

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1152**

In the Matter of the Welfare of the Child(ren) of:
A. M. B. and M. J. B., Parents.

**Filed March 22, 2021
Affirmed
Frisch, Judge**

Brown County District Court
File No. 08-JV-20-16

Michelle K. Olsen, Birkholz & Associates, LLC, Mankato, Minnesota (for appellant M.J.B.)

A.M.B., Manitowoc, Wisconsin (pro se respondent)

Charles W. Hanson, Brown County Attorney, Jill M. Jensen, Assistant County Attorney, New Ulm, Minnesota (for respondent Brown County Human Services)

Shiree Oliver, New Ulm, Minnesota (guardian ad litem)

Considered and decided by Florey, Presiding Judge; Frisch, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

FRISCH, Judge

In this appeal following the transfer of custody from appellant-father to the children's mother, appellant claims that the district court erred by failing to make sufficient findings and by requiring appellant to incriminate himself. We affirm.

FACTS

In December 2018, all five of appellant-father M.J.B.'s children were removed from the family home following reports of sexual abuse or threatened sexual abuse. After an emergency protective-care hearing, the children were placed in their mother's custody, subject to supervision by respondent Brown County Human Services (the county). M.J.B. was ordered to leave the family home and have no contact with the children. The district court held a trial and thereafter adjudicated the children in need of protection or services (CHIPS) in April 2019. M.J.B. challenged that decision and we affirmed in November 2019. *In re Welfare of Children of A.B.*, No. A19-0785, 2019 WL 5691824, at *7 (Minn. App. Nov. 4, 2019).

The district court adopted many of its findings set forth in the order adjudicating the children as CHIPS. The district court found that M.J.B. directed his oldest child, Child 1, to deliver a letter hidden inside of a stocking to her ten-year-old friend (the friend). The letter directed the friend to meet M.J.B. alone, late at night, on the street. The district court found that, after the letter was discovered, M.J.B. sent several emails to the county's family facilitator in an attempt to explain his perspective. M.J.B. stated in an email captioned "God's plan" that he and his wife "felt a burden" to adopt the friend and that he sent the

letter because the friend's aunt was against the idea. M.J.B. sent another email in which he stated that it was more "than just having [the friend] live with [his] family" because "marriage would be an option for her (probably 10-15 years from now)." He added, "By the way, I'm very aware of the statutory rape laws and would never want to jeopardize [the friend's] future by breaking any of these laws. So how does this all work if I'm currently married?"

M.J.B. also stated that he took his children's mother to prom when she was 17 and he was 37 and that they married as soon as she came of legal age. In yet another email, titled "How I Knew," M.J.B. described his realization that God had a plan for him and the friend and that, following this realization, M.J.B. missed the friend intensely while she was away at camp. When the friend returned home from camp, the friend attended a sleepover at M.J.B.'s house with Child 1, and M.J.B. woke the friend up in the night by tickling her. M.J.B. led the friend to his office, played a song for her, and told her that he loved her and believed God had a plan for them to marry "many years down the road if she wanted that." The district court also found that M.J.B. had purchased a phone for the friend so she and M.J.B. could stay in touch. The district court credited officer testimony opining that M.J.B. displayed signs of predatory grooming behavior. The district court expressed concern with M.J.B.'s use of Child 1 as a courier and found that behavior harmful.

The district court also made findings based on evidence collected from a search of M.J.B.'s home and electronics. The district court found that law enforcement recovered 90 images of children with various items of clothing removed. The search revealed six images of Child 1, fully nude and in sexually explicit poses that exposed her genitals. The

district court found by clear and convincing evidence that M.J.B. took these photographs of Child 1. It further found that M.J.B. “is attracted to young, vulnerable females” and his behavior toward the friend was credibly described as “predatory grooming.”

In light of these findings, the district court ordered that M.J.B. was still prohibited from contact with the children and that he was required to comply with the following case plan: (1) complete a parenting assessment and follow the resulting recommendations, (2) sign all necessary releases of information to allow coordination of services, and (3) participate in a family group decision-making meeting and follow the plan reached at that meeting.

