

*This opinion is nonprecedential except as provided by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
A22-1800**

In the Matter of the Welfare of the Children of:
N. J. E. and J. P. E., Parents.

**Filed July 3, 2023
Affirmed
Ross, Judge**

Sherburne County District Court
File No. 71-JV-21-305

N.J.E., St. Francis, Minnesota (self-represented appellant)

Kathleen Heaney, Sherburne County Attorney, Tim Sime, Assistant County Attorney, Elk River, Minnesota (for respondent Sherburne County Health and Human Services)

Lisa Rutland, Princeton, Minnesota (for respondent J.P.E.)

Bethany Peterson, Stillwater, Minnesota (guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

This transfer-of-custody appeal arises from a parent-child relationship in which a mother's three minor children fear being alone with her. Sherburne County Health and Human Services successfully petitioned the juvenile court for the permanent transfer of sole custody to the father after two years of providing services designed to repair the strained mother-child relationships. The mother appeals the transfer order, contending that

the juvenile court lacked subject-matter jurisdiction over the custody dispute and that it erroneously concluded that a statutory basis supported transfer. Because the juvenile court had subject-matter jurisdiction to determine custody and because the juvenile court did not abuse its discretion by permanently transferring custody to the children's father, we affirm.

FACTS

The juvenile court's posttrial findings of fact are undisputed on appeal. After an incident in May 2018, N.J.E. (Mother) and J.P.E. (Father) each petitioned the family court for orders for protection against the other, alleging physical and emotional abuse. Mother's petition alleged that she needed protection from Father, and Father's petition alleged that he and the parties' three children—now ages thirteen, eleven, and seven—needed protection from Mother. The family court denied Mother's petition, granted Father's petition, appointed a guardian ad litem for the children, and awarded sole physical and legal custody to Father. Father was in a romantic relationship with their next-door neighbor, whom we call Casey in the interest of her privacy. Mother petitioned to dissolve her marriage to Father.

Sherburne County Health and Human Services petitioned the juvenile court in October 2020 to order the children in need of protection or services. The county had previously placed the children on a 72-hour hold in Father's care and the petition disclosed that the county had 18 "intake" incidents about reports of dysfunctional issues in the family: domestic abuse between Father and Mother in front of the three children; Father giving away his son's Ritalin prescription to another adult; Father leaving the children in Casey's care; and Mother physically abusing the children. Mother admitted that the

children needed protection or services under Minnesota Statutes section 260C.007, subdivision 6(9) (2022), agreeing that the children’s “behavior, condition, or environment is such as to be injurious or dangerous to the [children] or others” and that the adverse condition was the ongoing conflict between Mother and Father. The juvenile court found that Mother’s custody of the children was contrary to their best interests and ordered temporary custody with Father and limited visitation for Mother at the county’s and guardian ad litem’s discretion. It granted the county’s petition and ordered Mother to participate in a case plan. The plan directed Mother to complete a neuropsychological evaluation and an anger-management treatment course; to communicate with the children’s therapist; to maintain contact with the county; to visit with the children under the supervision of the county in consultation with the guardian ad litem; and to participate in parenting-skills training and family therapy.

Mother made poor progress on the case plan in the year after the juvenile court ordered her to comply with it. Mother’s neuropsychological evaluation never occurred. After the county agreed to pay for it, Mother arrived for the evaluation and soon burst into a rage when she learned that the provider had been informed about the abuse allegations. The provider prohibited her from ever returning to the office. The county paid for the incomplete evaluation and after having wasted the funds to pay for it, the county informed Mother that it was her responsibility to find a different provider and pay for an evaluation. Mother refused. The county agreed to allow Mother to obtain a psychological evaluation instead of a neuropsychological evaluation, but Mother completed only an assessment rather than an evaluation. Mother did complete the required anger-management course.

Mother's behavior likewise prevented her from succeeding in family therapy and parenting training. Because one of the children informed the family therapist that Mother abused her and that she feared meeting with Mother in therapy, the therapist directed Mother to first participate in accountability sessions, which failed because Mother refused to take responsibility for traumatizing the children. Mother's effort in parenting training was no better. She attended only a few sessions before accusing the parenting coach of taking bribes and "treating her like every other therapist." The coach reported that Mother focused on her disappointment with the child-protection matter rather than on the needs of the children. The parenting coach terminated his therapeutic relationship with Mother.

