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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1113**

In the Matter of the Welfare of the Children of: S. C. and J. J. A. L., Parents.

**Filed March 15, 2021
Affirmed in part and reversed in part
Reilly, Judge**

Kandiyohi County District Court
File No. 34-JV-20-77

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Considered and decided by Florey, Presiding Judge; Reilly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this juvenile-protection appeal, the district court dismissed appellant-county's petition to terminate parental rights (the TPR petition). In the TPR petition file and in the underlying Child in Need of Protection or Services (CHIPS) file, the district court found due-process violations and ordered appellant to create and implement remedial plans and consult with the Minnesota Department of Human Services (DHS). Appellant appealed the dismissal of its TPR petition, and, in a separate appellate file (A20-1114), sought a writ

of prohibition to preclude the district court from enforcing the requirement in the CHIPS matter that appellant and the office of the county attorney consult with the DHS. This court denied the petition for a writ of prohibition in A20-1114 and directed the parties to address the order issued in the underlying CHIPS file in this appeal of the order dismissing the TPR petition. In this appeal, appellant argues that the district court (1) abused its discretion by dismissing the TPR petition, (2) abused its discretion by determining that it was not in the children's best interests to terminate parental rights, (3) erred by determining that appellant failed to make reasonable efforts to reunify the family, and (4) erred by determining on a sua sponte basis that appellant violated the family's due-process rights. We affirm the district court's termination decision, but reverse the district court's due-process-violation determinations.

FACTS

Appellant Kandiyohi County Health and Human Services (KCHHS) challenges the district court's determination that there was not a statutory basis to terminate the parental rights of respondent-father, J.J.A.L., and respondent-mother, S.C. (the parents), to their two minor children, I.C., born in 2017, and V.C., born in 2019. On September 22, 2019, mother noticed that V.C. was in pain, that her cry was "different," and that she had trouble breathing. Mother brought V.C. to the emergency room. Emergency-room providers performed an x-ray on V.C., but the x-ray did not show that V.C. had any fractures. The next day, mother brought V.C. to the doctor for a medical appointment. Mother told a health-care provider that a few days prior, she had left V.C. on the parents' bed to run upstairs. Mother heard V.C. crying and ran back downstairs. Mother found V.C. on the

bed, but noticed that V.C. seemed to have difficulty breathing and that her chest looked abnormal. The examining doctor decided to transfer V.C. to the hospital, where doctors discovered that V.C. sustained acute rib and hand fractures. Imaging suggested that V.C. sustained her fractures in the 7-10 days before the medical visit. The parents did not know how V.C. was injured. Although the parents are V.C.'s only caregivers, the family lives in a single-family home with mother's parents and two of mother's siblings.

On September 24, 2019, KCHHS filed an emergency request for protective care and detention. The district court issued an order on the same date, determining that the children should remain in protective care. KCHHS removed V.C. and I.C. from their parents' home and placed them into emergency protective care.

On September 26, 2019, KCHHS filed a Petition—Child in Need of Protection or Services (the CHIPS petition) in court file number 34-JV-19-219. The district court held an Emergency Protective Care (EPC) hearing on September 26, 2019. Following the hearing, the district court issued an order determining that the petition established a prima facie showing that a juvenile-protection matter existed and found that the children were endangered.

On March 18, 2020, KCHHS filed the TPR petition. The TPR petition asserted three statutory bases for termination: (1) the parents substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon them by the parent-child relationship under Minn. Stat. § 260C.301, subd. 1(b)(2) (2018); (2) the parents were palpably unfit to be parties to the parent-child relationship under Minn. Stat.

§ 260C.301, subd. 1(b)(4) (2018); and (3) the children experienced egregious harm under Minn. Stat. § 260C.301, subd. 1(b)(6) (2018).

