

*This opinion is nonprecedential except as provided by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
A20-1359**

In the Matter of the Welfare of the Child of:
A. L. C. and T. H. F., Parents.

**Filed April 12, 2021
Affirmed
Ross, Judge**

Carver County District Court
File No. 10-JV-20-124

Carol J. Mayer, Mayer Law Office, LLC, Arlington, Minnesota (for appellant-mother A.L.C.)

Cathryn Middlebrook, Chief Appellate Public Defender, Bethene Hunsberger, Assistant Public Defender, St. Paul, Minnesota (for respondent-child)

T.H.F., Sr., Minneapolis, Minnesota (pro se respondent-father)

Mark Metz, Carver County Attorney, Jennifer L. Christensen, Assistant County Attorney, Chaska, Minnesota (for respondent Carver County Health and Human Services)

Dianne Schafer, Chaska, Minnesota (guardian ad litem)

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

NONPRECEDENTIAL OPINION

ROSS, Judge

Carver County successfully petitioned the district court to transfer legal and physical custody of a ten-year-old child from his mother to his father following a trial precipitated by repeated reports of his mother's neglect and drug use. Mother argues on appeal that the

transfer does not serve the child's best interests and that the county failed to make reasonable efforts to reunite her with the child. She also argues that the district court improperly excluded her and the minor child from the custody proceedings. We hold that clear and convincing evidence supports the district court's findings that the transfer is in the child's best interests and that the county made reasonable efforts to reunite mother and child, and we also hold that the district court acted within its discretion by removing mother and child from the courtroom. We therefore affirm.

FACTS

This case involves the transfer of legal and physical custody of a ten-year-old child, whom we will call Junior, from his mother, A.C., to his father, T.H.F. Carver County Health and Human Services removed all four of Mother's children from her care in November 2019 after learning about alleged child abuse, educational neglect, and drug use in Mother's home. The district court found the children to be in need of protection, and, after Mother allegedly failed for four months to meet the consequent, court-approved case plan, the county petitioned to transfer permanent legal and physical custody away from Mother. Mother consented to voluntarily transfer custody of three of the children, but not Junior. Junior's custody was resolved by trial in July 2020 based on the following trial evidence.

Mother had a lengthy history with child protection, culminating (as it regards this case) in instances in 2019 involving Mother's illegal drug use. In August 2019, sheriff's deputies encountered Mother when they removed Junior from the Chanhassen library after a disturbance and took him home. Mother's appearance and difficulty understanding the

officers led them to suspect that she was under the influence of drugs. Mother denied any drug use but refused to provide a urine sample for analysis. About three weeks later, deputies stopped Mother's car for a traffic violation in the early morning hours. Three minor children, including Mother's oldest child, were in the car. After the deputies arrested her for driving with a revoked license and no insurance, they found methamphetamine in her purse.

The county opened a child-protection case. Case manager Haley Diser met with Mother and her children to investigate drug involvement. Mother denied using drugs. But on 11 occasions, she refused to submit to a urinalysis. She either cancelled or failed to arrive for six scheduled interviews with Diser. She refused the county's requests to reschedule the interviews and refused its offer to conduct the interviews at her home or to provide her with transportation to the meetings. It appeared to Diser that Mother was not cooperating in her investigation.

Diser's investigation included examining Mother's history with child protection. She found multiple reports involving suspected abuse of Junior between 2014 and 2018. The record does not reveal that any of the reports led to criminal charges or judicial findings of abuse. Diser also found multiple reports of neglect and maltreatment. She learned that Junior did not attend school consistently, being absent or tardy 78 times in the 2018–2019 school year. And she learned that Mother would often leave the children without adult supervision. Mother was evicted from her home and took the children to live in a shelter for an extended period not specified in the record.

The county removed the children from Mother's care in November 2019. Two of the children, including Junior, tested positive for methamphetamine and cocaine. The county successfully petitioned the district court to find that the children were in need of protection. The district court adopted the county's proposed case plan for Mother, which prohibited her from using drugs and addressed mental-health issues.

In April 2020 the county petitioned the district court to transfer legal and physical custody away from Mother, unsatisfied by her progress on the case plan. Mother challenged the transfer only as to Junior. At trial, the district court heard testimony from Mother, Mother's caseworker, and Junior's guardian ad litem. The caseworker and guardian ad litem both opined that Mother had failed to meet the goals of the case plan and that it would not be in Junior's best interests to return to her care. The court heard testimony that Father denied previous reports of abuse, that the county did not find that he had mistreated Junior, and that Father had also engaged with the county in creating a safety plan and a safety network, cooperating and addressing any concerns.

Mother was present the first two days of the five-day trial, but the district court ordered her to participate in the proceedings through an online video-conferencing application on the third and fourth day because she had COVID-19 symptoms. Mother's attorney objected, contending unsuccessfully that requiring her to participate remotely violated her right to due process.

Junior's foster parent brought Junior into the courtroom on the final day of trial, but the district court prohibited his attendance. It surmised that the foster parent had brought Junior at Mother's behest and concluded that he was too young to observe or participate.

The district court ordered Junior's custody to transfer to father. It based the order on its findings that Mother continued to use drugs and that her lack of progress under the case plan prohibited safe reunification under her care. Mother unsuccessfully moved for a new trial and amended findings, arguing that the district court erroneously refused to allow Junior to attend the trial and violated her due-process rights by refusing to continue the trial until she could attend in person.