Mother's visits with the children never progressed to unsupervised status. Mother at first failed to respond to the county's attempts to schedule supervised visits and to see the children. She eventually began having supervised visits with them, which went well but did not progress to unsupervised visits because the children expressed fear that Mother would confront them about their statements to child-protection workers critical of her abuse toward them.

The county petitioned the juvenile court to permanently transfer legal and physical custody to Father. Mother moved to dismiss that petition, maintaining that the juvenile court lacked jurisdiction. The court denied the motion.

At the custody trial, the juvenile court received documentary and testimonial evidence detailing the facts just described. It also heard testimony depicting a stark difference between the children's relationship with Mother and their relationship with Father. Witnesses testified recounting what they had learned from the children about

Mother's treatment of them. The juvenile court heard testimony tending to reveal Mother's behavior in parenting. Among other things, the juvenile court heard the allegations that Mother called the children names like "stupid bitch" and "little shit" and an obscene homosexual slur, that she placed a plastic bag over one of their heads, threatened them, caused the eleven-year-old to believe that she hates her, restricted the six-year-old's breathing by pushing her face into a pillow, responded to the eleven-year-old's crying in response to Mother slapping her by hitting her again and telling her that it didn't hurt, threatened to take the six-year-old's blanket and "rip it up and piss on it," searched the eleven-year-old's phone for evidence that she had tried to call or text Father, tried to convince the children not to love their Father, and responded angrily to their contact with Father.

By contrast, the juvenile court received testimony tending to indicate that the children felt much safer with Father than Mother. And it received evidence that Father participated well in therapy with the children and in parent coaching.

Not all the testimony about Father was positive. Mother's boyfriend at the time of trial, who was the ex-husband of Casey, who in turn had married Father five days before the trial, testified accusing Father and Casey of using the children to traffic drugs. Mother submitted 43 incriminating exhibits that she had not disclosed to Father or the county, which she said she extracted from Father's computer. She offered them as evidence of an exchange of controlled substances between Father and Casey. But the juvenile court did not apparently credit this evidence significantly. The county and Father both objected to its admission on foundation and reliability grounds, and the juvenile court admitted the

evidence on its qualification that it would “give it the appropriate weight.” Father and Casey both denied the allegations, and the juvenile court did not characterize or even reference the evidence in its factual findings.

The guardian ad litem testified to favoring a custody transfer to Father. She had no concerns about Casey residing with the minor children and recounted that the children wished to remain in Father’s care and observed that Father was meeting the children’s needs. She opined that transferring permanent physical custody to Father was in the best interests of the children.

The juvenile court found that the county made reasonable efforts toward reunifying Mother and the children, that Mother’s efforts toward the services provided were delayed and beleaguered, that Mother failed to correct the conditions leading to the petition for transfer, and that transferring custody solely to Father is in the children’s best interests. It granted the petition, transferring sole legal and physical custody of the children to Father but allotting Mother supervised parenting time of up to ten hours weekly. Mother appeals.

DECISION

Mother argues that the juvenile court lacked subject-matter jurisdiction over the proceeding because the children remained in the care of Father. She alternatively argues that the juvenile court erred by concluding that a statutory basis exists supporting the permanent transfer of custody. Both arguments fail.

I

Mother maintains that the juvenile court lacked subject-matter jurisdiction over the permanency proceeding because the children remained in the care of the custodial parent

throughout the proceeding. We review questions of subject-matter jurisdiction in child-protection matters de novo. *In re Welfare of Child of A.H.*, 879 N.W.2d 1, 4 (Minn. App. 2016). Our de novo review leads us to reject Mother’s argument as unsound.

Mother maintains that Minnesota Statutes section 260C.503, subdivision 1(a) (2022), imposes a jurisdictional condition precedent to the juvenile court’s ordering a permanent transfer of custody. That condition, she argues, is that the minor child be removed from the custodial parent’s home and placed elsewhere. We have carefully considered the statutory language:

Except for children in foster care pursuant to chapter 260D, where the child is in foster care or in the care of a noncustodial or nonresident parent, the court shall commence proceedings to determine the permanent status of a child by holding the admit-deny hearing required under section 260C.507 not later than 12 months after the child is placed in foster care or in the care of a noncustodial or nonresident parent.

