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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0828**

In the Matter of the Welfare of the Children of: J. J. F., II, and M. J. B., Parents.

**Filed November 28, 2022
Affirmed
Reyes, Judge**

Washington County District Court
File No. 82-JV-21-445

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Considered and decided by Reyes, Presiding Judge; Slieter, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant-father challenges the involuntary termination of his parental rights (TPR) to two of his children, arguing that the record does not support the district court's determinations that (1) respondent-county made reasonable efforts to rehabilitate and

reunify father with the children; (2) the TPR is in the children's best interests; and (3) it was reasonable to adopt the county's proposed order verbatim.¹ We affirm.

FACTS

J.J.F. is the father and custodial parent of two children, L.F. and C.F. The children, born in October 2017, are twins. When the children were born, M.J.B., the children's mother, had recently graduated from in-patient chemical-dependency treatment that she participated in as part of a child-protection matter for her oldest child. Washington County initiated that child-protection matter because of mother's methamphetamine use and domestic abuse by J.J.F. In July 2018, the district court granted an order for protection (OFP) against father with mother and children as protected parties after father "punched [mother] in the side of the face" causing her to accidentally butt the head of one of the children. Mother sought to dismiss the OFP in late August after father agreed to enter chemical-dependency (CD) treatment and take anger-management classes. However, in September 2018, father again assaulted mother in the presence of the children and was arrested and charged with felony domestic assault by strangulation and violating an OFP.

2018 Child-Protection Petition

In October 2018, while father remained incarcerated on the felony assault charges, law enforcement executed a search warrant at mother's residence and found methamphetamine and a gun with the children present in the home. This prompted Dakota

¹ Father also appears to argue that his due-process rights were violated by the district court's failure to strictly apply the requirements of the juvenile-protection statutes. We address this issue as part of father's arguments in Section I, regarding the county's reasonable efforts.

County Social Services (Dakota County) to take the children into custody and initiate a child-protection proceeding. The children were initially placed in non-relative foster care. The social worker assigned to the case worked with mother and father to create a case plan. Between November 2018 and January 2019, father actively engaged in the case plan and obtained an order amending the OFP to allow contact with children and mother, along with supervised visits.

In January 2019, the children transitioned to foster care with J.A., father's sister. Around the same time, the district court placed father on probation for four years with a stayed eighteen-month prison sentence and a period of incarceration pursuant to his guilty plea for third-degree assault against mother. The district court allowed father's jail time to be furloughed, so father started intensive outpatient treatment with lodging on March 1, 2019. During father's time in intensive outpatient treatment, father participated in supervised visits with the children, assisted by J.A. In late March or early April, the intensive outpatient treatment program discharged father for failing to follow the rules. Shortly after, however, as directed by the case plan, father completed a psychological evaluation and parenting assessment. Father also provided clean drug tests throughout April 2019 before entering treatment again in May 2019. In August 2019, father successfully completed the intensive outpatient CD treatment. Father also demonstrated sobriety and the ability to meet the needs of the children and completed other aspects of the case plan, including parenting education and therapy counseling.

In September 2019, as the children neared one year of being placed away from mother, Dakota County petitioned to transfer sole legal and sole physical custody of the

children to father. With mother's consent, the district court transferred custody to father in October 2019, and Dakota County closed its child-welfare case.

2021 Child-Protection Petition

Between October 2019 and October 2020, J.J.F. resided in his father's home with the children and successfully provided care. However, concerns about father's ability to care for the children began again in October 2020, as father obtained new employment, but began requesting financial assistance from J.A. and spending less time at his father's house. After other concerning behavior at the beginning of 2021, J.A. received a call to pick up the children from daycare after father failed to do so.

During this time, father remained on probation and completed domestic-violence programming. However, between December 2020 and March 2021, father's probation officer could not reach father. In April 2021, father was arrested for several probation violations, including failure to maintain contact, failure to report an address change, failure to abstain from drug use, and failure to report police contact. Upon his arrest, father contacted J.A. and asked her to care for the children.

While J.A. made plans with father to return the children to father's care in June 2021, father did not follow through with the plan. Between June and July 2021, father had limited contact with J.A.