In February 2020, the county filed a permanency petition seeking the transfer of legal and physical custody of the children to their mother. At trial, the case worker assigned to M.J.B. testified that she created case plans in March 2019 and October 2019 and attempted to discuss both plans with M.J.B. But M.J.B. said he would not meet with the case worker without his attorney. M.J.B. did not follow up with the case worker to schedule a meeting and never met with her. In November 2019, the district court ultimately approved a case plan. In March 2020, the case worker sent M.J.B. an email stating that she had sent M.J.B.’s attorney a copy of the case plan in February 2020.

The district court noted M.J.B.’s delay in completing a parenting-capacity assessment and psychosexual assessment by canceling one appointment without rescheduling, canceling a second appointment following a second court order, and finally arriving for a scheduled assessment but leaving before completing the full assessment. The assessor recommended that M.J.B.

complete adult sex offender treatment; participate in individual therapy, preferably in conjunction with the treatment programming; he may benefit from consulting with a psychiatrist regarding possible need for medication for his narcissistic personality disorder and possible underlying delusional disorder; abstain from use of alcohol and illegal drugs; not possess pornography; have no contact with the victim; and have no contact with persons under the age of 18.

On February 5, 2020, M.J.B. entered sex-offender treatment and was unsuccessfully discharged on March 18, 2020. The district court found no evidence that M.J.B. participated in individual therapy or consulted with a psychiatrist regarding medication.

Based on the foregoing, the district court found that there was sufficient evidence to permanently transfer legal and physical custody to the children's mother. It determined that the transfer was in the children's best interests, the county made reasonable efforts to rehabilitate M.J.B. and reunite him with the children, M.J.B. failed and refused to make use of offered services, and M.J.B. failed to correct the conditions leading to the children's placement. The district court also ordered that in order to have contact with his four younger children, M.J.B. must successfully complete sex-offender treatment. M.J.B. appeals.

DECISION

M.J.B. argues that the district court's findings were insufficient to support the transfer of custody of his five children to the children's mother.¹ Minn. Stat. § 260C.517(a)

¹ On the first page of M.J.B.'s brief, he argues that the district court abused its discretion by "(1) making findings that were not supported by the evidence or sufficient in sustaining the conclusions made by the court; and (2) ma[king] no findings applying the correct standard." In the argument itself, M.J.B. does not contest any specific factual finding by the district court but instead argues that the district court committed legal errors.

(2020) requires that an order permanently placing a child out of the home of their parent or guardian “must include the following detailed findings” addressing:

- (1) how the child’s best interests are served by the order;
- (2) the nature and extent of the responsible social services agency’s reasonable efforts or, in the case of an Indian child, active efforts to reunify the child with the parent or guardian where reasonable efforts are required;
- (3) the parent’s or parents’ efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
- (4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

Each of the four findings must be supported by clear and convincing evidence. Minn. R. Juv. Prot. P. 58.03, subd. 1.

“On appeal of a juvenile-protection order, we review the juvenile court’s factual findings for clear error and its finding of a statutory basis for the order for abuse of discretion.” *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321 (Minn. App. 2015), review denied (Minn. July 20, 2015). “A finding is clearly erroneous only if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred.” *In re Welfare of J.H.*, 844 N.W.2d 28, 35 (Minn. 2014) (quotation omitted). “A district court abuses its discretion if it improperly applies the law.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 93 (Minn. App. 2012).

Best Interests of the Children

M.J.B. argues that the district court did not make sufficient findings regarding the best interests of his children because the district court did not consider his interest in

maintaining a parent-child relationship and did not explain how that interest weighed relative to the interest of the children in maintaining a parent-child relationship and other competing interests of the children. It is true that Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) requires a district court to weigh these three discrete factors to determine a child's best interests in a termination-of-parental-rights (TPR) case. *See In re Welfare of Children of M.A.H.*, 839 N.W.2d 730, 744 (Minn. App. 2013) (requiring weighing of three discrete interests in TPR case). But this matter does not involve a TPR and instead involves a transfer of custody. M.J.B. cites no authority imposing these requirements in a transfer-of-custody case.²

In a case involving the permanent transfer of legal and physical custody, the district court must make the findings required by Minn. Stat. § 260C.517(a). Minn. R. Juv. Prot. P. 58.04(b). Minn. Stat. § 260C.511(b) (2020) requires that “the court must be governed by the best interests of the child, including a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact.” Minn. Stat. § 260C.511(a) (2020) defines “best interests of a child” as meaning “all relevant factors to be considered and evaluated.” Thus, we review the district court's best-interests determination for the sufficiency of its findings regarding

² A recent nonprecedential opinion confirmed that the factor balancing used to determine best interests in a TPR case is not required to support a transfer of legal and physical custody. *In re Welfare of Child of L.J.*, No. A20-1038, 2021 WL 79334, at *3 (Minn. App. Jan. 11, 2021). In our review of M.J.B.'s CHIPS appeal, we also noted that the three-factor best-interests analysis only applies in a TPR case. *A.B.*, 2019 WL 5691824, at *7.

all relevant factors, including the relationship between the children and their relatives and people with whom they resided or had significant contact.