The district court held a trial on the TPR petition in June and July 2020. On August 10, 2020, the district court issued its Findings of Fact, Conclusions of Law, and Order for Dismissal, concluding that KCHHS failed to prove a statutory basis for termination and dismissing the TPR petition. The district court determined that KCHHS failed to show by clear and convincing evidence that the parents harmed V.C. The district court determined that KCHHS did not show by clear and convincing evidence that either of the parents knew or should have known that V.C. suffered substantial bodily harm. The district court reasoned that “It is possible that neither [parent] caused [V.C.’s] fractures. It is possible that neither [parent] knows who harmed [V.C.]. It is possible that [parents] have provided truthful information and testimony that they do not know what happened to [V.C.].” Given all the evidence presented, the district court determined that the children “continue[d] to be in need of protection or services because [V.C.] experienced unexplained rib fractures while in the home[. . .]” Thus, the district court determined that while KCHHS failed to establish a statutory basis for termination, “the safety concerns in the [family] home have not been mitigated.” The district court also determined that termination of parental rights was not in the best interests of the children, and that KCHHS had not made reasonable efforts to reunify the family. Lastly, the district court made a sua sponte finding that “[t]he Due Process Rights of [the family] have been violated in this proceeding and in the CHIPS proceeding” The district court then dismissed the TPR petition.

On August 11, 2020, the district court issued an order in the CHIPS case. The district court found that there were due-process violations “related to how [KCHHS] initially assesses egregious harm cases and any removal determination[s].” The district court ordered KCHHS and the Kandiyohi County Attorney’s Office (the KCAO) to “engage in coordinated efforts to establish objective processes for making removal determinations, making maltreatment determinations, and when to make determinations for filing permanency petitions that are not based upon the passing of permanency timelines.” The district court ordered KCHHS and the KCAO to “creat[e] objective processes identifying means to create safety and for making safety plans for parents in difficult and extraordinary circumstances,” and to “create a plan to coordinate efforts to determine the elements of proof at the outset of all CHIPS and TPR cases”

KCHHS appeals the August 10, 2020 order dismissing the TPR petition. KCHHS and the KCAO also filed a separate petition for writ of prohibition or mandamus, seeking to preclude the district court from enforcing the parts of its August 10 and August 11 orders regarding the due-process violations and remedial provisions (A20-1114). We declined to address the writ of mandamus because it was not adequately briefed. We also determined that a writ of prohibition was not an appropriate remedy because KCHHS and the KCAO had an adequate remedy at law. We directed the parties to the TPR case to address the August 11, 2020 CHIPS order in this appeal.

DECISION

I. The district court did not abuse its discretion by determining that there was not a statutory basis to terminate parental rights.

a. Standard of review

A natural parent is generally “presumed to be fit and suitable to be entrusted with the care of his or her child.” *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 250 (Minn. App. 2003). “Parental rights are terminated only for grave and weighty reasons,” *In re Welfare of Children of B.M.*, 845 N.W.2d 558, 563 (Minn. 2014) (quotation omitted), and “when the evidence clearly mandates such a result,” *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. App. 1996). “To involuntarily terminate parental rights, the district court must find that at least one of the eight statutory conditions for termination exist[s].” *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996); Minn. Stat. § 260C.301, subd. 1(b) (2018) (listing statutory grounds for termination).

While we afford “considerable deference” to the district court, we will carefully inquire into the sufficiency of the evidence to determine whether it is clear and convincing. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). On appeal from a district court’s termination-of-parental-rights order, “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. 6, 2012). A finding is clearly erroneous if “the review of the entire record leaves the court with the definite and firm conviction that

a mistake has been made.” *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998) (quotation omitted).

b. The district court’s factual findings are not clearly erroneous.

KCHHS argues that the district court made “multiple critical errors of fact,” leading to factual findings that were not supported by the record. We review the district court’s findings of fact for clear error. *J.R.B.*, 805 N.W.2d at 901. “That the record might support findings other than those made by the [district] court does not show that the [district] court’s findings are defective.” *In re Welfare of Child of T.C.M.*, 758 N.W.2d 340, 345 (Minn. App. 2008) (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 Child of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007).