In July 2021, Washington County Community Services (the county) initiated a child-protection proceeding and officially placed the children with J.A. The district court held an emergency-protective-care hearing on July 27, 2021. On September 23, 2021, the county filed a TPR petition as to father and the children.

The district court held a five-day court trial on the petition between March 31 and May 5, 2022. During the court trial, the district court considered dozens of exhibits and heard testimony from father, mother, J.A., the guardian ad litem (GAL), social workers, father’s psychological evaluator, father’s licensed alcohol and drug counselor, father’s probation officer, and the children’s counselor and mental-health therapist. On June 1, 2022, the district court issued findings of fact, conclusions of law, and an order terminating mother’s and father’s parental rights to the children. Mother and father appealed separately.² This is father’s appeal.

DECISION

A district court may terminate parental rights “only for grave and weighty reasons,” and it is presumed that parents are fit to be entrusted with the care of their children. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (quotation omitted). But parental rights are “not absolute” and should not be “enforced to the detriment of the child’s welfare and happiness.” *In re Adoption of Anderson*, 50 N.W.2d 278, 284 (Minn. 1951).

“[O]n appeal from a district court’s decision to terminate parental rights, we will review the district court’s findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion.” *In re Welfare of Child of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). “We

² Mother’s parental rights were terminated in the same proceeding, and she separately appealed in *In re Welfare of the Children of J.J.F., II and M.J.B.*, A22-0798 (Minn. App. Nov. 28, 2022).

affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family." *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted).

Here, the district court determined, and father does not challenge, that there was clear and convincing evidence to support the factual basis for each of the four statutory grounds for termination of parental rights under (1) Minn. Stat. § 260C.301, subd. 1(b)(2) (2020) (father has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship); (2) Minn. Stat. § 260C.301, subd. 1(b)(4) (2020) (father is palpably unfit to be a party to the parent and child relationship); (3) Minn. Stat. § 260C.301, subd. 1(b)(5) (2020) (following the children's placement out of the home, reasonable efforts have failed to correct father's conditions leading to the children's placement); and (4) Minn. Stat. § 260C.301, subd. 1(b)(8) (2020) (that the children are neglected and in foster care).

I. The district court did not abuse its discretion by determining that the county presented clear and convincing evidence that it engaged in reasonable efforts because the district court's findings are not clearly erroneous and are supported by the record.

Father argues that the county did not make reasonable efforts to rehabilitate and reunify father with the children. We are not convinced.

When the district court terminates parental rights, it "shall make findings and conclusions as to the provision of reasonable efforts." Minn. Stat. § 260.012(h) (2020).

When reviewing a TPR decision, we determine whether there is clear and convincing evidence that the county made “reasonable efforts” to “reunite the family.” *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). We review the district court’s findings of fact regarding reasonable efforts for clear error. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 323 (Minn. App. 2015), *rev. denied* (Minn. July 20, 2015). Unless we are left with a definite and firm conviction that a mistake has occurred based on the entirety of the evidence, we will not conclude that the fact-finder clearly erred. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). In applying the clear-error standard, our role is not to reweigh evidence; therefore, we need not engage in extended discussion of the evidence to demonstrate the correctness of the district court’s findings. *Id.* at 223. When the record reasonably supports the findings, it is immaterial that the record might also provide a reasonable basis to the contrary. *Id.*

We review the district court’s determination of whether the efforts the county provided are reasonable under the circumstances of that particular case for an abuse of discretion. *D.L.D.*, 865 N.W.2d at 323. “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)).

Because this court defers to the district court’s “determinations of witness credibility and the weight to be given to the evidence[.]” we also rely on the district court’s evaluation of the testimony received during trial. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007), *rev. denied* (Minn. July 17, 2007).

Father asserts that the county's efforts were not reasonable because (1) the county made "no efforts whatsoever[,]" (2) the county-created case plans "bore no relationship to the conditions which led to the out-of-home placement[,]" and (3) the case plans were defective by design, by the way they were presented to father, and by their expectations. We will address each assertion in turn.

A. The district court's findings of fact regarding the county's efforts were not clearly erroneous.

First, father argues that the county generally did not make any efforts whatsoever. Father asserts that there was limited contact, in-person or by phone, between father and the county and that the social worker failed to arrange any services for father.

