in [father's] care. It is understandable the child would not feel safe. She knows what happened to her sister. The Court learned from the testimony of the real potential for deterioration in the child's mental health should she live with [father] – concerns she may start to self-harm again or otherwise regress or decompensate.

Father argues that the evidence shows that both he and the child have an interest in preserving the parent-child relationship. Though the district court recognized that father has made efforts to visit the child and maintain contact with the child through phone calls and that the child has expressed curiosity about father, it found that any interest in preserving the parent-child relationship is outweighed by father's failure to meaningfully address his abuse against sister, by the child's repeated statements that she wants to remain where she is, and by the child's feelings that father does not respect her opinions. These findings are supported by the record.

Father next argues that the only alleged competing interest of the child is the county's concern for her safety based on "unsubstantiated allegations of sexual abuse of a different child over eleven years ago." As an initial matter, the district court did not find the allegations unsubstantiated; rather, it found sister's testimony regarding abuse credible, and we defer to the district court's credibility determinations. *T.D.*, 731 N.W.2d at 555.

Moreover, father's argument fails to acknowledge the testimony from sister, the child's foster parents, the case manager, mother, and most importantly, the child that

reflects concerns apart from the sexual-abuse issue—specifically, concerns regarding the child’s mental and physical health if she is removed from her current placement. The testimony reflects that the child’s current placement is the most stable and safe environment that the child has lived in and that she is receiving all the support services she needs. The child is excelling at and enjoying school. She plays piano and participates in speech team and the local university theater productions. The child’s foster parents provide a loving home for the child, and her needs are met there. The child is strongly bonded to both sister and sister’s infant son. The child testified that, in a perfect world, “[she] would be living with [sister]” and that until she is 18, she wants to live with her foster parents. The child also expressed that she would be “very furious” if she were forced to live with father. Overall, the record contains ample evidence that the child has done well in her foster care placement, that she has made progress since she was placed there, and that, if she were removed, she might regress or deteriorate.

The district court analyzed the three factors outlined above and concluded that the child’s best interests are served by terminating father’s parental rights. The district court did not abuse its discretion when it found that it is in the best interests of the child that father’s parental rights be terminated.

Affirmed.