First, KCHHS argues that the district court failed to give enough weight to the testimony of its expert witness, Pediatrician Dr. Mark Hudson. Dr. Hudson is the Medical Director of Midwest Children’s Resource Center. Dr. Hudson testified that in his medical opinion, V.C.’s injuries resulted from abusive trauma. Dr. Hudson ruled out other causes such as underlying bone disease, other types of significant trauma from non-abusive sources, a fracture caused by routine care, or injuries caused by I.C., V.C.’s two-year-old sibling. KCHHS argues that the district court clearly erred by failing to find, based on Dr. Hudson’s testimony, that V.C.’s injuries stemmed from parental abuse.

We disagree. The district court determined that Dr. Hudson was “qualified to testify as an expert regarding pediatrics and the subspecialty of pediatric child abuse” That said, the district court weighed Dr. Hudson’s testimony against all of the other evidence

presented and found that “[i]t is very difficult to determine when [V.C.’s] injuries occurred” and that “[t]here is no way to know if the person who caused this injury did it intentionally or with a purpose to injure the child.” The record supports the district court’s finding that the witnesses could not identify who caused V.C.’s injuries.

KCHHS argues that “[e]ven the parents’ own proffered experts and the mother’s counsel acknowledged at trial that Dr. Hudson’s diagnosis was abuse.” This statement is inaccurate. The parents called Dr. Marvin Miller, a physician in the Department of Medical Genetics and Birth Defects for Dayton Children’s Hospital in Ohio, to testify about brittle bone disease. Dr. Miller testified that he reviewed Dr. Hudson’s conclusions and diagnosis, but “respectfully disagree[d]” with them. Ultimately, the district court did not give Dr. Miller’s testimony much weight because his opinions about brittle bone disease rested on a “novel theory” and lacked “the appropriate objective and independent validation necessary for the [district] [c]ourt to rely upon it.” KCHHS’s contention that the district court failed to give proper weight to Dr. Hudson’s abuse determination is unfounded.

Second, KCHHS argues that the district court erred in “important medical findings” supporting a determination that V.C. suffered abuse. KCHHS mischaracterizes the district court’s factual findings. The district court acknowledged that Dr. Hudson testified that V.C.’s injuries could have been the result of abuse. The district court did not deny the extent of V.C.’s injuries or disregard the medical opinions of the radiologists or medical doctors. Instead, the district court reasoned that while V.C. suffered injuries, there could have been other possible, unknown explanations for those injuries. The district court heard testimony from Dr. Janice Ophoven, MD, a pediatric forensic pathologist. Dr. Ophoven

conducted an independent forensic review of V.C.'s injuries and reviewed V.C.'s medical records. Dr. Ophoven testified that there are a "number of considerations that have to be made as to why this child might present with—with abnormal bone on X-ray." As an example, Dr. Ophoven identified as possible factors:

The mother's history of malnutrition and Vitamin D deficiency as well as the manipulation of the baby [during her delivery], the [fact that she was] small for [her] gestational age, and the fact that there may have been an incident of an accidental impact from the siblings to me all together basically says there is a very legitimate[] trauma[] [as] to why this family is having to identify or uncover possible explanations.

Dr. Ophoven testified that V.C. also could have been injured by I.C., and she could not conclude that V.C.'s injuries were definitely caused by parental abuse.

The district court found Dr. Ophoven's testimony credible. The district court found that the possibilities raised by Dr. Ophoven constituted a "realm of logically possible explanations for [V.C.'s] injuries." Because of the varied possibilities raised by Drs. Hudson and Ophoven, the district court found that "KCHHS did not fully investigate all of the logically possible explanations before choosing one possible explanation that [V.C.] is a normal child with non-accidental, inflicted trauma." The order reveals that the district court carefully weighed the testimony of three expert witnesses, Dr. Hudson, Dr. Miller, and Dr. Ophoven, and made credibility determinations based on their testimony. In weighing this testimony, the district court could not say with the certainty required by the clear and convincing burden of proof that V.C.'s injuries were caused by parental abuse. Viewing this record in the light most favorable to the district court's findings, these findings are not clearly erroneous.