The district court determined that the county made "more than reasonable efforts toward reunification." Regarding both contact and services, the district court noted that the social worker's efforts were "initially actively thwarted by [father's] behaviors preventing the provision of any services" between July 2021 until father's arrest in December 2021. During this time, the district court noted that the county could not provide father with services because father chose to "essentially abandon his children" and refused "to engage with [the county] to receive rehabilitative services to reunify with his children" and, as a result, "chose to forego approximately five . . . months of time in which [he] could have received rehabilitative services." Further, after father's December 2021 arrest, "case planning services were directly provided to [father] including coordination and support in chemical dependency treatment, a mental health evaluation, therapeutic interventions relating to the ability to initiate ongoing and supporting visitation with his children and

assistance in obtaining additional mental health and domestic violence services.” The district court also noted the following services that were provided to the family:

[O]ngoing meeting either in person or via phone or video; creating and updating case plans; communication via phone, via text, phone and email; provision of a cell phone to [father] after he reportedly threw his away; transportation as needed; mental health evaluations for [father] and his children; coordination of ongoing necessary mental health services for both children; coordination for father to engage in those services; and appropriate and supportive foster care services.

Because the record supports the findings the district court made identifying the services the county offered father, those findings are not clearly erroneous.

B. The district court did not abuse its discretion by determining that the county’s efforts were reasonable.

Second, father argues that the case plans created by the social worker “bore no relationship to the conditions which led to the out-of-home placement.” When a child is placed in foster care by a court order, the county’s reasonable efforts to reunite the family include the responsible social-services agency’s preparation of an out-of-home case plan. *In re Welfare of Children of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018); Minn. Stat. § 260C.212, subd. 1(b) (2020). The case plan must identify the specific reasons why the child was placed in foster care, the changes or requirements a parent must make or satisfy in order for their child to return home, and the services that are available to help a parent achieve these changes or requirements and reunify the family. Minn. Stat. § 260C.212, subd. 1(c)(2), (3) (2020).

Father asserts that the case plans were nearly identical between August 2021 and January 2022 and that all four of the case plans failed to include “any services that [father]

is mandated to complete for rehabilitation and reunification.” Father relies on *In re Welfare of J.A.* for the argument that services must “go beyond mere matters of form . . . so as to include real, genuine help to see that all things are done that might conceivably improve the circumstances of the parent and the relationship of the parent with the child.” 377 N.W.2d 69, 73 (Minn. App. 1985), *rev. denied* (Minn. Jan. 23, 1986).

While the two sets of case plans, the first created in August 2021 and the second created in January 2022, had significant overlap, they were not identical. As noted by the district court, because father “chose to make himself unavailable[,]” the county created the plans without father’s input. The record supports this finding, as the county had difficulty reaching father between August and December 2021, and it was not until December 2021, after father’s arrest, that the county had a face-to-face meeting with father.

Father also asserts that the case plans “notably did not contain any services that [father] is mandated to complete for rehabilitation and reunification.” However, the plans indicate that father “will need to demonstrate sobriety over a significant period of time, as well as an ability to safely and consistently parent” and identify services including support with basic needs, housing, mental-health assessment, mental-health services, chemical-health assessment, chemical-health services, and transportation, many provided by the county. Because father’s substance use caused the placement, it is reasonable that the identified change for reunification is sobriety with reasonable services listed to support father’s treatment efforts. Therefore, because the record shows case plans that contain relevant services and identify the change necessary for reunification, and because we previously concluded in Section I(A) that the district court’s findings of fact identifying

the services offered to father were not clearly erroneous, we affirm the district court's determination that the services offered to father by the county were reasonable.

C. Any technical defects with the case plans do not undermine the conclusion that the county's efforts were reasonable.

Next, father argues that the case plans were defective because they did not comply with the requirements of Minn. Stat. § 260C.212 (2020).³ Specifically, father claims that the case plans were not (1) completed in a timely manner; (2) created jointly with father in consultation with the GAL; or (3) signed by the parent, GAL, social worker, and foster parent.

