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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1386**

In the Matter of the Welfare of the Children of:
K. H. and D. L., Parents.

**Filed April 26, 2021
Affirmed
Bratvold, Judge**

Lyon County District Court
File No. 42-JV-20-51

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Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant-father challenges the district court's decision to terminate his parental rights. He argues that (1) the district court denied his due-process rights when it ordered that his termination trial be held remotely because of concerns about COVID-19 exposure, and (2) the district court erred when it determined that reasonable efforts had failed to

correct conditions leading to the children's out-of-home placement. Because we determine the district court did not violate father's due-process rights, and the district court did not abuse its discretion by terminating father's parental rights, we affirm.

FACTS

The following summarizes the district court's written findings after a two-day bench trial.

Background

Appellant D.L. (father) and respondent K.H. (mother) have three children (child 1, child 2, and child 3), who ranged from one to three years old at the time of the trial. Father and mother lived together from November 2018 until May 2019, shortly before child 3 was born. "Father physically and verbally abused Mother when they resided together." "The verbal abuse commonly occurred in the presence of the children." Although "the physical abuse generally did not occur in the presence of the children," the district court found that, in November 2019, father pushed mother "over the toilet and held her down" while the children were present. Father also was very controlling and "placed recording equipment in and around the home to monitor Mother and the children."

In May 2019, a district court imposed a domestic-abuse no-contact order (DANCO) directing father to have no contact with mother. While the DANCO was still in place, father went to the hospital to see mother after child 3 was born and "caused an altercation, resulting in Father getting tased by law enforcement." Officers arrested father, and later,

the state charged father with fifth-degree drug possession, obstruction of the legal process, violation of his DANCO, and possession of a hypodermic needle.

Father used drugs, starting after child 1 was born. Father's "drug of choice" is methamphetamine and, while living with mother and the children, he kept drugs and paraphernalia "on his person, in the basement, or in the garage." While there was "no evidence" the children were exposed to drugs, father "was under the influence of methamphetamine" when the children were in his care.

Child-protection proceedings

At about the same time the DANCO was issued, respondent Southwest Health and Human Services (the county) petitioned the district court and alleged that child 1 and child 2 needed protection or services. The county filed a similar petition for child 3 three months later. The petitions alleged that "[d]ue to the ongoing chemical dependency concerns and the domestic violence occurring in the home in the presence of the children . . . an adjudication is necessary to ensure the children's needs are being met." In July and August 2019, the district court adjudicated the children to need protection or services. The district court placed the children in the custody of the county, and the county placed the children in foster care in August 2019.

The county developed a case plan for father that had four key provisions: (1) complete outpatient, chemical-dependency treatment, comply with drug testing, and attend Alcoholics Anonymous/Narcotics Anonymous (AA/NA) meetings; (2) complete a parenting class, attend all scheduled visitations with the children, "demonstrate the skills [father] has learned from parenting [class] during his visitation," and obtain a diagnostic

assessment, which recommended individual therapy and medication management; (3) cooperate with the social worker; and (4) maintain appropriate housing and obtain employment. During father's incarceration, the county social worker reviewed the case plan with father, who "verbally agreed" to the plan.¹

During the child-protection proceedings, father was placed on supervised conditional release because of the criminal charges. But father violated his conditions of release, which lead to local jail time "at least one day every month while the [child-protection] proceedings were pending." Father pleaded guilty to all four charges in November 2019. The district court sentenced him to prison on January 16, 2020, with an anticipated release date of January 26, 2021.

In July 2020, the county petitioned to terminate the parental rights of father and mother. The petition alleged four statutory bases for termination: (1) father and mother refused or neglected to comply with their parental duties; (2) father and mother were palpably unfit; (3) despite reasonable efforts to reunite the family, father and mother had not corrected conditions leading to out-of-home placement; and (4) the children were neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2020).

¹ The county adjusted father's case plan during his incarceration. For example, the case plan called for father to "write letters and draw pictures for the children" during incarceration, and the county facilitated father's phone conversations with the children by purchasing phone cards.