Third, KCHHS argues that the district court erred “with regard to who could have caused the injuries” because only the parents spent time alone with V.C. During trial, both mother and father testified that they were the primary caretakers for their children. But the parties also presented evidence that the family lived in a single-family home with mother’s parents and two of mother’s siblings. The district court noted that KCHHS “did not walk through the entire [family] home . . . at any point during the investigation or case management,” and likewise failed to “investigate who lived in the home with [V.C.] at [the home] at any point during the investigation or case management.” The district court also noted that KCHHS did not investigate who lived in the house with the parents. The district court made factual findings that V.C. sustained serious injuries, which had not been explained. But given the evidence presented by KCHHS and the questions remaining about the family home, the district court did not find clear and convincing evidence to support an egregious-harm determination. These findings are not clearly erroneous.

c. The district court’s legal conclusions do not constitute an abuse of discretion.

KCHHS argues that the district court’s erroneous factual findings affected its ultimate conclusion that there was not a statutory basis to terminate parental rights. As stated, we determine that the district court’s factual findings are supported by the record and are not clearly erroneous. We now turn to KCHHS’s argument that the district court abused its discretion by dismissing the TPR petition because a statutory basis was not proven by clear and convincing evidence.

KCHHS sought to terminate parental rights on the ground of egregious harm. Minn. Stat. § 260C.301, subd. 1(b)(6).¹ Termination is appropriate if the district court determines that:

a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care.

Id. “Egregious harm” is “the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care.” Minn. Stat. § 260C.007, subd. 14 (2018). “Egregious harm” includes, but is not limited to, the infliction of “substantial bodily harm” to a child. *Id.*, subd. 14(2); *see also* Minn. Stat. § 609.02, subd. 7a (2018) (noting that “substantial bodily harm” includes “bodily injury which . . . causes a fracture of any bodily member”).

¹ The petition also sought to terminate parental rights for neglect and for palpable unfitness. Minn. Stat. § 260C.301, subd. 1(b)(2), (4). Before trial, the district court determined that KCHHS's petition did not establish a *prima facie* case for neglect and dismissed that portion of the petition. KCHHS does not challenge this determination on appeal. The district court also determined that KCHHS failed to prove that the parents were palpably unfit. KCHHS did not elicit testimony from any of the witnesses at trial that the parents were palpably unfit. Yet, KCHHS argues that “If the district court had found the parents responsible for the egregious harm, then they too would likely meet the definition of palpably unfit to parent.” KCHHS neither presents evidence nor cites caselaw in support of this argument and we deem it forfeited. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (deeming arguments forfeited on appeal that are unsupported by facts in record and contain inadequate citation to relevant legal authority); *see also State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an issue absent adequate briefing); *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 166 (Minn. App. 2005) (citing this aspect of *Wintz* in a termination of parental rights appeal).

The district court determined that the record lacked clear and convincing evidence of egregious harm. KCHHS argues that it provided a “significant volume of evidence” of egregious harm and the district court abused its discretion by declining to terminate parental rights on this basis. We begin by noting that the district court’s “determinations of witness credibility and the weight to be given to the evidence” are entitled to deference. *T.D.*, 731 N.W.2d at 555.

Here, the district court made thorough findings about the testimony of the witnesses. The district court’s order relied, in part, on the testimony presented by Dr. Hudson about the nature and extent of V.C.’s injuries. Dr. Hudson stated that in his opinion, V.C.’s fractures were “all highly specific for abuse.” Yet, the district court also found that “Dr. Hudson opined that there is no way to determine the mechanism of injury. Dr. Hudson also opined that there is no way to determine who committed the harm.” Dr. Hudson became acquainted with V.C.’s case on September 24, 2019, when he consulted as a child-abuse pediatrician. Dr. Hudson spoke to the parents, inquired into the family’s medical history, and reviewed V.C.’s lab work. Dr. Hudson reviewed V.C.’s vitamin D level, which can relate to bone health, but documented a normal or adequate level of Vitamin D in V.C.’s lab results. Dr. Hudson performed a physical examination of V.C. and testified that she “looked like a normal infant” and did not have “any signs of external trauma.” Dr. Hudson spoke to the parents, who could not identify any source of accidental trauma, such as an accident or a fall. V.C. had a head CT scan to see if there was an “injury inside her head” or to her eyes, but those tests came back negative. Based on the tests conducted and his medical examination, Dr. Hudson concluded that V.C. had “acute” fractures to her ribs

