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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0412**

In the Matter of the Welfare of the Child of:
J. S. S. and D. M. P., Parents.

**Filed October 25, 2021
Affirmed
Gaïtas, Judge**

Otter Tail County District Court
File No. 56-JV-20-1820

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Considered and decided by Gaïtas, Presiding Judge; Ross, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

On appeal from an order terminating parental rights to his child, appellant-father D.M.P. argues that the district court abused its discretion by determining that three statutory grounds to terminate parental rights existed, that reasonable efforts had been made to reunite him and child, and that termination was in child's best interests. We affirm.

FACTS

Father and mother, J.S.S., are the parents of A.S.B., a child born in 2014. Following a multi-day court trial in 2021, the district court terminated both parents' parental rights to child. Mother, who failed to appear at the trial and was found to be in default, does not participate in this appeal.

In 2017, Swift County Human Services filed a petition alleging that child was in need of protection or services. The petition noted that mother had "an extensive child protection history regarding drug use and abandonment issues," that mother had her rights to three previous children involuntarily terminated, and that intrauterine drug exposure had been a "significant condition" involved in the death of one of her children. While father's own history of illegal drug use was noted by the district court throughout the Swift County proceedings, the court ultimately concluded that father could provide a "stable and satisfactory environment" for child, and sole legal and physical custody of child was transferred to father on January 12, 2018, after 170 days of out-of-home placement. The district court's order transferring custody to father explicitly prohibited him from returning child to mother's care without court approval.

Child protection again became involved with child after the evening of February 16, 2020, when Pelican Rapids police responded to a report that two small children were outside, alone, and inappropriately dressed for the cold winter weather. One of the children was later identified as child; the second child was a cousin. Both children were without coats, and the cousin was wearing ill-fitting adult male shoes. Further investigation revealed that the children had been at mother's apartment in Pelican Rapids and that they

left the apartment unattended. The officers returned the children to the residence, where they found mother and mother's sister. One officer described the apartment as dirty and unkempt. And child informed the officer that she slept on the wooden slats of a bed, with no mattress. Mother's sister was later identified as a convicted predatory offender who was not to have contact with children; she was later arrested for failing to comply with predatory-offender registration requirements. Although mother told the officers that father did not live in the apartment, officers observed signs that a male was staying there, including a man's clothing.

Respondent Otter Tail County Human Services (the county) began its involvement in this matter shortly after this incident. A child-protection investigator visited mother's apartment on February 19, 2020. Child was no longer there, however. The only person at the residence—child's uncle—told the investigator that child had been taken to the Twin Cities.¹ The investigator could not find child until the following day, at which point child was removed from the parents' custody and placed in the emergency care of the county pending location of an appropriate foster-care placement. After child was removed, a hair follicle test showed that she had been exposed to cocaine.

An Emergency Protective Care (EPC) hearing was held on February 21, 2020, at which father admitted that he and mother had gotten married in 2019—after sole custody of child had been transferred to father. Father stated that he was not living with mother, but he was unable to provide an independent address. Mother, who attended the EPC

¹ Child protection was also seeking to remove child's cousin from his mother's custody, although this was done in a separate child-protection matter unrelated to this one.

hearing, provided an address that was later found to “not exist.” The district court granted the county’s requests to place child in protective care and to temporarily transfer custody to the county.

The county provided father with a reunification case plan requiring him to, among other things, “submit to random and ongoing drug tests,” remain in contact with the child-protection agency, and undergo a parental capacity evaluation and follow the recommendations of that evaluation. Father showed some initial compliance with his case plan, including attending parenting classes and a drug treatment program, as well as maintaining some contact with his caseworker. However, child-protection workers were concerned about father’s marginal parenting abilities, failure to complete a requested hair follicle test, failure to obtain stable housing or employment, and failure to maintain consistent contact with the agency. They were most concerned about father’s refusal to discuss his relationship with mother and inability to commit to keeping child safe from mother, whose myriad problems endangered child’s welfare.

The county moved to terminate father’s parental rights to child based on these concerns. When the termination petition was filed, then five-year-old child had already been in out-of-home placement for over 330 days in the Swift County and Otter Tail County matters.² Ultimately, and after a cumulative total of 499 days of out-of-home placement, a three-day court trial was held on the county’s petition. The district court heard

² The district court, in its order terminating parental rights, took judicial notice of the Swift County case involving parents and child, during which child was in out-of-home placement for a total of 170 days.

testimony from multiple witnesses, including father. After the trial, the district court issued a written order granting the county's petition and terminating father's parental rights to child. According to the order, father, who indicated for the first time at trial that he would not allow mother to have contact with child, was not a credible witness. The district court concluded that termination was justified under three separate statutory bases, that the county had made reasonable efforts at reunification, and that termination was in the best interests of child.