Termination trial

The district court scheduled a court trial for September 15, 2020, and ordered father to appear in person.² The day before trial, the district court emailed the parties to inform them that it had “received information that there may have been positive cases of COVID” where father was incarcerated. The district court found that “due to concerns for the health and safety of parties, attorneys, and witnesses, I am going to require that [father] appear remotely from [the jail] . . . to minimize any possible exposure.”³ On the first day of trial, the district court elaborated on its reasoning: while it had “no reason to believe that [father] is symptomatic,” the district court also did not know “if he may actually have the virus” and wanted to limit exposure “as much as possible for the health and safety of all the other individuals involved.” Father did not move for a continuance.

All parties and witnesses appeared remotely by videoconference during the two-day trial. On the first day of trial, mother consented to third parties adopting the children. Thus, the only issue before the district court was termination of father’s parental rights. The district court heard testimony from father, mother, father’s probation officer, two social workers, the guardian ad litem, and father’s sister and mother.

In October 2020, the district court issued written findings of fact, conclusions of law, and an order terminating father’s parental rights. The district court determined that

² Father’s brief to this court asserts that, before the judge’s order, he asked the district court for an order that he appear in person for trial. Although the record does not include this motion, the county does not disagree with father’s assertion.

³ Father was unable to appear remotely from prison, so the district court ordered father transported to the county jail for his trial appearance.

clear and convincing evidence supported termination of father's parental rights under all four statutory grounds. The district court also found that the county provided reasonable efforts to reunite the family. Additionally, the district court found, "Father has not demonstrated that he is able or willing, outside of a controlled prison environment, to comply with the case plan." And the district court determined that termination of father's parental rights is in the best interests of the children.

Father appeals.

DECISION

I. The district court did not violate father's due-process rights by holding the bench trial remotely.

Father argues that "allowing witnesses to testify remotely during trial would impair [his] procedural rights," and that "the practical realities of a virtual hearing unquestionably made it more difficult for the father and his attorney to communicate privately and continuously throughout the proceedings." "Whether a parent's due-process rights have been violated in a [termination of parental rights] proceeding is a question of law, which we review de novo." *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008).

The county first argues that because the due-process issue was not "raised at the district court level, it should be precluded from being addressed." Generally, appellate courts do not address issues that were not raised before and decided by the district court. *See In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981) (declining to address a constitutional issue raised for the first time on appeal from an order terminating parental

rights). Father's brief acknowledges that he did not object or seek a continuance when the district court ordered remote proceedings. Father argues he is still entitled to "plain error" review.

We need not decide whether plain-error review applies. We have discretion to review issues raised for the first time on appeal in the interests of justice. Minn. R. Civ. App. P. 103.04; *see Tischendorf v. Tischendorf*, 321 N.W.2d 405, 410 (Minn. 1982) (addressing constitutional issues in the interest of justice when the parties had adequate briefing time and the issues were "implied in the lower court"). Because the parties have briefed the due-process issue, the record is adequate for our review, and the county does not claim prejudice, we address the issue in the interests of justice.

The United States and Minnesota Constitutions guarantee that no person shall be "deprive[d] of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1; *see also* Minn. Const. art. I, § 7. Parents have "substantial and fundamental rights . . . to the custody and companionship of their children." *In re Welfare of HGB*, 306 N.W.2d 821, 825 (Minn. 1981). The Minnesota Supreme Court has accorded due-process review to termination proceedings and specifically considered what process is due when a parent is in prison and unable to be physically present for a termination trial. *Id.* at 822 ("Due process of law does not compel the physical attendance of a parent at a termination of parental rights proceeding."). In doing so, the supreme court held that "the nature of due process is flexibility," therefore, courts balance "the interests involved in the specific case under consideration." *Id.* at 825. Thus, the "amount of process due varies with the circumstances of the case," and "both the interests of the parent and the child[ren] are

considered along with the circumstances of the particular case in an effort to determine which of these interests is to predominate.” *Id.* at 825-26.

Here, we consider father’s interests along with the county’s and the children’s interests. Father’s interests include his “fundamental right” to “make decisions concerning the care, custody, and control of his . . . children.” *SooHoo v. Johnson*, 731 N.W.2d 815, 820 (Minn. 2007). The county “has a compelling interest in identifying and protecting abused children, and in safeguarding the physical and psychological well-being of children.” *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 134 (Minn. 2014) (quotations and citations omitted). The children’s interests are well-established: “Under our law, children are not to be kept waiting, uncertain who will raise them or where they will grow up.” *Id.* at 135.

