

*This opinion is nonprecedential except as provided by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
A21-0519**

In re the Matter of the Welfare of the Children of: B. H. K. and A. J. S. B., Parents.

**Filed October 18, 2021
Affirmed
Larkin, Judge**

Brown County District Court
File No. 08-JV-20-137

Steven D. Winkler, VARD Law, St. Peter, Minnesota (for appellant-father A.J.S.B.)

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

Heather Schwab, New Ulm, Minnesota (guardian ad litem)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Jesson,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant-father challenges the district court's termination of his parental rights to his children, arguing that the county failed to make reasonable reunification efforts, that termination of his parental rights was not in the children's best interests, and that he received ineffective assistance of counsel. We affirm.

FACTS

This appeal stems from a juvenile-protection matter involving two children: child 1, born in 2013, and child 2, born in 2017. Appellant A.J.S.B. is the children's father. Father was not married to the children's mother, B.H.K., when the children were conceived or born.

On May 24, 2020, the police visited mother's home and discovered that child 2 was unsupervised and exposed to methamphetamine. The police arrested mother and placed the children on a 72-hour health-and-welfare hold. At that time, father was in inpatient treatment for methamphetamine use. On May 27, respondent Brown County Human Services filed a petition alleging that the children needed protection or services and requesting emergency custody of the children. The district court ordered the children to remain in out-of-home placement.

The county petitioned to terminate father's parental rights on January 19, 2021. The district court held a trial on the petition on March 3-4, and in April, the district court issued an order terminating father's parental rights. Father appeals.¹

DECISION

The district court has broad discretionary powers when deciding juvenile-protection matters. *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009). Appellate courts give considerable deference to a district court's decision to terminate parental rights and will affirm an order for termination if at least one statutory ground for

¹ The district court also terminated mother's parental rights, but mother is not a party to this appeal.

termination is supported by clear and convincing evidence, termination is in the best interests of the children, and the county made reasonable efforts to reunite the family. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

Father challenges the termination of his parental rights on three grounds. We address each in turn.

I.

Father contends that the district court erred in determining that the county made reasonable reunification efforts. In any proceeding to terminate parental rights, the district court must make specific findings that “reasonable efforts to finalize the permanency plan to reunify the child and the parent were made” or that “reasonable efforts for reunification are not required.” Minn. Stat. § 260C.301, subd. 8 (2020). The parties agree that reasonable efforts were required in this case.

When determining whether a county has made reasonable reunification efforts, the district court must consider whether the services to the child and family 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). Appellate courts review a district court’s reasonable-efforts findings to ensure that they are supported by substantial evidence and are not clearly erroneous. *S.E.P.*, 744 N.W.2d at 387.

Father argues that the county’s reunification efforts were inconsistent and untimely. Specifically, he argues that the timeline to correct the conditions that led to placement were

“unduly compressed” because the county did not create a case plan until August 2020 and the termination trial was held only six to seven months after he received the case plan.

In determining that the county made reasonable efforts to reunite father with the children, the district court found that although the county did not initially develop a case plan for father, it delayed doing so because father was either “in treatment, on the run, or incarcerated.” The record supports that finding. At the beginning of the underlying juvenile-protection proceeding, father was in treatment after his arrest for a probation violation in early May 2020. He failed to complete that treatment program and absconded on May 31. On June 25 and 26, he spoke with the assigned juvenile-protection social worker by phone. The social worker told him that a case plan needed to be developed. Father refused to disclose his location because there was a warrant for his arrest. On July 7, father was arrested for possession of methamphetamine. The social worker ultimately met with father on August 20, 2020, while he was incarcerated, and discussed his case plan. Father signed a case plan regarding each child on August 27.

This court has stated that a parent’s incarceration may affect reasonable reunification efforts and has emphasized that a county must create a case plan even if the parent is incarcerated. *In re Welfare of Children of A.R.B.*, 906 N.W.2d 894, 899 (Minn. App. 2018). For example, in *A.R.B.*, this court concluded that the county did not make reasonable reunification efforts because it did not create *any* case plan for an incarcerated parent. *Id.* at 898-900. Unlike the circumstances in *A.R.B.*, the county social worker in this case met with father while he was in jail and developed a case plan regarding each child. And at oral argument before this court, father could not articulate how the delay in

developing his case plan after he was incarcerated prejudiced him. Nor did he identify any additional services that should have been offered. Instead, he argued that the county's reunification efforts were unreasonable because communication between father and the county could have been better and that under the circumstances of this case, reasonable efforts required the allowance of more time for him to complete the case-plan services.