DECISION

Mother presents a two-facet challenge to the custody-transfer decision, the first procedural and the second substantive. Regarding procedure, she contends that the district court improperly denied her posttrial motion. Regarding substance she contends both that the district court wrongly concluded that the county made reasonable efforts to reunite her with Junior and that the transfer does not serve Junior's best interests. The challenge fails.

I

Mother first challenges the district court's denial of her motion for a new trial and amended findings, asserting that the district court wrongly excluded her and Junior from the trial. The district court has broad discretion whether to grant a motion for a new trial, and we will affirm its decision on a new-trial motion absent a clear abuse of discretion. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). Mother identifies no reason for reversal.

We reject Mother's contention that the district court abused its discretion by excluding Junior from the courtroom. The Minnesota Rules of Juvenile Protection outline procedures for hearings involving children in need of protection. *See* Minn. Stat.

§ 260C.163 (2020); *see also* Minn. R. Juv. Prot. P. 38 (outlining the hearing procedures for placement proceedings). It is true that a child who is subject to a petition under the rules has a right to participate in the proceedings by personally attending all hearings. Minn. Stat. § 260C.163, subd. 2(a). But the district court “may waive the presence of the minor in court at any stage of the proceedings when it is in the best interests of the minor to do so.” Minn. Stat. § 260C.163, subd. 7. And a child may testify in a placement proceeding informally if the district court determines that doing so serves the child’s best interests. Minn. Stat. § 260C.163, subd. 6. We therefore must decide whether the district court abused its discretion by concluding that Junior’s presence and testimony would not have served his best interests.

The record shows that when Junior’s foster parent brought him to observe the final day of trial the district court opined that this was Mother’s attempt to allow Junior to “talk to [the judge].” But Mother does not direct us to any place in the record where any party properly asked the district court to allow Junior to testify formally or informally. And the district court described the course for Junior’s attorney to procure Junior’s participation. Mother also does not show how excluding Junior from being present on the last day affected the outcome of the proceeding, and Junior, represented by counsel in this appeal, presents no challenge.

Likewise unconvincing is Mother’s due-process contention arising from the district court’s decision to proceed with Mother participating online rather than continue the case until after Mother’s virus-related quarantine. To constitute a due-process violation, Mother must show that the placement proceedings were fundamentally unfair and that she suffered

prejudice as a result of any alleged violation. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008). We have already determined that due process does not require the physical presence of a parent at a placement proceeding. *In re Welfare of A.Y.-J.*, 558 N.W.2d 757, 759 (Minn. App. 1997), *review denied* (Minn. Apr. 15, 1997). Mother was present for the first two days of trial, and she participated through an online program on the third and fourth day. The district court balanced the importance of Mother's physical presence against the harm in delaying a custody decision, expressly recognizing that Mother fully participated in the trial by her virtual presence and her attorney's physical presence. The district court also offered Mother additional time to discuss trial strategy with her attorney given the circumstances. We see no procedural unfairness. The district court did not violate Mother's due-process rights in its response to her COVID-19 symptoms.

II

Mother also challenges the custody transfer on the merits. A district court may transfer custody of a child if clear and convincing evidence supports the conclusion that the transfer is in the child's best interests. Minn. Stat. §§ 260C.163, subd. 1(a), .515, subd. 4 (2020). A district court must consider whether the county made reasonable efforts to reunite the parent with the child and whether the parent undertook efforts to correct the conditions which led to out-of-home placement when determining whether to transfer custody. Minn. Stat. § 260C.517 (2020). We review the district court's factual conclusions for clear error, *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996), and its decision to transfer custody for an abuse of discretion, *In re Welfare of Children of A.I.*,

779 N.W.2d 886, 895 (Minn. App. 2010), *review dismissed* (Minn. Apr. 20, 2010). We have seen no clear factual error or abuse of discretion here.

Mother challenges the district court's best-interests determination, focusing on allegations that Father abused Junior. A district court must address the suitability of a prospective custodian before transferring custody. Minn. Stat. § 260C.515, subd. 4(1); *see also A.I.*, 779 N.W.2d at 895. The district court acknowledged the abuse allegations. But the district court balanced these allegations against Father's consistent denials, which the district court found credible, along with the lack of any administrative or judicial findings of mistreatment by Father and Father's cooperation with the county's plan to address any concerns. The district court also found credible the testimony of multiple witnesses that Junior thrived while he was parented by Father, with no attendance or performance issues in school. Other testimony suggested that Mother had been attempting to alienate Junior from his father, diminishing her best-interests assertions. We are satisfied that the district court thoroughly weighed the testimony in context and had ample evidence to find that conferring custody to Father met the child's best interests.

Mother's contention that the county did not make reasonable efforts to reunite her with Junior also fails. Reasonable efforts involve due diligence to identify services to meet the child's and family's need. Minn. Stat. § 260.012(f) (2020). Mother's contention rests on her supposed broken relationship with her case worker and the county's failure to provide her transportation to reach service providers. Mother seems to argue that she would have complied with her case plan if only she had a different case worker. The suggestion that she would have otherwise met her case plan is speculation, lacking any factual support,

let alone compelling support. And the assertion that the county did not offer her transportation is belied by the record, which includes testimony that the county arranged for taxi service and gasoline cards to accommodate Mother's transportation challenges. The district court had ample basis to conclude that the county made reasonable efforts.

Affirmed.