The county’s interests align with the children’s interests in the speedy determination of father’s parental rights to advance permanent placement options for the children. The children’s interests are reflected in Minnesota’s juvenile protection rules, which provide that proceedings intend to “secure for each child under the jurisdiction of the court a home that is safe and permanent,” “provide a just, thorough, speedy, and efficient determination” of parental rights while ensuring due process, and “reduce unnecessary delays in court proceedings.” Minn. R. Juv. Prot. P. 1.02(b), (e). When father’s termination trial started, the children had been in out-of-home placement over 405 days and were all very young: three years old or less.

Father’s argument assumes that he has a right to attend a termination trial *in person*. He certainly has an interest in attending a trial addressing whether to terminate his parental

rights, and it is undisputed that in-person attendance is preferable. The applicable rules recognize a parent's procedural right to attend child-protection proceedings. Minn. R. Juv. Prot. P. 38.02 (parties who are entitled to a summons "shall have a right to attend the hearing."); *id.* 53.02 (summons required to terminate parental rights). While a parent has an interest in attending a termination trial, due process does not require in-person or "physical attendance" of that parent at the termination trial. *See HGB*, 306 N.W.2d at 822. In *HGB*, the supreme court affirmed the termination of a mother's parental rights when she could not attend the trial because she was incarcerated in another state. *Id.* at 824. The supreme court determined that the mother's due-process rights were vindicated because she was represented by counsel, who could submit depositions or interrogatories on her behalf. *Id.* at 825-27.

We later noted that "*H.G.B.* did not create an absolute rule for allowing termination proceedings without the physical presence of a parent." *In re Welfare of A.Y.-J.*, 558 N.W.2d 757, 760 (Minn. App. 1997), *review denied* (Minn. Apr. 15, 1997). Yet *HGB* established that there is no constitutional right for a parent to attend a termination trial in person. 306 N.W.2d at 822; *see also A.Y.-J.*, 558 N.W.2d at 760 (holding father's due-process rights were not violated when he was not allowed to attend a termination trial in person due to incarceration because father was represented by counsel and could submit evidence). Thus, we next consider whether the district court's decision to conduct a remote

termination trial provided adequate due process under the circumstances by balancing father's interests with the children's interests.⁴

The rules allow that “[b]y agreement of the parties, or in exceptional circumstances upon motion . . . or on the court’s own initiative, the court may hold hearings and take testimony by telephone or interactive video.” Minn. R. Juv. Prot. P. 11.02. Father’s brief to this court did not discuss whether the current pandemic is an exceptional circumstance, nor did he argue that rule 11.02 violates due-process guarantees. The county argues that “[a] pandemic should qualify as an exceptional circumstance.”

We agree with the county. On March 13, 2020, the Governor of Minnesota issued an executive order declaring a peacetime emergency in response to the pandemic. Emerg. Exec. Order No. 20-01, *Declaring a Peacetime Emergency & Coordinating Minnesota’s Strategy to Protect Minnesotans from COVID-19* (Mar. 13, 2020). That peacetime emergency has been extended many times, and was still in effect during the trial. See Emerg. Exec. Order No. 20-89, *Extending the COVID-19 Peacetime Emergency Declared in Executive Order 20-01* (Sept. 11, 2020).

⁴ Father asserts that “there exists no compelling state interest in having a trial during a pandemic when an in-person trial is not possible.” He contends that “[c]learing the court’s docket or adhering to timelines when all other rules and resources have been paused during the public health crisis do not amount to a compelling state interest outweighing constitutional rights.” But this argument both ignores a child’s right to the prompt resolution of juvenile-protection matters and assumes father has a constitutional right to physical attendance at the termination trial—a legal conclusion that the supreme court rejected in *HGB*. 306 N.W.2d at 822. *HGB* instead directed that the correct analysis determines what process is due by balancing the interests of the parent and the children. *Id.* at 826. Father’s brief to this court does not cite or discuss *HGB*.