M.J.B. concedes that the district court's findings do address the "environment, health considerations, and each child's preference." The district court also discussed the children's mother's ability to care for the children and her willingness to allow future contact between M.J.B. and the children if he addresses the concerns leading to the CHIPS determination. Because the district court did not misapply the law and supported its conclusion with detailed findings, it did not abuse its discretion in concluding that a transfer of custody was in the best interests of the children.

Agency Efforts to Reunify Children and Parent

M.J.B. claims that the district court's findings did not support its conclusion that the county made reasonable efforts designed to address the conditions that led to the children's placement with their mother. We disagree.

The district court found that the county established by clear and convincing evidence that it made reasonable efforts to rehabilitate father and reunite him with his children but that those efforts were unsuccessful because of father's behavior. These findings are well-supported by the record. The district court made detailed findings regarding the reasonableness of the county's efforts. It found that the case worker twice created case plans for M.J.B. and contacted him to discuss those case plans. After M.J.B. refused to meet with the county and made no effort to engage in case planning or reschedule meetings that he canceled, the district court on November 6, 2019, approved a case plan to address the conditions that led to his not being allowed to have contact with the children.

That case plan required M.J.B. to complete parental-capacity and psychosexual assessments and to comply with any recommendations resulting from those assessments—an entirely appropriate plan given the concerning behavior identified by the district court. Although M.J.B. eventually participated in a psychological assessment, he refused to answer certain questions resulting in invalid test results. He then began sex-offender treatment but was discharged unsuccessfully for not attending treatment sessions. Although M.J.B. argues that the county’s efforts were unreasonable because it did not undertake efforts *he* believed were appropriate, we see no error by the district court in finding by clear and convincing evidence that M.J.B. refused the reasonable efforts the county *did* offer. We therefore see no abuse of discretion by the district court in its reasonable-efforts findings and conclusion.³

Parent’s Efforts and Ability to Use Services

M.J.B. claims that the district court also erred by requiring that he engage in treatment that he claims would have required that he incriminate himself without a criminal conviction. He relies on *In re Welfare of J.W.*, 415 N.W.2d 879 (Minn. 1987), for the proposition that the district court cannot require the completion of sex-offender treatment when M.J.B. had not been convicted of a sexual offense. In *J.W.*, parents lost temporary custody of their children after a nephew died of blunt trauma while in their care. 415

³ We also note that the county moved to be relieved of the duty to make reasonable efforts to rehabilitate M.J.B. and reunite him with the children, arguing that such efforts would be futile because M.J.B. failed to participate in offered services and did not believe he needed services. M.J.B.’s counsel conceded at oral argument that M.J.B. did not object to the county’s motion before the district court. He therefore forfeited his objection. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

N.W.2d at 880. Both parents immediately invoked their constitutional privilege against self-incrimination. *Id.* The district court ordered them to have separate psychological evaluations and follow the resulting recommendations, to attend and successfully complete domestic-abuse counseling, to participate in a parents' education group, and to sign releases of information for all professionals involved. *Id.* at 881. The treatment plan also required the parents to include an explanation of the death of their nephew in the evaluations. *Id.* At the disposition hearing, the state said that if the parents did not undergo the ordered evaluations, the state would file for termination of the parties' parental rights. *Id.* The supreme court determined that, because the state compelled testimony through real and imminent threats of sanctions, the parents were properly exercising their right against self-incrimination and their noncompliance could not be used as grounds for termination of their parental rights. *Id.* at 882-83.

The supreme court narrowed its opinion in *J.W.* stating:

While the state may not compel therapy treatment that would require appellants to incriminate themselves, it may require the parents to otherwise undergo treatment. Therapy, however, which does not include incriminating disclosures, may be ineffective; and ineffective therapy may hurt the parents' chances of regaining their children. These consequences lie outside the protective ambit of the Fifth Amendment.