Father's argument is unavailing. Minnesota has adopted expedited deadlines for securing permanent homes for children who have been removed from their parents' care due to abuse or neglect and who cannot safely be returned to their parents' care. *See* Minn. Stat. §§ 260C.503-.509 (2020); Minn. R. Juv. Prot. P. 52.01-.02. The law allows a district court to extend those deadlines if a parent is actively working to correct the conditions that led to a child's removal from the home. Minn. Stat. § 260C.204(d)(1)(ii) (2020). In this case, the district court granted such an extension on November 19, 2020, ruling that the permanency deadline would be extended up to six months based on father's participation in case-plan services at that time. But on January 15, 2021, the district court ordered the county to file a permanency petition, and the underlying termination proceeding ensued.

The record supports the district court's decision to move forward with permanency planning. Father's case plan required him to abstain from nonprescribed mood-altering chemicals and alcohol, complete a chemical-use assessment, follow the recommendations of that assessment, cooperate with the county, remain law abiding, and follow his probation requirements. The record indicates that father made some progress on his case-plan goals. On September 2, 2020, father was furloughed to inpatient chemical-dependency treatment. He successfully completed treatment with a "guarded prognosis." Although the discharge

recommendation was for a halfway house with a medium-intensity level of care, father wanted to return to the community and pursue outpatient treatment. Despite his initial objections, father entered a halfway house on October 6. Through no fault of his own, father was discharged on October 23 because the halfway house closed. Father's discharge from the halfway house was "chaotic" because his counselor had to quickly make discharge recommendations for 15 to 20 clients, including father.

Father's discharge summary from his treatment counselor at the halfway house stated that he would reside with his brother and recommended that he attend low-intensity outpatient treatment. Father's probation agent was concerned about that plan because she thought father needed the medium-intensity level of care that he had received at the halfway house. Nevertheless, father's treatment counselor did not change her recommendation because father refused to sign a release of information for another treatment program that would provide a medium-intensity level of care.

The record establishes that even though father agreed to enter outpatient treatment after his discharge from the halfway house, he never did so. From November 2020 to January 2021, father had numerous probation violations, most of which involved the failure to submit to random drug testing. During those two months, he did not test 12 of the 14 days required and did not call 48 of the 53 days requested. Father often gave excuses for failing to test. For example, he claimed that he could not test because he was working. Although father provided proof of his employment, he did not provide his work schedule, despite requests from the county. Moreover, father provided multiple urine samples that tested positive for methamphetamine. On other occasions he failed to provide a urine

sample for several days after being arrested. On January 6, 2021, father was arrested on charges of receiving stolen property.

Also significant is father's failure to take advantage of opportunities to have contact with his children during the juvenile-protection proceeding. The district court found that the county offered supervised visits with the children, but father "never completed the orientation or made any discernible effort to use the service offered." The record indicates that the county referred father for visitation with the children on October 29, 2020, through a parenting-time center. That visitation did not occur because father did not attend the scheduled orientation in November 2020. After father missed the orientation, the parenting-time center emailed him and asked what his plans were, but father never responded to that email.

Father had contact with child 1 only two times during the pendency of the underlying proceeding. That contact occurred during the child's therapy sessions. The first contact was by telephone, and the second was by video. During the second visit, father did not log into the video session at the scheduled time, so the therapist had to call father. Once the session began, father had a difficult time paying attention because he was at work. After the second session, father told child 1 that he would join more sessions, but he did not do so. A third session was scheduled. Father was supposed to inform the therapist in advance whether he would attend in person or remotely, but he did not do so. Instead, he left a voicemail for the therapist about half an hour after the session began, saying that he was ready to join the session remotely. The therapist did not answer her phone because she does not answer the phone during sessions. There was no additional contact between

father and child 1 because father did not take the steps necessary to have contact. The record indicates that father did not have any contact with child 2 during the underlying proceeding.