In connection with the peacetime emergency, the supreme court ordered that “[n]o person who has an elevated risk of transmitting the novel coronavirus that causes COVID-19 may attend any in-court hearing or proceeding.” *Continuing Operations of the Courts of the State of Minnesota Under a Statewide Peacetime Declaration of Emergency*, No. ADM20-8001 at 3 (Minn. Mar. 13, 2020). At the time of father’s trial, the judicial branch had implemented “transitional case strategies” but still required adherence to the Minnesota Judicial Branch COVID-19 Preparedness Plan, which in turn cited to Center for Disease Control guidelines recommending that “if a household member or close contact has tested positive for COVID-19, stay home.” *See Order Governing the Operations of the Minnesota Judicial Branch Under Emergency Order Nos. 20-53, 20-56*, No. ADM20-8001 (Minn. May 15, 2020). These orders support the district court’s decision to order father’s termination trial by videoconference. Given the health concerns of COVID-19 exposure at father’s prison, the district court did not abuse its discretion when it determined that exceptional circumstances warranted a remote hearing. We determine that the district court’s decision, which followed the rules of juvenile-protection procedure and appropriately balanced the interests of father and the children, did not violate father’s due-process rights.

Even if we assume that the district court’s order for a remote trial compromised father’s due-process rights, “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. and H.W.*, 744 N.W.2d 669, 673 (Minn. 2008). Father makes two arguments for prejudice.

First, father argues that remote participation prevented him, his attorney, and the district court from realizing his “right to confront witnesses” because he could not “adequately and fairly evaluate the reliability of testimony given by the State’s witnesses.” Father claims that the district court also was “deprived [of] the opportunity to decipher the nonverbal expressions of witnesses appearing over a computer screen, the nuances of the father’s demeanor and body language was undoubtedly flattened and lost to technology.”

Father cites no legal authority recognizing a “right to confront witnesses” in civil or child-protection proceedings. The right to confront witnesses exists in the criminal context. *See* Minn. Const. art. I, § 6 (“In all criminal prosecutions . . . the accused shall enjoy the right . . . to be confronted with the witnesses against him.”). But at least one jurisdiction has refused to extend the right to confrontation to child-protection proceedings. *Cabinet for Health & Family Servs. v. A.G.G.*, 190 S.W.3d 338, 346-47 (Ky. 2006). And even if we assume father has a right to confront witnesses, that right was vindicated here. Because the termination trial took place by videoconference, father, his attorney, and the district court had the opportunity to perceive nonverbal expressions of the witnesses. While in-person testimony is generally preferable to remote testimony, videoconferencing still provides clear and detailed observation of a witness’s demeanor.

Second, father argues that remote participation precluded effective assistance of counsel because it “profoundly limited the strategic options available to the father and his counsel by precluding eye contact” and limited their confidential discussions of a “witness’s body language.” Minnesota statute establishes that father has a right to effective assistance of counsel at a termination hearing. Minn. Stat. § 260C.163, subd. 3 (2020).

The county responds that, during his termination trial, father “was able to meet with his attorney whenever he asked or when his attorney asked to meet with him.” The record supports the county’s position. The district court asked father regularly if he would like to speak with his attorney. Father used “breakout room” sessions many times during trial proceedings. Father cites no instance in which videoconferencing hampered his communication with his attorney.

In sum, father’s due-process claim fails because he has no right to attend a termination trial in person, and he has not shown prejudice by the district court’s decision to conduct remote proceedings in his case. The district court did not abuse its discretion by determining that exceptional circumstances warranted remote proceedings for father’s termination trial given the COVID-19 outbreak at father’s prison, the long out-of-home placement of the children, who are very young, and the availability of videoconference proceedings. Because the district court’s use of videoconference technology allowed father to appear and participate in the termination trial, we discern no constitutional violation and no prejudice.

II. The district court did not abuse its discretion by determining that the county provided reasonable efforts and that father failed to correct the conditions leading to the children’s out-of-home placement.

Father argues that the district court erred by finding that the county provided reasonable efforts to reunite the family given his incarceration and the restrictions imposed because of the pandemic. Father also argues the district court focused on his past failings and did not consider conditions at the time of the termination trial. On appeal, we examine the record to determine whether the district court applied the appropriate statutory criteria

and whether its factual findings are supported by substantial evidence and are not clearly erroneous. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We review a district court's determination that a county made reasonable efforts to reunite the family for abuse of discretion. *In re Welfare of the Child of D.L.D.*, 865 N.W.2d 315, 323 (Minn. App. 2015), *review denied* (Minn. July 21, 2015).