In addition to the statutory requirement that the social-services agency make reasonable efforts, the county is required by statute to develop a case plan with each parent. Minn. Stat. § 260C.212, subd. 1. These statutes can be considered together, meaning that failure to follow the statutory requirements for creating a case plan can amount to a failure to make reasonable efforts to reunite the family as required by Minn. Stat. § 260.012 (2020). *See, e.g., A.R.B.*, 906 N.W.2d at 900.

First, father appears to argue that the case plans were not timely because they were created six months after the children's initial placement in foster care. Minn. Stat. § 260C.212, subd. 1(a), requires case plans to be prepared within 30 days after a child is placed in foster care. The record supports the district court's finding that the county prepared the first set of case plans in late August 2021, which is within the 30-day period.

³ The statute has subsequently been amended in a manner not relevant to the case.

Second, father argues that the county did not follow Minn. Stat. § 260C.212 because they did not involve father in the creation of the case plans. The county cites in part to *In re Welfare of J.J.L.B.* to support the rule that, when a parent fails to cooperate, a written case plan or explanation of one is not always necessary if the underlying purpose of the case plan is met. 394 N.W.2d 858, 863 (Minn. App. 1986). In *J.J.L.B.* this court determined that there was no reversible error when a parent’s failure to cooperate and transitory lifestyle prevented a county from providing the parent with a written plan. *Id.* Here, father’s failure to cooperate similarly prevented the county from working with father to create the August 2021 plan. However, the county reviewed and updated the case plan with father in January 2022. Therefore, the record supports a conclusion that any failure to involve father in the first set of case plans is not reversible error.

Third, father argues that the county failed to follow Minn. Stat. § 260C.212 because the necessary signatures do not appear on all of the case plans. Minn. Stat. § 260C.212, subd. 1(b)(3), requires case plans to be signed “by the parent . . . the child’s [GAL] . . . [and] the responsible social services agency.”⁴

Father did not sign the first set of case plans from August 2021, and the county recognizes that father was not involved with the development or approval of the case plans due to father’s decision not to engage with the process. The district court determined that

⁴ Father argues that a case plan without the GAL’s signature does not adhere to the statute. The four case plans relevant to father’s case are signed by the GAL. Father directs us to a case plan developed for mother that is unsigned by the GAL, but that is irrelevant to this case, which involves father.

the first case plans were “necessary [sic] created without [father’s] input, as he chose to make himself unavailable.”

While father did not sign the August 2021 case plans for the children, the record demonstrates that he signed subsequent plans. And the technical violation of Minn. Stat. § 260C.212, subd. 1(b)(3) regarding the August 2021 case plans does not override the reasonable efforts by the county. It is therefore not reversible error. *Cf. In re Welfare of S.R.A.*, 527 N.W.2d 835 (Minn. App. 1995) (concluding that best interests of child may be held paramount to parent’s interest in protection from technical violation of statute), *rev. denied* (Minn. Feb. 7, 1995).

The record supports the district court’s findings that the county attempted to contact father, develop a case plan, and reach the goals identified in the case plan. Further, the record supports the district court’s determination that any procedural deficiencies in the case plan, such as father’s lack of input, were due to father’s lack of cooperation before his December 2021 arrest. *See S.R.A.*, 527 N.W.2d at 839. Therefore, the district court did not abuse its discretion by determining that the county’s efforts were reasonable, and any failures to comply with the technical statutory requirements for the county’s provision of reasonable efforts were not fatal to the reasonableness of those efforts.

II. The district court did not abuse its discretion because clear and convincing evidence establishes that the TPR was in the best interests of the children.

Father challenges the district court’s determination that the children’s best interests are served by preserving the parent-child relationship between father and children. We are not persuaded.

Once a statutory basis for TPR is met, “the best interests of the child must be the paramount consideration.” Minn. Stat. § 260C.301, subd. 7 (2020). We review a district court’s best-interests determination for an abuse of discretion. *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 657 (Minn. App. 2018). “In determining a child’s best interests, the district court must balance ‘(1) the child’s interest in preserving the parent-child relationship; (2) the parent’s interest in preserving the parent-child relationship; and (3) any competing interest of the child.’” *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 604 (Minn. App. 2021) (quoting *A.M.C.*, 920 N.W.2d at 657), *rev. denied* (Minn. Dec. 6, 2021); *see also* 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) (quoting *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003)); *T.D.*, 731 N.W.2d at 555 (providing that this court defers to district court’s “determinations of witness credibility and the weight to be given to the evidence”).

