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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1045**

In the Matter of the Welfare of the Children of:
C. K. (Deceased) and J. D. K., Parents.

**Filed January 19, 2021
Affirmed
Reyes, Judge**

Anoka County District Court
File No. 02-JV-19-1253

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Considered and decided by Gaïtas, Presiding Judge; Connolly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that the district court erred by terminating his parental rights because he never signed the out-of-home-placement plans (case plans), and Anoka County Social Services (the county) failed to make reasonable efforts toward reunification. We affirm.

FACTS

On March 3, 2019, police arrested appellant J.D.K. for violating an order for protection. At the time of his arrest, J.D.K.'s children, who were 13 years old (child 1) and ten years old (child 2), were left alone at a hotel. The next day, the children went to their middle school and elementary school respectively, and reported that they were staying at a hotel without supervision. Based on this information, the schools contacted the county, which initiated a 72-hour police hold on the children.

On March 7, 2019, the county filed a Child in Need of Protection or Services (CHIPS) petition on behalf of the children under Minn. Stat. § 260C.007, subds. 6(3), (4), (8), and (9) (2019). The county noted that the children lacked stable housing and that the schools reported J.D.K. has been unresponsive to the children's needs. The county also learned that, in January 2017, J.D.K. and the children were living in a fish house with propane heat and an outhouse that lacked a shower. At other times, they lived on campgrounds. One significant issue for child 2 had been the child's medical condition of having a "lazy eye;"¹ J.D.K. made no appointments for child 2 after the school arranged for vision therapy. The district court held an emergency-protective-care (EPC) hearing on the same day, finding the children in need of protection or services, and requiring J.D.K. to submit to a Urinalysis test (UA).

¹ After the children were removed, the county arranged for child 2 to undergo eye surgery. J.D.K. did not attend and called several hours after the surgery's scheduled time to tell the case worker that he "forgot."

On March 15, 2019, the district court held an admit-or-deny hearing on the CHIPS petition. At the hearing, J.D.K. admitted to failing to provide for the children's physical or mental-health needs under Minn. Stat. § 260C.007, subd. 6(3) (2018), and the district court adjudicated them CHIPS. J.D.K.'s UA results for the March 15, 2019 collection were positive for amphetamines.

On April 25, 2019, the district court held a disposition hearing and adopted the case plans. In relevant part, the case plans required that J.D.K. (1) "have safe, stable, and sober behaviors," (2) "participate in mental health assessments and follow through with services/recommendations," (3) "provide UA's as requested by [the county]," (4) "remain free of all mood altering chemicals," (5) "show the ability to consistently meet the children's education needs," (6) "attend appointments and engage in the children's services," and (7) "obtain adequate, safe, and stable housing." J.D.K. had not signed the case plans but had counsel represent him at the hearing, and neither J.D.K. nor his attorney objected to the case plans. J.D.K.'s UA results for the April 25, 2019 testing were positive for amphetamines and cannabinoids. Over the following months, J.D.K. either failed to provide a UA or tested positive for amphetamines.

In August 2019, J.D.K. underwent a Rule-25 assessment that found he has "no awareness of the negative impact of mental health problems or substance abuse" with a high vulnerability to further substance abuse. The assessment also noted that J.D.K. has a severe case of Amphetamine Type Substance disorder. The assessment recommended that J.D.K. complete chemical-dependency treatment at Twin Town, that he remain free of all

drugs and alcohol, and that he have an updated assessment if he missed or tested positive on any of the UAs. J.D.K. never attended the Twin Town treatment program.

On November 14, 2019, the county filed a petition to terminate parental rights (TPR) under Minn. Stat. § 260C.007, subds. 6(3), (4), (8), (9) (2019). J.D.K. denied the TPR petition.

A second Rule-25 assessment also diagnosed him with a severe Amphetamine Type Substance disorder and recommended that he complete inpatient chemical-dependency treatment at New Beginnings. J.D.K. did not enroll in the New Beginnings treatment program, but instead enrolled in a 30-day program at Meridian Behavioral Health on January 15, 2020. At Meridian, J.D.K. reported using methamphetamine 28 out of 30 days. On January 23, J.D.K. left Meridian against staff approval.

At trial, J.D.K. testified on each of the four days. The district court terminated J.D.K.'s parental rights to the children based on clear and convincing evidence on three of the four statutory grounds and found that the county made reasonable efforts towards reunification. J.D.K. appeals.