Minn. Stat. § 260C.503, subd. 1(a). By its terms, the statute describes the method and timing to commence permanency proceedings in a described circumstance. We will conclude a statute is jurisdictional in nature only when that statute “clearly states . . . a threshold limitation” on the scope of a court’s ability to act. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 515 (2006); *see also In re Welfare of Child S.B.G.*, 981 N.W.2d 224, 227–28 (Minn. App. 2022) (stating that subject-matter jurisdiction depends on the scope of the statutory grant of authority), *rev. granted* (Minn. Dec. 2, 2022). Nothing in the statute clearly bears on any aspect of the definition of subject-matter jurisdiction. We can reject Mother’s argument on that ground alone.

We add that the argument also fails in the face of the statutes that bear expressly on the juvenile court’s jurisdiction. The juvenile court’s subject-matter jurisdiction is broad and generally encompasses all subject matter that falls within the Juvenile Court Act, as codified in Minnesota Statutes sections 260C.001 to 260C.637 (2022). *See* Minn. Stat. §§ 260C.001, subd. 1 (defining the scope of the act), 260C.007, subd. 9 (defining “Court” as used in the act to “mean[] juvenile court unless otherwise specified in this section”). Indeed, the legislature has conferred on the juvenile court “original and exclusive jurisdiction in proceedings concerning any child who,” like each child here, “is alleged to be in need of protection or services.” Minn. Stat. § 260C.101, subd. 1. More specifically, the juvenile court’s original and exclusive jurisdiction also applies in “permanency matters under sections 260C.503 to 260C.521,” *id.*, subd. 2(2), like this case, in which the juvenile court transferred custody to Father by applying section 260C.515. In the face of the legislature’s express vesting of subject-matter jurisdiction for permanent transfers of parental rights, Mother’s contention that the juvenile court lacked subject-matter jurisdiction has no merit.

We observe that even if we recast Mother’s jurisdictional argument as one that the juvenile court acted beyond the scope of a *non*jurisdictional limit on its activity, still we would not reverse. Read literally and precisely, section 260C.503, subdivision 1(a), by itself, imposes no express limit on the transferee categories. By its plain terms, it establishes two things: first, a deadline (12 months after placement) for the juvenile court to commence a permanency proceeding for children who are either in foster care or in the care of a noncustodial or nonresident parent, and second, the hearing (an admit-deny hearing) that

commences the proceeding. It does not expressly bar the juvenile court from determining permanency for other children who are in need of protection or services—that is, children who have been placed neither in foster care nor in the care of a noncustodial or nonresident parent. Mother cites no caselaw holding or statute establishing what Mother urges us to infer from the statute, which is that the juvenile court may not determine permanency for any other children who are in need of protection or services. Because Mother identifies no such authority and we are aware of none, her argument fails.

Another problem confronts the inference Mother draws from the statute. The inference would support Mother’s suggestion that only the district court acting in its capacity as the family court, not the juvenile court, could consider transferring custody from Mother to Father. The fundamental problem with this theory is that it ignores the fact that, once the children had been found to need protection or services, *only* the juvenile court had jurisdiction to determine permanency. *See* Minn. Stat. § 260C.101, subds. 1, 2(2). We previously rejected the similar argument that the child-protection jurisdictional “statutes do not prohibit the family court from simultaneously considering these same issues in response to” litigation seeking custody. *Stern v. Stern*, 839 N.W.2d 96, 100 (Minn. App. 2013); *see A.H.*, 879 N.W.2d at 5 (citing this aspect of *Stern* in a post-permanency placement dispute); *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 324–25 (Minn. App. 2015) (citing this aspect of *Stern* in a transfer-of-custody dispute), *rev. denied* (Minn. July 20, 2015). Given the exclusivity of the juvenile court’s jurisdiction to determine permanent custody of the children found to be in need of protection or services here, we

cannot say that it erroneously failed to defer the question of permanent custody to a family court proceeding.