Father appeals.

DECISION

Father challenges the district court's order terminating his parental rights. Parental rights should only be terminated "for grave and weighty reasons." *In re Welfare of H.G.B.*, 306 N.W.2d 821, 825 (Minn. 1981). Here, the district court concluded that three statutory bases supported termination of father's parental rights: (1) that father had "refused or neglected to comply with the duties imposed upon [him] by the parent and child relationship," (2) that "reasonable efforts" had "failed to correct the conditions leading to the child's placement," and (3) that child was "neglected and in foster care." Minn. Stat. § 260C.301, subd. 1(b)(2), (5), (8) (2020).

Generally, an appellate court will affirm the district court's termination of parental rights when (1) "at least one statutory ground for termination is supported by clear and convincing evidence," (2) "the county has made reasonable efforts to reunite the family," and (3) "termination is in the best interests of the child." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008); *see* Minn. Stat. §§ 260C.301, subd. 1(b) (listing

statutory grounds for the involuntary termination of parental rights); .317, subd. 1 (2020) (requiring clear and convincing evidence of a statutory ground to terminate parental rights); Minn. R. Juv. Prot. P. 58.03, subd. 2(a) (stating that the standard of proof in juvenile protection proceedings not involving an Indian child is clear and convincing evidence). On appeal from a district court's termination of parental rights, appellate courts "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing," *S.E.P.*, 744 N.W.2d at 385, and "[c]onsiderable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). Additionally, appellate courts review the district court's findings of the underlying or basic facts for clear error but review for an abuse of discretion the district court's determination of whether those underlying or basic facts show the existence of a particular statutory basis to terminate parental rights. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 899-901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012).

I. The district court did not abuse its discretion in concluding that clear and convincing evidence established at least one statutory basis to terminate father's parental rights.

Father argues that the record does not support the factual findings underlying the district court's determinations that father failed to satisfy the duties of the parent-child relationship, that reasonable efforts failed to correct the conditions leading to child's out-of-home placement, and that child is neglected and in foster care. Thus, father contends, the district court abused its discretion in terminating his parental rights on these grounds.

The supreme court recently discussed the clear-error standard that appellate courts use to review a district court's findings of fact:

In applying the clear-error standard, [appellate courts] view the evidence in a light favorable to the findings. [Appellate courts] will not conclude that a factfinder clearly erred unless, on the entire evidence, [they] are left with a definite and firm conviction that a mistake has been committed.

In re Commitment of Kenney, 963 N.W.2d 214, 221 (Minn. 2021) (quotations and citations omitted).³ An appellate court must “fully and fairly consider the evidence, but so far only as is necessary to determine [whether that evidence] reasonably tends to support the findings of the factfinder.” *Id.* at 223 (quotation omitted). And “[w]hen the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* (quotation omitted).

Under Minnesota law, a statutory basis to terminate parental rights exists when “reasonable efforts . . . have failed to correct the conditions leading to the child’s placement.” Minn. Stat. § 260C.301, subd. 1(b)(5). Here, the condition that led to child’s out-of-home placement was father’s decision to allow child to live with mother despite a court order prohibiting him from returning child to mother’s permanent care without court approval. The district court concluded that despite the county’s efforts, there remained

³ In *Kenney*, which is a civil-commitment case, the supreme court prefaced its discussion with the observation that “[t]he clear-error standard of review is familiar because it applies across many contexts.” 963 N.W.2d at 221. We therefore presume that *Kenney*’s discussion of the clear-error standard of review is not limited to the commitment context.

substantial concern that father would return child to mother's care. Specifically, the district court stated,

[Father] was given opportunities to comply with the case plan and to demonstrate that he could keep [child] safe. However, at this point in the proceedings, the Court still has significant concerns that [father] would allow [mother] contact with the child. The Court also finds concerning that [father] was never able to provide his current address or living situation and could not offer a solid plan or explanation for where the child would be living if returned to his care.

Father first argues that the county never clearly communicated to him that contact between mother and child was not allowed. He notes that the case plan did not explicitly ban contact. Thus, father contends, he was never given the opportunity to correct this condition, and the district court clearly erred in concluding otherwise.

We initially observe that the case plan is not the sole source of a parent's obligations during a permanency proceeding. "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 Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012)

We also reject father's assertion that he was never told about restrictions on contact between child and mother. There is no ambiguity in the record about the issue of contact with mother. The case plan expressly prohibited mother from having any contact with child outside of a supervised setting: "all visits must be supervised by the agency, parenting time center or an individual or agency deemed appropriate by [the county]." Beyond the case plan, the trial record reflects that father was repeatedly counseled that allowing child

to have contact with mother was detrimental to child. Father's caseworker tried to impress upon him the importance of keeping child safe from mother, but father became emotional and refused to discuss the issue. Moreover, the parenting assessment recommended reunification only if father accepted that contact with mother was not in child's best interests. Indeed, the major recommendation of the parenting assessment was that father "commit to no contact between [child] and . . . mother." And the case plan specifically ordered father to comply with the recommendations of the parenting assessment. Given these facts in the record, the district court did not clearly err in finding that contact between child and mother *remained* a significant concern, and that the county's efforts did not mitigate this concern.