Father emphasizes the progress that he made on his case-plan requirements and argues that he could have made more progress if the county had delayed petitioning for termination of his parental rights, thereby allowing him more time to work on his case-plan services. But father's actions undermine his argument that he would have attained the goals of his case plans if he had been given more time to do so. Ten months passed between the initiation of the underlying juvenile-protection matter and the ensuing termination trial. Six months passed between father's agreement to the terms of a case plan setting forth services aimed at reunification and the termination trial. Four months passed between father's agreement to pursue outpatient treatment following the closure of the halfway house and the termination trial. Yet, father had contact with child 1 only two times, had no contact with child 2, and never started outpatient treatment. This record simply does not support father's argument that he would have satisfactorily participated in case-plan services if he had been given more time to do so.

Moreover—and most importantly—Minnesota adopted expedited timelines in its procedural rules because the uncertainty associated with needlessly delayed permanency decisions is damaging to children who are placed out of home due to abuse or neglect. *See In re Welfare of J.R.*, 655 N.W.2d 1, 5 (Minn. 2003). Father's argument that reasonable efforts were lacking because he was not allowed more time to engage in case-plan services—even though he had little-to-no contact with his children and failed to engage in

most case-plan services after leaving the halfway house—is entirely inconsistent with Minnesota’s expedited permanency timelines and the important policy they serve. We therefore reject father’s assertion that the county’s reunification efforts were unreasonable because the proceedings in this case were “unduly compressed.”

In sum, the district court’s finding that the county made reasonable efforts to reunite father with the children is supported by substantial evidence and is not clearly erroneous.

II.

Father contends that the district court erred in determining that termination of parental rights was in the children’s best interests. In any proceeding to terminate parental rights, “the best interests of the child must be the paramount consideration.” Minn. Stat. § 260C.301, subd. 7 (2020). Before terminating parental rights, the district court must find that termination is in the best interests of the child and must analyze “the child’s interests in preserving the parent-child relationship,” “the parent’s interests in preserving the parent-child relationship,” and “any competing interests of the child.” Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). Competing interests include “a stable environment, health considerations and the child’s preferences.” *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). “Where the interests of parent and child conflict, the interests of the child are paramount.” Minn. Stat. § 260C.301, subd. 7. Appellate courts review a district court’s determination that termination is in a child’s best interests for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012).

Here, the district court analyzed each of the best-interests factors and concluded that termination of father's parental rights was in the children's best interests. As to the first factor, the district court found that child 1's interest in preserving the parent-child relationship was "minimal" because child 1 "has expressed fear of father and was worried that father would attempt to take her from the therapy session that he attended remotely." Regarding child 2, the district court determined that there was little evidence regarding his interest in preserving the parent-child relationship.

The record supports the district court's findings. Child 1's therapist explained child 1 had worried that father would "see her," "hurt her," or "be mad at her." Child 1's fear of father stemmed from her witnessing father be violent and abusive toward mother. Before father's first virtual visit during therapy, child 1 was "scared" and "nervous." During the telephone visit, father told child 1 several times that she would live with him, and the therapist had to redirect him and tell him not to make promises about the future. After father suggested joining in her therapy, child 1 became more anxious, twice asked the therapist to barricade the door and put the blinds down, and expressed concern that father would try to take her. A couple weeks before the trial, she told her therapist that she worried that father would kidnap her.

The children's court-appointed guardian ad litem testified that father requested the removal of child 1's therapist, even though child 1 had a "strong bond" with her therapist and trusted her. According to the guardian ad litem, seeing a different therapist would be inconsistent with child 1's best interests because it takes time to build a strong bond between a child and therapist. Father neither asked the guardian ad litem about child 2's

well-being nor asked to visit him; he asked only about child 1. The guardian ad litem noted that child 2 was too young to express his wishes about placement.

As to the second best-interests factor, the district court recognized that father claimed to have a significant interest in preserving the parent-child relationship. But it found that father “has demonstrated an unwillingness to do the work necessary to maintain that relationship” because he “has continued to abuse drugs, break the law, go on the run, and not follow recommendations for chemical dependency treatment aftercare.” Father challenges that finding, arguing that it “ignores the work that Father did do in the short time he had with a case plan” and “casts Father’s issues as a matter of will.”