But we return to Mother's actual argument, which is that the juvenile court lacked jurisdiction to decide permanency. We hold that Mother's subject-matter jurisdiction argument fails.

II

Mother also challenges the juvenile court's permanency order on the merits. The juvenile court may issue an order permanently transferring custody only if the following four elements listed in Minnesota Statutes section 260C.517(a) are proved by clear and convincing evidence:

- (1) how the child's best interests are served by the order;
- (2) the nature and extent of the responsible social services agency's reasonable efforts . . . to reunify the child with the parent . . . where reasonable efforts are required;
- (3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
- (4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

See Minn. R. Juv. Prot. P. 58.03, subd. 1 (establishing standard of proof). We review the juvenile court's factual findings for clear error and its finding of a statutory basis for the custody-transfer order for an abuse of discretion. *D.L.D.*, 865 N.W.2d at 321–22; *see In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222–23 (Minn. 2021) (discussing, in detail, the clearly erroneous standard of review); *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* on review of a juvenile-protection order),

rev. denied (Minn. Dec. 6, 2021). Our review leads us to conclude that the juvenile court acted within its discretion.

Mother specifically challenges the juvenile court's determinations in three regards. She asks us to conclude that the court abused its discretion when it concluded that placement with Father is in the children's best interests, that the county made reasonable efforts to reunify Mother with the children, and that Mother failed to correct the conditions leading to the court's decision that the children were in need of protection or services. We address each challenge.

The juvenile court did not abuse its discretion by determining that the permanent transfer of custody to Father is in the children's best interests. Mother maintains that because Casey lives with Father, transferring custody to Father is not in the children's best interests. She highlights her allegations that Casey and Father used the children to transport drugs, her claim that Casey has drug and mental-health issues, and the history of an order for protection regarding Father and Casey. The juvenile court considered Mother's allegations of engaging the children in drug transfers, but the court implicitly credited Father's and Casey's statements and testimony denying them. The juvenile court is in the best position to assess credibility, and we are in no position to reassess its determination on appeal. *See In re Welfare of Child of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007) (noting that appellate courts defer to the district court's "determinations of witness' credibility and the weight to be given to the evidence[,] and rely on the district court's evaluation of the testimony presented at trial), *rev. denied* (Minn. July 17, 2007). The juvenile court also demonstrated that it was aware of an order for protection involving

Father and Casey, observing that the order had been dismissed. The juvenile court received testimony from the guardian ad litem opining that permanent transfer was in the children's best interests and on the children's expressed desire to remain solely with Father. We need not recount here the abundant evidence of Mother's mistreatment of the children, and we are satisfied that the juvenile court acted within its discretion when it determined that the children's interests are best served by transferring custody from Mother to Father.

The record likewise assures us that the juvenile court did not abuse its discretion by concluding that the county made reasonable efforts toward reunification. The county demonstrated substantial effort to provide Mother the services that might lead to her being reunified with the children. The county attempted to assist her to receive a neuropsychological evaluation, engage with the children's therapist, and learn necessary skills from a parenting coach. Mother maintains that the county should have secured alternative providers for these services. The county was not required to accommodate Mother's particular difficulties working with the service providers offered to her. *See* Minn. Stat. § 260.012(h) (2022) (requiring services to be "accessible" and "realistic under the circumstances"). Nor was the county required to relax the restrictions on Mother's visitation with the children. The children expressed significant and unusual fear of Mother, supported by their descriptions of specific incidents. We cannot under these circumstances see any abuse of discretion in declining either to lengthen the period of supervised visitation or to allow unsupervised visits.

Mother contends that the juvenile court erred in finding that the conditions forming the basis of the petition were not corrected, appearing to construe its decision as a finding

that Mother failed to comply with the case plan and dispute the correctness of that finding. Mother misunderstands the juvenile court's order. The juvenile court held that Mother substantially complied with the case plan. But it observed, and Mother concedes, that her compliance was delayed and her behavior uncivil. The court emphasized that Mother failed to change the way she treats and interacts with her children and instead continued to blame others for the struggles in the mother-child relationships. The record amply supports the juvenile court's finding that Mother failed to correct the conditions that led to its order adjudicating the children to be in need of protection or services.

Affirmed.