DECISION

I. The district court did not err by terminating J.D.K.'s parental rights without J.D.K. signing the case plans.

Appellant argues that the plain language of Minn. Stat. §§ 260C.219, subd. 1(c)(1) (2018) and 260C.212, subd. 1(b)(1) (Supp. 2019), require the county to prepare the case plans “jointly” with the parent and obtain the parent’s signature and that the county’s failure to meet those requirements warrants reversal. We are not persuaded.

“Whether a written case plan is required is a question of statutory interpretation, which we review de novo.” *Matter of Welfare of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018) (citing *In re Welfare of J.J.P.*, 831 N.W.2d 260, 264 (Minn. 2013)). 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, subd. 1(c)(1). “An out-of-home placement plan means a written document . . . prepared . . . jointly with the parent.” Minn. Stat. § 260C.212, subd. 1(b). “As *appropriate* the plan shall be” submitted to the district court for approval, “signed by the parent,” and explained to all persons involved in its implementation. *Id.*, subd. (1)(b)(1) (emphasis added); 3(c).

Because this issue requires statutory interpretation, we begin by determining whether section 260C.212, subdivision 1(b), is ambiguous. We conclude that it is not. We therefore look to its plain and ordinary meaning. *See A.R.B.*, 906 N.W.2d at 897. Section 260C.212 provides that, “as appropriate,” a case plan shall be signed by the parent. The plain language of the statute gives the district court discretion, depending on the circumstances of each case, to determine whether a parent must sign a case plan. For example, it may not be “appropriate” or necessary to require signatures when, as occurred here, all of the parties, including the parent, guardian ad litem, county social worker, and county attorney, are in the courtroom at the time the district court adopts the order. In past versions of this statute, Minnesota appellate courts have recognized that a written case plan or the explanation of one is not always necessary, particularly when a parent fails to

cooperate, if the underlying purpose of the case plan is met. *In re Welfare of R.M.M. III*, 316 N.W.2d 538, 542 (Minn. 1982) (concluding absence of written plan did not warrant reversal when parent's lack of cooperation prevented construction of plan); *Matter of Welfare of J.J.B.*, 390 N.W.2d 274, 280 (Minn. 1986) ("That one social worker did not read the plan to the mother, word for word, is not a basis for reversal of the termination order."); *In re Welfare of J.J.L.B.*, 394 N.W.2d 858, 863 (Minn. App. 1986) (concluding no reversible error when parent's failure to cooperate and transitory lifestyle in part prevented county from providing her timely written foster-placement plan), *review denied* (Minn. Dec. 17, 1986).

First, J.D.K. argues that he was not meaningfully involved in case planning and did not "jointly" prepare the case plans. This assertion is not consistent with the testimony at trial or the district court's finding that J.D.K. told the county he "doesn't believe he needs the services and doesn't plan to engage with the worker." J.D.K. admitted that he was "bucking the system." The case worker also testified that, after several email exchanges with J.D.K., she offered to meet with him closer to his home before or after one of the court hearings. She also attempted to review the case plans over the phone, but he was mostly interested in arguing that he did not need the services. She even offered to meet with him at one of his job sites. On April 14, 2019, the case worker sat down with J.D.K. and went over the case plans with him, emphasizing the goal of reunification. He did not sign it because it was not court ordered yet. The record reflects that the county made reasonable efforts to involve J.D.K. in the case-planning process, but that his own refusal to cooperate prevented the kind of involvement of which he now complains.

Next, J.D.K. asserts that he did not understand the terms of the case plans. This too is not supported by the record. J.D.K. verbally agreed to the case plans at the hearing. And J.D.K.'s own testimony indicates that he understood the case plans. He stated that he understood the case plans to be "[h]elp with finances to get a place to live, and that's about it. That's the only thing I had acknowledged in the EPC hearing." But later, J.D.K. acknowledged that the district court "said that I need to find stable housing *and* kick the drug habit." (Emphasis added). The district court repeated those concerns at the November hearing. It is reasonable to infer that J.D.K. understood that he needed to attend chemical-dependency treatment after each of the Rule-25 assessments since he attended one program for about a week, albeit not the recommended program and short of the recommended time. J.D.K. also admitted that at "almost every time" he met with the case worker, she asked him to attend chemical-dependency treatment. Based on this record, we are not persuaded that he failed to understand the conditions of the case plans.