A district court may terminate parental rights when (1) at least one statutory ground for termination is supported by clear and convincing evidence; (2) termination is in the best interests of the child; and (3) the county has made reasonable efforts to reunite the family. *S.E.P.*, 744 N.W.2d at 385. We note that father does not challenge the district court's determinations on the first and second steps. On the first step, the district court determined that the county provided clear and convincing evidence for each of the four statutory grounds for termination: (1) father refused or neglected to comply with his parental duties, (2) father is palpably unfit to be a parent, (3) father had not corrected conditions leading to out-of-home placement, and (4) the children were neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8). On the second step, the district court determined that termination of father's parental rights is in the best interests of the children. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990) ("The child's best interests, however, remain the paramount consideration in every termination case.").

Father's appeal solely addresses the third step: whether the county has provided reasonable efforts to reunite the family. The district court must consider whether the services provided were "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and

accessible; (5) consistent and timely; and (6) realistic under the circumstances.” Minn. Stat § 260.012(h) (2020). We agree with father that, while he was incarcerated, “this circumstance might change what qualifies as ‘reasonable’ under the county’s duty to make ‘reasonable efforts’ to reunite father and child.” *In re Welfare of A.R.B.*, 906 N.W.2d 894, 899 (Minn. App. 2018).

Although an issue statement and point heading in father’s brief to this court identify the claimed error as the county’s failure to provide reasonable efforts, he does not articulate how the county failed. The district court found that the county provided these services to the children and father: case management, purchase of phone and phone card to facilitate contact while father is in prison, chemical-use assessment, diagnostic assessment, random drug testing, anger-management classes, and supervised visitation, among other things. The district court found the services provided were relevant, adequate, and appropriate, as well as realistic under the circumstances. The district court also found that father never told the guardian ad litem or social worker that he needed any assistance with accessing services or that he needed additional services. Based on these findings, the district court determined that the county had provided reasonable efforts.

Father appears to contend that the county’s efforts were not sufficient because he could not overcome some of the challenges of complying with his case plan during incarceration and under COVID restrictions. Father argues that “based on the evidence adduced at trial,” the district court’s finding that father did not substantially comply with the case plan “could hardly be more erroneous.” He requests that this court “reverse the

termination and remand for a determination as to whether the COVID-19 pandemic constitutes good cause for extending the [child-protection] proceedings.”

We are not persuaded. First, we note that father did not ask the district court to extend child-protection proceedings. Second, in determining whether father had complied with the case plan and had corrected conditions leading to out-of-home placement of the children, the district court specifically commented on COVID restrictions that affected plan compliance. Still, father’s incarceration and COVID restrictions posed circumstances not addressed by existing caselaw. Thus, we consider father’s specific challenges to the district court’s findings that he failed to comply with his case plan. The district court analyzed father’s compliance with each of the four aspects of the case plan.

First, the district court found that father failed to abstain from methamphetamine. Before going to prison, father “either refused to submit to testing or tested positive for illegal drugs at least 5 times.” The district court found that father “chose to interact with drug users” and told his social worker that this was “not a risk to him.” The district court found that father’s “assessment . . . shows a lack of insight into the actions needed to maintain sobriety.”

The district court also found that father failed to adequately comply with his recommended outpatient chemical-dependency treatment. Father wanted to attend a particular program, “but could not because Mother was currently participating in that program.” Father petitioned the program “to make an exception for him,” but was ultimately rejected. Before entering prison, father completed orientation at an alternative program, but began his prison sentence before he could begin the program. The district

court found that “[i]f Father had immediately contacted [the second program], or another treatment program, when he was denied admission into [the first program], instead of pursuing his own agenda, he would have been able to complete at least a portion of the outpatient treatment program. Father chose not to do so.” This finding is supported by the record and not clearly erroneous.

Father challenges the finding by pointing to his testimony that he has been involved in AA/NA group sessions while in prison. But father’s failure to complete outpatient treatment while he was outside the controlled environment of prison is material noncompliance with his case plan. Father also argues that “[d]ue to the prison’s COVID-19 restriction . . . chemical dependency treatment and parenting classes were simply not available” while he was in prison. The district court considered that father “has attempted to access treatment in prison, but has not been able to do so.” The district court determined, however, that father failed to complete chemical-dependency treatment because he “intentionally took actions that delayed his entry.” The district court also found that father “has not been able to demonstrate any significant period of sobriety outside of a correctional setting.”