Father also argues that the record does not support the district court's finding that the county "attempted to remedy the issues the court finds uncorrected." We again disagree with father.

The first item in father's case plan was that father "need[s] to ensure that he is not residing with [mother]." To that end, father was offered assistance in locating independent housing and employment. As noted, the record also shows that father was given a parenting assessment that directly addressed the importance of keeping child safe from mother. And father was provided with multiple ancillary services that complemented the efforts specifically targeted at keeping child safe from mother. Those services included chemical-dependency services, a family resource worker, parental education, and supervised visitation. The district court therefore did not clearly err in finding that the county made reasonable efforts to correct the condition leading to child's placement.

Father further contends that the district court failed to consider and credit his trial testimony acknowledging the importance of keeping child safe from mother. At trial, father testified that he understood that having no contact with mother was in child's best interests. He also testified that he would not allow mother to have contact with child going forward. However, the district court found father's testimony to be not credible. And the district court found the testimony of father's caseworker, the guardian ad litem (GAL), and the parenting assessor—all of whom expressed concern about father's ability and willingness to prevent contact between child and mother and avoid other behaviors dangerous to child—to be credible. We must defer to a district court's determination of credibility, *L.A.F.*, 554 N.W.2d at 396, and do so here.

Finally, father argues that the record fails to support the district court's finding that he "substantially failed to comply" with his case plan. We again note that the salient issue is not compliance with a case plan but whether a parent is "presently able to assume the responsibilities of caring for the child." *J.K.T.*, 814 N.W.2d at 89. But we also disagree with father's contention that the record does not support the district court's finding regarding his compliance with the case plan. The record reveals that father did comply with some aspects of his case plan and made some efforts to address the county's concerns. He took and completed parenting classes, attended chemical-dependency treatment in the Twin Cities, and maintained contact (albeit sporadic) with his caseworker. Child's GAL testified that the supervised visits that did occur went well, and that father and child appeared to have a loving relationship.

But the record also shows that father did not address the primary concern in his case plan—keeping child safe from mother—which supports the district court’s conclusion that there were “significant concerns that [father] would allow [mother] contact with the child.” Father’s caseworker stated that the threat of contact between father, mother, and child was “one of the biggest issues” in this case. The caseworker testified that when he attempted to discuss the importance of avoiding contact between child and mother, father was unable to have productive conversations on this topic. When the caseworker raised the subject of mother, father would become emotional and “heated.” The parenting assessor made a similar observation, stating that father’s “commitment to prohibiting contact between [child] and . . . mother appears low and this increases risk to the child.” And the GAL testified about similar concerns. According to the GAL, father consistently stated that he wanted mother to be part of the family. The GAL testified that she did not know whether father knew contact with mother was bad for child.

Additionally, the record supports the district court’s findings regarding father’s general resistance to the county’s efforts to assist the family. Father did maintain some contact with the county, but this contact was inconsistent. Given father’s own history of drug use, one requirement of father’s case plan was that he “submit to random and ongoing drug testing.” As part of this requirement, the county asked father to complete a hair follicle test, which would more accurately detect controlled-substance use. However, father never completed the required hair follicle test, and he was unable to provide any explanation for this failure. Father’s resistance to the hair follicle test led the caseworker to believe that father’s drug use—another basis for child’s out-of-home placement—had

not been adequately addressed. Finally, while father did complete the parenting assessment, as required, he refused to allow his caseworker to attend and participate in the last session of the assessment, which is a customary component of the assessment.

The record before the district court amply supports the finding that father was substantially noncompliant with his case plan. Thus, this finding is not clearly erroneous.⁴

The district court's findings of fact supporting its determination that reasonable efforts had failed to correct the conditions leading to child's out-of-home placement are not clearly erroneous. Therefore, the district court did not abuse its discretion in concluding that this statutory basis for termination—that "reasonable efforts" had "failed to correct the conditions leading to the child's placement," Minn. Stat. § 260C.301, subd. 1(b)(5)—existed in this case. Because we conclude that termination was justified on this basis, we do not address the district court's conclusions regarding the two alternative bases. *See* Minn. Stat. § 260C.301, subd. 1(b) (requiring only "one or more" statutory basis for termination to justify termination of parental rights).

II. The district court did not abuse its discretion in determining that the county made reasonable efforts to reunify the family.