Appellant argues next that *A.R.B.* controls. But the *A.R.B.* court decided a different issue: whether a written case plan was required because the "case plans" were in fact merely recommendations that the social worker created before the children were found in need of protection or services. 906 N.W.2d at 896. The parent did not sign the first recommendations, and only after the children were adjudicated CHIPS did the parent express a desire to work on a case plan. *Id.* More importantly, the county never developed a case plan for court approval. *Id.* Unlike *A.R.B.*, here, the county developed and discussed the case plans with J.D.K. after the children were adjudicated CHIPS and before the April 25, 2019 hearing at which the district court formally adopted them. Moreover, the district

court in *A.R.B.* noted the limited and inconsistent testimony regarding the contents of the alleged case plan. Here, the case plans are in the record in their entirety, the county emailed them to J.D.K and his attorney, the county discussed them with him in person, and he reiterated his understanding at trial of the parts of the plans he now disputes. *A.R.B.* does not control here.

We conclude that the district court did not err in terminating J.D.K.’s parental rights because it determined that J.D.K. did not have to sign the case plans based on his unwillingness to engage the services rendered.

II. The district court did not clearly err by finding that the county made reasonable efforts toward reunification.

J.D.K. argues that the services the county provided him did not constitute reasonable efforts to reunite the family because they were not relevant to the safety and protection of the children. We disagree.

A county must make reasonable efforts to reunify the family. *See* Minn. Stat. § 260.012(a) (2018). We review a district court’s finding that reasonable efforts were made for clear error. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). A finding is clearly erroneous if it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Id.* (quoting *In re Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008)).

To be reasonable, a county’s reunification efforts 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.” See Minn. Stat. § 260.012(h) (2018). “Whether the county has met its duty of reasonable efforts requires consideration of the length of the 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).

As an initial matter, J.D.K. suggests that the district court terminated his parental rights solely on chemical-dependency concerns. But the district court found that J.D.K.’s inability to attend to the children’s needs engendered unstable housing, a lack of gainful employment, and his lack of engagement with their education and health. His substance abuse is one of the underlying causes of his “neglectful and disengaged” parenting, but not the only reason his parental rights were terminated.

Here, the district court found that J.D.K.’s use of “substances make him unable to manage his affairs,” that he is not engaged with the education or health of his children, that he is chronically absent or late, and that his lack of sobriety prevents him from “working the case plan[s] in a meaningful way or possessing adequate insight into the needs of his children.” Each of these findings is related to the safety and protection of the children and supported by the record, including J.D.K.’s own admissions.

First, J.D.K. admitted at trial that his use of methamphetamine 28 out of 30 days in a month has a “major” impact on his life, and this is consistent with the two Rule-25 assessments that concluded he has severe Amphetamine Type Substance disorder. J.D.K. admitted three times at trial that his drug use has negatively impacted the children. Second, J.D.K. failed to attend to child 1’s medication and child 2’s corrective eye surgery. Even when child 2’s school arranged for eye therapy, J.D.K. did not make an effort to get child

2 the medical attention the child needed. When the county arranged for child 2's corrective eye surgery, J.D.K. "forgot" about the surgery and did not attend. The children's schools reported that J.D.K. was largely absent from their educational needs, and he admitted that he did not know that child 1 had 47 documented behavioral incidences. Third, J.D.K. arrived late for court dates and either missed or arrived late for scheduled visits with his children, often without explanation. The schools also reported that J.D.K.'s constant tardiness means the children will wait hours for him to show up. Fourth, J.D.K.'s lack of sobriety was the express reason that two of the visit supervisors discontinued scheduled visits. Even during the visits he did attend, the supervisors noted that he did not engage in appropriate conversation, talked over the children, and generally did not show improvement. The district court's findings that J.D.K.'s chemical dependency kept him from attending to the needs of the children is supported by the record and related to the safety and protection of the children.

Appellant argues next that, because his children were unaware of his chemical and substance abuse, it could not have been germane to their safety and protection. Appellant provides no legal support for the purported requirement that the children be aware of his substance abuse. Further, this position would mistakenly require that a child be aware of the underlying conditions compromising his or her safety and protection. A TPR is an action to protect children, not to require that they be acutely aware of the nature of the threats to their safety and well-being.

Next, J.D.K. asserts that the county failed to provide "real, genuine assistance." This too is not supported by the record. The case worker testified that she went to great

lengths to get copies of the case plans to J.D.K. and sat down with him to discuss the plans in person. She advocated for J.D.K. on several occasions: to keep him on the UA list after the facility called requesting to take him off the list for noncompliance, to find him a second referral for an inpatient chemical-dependency program, to help him find housing in three different cities, to personally fill out his application for a Rule-25 assessment, and to provide him with a gas card for transportation if necessary. Because the record supports the district court's finding that the county made reasonable efforts to reunite the family, we conclude that the district court did not clearly err by terminating his parental rights.

Affirmed.