and her hand. Dr. Hudson opined that V.C.'s fractures resulted from "abusive trauma." During cross-examination, parents' counsel asked Dr. Hudson to confirm that he was "unable to address . . . how this might have happened, specifically as far as the causation?" Dr. Hudson responded, "[s]pecific to [V.C.], correct." Dr. Hudson reiterated that, in his opinion, "the injuries [are] inflicted or abusive trauma." That said, he acknowledged that it was impossible to say how the injuries occurred.

The district court also credited the testimony of Dr. Ophoven. Dr. Ophoven testified that there were several possible explanations for V.C.'s injuries, including:

- 1) Fractures due to accidental trauma in a normal child;
- 2) Fractures due to accidental trauma in a child with abnormality of bone strength;
- 3) Fractures due to inflicted trauma in a normal child;
- 4) Fractures due to inflicted trauma in a child with abnormality of bone strength;
- 5) Fractures due to activities of daily living in a child with abnormal bone strength;
- 6) Abnormalities of bone or bone healing that do not represent fracture in a child with metabolic bone disease; and
- 7) Combination of any of the above.

The district court reasoned that the existence of V.C.'s fractures, "without investigation into all logically possible explanations, is insufficient to prove child abuse occurred, even if the fracture is 'highly suspicious of abuse.'" Based on its review of the witness testimony and its credibility determinations, the district court found that KCHHS failed to prove by clear and convincing evidence that parents were responsible for the harm caused to V.C. These findings—which are supported by the record—sustain the district court's conclusions of law.

KCHHS also argues that in some cases the egregious-harm provision may permit the termination of parental rights even if the parent did not personally inflict the harm or

was not physically present when the egregious harm was inflicted. *In re Welfare of Child of T.P.*, 747 N.W.2d 356, 362 (Minn. 2008). If a parent did not personally inflict egregious harm on a child, a district court may terminate parental rights only if the district court finds “that the parent either knew or should have known that the child had experienced egregious harm.” *Id.* Whether a parent knew or should have known of the egregious harm is “necessary, but not sufficient” to satisfy the “nature, duration, or chronicity” requirement of section 260C.301, subdivision 1(b)(6). *Id.* at n.4. Further, the fact that a child experiences harm “does not indicate a lack of regard for the well-being of the child on the part of the parent who did not personally inflict the egregious harm, did not actually know about the harm, and could not have been expected to know about the harm.” *Id.*

Here, the record does not support a conclusion that the parents knew or should have known that V.C. suffered egregious harm. Mother testified that she noticed on September 22 that V.C. was in pain, had a “different” cry, and had trouble breathing. Mother stated that earlier in the week, she was in an upper level of the home when she heard V.C. crying from her bedroom. Mother found V.C. on the bed and noticed that she seemed to have difficulty breathing and that her chest looked abnormal. Mother testified that she did not harm V.C., and did not know how she sustained her injuries. Father also testified that he did not know how V.C. may have become injured. The district court weighed the parents’ testimony, along with the testimony of the doctors and the expert witnesses and all of the record evidence. While the district court found that V.C. suffered serious injuries, it also determined that KCHHS failed to prove by clear and convincing evidence that V.C. “experienced egregious harm in the parent’s care which is of a nature, duration, or

chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care."

Given the record before us, we conclude that the district court did not abuse its discretion by determining that KCHHS failed to establish by clear and convincing evidence that a statutory basis supported termination.

II. The district court did not abuse its discretion by determining that it is not in the best interests of the children to terminate parental rights.

KCHHS argues that the district court abused its discretion by determining that it is not in the best interests of the children to terminate parental rights. Because we determine that the district court did not abuse its discretion by concluding that KCHHS did not prove a statutory basis by clear and convincing evidence, we need not reach this issue. *See In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014) (noting that "an involuntary termination of parental rights is proper only when at least one statutory ground for termination is supported by clear and convincing evidence *and* the termination is in the child's best interest"). But because the best interests of the children are the "paramount consideration" in termination matters, we will briefly address this argument. Minn. Stat. § 260C.301, subd. 7 (2018).