Here, the district court made best-interests findings specific to eight different areas of the children’s needs and applied the required three-part balancing test. The district court acknowledged that it is “undisputed” that father loves the children and expresses a “desire to parent [the] children in the future.” However, the key part of the district court’s best-interests analysis is the third factor, the competing interests of the children, including “a stable environment, health considerations, and the child[ren]’s preferences.” *In re Welfare*

of Child. of K.S.F., 823 N.W.2d 656, 668 (Minn. App. 2012) (quoting *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992)). The district court found that, during the children’s “short lives[,]” they have “been under the jurisdiction of various courts as part of three . . . separate child protection proceedings due to their parent’s chronic substance abuse, mental health, domestic violence and resulting instability making them unable to safely meet their needs, resulting in over 600 days in [c]ourt ordered out of home placement.” It noted that, prior to the initiation of this case, “the children resided solely with [J.A.] from April 16, 2021, till July 27, 2021, due to [father’s] substance abuse and unmet probation violations making him unable to safely meet his children’s needs.”

Further, finding the psychological evaluation, testimony, diagnostic impressions, and treatment recommendations from the doctor who completed father’s 2022 psychological evaluation “credible in all respects[,]” the district court highlighted the doctor’s conclusions that father has health barriers, including a lack of “empathy for others” and behaviors that can “negatively impact parenting as they cause an inability to maintain and establish appropriate relationships with others” and “negatively impact[] the ability to safely parent children.”

Father emphasizes an alternative set of facts under each of the three best-interest factors. However, when reviewing for clear error, we view the evidence in a light favorable to the findings. *See Kenney*, 963 N.W.2d at 221; *J.H.*, 968 N.W.2d at 601 n.6 (applying *Kenney* in TPR case). The district court not only specifically analyzed the best interests of the children under the correct balancing test, but it also provided more than 60 pages of detailed findings, which are supported by testimony from social workers, expert witnesses,

and dozens of exhibits. In the portion of the order addressing the best-interests analysis, the district court determined that the children's overriding need for a caregiver who is safe, stable, sober, and attuned to the significant mental-health needs of the children outweighs any competing interests of father. Because the district court's findings are supported by the record, there is no clear error in these findings.

Father also argues that the foundation for the GAL's testimony that termination of father's parental rights is in the children's best interest is "woefully weak" because of her lack of investigation required by Minn. Gen. R. Prac. 905.01(a) and her purported misunderstanding of the best-interests standard. The district court found the GAL's testimony "credible in all respects," and father's argument amounts to a request for this court to reweigh the credibility of the witness, which we will not do. *See D.L.D.*, 771 N.W.2d at 546; *see also Kenney*, 963 N.W.2d at 221-22. Furthermore, the GAL's understanding of the legal balancing test *the district court* must apply is immaterial to the GAL's credibility on the factual questions the GAL addressed at trial.

Because the district court's findings of fact are not clearly erroneous and this determination is not contrary to logic and the facts on record, it did not abuse its discretion by determining that termination of father's parental rights was in the children's best interests.

III. The district court did not commit reversible error by adopting the county's proposed findings.

Father argues that the district court failed to provide father with an independent review of the issues raised because it adopted the county's proposed findings verbatim. We disagree.

The Minnesota Supreme Court's "preference is 'for a court to independently develop its own findings,'" not adopt the county's proposed findings verbatim. *T.A.A.*, 702 N.W.2d at 707 n.2 (quoting *Pederson v. State*, 649 N.W.2d 161, 163 (Minn. 2002)). But despite this preference, the supreme court "ha[s] declined to adopt a blanket prohibition on the practice." *Id.*

As *T.A.A.* states, there is no rule categorically precluding a district court from adopting a county's proposed findings verbatim. *Id.* Moreover, the district court made changes throughout its findings which indicate that it reviewed the county's proposed findings and determined that they were correct before adopting them. As a result, we discern no error by the district court.

Affirmed.