Before terminating parental rights, a district court must also find that there were reasonable efforts made to reunify the child and the parent. Minn. Stat. § 260C.301, subd.

⁴ Among father's challenges to the district court's factual findings, he argues that the district court clearly erred in finding that services offered in Swift County failed to correct "ongoing chemical dependency issues, neglect of the child(ren) and abandonment." He agrees that this finding may be accurate as to mother. But because he was granted physical and legal custody in the Swift County proceedings, he argues that the district court's finding is clearly erroneous as to him. We conclude that the challenged finding concerned mother and not father, and therefore it is not clearly erroneous.

8 (2020). In determining whether reasonable efforts were made, the district court was required to consider whether the efforts 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). “Reasonable efforts” must “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), *rev. denied* (Minn. Mar. 28, 2007). However, “the nature of the services which constitute reasonable efforts depends on the problem presented.” *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008) (quotation omitted). We review a district court’s determination that a county made reasonable efforts to reunify the family for an abuse of discretion. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 323 (Minn. App. 2015) *rev. denied* (Minn. July 20, 2015).

As noted, the county made numerous efforts to facilitate reunification here. The county developed a case plan designed to help father understand the steps that he needed to take to be reunited with child. To assist father in complying with the case plan, the county provided him with a resource worker, facilitated chemical-dependency treatment and parental education, and made available other services related to housing and employment. Father’s caseworker made referrals in Otter Tail County for other services such as drug testing, mental-health services, anger management, and supervised visitation. The county expended significant efforts in identifying an appropriate location for visitation between father and child.

Father argues that none of the county's efforts were directed at addressing the relationship between father and mother. The record does not support this argument, however. In fact, the county tailored its efforts to address the most significant concern about father's parenting—his failure to address the serious safety issue presented by mother. Again, the parenting assessment, which was ordered in the case plan and facilitated by the county, stressed to father the importance of avoiding contact with mother. Father's caseworker repeatedly and unambiguously attempted to impress upon father the gravity of the safety concerns about mother. And father's caseworker repeatedly and unsuccessfully attempted to open a dialogue with father about mother's involvement. Moreover, the county offered father assistance with housing and employment to help father find independence from mother.

In its order, the district court identified the correct legal standard and noted the county's efforts to reunify child and father. Additionally, the district court determined that the "services provided a meaningful opportunity to address the issues relevant to the foster care placement." Given the record and the district court's findings, we see no abuse of discretion in the district court's conclusion that the county made reasonable efforts to reunify child and father.

III. Although the district court did not explicitly scrutinize the three statutory factors for considering child's best interests, its findings clearly demonstrate that it performed the necessary analysis.

A district court may only terminate parental rights if it is in the best interests of the child. *S.E.P.*, 744 N.W.2d at 385. In evaluating the best interests of a child, a district court must consider (1) "the child's interests in preserving the parent-child relationship," (2) "the

parent’s interests in preserving the parent-child relationship,” and (3) “any competing interests of the child.” Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). “[D]etermination of a child’s best interests is generally not susceptible to an appellate court’s global review of a record, and . . . an appellate court’s combing through the record to determine best interests is inappropriate because it involves credibility determinations.” *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quotation omitted). We review a district court’s best-interests determination for an abuse of discretion. *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 669 (Minn. App. 2020).

Father argues that because the district court failed to expressly address the interests of child and father in maintaining the parent-child relationship, the district court’s findings were inadequate requiring reversal of the termination decision. The county agrees that the district court’s findings are technically deficient but asks us to remand the case for additional findings rather than reverse the termination.

Although the district court’s order does not explicitly delineate the interests of child and father in maintaining a relationship, we disagree that the district court failed to consider these issues. The district court’s order made clear that both child and father had an interest in maintaining a relationship. Specifically, the district court found credible the GAL’s testimony that child and father had a loving relationship. The district court observed that visits between child and father had gone well. And the district court noted the testimony of father’s mother—child’s grandparent and foster parent—that father regularly visited with child in her home and participated in child’s bedtime routine. Given these factual findings, the district court implicitly recognized that both child and father had an interest

in maintaining a relationship. *See D.L.D.*, 771 N.W.2d at 545 (reviewing a district court’s implicit findings of fact). Nonetheless, the district court determined that “[t]he benefits to the child that will result by a termination of parental rights . . . outweigh the interests of preserving the parent-child relationship.” Moreover, the district court found that “the competing interest of the child’s need for a safe, sober, and stable living environment supports the termination of parental rights.”

Considering the district court’s order in its entirety, we conclude that the district court adequately addressed all the factors bearing on whether the termination served the best interests of child. We therefore see no abuse of discretion.

In sum, the district court did not abuse its discretion in determining that clear and convincing evidence supported at least one statutory basis for termination, that reasonable efforts were made to reunify father and child, and that termination was in child’s best interests.

Affirmed.