When analyzing the child's best interests, the district court balances 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." *J.R.B.*, 805 N.W.2d at 905 (quotation omitted); Minn. R. Juv. Prot. P. 58.04(c)(2)(ii).

“Competing interests include such things as a stable environment, health considerations and the child’s preferences.” *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). “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 (citation omitted).

In determining whether termination is in a child’s best interests, the district court must “explain its rationale in its findings and conclusions.” *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). But best-interests findings need not “go into great detail.” *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004). While the district court did not specifically address the factors outlined in Minn. R. Juv. Prot. P. 58.04(c)(2)(ii), it did discuss the children’s interest in preserving the parent-child relationship, and the parent’s interest in preserving the parent-child relationship with the children.

The district court found that both children had a “significant interest in maintaining the parent-child relationship” with the parents. The district court noted that I.C. “in particular suffered from his long separation from his parents,” and “did not want to be away from his parents.” While V.C. was only three months old when she went into foster care, the district court found that she “suffered from irreparable harm to what would have been her expected attachment and bonding with her parents.”

And the district court found that both parents had an interest in preserving the parent-child relationship. Unlike many termination cases that come before this court, the parents here made significant efforts to preserve the parent-child relationship. A child protection specialist with KCHHS referred the parents for parental capacity evaluations,

anger assessments for father, diagnostic assessments, supervised visits, and medical appointments for the children. The district court found that, according to the specialist, “all services that could be provided to this family were provided.” The district court found that the parents cooperated with the out-of-home placement plan, and “completed everything in their plan,” except for certain aspects of genetic testing. The district court described the parents as having a favorable demeanor in court, and noted that father even left his job and took another job to meet all the demands of the child-protection case.

The district court’s best-interests findings are supported by the record. Further, the district court’s findings are based, in part, on its assessment of the credibility of the witnesses, and we will not reweigh these credibility determinations on appeal. *See In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012) (“Because the best-interests analysis involves credibility determinations and is generally not susceptible to an appellate court’s global review of a record, we give considerable deference to the district court’s findings.” (quotation omitted)). We therefore conclude that the district court did not abuse its discretion in determining that termination of parental rights would not be in the best interests of the children.

III. The district court did not err by determining that KCHHS failed to make reasonable efforts to reunify the family.

KCHHS challenges the district court’s determination that it failed to make reasonable efforts to reunify the family. A county must make reasonable efforts at reunification before the district court can terminate a parent’s rights. Minn. Stat. § 260.012(a) (2018). “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) (quotation omitted), *review denied* (Minn. Mar. 28, 2007). A district court’s finding that reasonable efforts were made to reunify parent and children is reviewed for clear error. *S.E.P.*, 744 N.W.2d at 386. Reasonable efforts are not required when “the parent has subjected a child to egregious harm as defined in section 260C.007, subdivision 14.” Minn. Stat. § 260.012(a)(1).²

The district court determined that KCHHS failed to prove egregious harm. It also determined that “KCHHS did not provide reasonable efforts to reunify” the family.³ KCHHS argues that these findings are unnecessary and must be reversed. That said, KCHHS did not brief this issue or present any facts or legal authority to support its argument, beyond its assertion that reasonable-efforts findings are unnecessary. “An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.” *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971); *see also In re A.R.M.*, 611 N.W.2d 43, 50 (Minn. App. 2000) (applying *Schoepke* in a CHIPS case). We decline to consider this argument. *See Wintz*, 558 N.W.2d at 480; *J.B.*, 698 N.W.2d at 166.

² A district court may, under certain circumstances, relieve a county from having to make reasonable efforts to rehabilitate parents and reunify a family. Minn. R. Juv. Prot. P. 42.08, subd. 1(e)(1). Here, KCHHS did not request to be relieved of its responsibility to make reasonable efforts, the district court did not relieve KCHHS of that obligation, and the lack of that determination is not at issue in this appeal.