Even though father made some progress on his case-plan goals, the record supports the district court’s finding that he was unwilling to do the work necessary to maintain a relationship with the children. Again, father went on the run for more than one month shortly after the juvenile-protection proceeding began, failed to enter outpatient treatment after his halfway house closed in October 2020, violated probation numerous times, was charged with additional criminal offenses, and failed to take the steps necessary to maintain contact with his children. Father points to text messages he sent in January 2021 and testimony from his stepfather as evidence that he was willing to improve his relationship with the children. But the district court was in the best position to determine father’s credibility regarding that issue, and this court defers to the district court’s implicit determination that father was not credible. *See S.S.W.*, 767 N.W.2d at 733.

As to the third best-interests factor, the children’s competing interests, the district court concluded that the children “have an overwhelming and overriding interest in having

a safe, stable, permanent family home.” The guardian ad litem opined that father could not provide such a home, noting that he had been unable to provide for himself. Similarly, the social worker testified that father was unable to provide for the children’s mental health, physical health, shelter, food, clothing, medical, and educational needs because of his issues with criminal activity, mental health, and chemical use, which caused him to fail “to show up.”

In sum, the district court carefully weighed each of the relevant best-interests factors and thoroughly explained its assessment of those factors. Father does not address those factors or assign error to the district court’s analysis. Instead, he argues that he “should have had more time to mend his relationship with his children” and that “[w]ithout that opportunity the facts upon which the [district] court relied in determining the [children’s] best interests lack support in the record by clear and convincing evidence.” But the district court initially authorized an extension of the permanency deadline. Regrettably, father did not do the work that was necessary to merit the continued existence of that extension, resulting in the county’s pursuit of termination. On this record, the district court did not abuse its discretion by concluding that termination of father’s parental rights is in the children’s best interests.

III.

Father contends that the termination order should be reversed because he received ineffective assistance of counsel. In juvenile-protection cases, a parent has a statutory right to effective assistance of counsel. Minn. Stat. § 260C.163, subd. 3(a) (2020). This court has relied on criminal caselaw regarding ineffective-assistance-of-counsel claims when

reviewing satisfaction of a statutory right to counsel in a noncriminal context. *See, e.g., In re Welfare of L.B.*, 404 N.W.2d 341, 345 (Minn. App. 1987) (applying *Strickland* in juvenile-delinquency context); *see also Beaulieu v. Minn. Dep't of Hum. Servs.*, 798 N.W.2d 542, 550 (Minn. App. 2011) (noting that *Strickland* analysis is applicable in civil-commitment context), *aff'd on other grounds*, 825 N.W.2d 716 (Minn. 2013).

To demonstrate ineffective assistance of counsel in a criminal case, the moving party must show that (1) “counsel’s performance was deficient” and (2) “the deficient performance prejudiced the defense.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984). An attorney’s representation was deficient if it “fell below an objective standard of reasonableness.” *Id.* at 688. Deficient representation is prejudicial if “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* A court need not address both prongs of the test if one is determinative. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003).

Father argues that his trial counsel’s performance was deficient because counsel failed to properly execute a sound trial strategy. Specifically, counsel’s strategy was to focus on the limited amount of time that father had to work on his case plan before the county petitioned to terminate his parental rights. Counsel’s direct and cross-examination at trial emphasized that the county filed the termination petition two months earlier than required under the juvenile-protection statutes. Father argues that trial counsel misunderstood the applicable statutes and that the county actually filed the termination petition four months earlier than required. According to father, that argument would have

been more compelling because four months is a “substantial amount of time” in which he could have made “substantial progress” on his case plan.

We need not decide whether counsel’s performance was deficient because on this record, there is no reasonable probability that the outcome of the proceeding would have been different if counsel had argued that the county could have waited four—and not two—additional months before moving for permanency. Both the guardian ad litem and the county social worker testified that father would not be able to care for the children within the “reasonably foreseeable future.” Both witnesses explained that father had made little progress on his case plan in the ten months since the children were removed from the home. Again, the record shows that father did not enter outpatient treatment after his halfway house closed, follow the requirements of probation, remain law abiding, or—most importantly—maintain contact with the children.

In sum, father has not shown that there is a reasonable probability that the outcome would have been different if his attorney had argued that the county filed the termination petition four months earlier than required. He therefore is not entitled to relief on his ineffective-assistance-of-counsel claim.

Affirmed.