Id. at 883 (footnote omitted). Regarding the "dilemma" of whether to disclose at therapy or risk failing to address underlying problems, the court explained that "the risk of losing the children for failure to undergo meaningful therapy is neither a 'threat' nor a 'penalty' imposed by the state. It is simply a consequence of the reality that it is unsafe for children to be with parents who are abusive and violent." *Id.* at 884.

The circumstances in *J.W.* are not present here. M.J.B. did not invoke his right against self-incrimination at any time before the district court. Nothing in the district court's order compelled M.J.B. to incriminate himself. And there is no record of any specific, substantive admission required of M.J.B. as part of his therapy that would amount to compelled self-incrimination. We note that at oral argument, counsel was unable to identify exactly how M.J.B. would have been required to incriminate himself in treatment beyond the incriminating statements he had already offered voluntarily.

In addition to the absence of an objection by M.J.B., or any alleged requirement of self-incrimination by the district court or the treatment program, or the identification of the nature of any purportedly incriminating information beyond that already volunteered by M.J.B., the record shows that neither the case plan nor the recommendations resulting from the evaluations required that M.J.B. make "admissions to the alleged offenses." The district court required M.J.B. to undergo treatment, and M.J.B. did not satisfy this condition because, as the district court specifically found, the case worker "testified credibly [that] the discharge [from treatment] was not solely based on [M.J.B.'s] unwillingness to admit any wrongdoing; it also occurred because he did not return to treatment."

The district court issued detailed findings regarding M.J.B.'s lack of participation and failure to avail himself of offered services to correct the conditions that led to the children's placement with their mother. M.J.B. took no part in creating a case plan, he repeatedly canceled and delayed completing required assessments, and he did not participate in therapy beyond his failed sex-offender treatment. As recently as April 2020, M.J.B. denied needing any services, and he previously denied any parenting shortcomings.

The district court emphasized M.J.B.'s continuous resistance to case-plan recommendations in its determination that M.J.B. had failed to utilize offered services.

Because the district court issued thorough, detailed findings and there is no evidence to support M.J.B.'s claims regarding compulsory self-incrimination, the district court did not abuse its discretion by finding that M.J.B. failed to utilize offered services to correct the conditions that led to the children's placement with their mother.

Conditions Have Not Been Corrected

M.J.B. argues that the district court also erred in its application of the law because correction of the conditions that led to the children's removal could require the compelled disclosure of incriminating information. But as set forth herein, M.J.B. presented no evidence that he was required to incriminate himself. In addition, the district court did not find any evidence that the conditions in question had been corrected and issued detailed findings that M.J.B. refused to recognize, let alone correct, the conditions leading to his children's out-of-home placement.

M.J.B. argues that the conditions created a "no-win" situation because M.J.B. has denied attraction to young, vulnerable girls, and it is that condition that M.J.B. was to correct through the case plan. But the district court was not required to set conditions based on the opinion of a parent who created those conditions; the district court must instead serve the best interests of the children. *See J.W.*, 415 N.W.2d at 883-84 (explaining that paramount need to protect safety and well-being of children justified imposition on parents' rights and that best interests of children is indispensable factor in making decisions that affect juveniles).

Here, the conditions directly addressed the concerns identified by the district court. The district court found that M.J.B. is attracted to young, vulnerable females, that he took sexual pictures of Child 1, and that he engaged in predatory grooming behavior. These findings are well-supported by the record. The county made reasonable efforts to provide services to M.J.B. to correct those conditions, and M.J.B. repeatedly delayed and avoided engaging with those services. The district court did not abuse its discretion by concluding that the conditions that led to the children's placement with their mother had not been corrected.⁴

Affirmed.

⁴ M.J.B. also argues that the district court abused its discretion by ordering him to successfully complete sex-offender treatment before having any contact with his children. The county argues that M.J.B. forfeited this argument because M.J.B. never filed a posttrial motion, requested relief from the district court's order, or requested modification of the custody order. Minn. Stat. § 260C.521, subd. 2 (2020); Minn. R. Juv. Prot. P. 21; *In re Welfare of M.H.*, 595 N.W.2d 223, 229 (Minn. App. 1999). We agree. M.J.B. forfeited this argument because it was not previously raised. *See Thiele*, 425 N.W.2d at 582.