³ We acknowledge that, in its lengthy order, the district court found, on the one hand, that “all services that could be provided to this family were provided,” and, on the other hand, that KCHHS did not make reasonable efforts to reunify the family.

IV. The district court erred in determining, on a sua sponte basis, that KCHHS committed due-process violations.

KCHHS argues that the district court's due-process-violation findings are erroneous. The constitutions of the United States and the State of Minnesota guarantee the right to due process and a fair trial. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. "Although the amount of process due in a particular case varies with the unique circumstances of that case, prejudice as a result of the alleged violation is an essential component of the due process analysis." *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008) (citations omitted). We apply a de novo standard of review to due-process-violations findings in a termination proceeding. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008).

We determine that the district court erred because the due-process issue was not properly before the district court in either the CHIPS file or the TPR file.

At the hearing on August 10 that generated the August 11, 2020 order in the CHIPS file, the district court stated that it "asked Guardians ad Litem, Social Workers, and Assistant Kandiyohi County Attorneys for Kandiyohi County to come to this hearing."⁴ The district court began the hearing by announcing that "[w]e collectively got this case wrong from the beginning. We is all-inclusive, including this Court" and conveyed that it was time to address the due-process violations in the case. The district court then orally

⁴ We note that it is unusual for a district court to order people who did not work on a child protection case to appear for a disposition hearing.

articulated findings and orders in the case. It followed up with written orders. In its August 10, 2020 order in the TPR file, the district court made these conclusions of law:

23. The failure of KCHHS to properly investigate who might have harmed [V.C.] before filing a TPR petition led to Due Process Violations suffered by [the family].

24. The failure of KCHHS and [the KCAO] to effectively collaborate and communicate the legal standards relevant in this case led to Due Process Violations suffered by [the family].

25. The Due Process Rights of [the family] were violated when KCHHS provided inaccurate information to the Court in the Ex Parte EPC Affidavit and proposed order, and when that same inaccurate information was submitted to the Court in the CHIPS petition and the TPR petition as true. At the time submitted, KCHHS knew or should have known the information was inaccurate or obsolete.

In its August 11, 2020 order in the CHIPS file, the district court reiterated that KCHHS and the KCAO violated the family's due-process rights and ordered the following:

- a. KCHHS and the [KCAO] shall engage in coordinated efforts to establish objective processes for making removal determinations, making maltreatment determinations, and when to make determinations for filing permanency petitions that are not based upon the passing of permanency timelines.
- b. KCHHS and the [KCAO] shall seek assistance from [DHS] in creating objective processes identifying means to create safety and for making safety plans for parents in difficult and extraordinary circumstances.
- c. KCHHS and the [KCAO] shall create a plan to coordinate efforts to determine the elements of proof at the outset of all CHIPS and TPR cases so that the social workers and county attorneys better understand what evidence is relevant and what is not. The plan shall be approved of by [DHS], and it shall be submitted within the next 60 days.

KCHHS argues that the district court exceeded its authority by making due-process-violation findings on a sua sponte basis and requiring KCHHS and the KCAO to engage in various affirmative efforts. We agree. Under Minnesota law, a district court “has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be in need of protection or services.” Minn. Stat. § 260C.101, subd. 1 (2018). The district court also has “original and exclusive jurisdiction in proceedings concerning . . . permanency matters under sections 260C.503 to 260C.521.” *Id.*, subd. 2(2) (2018). The “termination of parental rights is *always* discretionary with the juvenile court,” and the district court “is not required to grant or to deny” any petition. *In re Welfare of Children of J.D.T.*, 946 N.W.2d 321, 328 (Minn. 2020) (quotation omitted).