Second, the district court found father “did not comply with [the case-plan] requirement” that he attend individual therapy or participate in visitation.⁵ Father correctly points out, and the district court found, that he completed anger management. It is also true

⁵ The case plan also required father to participate in medication management, but the record on appeal lacks any specific information about what was required or father’s compliance. While the district court found that father did not participate in medication management, the district court did not include it in the analysis of father’s compliance with the case plan.

that father was not charged with acts of domestic violence after his 2020 conviction for the DANCO violation. And, before entering prison, father attended his first individual therapy session, but father then cancelled the rest. The district court found that “[s]ome of the failures to attend were due to Father’s local incarceration that occurred as a result of his violations of conditions of release.” To his credit, father attended therapy in prison, but the district court found that, “based on Father’s testimony, the therapy does not involve issues related to his ability to parent children.”

The district court also found that father’s parenting time was “inconsistent.” Before his commitment to prison, father attended “only 16 out of 31 visits.” Some missed visits were because of father’s local incarceration after he violated conditions of release, while other missed visits were “due to no-shows or cancellations.” While in prison, father maintained some contact with his children through phone calls, though “[s]ince Father has had phone contact with the children, [child 1] has become more angry and noncompliant in the foster home.” Thus, father’s compliance with therapy requirements and parental visitation was mixed, and the district court’s finding that he did not comply with his case plan is supported by the record.

Third, the district court found that father “did not consistently comply with [the] requirement” that he maintain contact with his social worker. Father was “not responsive to calls and messages” and failed to update his first social worker on his current address. “Father would frequently come to the social service office, without an appointment, . . . demand to see the social worker,” and “become angry and cause a scene in the lobby if the social worker was not available.” The district court recognized,

however, that “[m]any of the failures in communication occurred between Father and the initial social worker.” The district court found that “these difficulties seem to have dissipated” with a new social worker, “at least in part because Father [was] in prison.” Thus, the district court’s finding that father was inconsistent in maintaining contact is supported by the record.

Finally, father’s case plan required him to obtain employment and maintain appropriate housing. The district court found father testified that “he plans [to] work for a foundation to help persons with housing” following his release from prison. The district court found that “Father’s role with the foundation is unclear.” Father told a social worker that the foundation had “\$60 million” in assets but the district court found this “not credible.” Father also told the social worker that he had saved enough money to allow him to live with the children without working, though the district court determined this was “entirely incredible.”

Father’s last employment was in December 2018, and he was terminated after failing a drug test. The district court noted that when father was employed at a different business, he “quit, even though he had no other employment prospects, because he got into a verbal argument with his boss about a minor issue.” The district court found that this work history was “emblematic of Father’s poor decision-making skills and poor impulse control.” Father ultimately testified that his employment plans for after prison were not “concrete.” The district court found father’s employment plans, “assuming they exist, are not reasonable and realistic.”

Father testified that he had found a home for after his release from prison. But father could not identify the price of the home, and the county “discovered that the asking price of the home is \$461,000.” The district court found that “Father’s mother testified that there were no concrete plans to assist Father in purchasing the home.” The district court found that father testified, when he and mother lived together, he “quit making the mortgage payments because he got mad at the lender.” The district court found that this was “emblematic of Father’s poor decision-making skills and poor impulse control.” The district court determined that father’s deficits in employment “directly and adversely affect his ability to care for the children.”

After reviewing each of the four components of father’s case plan, we conclude that the record supports the district court’s findings that father did not comply with his case-plan requirements to complete chemical-dependency treatment, complete individual therapy and a parenting class, attend all scheduled visitations with the children, cooperate with his social worker, and secure appropriate housing and employment.

Father insists that the district court “focused disproportionately on the court-ordered programming that was not completed due to the COVID-19 pandemic.” But even if father had completed his case plan, the district court’s determination that he had not corrected the conditions leading to out-of-home placement of the children would still be supported by the record. “The critical issue is not whether the parent formally complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child.” *In re Welfare of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012).

Thus, the record supports the district court's finding that the county provided reasonable efforts to reunite the family and that father still failed to correct the conditions leading to the children's out-of-home placement. The district court's findings are supported by record evidence and are not clearly erroneous. The district court also did not abuse its discretion by determining that father was not now able to assume the responsibilities of caring for the children. In making this determination, the district court appropriately considered the difficulties posed by father's incarceration and COVID restrictions.

Because we also determine that the district court did not abuse its discretion in determining that terminating father's parental rights is in the children's best interest and the statutory grounds for termination are fully supported by the record, we affirm the district court's order.

Affirmed.