We recognize that it is the stated goal of Minnesota caselaw, statutory authority, and the guidance of the Children’s Justice Initiative, to ensure permanency for children in a fair and timely manner. See *R.D.L.*, 853 N.W.2d at 135 (stating that purpose of Children’s Justice Initiative is to ensure that “every Minnesota child, regardless of location, has the best possible chance for a safe and permanent home, *at the earliest possible time*” (quotation omitted)); *In re Welfare of J.R.*, 655 N.W.2d 1, 5 (Minn. 2003) (discussing importance of resolving child-protection matters in a fair and final manner); Minn. R. Juv. Prot. P. 1.02(b), (e) (noting that the purpose of these rules is to “provide a just, thorough, speedy, and efficient” resolution, and “reduce unnecessary delays in court proceedings”). We agree that district courts are responsible for overseeing and monitoring the progress of each child-protection case at every stage of the case, including addressing the issues that led to the petition, the reasonable efforts—if any—to reunify the family, and the progress

of the parents and the children on their case plan. And we encourage district courts to make observations about the progress of the case, and generate or solicit suggestions on how to improve the management of child-protection cases.

But central to the oversight of the case is the district court's obligation to ensure that *all* relevant persons and entities are afforded due process. Here, the district court violated that duty. While we recognize the broad discretion granted to the district court in child-protection matters, the district court exceeded its lawful authority when it found that KCHHS and the KCAO committed due-process violations and ordered them to implement remedial plans and consult with DHS. The district court did not indicate that it intended to address due-process considerations in either the TPR or CHIPS file, until *after* the TPR trial. Indeed, the transcript and the record reveal that the district court did not even say the phrase "due process" until the August 10 hearing, weeks after the TPR trial.

And more importantly, neither the KCAO nor DHS was a party to the CHIPS or TPR matter. Because neither the KCAO nor DHS was a party in these proceedings, the district court lacked authority to compel them to engage in remedial efforts such as consulting with one another and with KCHHS. *See Sammons v. Sammons*, 642 N.W.2d 450, 457 (Minn. App. 2002) (stating, in the marital dissolution context, that the "district court may not exercise jurisdiction over a nonparty" and "[lacked] personal jurisdiction to enter a judgment affecting [the property rights of a nonparty]"); *see also In re Ferlitto*, 565 N.W.2d 35, 37 (Minn. App. 1997) (noting that a district court may not exercise jurisdiction over a nonparty).

We determine, further, that the district court's due-process determinations violate the separation of powers and interfere with executive branch functions. Chapter 260C of the Minnesota Statutes governs child-welfare proceedings. *See* Minn. Stat. §§ 260C.001-.637 (2020). Courts must be mindful not to “use judicial authority to enforce or restrain acts which lie within the executive and legislative jurisdictions.” *State v. M.D.T.*, 831 N.W.2d 276, 280 (Minn. 2013) (quotation omitted). Here, the district court exceeded its authority and interfered in the powers delegated to another branch of government when it issued orders beyond those authorized by chapter 260C. It did so both by imposing requirements on entities such as DHS, which are neither a party to nor a participant in the proceedings, and by imposing on the county a duty to consult with other agencies regarding the propriety of filing termination petitions; the statute simply does not require the consultation ordered by the district court.

Additionally, the district court's order impermissibly interferes with the attorney-client relationship between KCHHS and the KCAO. The attorney-client privilege protects communications between attorneys and clients. Minn. Stat. § 595.02, subd. 1(b) (2020). Further, the rules of professional conduct prohibit an attorney from disclosing a client's confidences. Minn. R. Prof. Conduct 1.6(a). The district court's order would have impermissibly required disclosure to the court of privileged information and communications between the county and counsel. The order compelling KCHHS and the KCAO to submit their plans to the district court for review and continued oversight would have likewise violated the attorney-client relationship.

In sum, we determine that the district court's sua sponte consideration of due process, its decision to call nonparties to a hearing on August 10, its factual findings and conclusions of law regarding due process, and its imposition of remedial provisions upon nonparties, were improper. We therefore reverse those portions of the August 10, 2020 order in the TPR file related to the district court's due-process analysis, and the August 11, 2020 order in the CHIPS file.⁵

Affirmed in part and reversed in part.

⁵ The district court ordered KCHHS and the KCAO to undergo a number of remedial efforts, such as consulting with DHS, who is not a party to this proceeding. Because we are reversing the district court's due-process rulings prompting the required consultations, KCHHS and the KCAO do not have to engage in the remedial efforts erroneously ordered by the district court.