

*This opinion is nonprecedential except as provided by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
A23-0345**

In the Matter of the Welfare of the Children of:
S. A. N. and A. P., Parents.

**Filed August 21, 2023
Affirmed
Slieter, Judge**

Hennepin County District Court
File Nos. 27-JV-22-1313, 27-JV-22-763

Brooke Beskau Warg, Hennepin County Adult Representation Services, Minneapolis,
Minnesota (for appellant-mother S.A.N.)

Mary F. Moriarty, Hennepin County Attorney, Britta Nicholson, Assistant County
Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and
Public Health Department)

Kathy Gelino, Minneapolis, Minnesota (*guardian ad litem*)

Considered and decided by Slieter, Presiding Judge; Smith, Tracy M., Judge; and
Frisch, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the termination of her parental rights to her two children. She argues that respondent did not make reasonable efforts to reunify the family because it did not prepare an adequate case plan. Because respondent made reasonable efforts to reunify the family notwithstanding any technical deficiencies in appellant's case plan, we affirm.

FACTS

Appellant-mother has two children, P.M.P. and A.R.P.¹ At the time of trial, P.M.P. was nine years old and A.R.P. was three years old. The current termination of parental rights (TPR) matter is the culmination of the second child-protection proceeding initiated on behalf of the children by respondent Hennepin County Human Services and Public Health Department.

In July 2020, the county initiated the first child-protection proceeding based on reports of possible physical abuse of the children, chemical dependency of the parents, and mother's mental health issues. The children were placed in the home of mother's mother (grandmother). The district court adjudicated the children in need of protection or services (CHIPS) and adopted case plans previously filed by the county. The first CHIPS proceeding was closed in October 2021 and the children were returned to the parents, after both parents received chemical-dependency treatment and demonstrated sobriety.

On February 13, 2022, the county received a report that law enforcement had been called to grandmother's house during an altercation between father and P.M.P. Father and mother had left when the police arrived, and P.M.P. reported that father had punched him in the face and back of the head. It was also revealed that mother and father were no longer living at grandmother's house, having been evicted for continued methamphetamine use and domestic disturbances, and were homeless.

¹ The children's father voluntarily terminated his parental rights to the children at the beginning of the trial, and he did not participate in this appeal.

Over the next two months, the county met with the parents to discuss mental-health therapy for P.M.P. to address issues he was having in school, and to discuss execution of a designation of parental rights (DOPA) to facilitate grandmother obtaining medical care for the children. Mother refused to sign a DOPA, and the county filed the second CHIPS petition.

On April 20, 2022, after an emergency protective care (EPC) hearing, the district court ordered interim custody of the children to the county for out-of-home placement. The EPC order also included a “voluntary interim case plan,” which the district court “approved,” and directed the county to file an out-of-home-placement plan (OHPP) within 30 days. The order directed the parents to “cooperate with the evaluations identified in the interim case plan so that an appropriate case plan for reunification may be developed.” The interim case plan required the parents to comply with the following:

- Complete a chemical-dependency assessment and follow recommendations;
- Neither possess nor use illegal drugs;
- Submit to urinalysis testing (UAs) on a schedule set by the county;
- Complete psychiatric/mental health evaluation and follow recommendations;
- Obtain safe and suitable housing;
- Ensure school attendance;
- Cooperate with the county; and
- Attend visitation with the children.

After the EPC hearing, the social worker met with the parents and discussed mental health concerns, tests to demonstrate sobriety, and financial assistance for phones and transportation. Mother denied having mental health issues and denied substance use. The county later provided “paycards,” referrals for chemical testing, and information about obtaining a mental health assessment.

On May 18, 2022, the district court held a pretrial hearing. Before the hearing, the county filed a prehearing report which included a section labeled “case plan.” This section included the same requirements as the “voluntary interim case plan” and noted the county’s efforts to engage mother and her failure to make progress on any of the steps.

On June 16, 2022, the county filed a petition to terminate parental rights.

Over the next seven months, the district court held three more pretrial hearings. Before each hearing, the county filed a prehearing report outlining its efforts to engage mother in her case plan and mother’s continued failure to engage with her plan.

On January 19, 2023, the district court conducted a TPR trial. During the trial, the district court heard testimony from the *guardian ad litem*, the social worker, mother’s brother who was providing foster care for the children with grandmother, and mother. The district court admitted as evidence the social worker’s notes and the previously submitted prehearing reports.

On February 16, 2023, the district court terminated mother’s parental rights to the two children. Mother appeals.

DECISION

“[Appellate courts] 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 Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted); *see also* Minn. Stat. § 260C.301 (2022) (providing for termination of parental rights).

“[W]e 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 Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). We give “[c]onsiderable deference . . . 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). “[W]hat constitutes reasonable efforts depends on the facts of each case,” and whether the county made reasonable efforts is a factual finding, which this court reviews for clear error. *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 (Minn. App. 2021), *rev. denied* (Minn. Dec. 6, 2021). A finding is clearly erroneous if it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted); *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). When conducting clear error

review, appellate courts do not “reweigh the evidence . . . engage in fact-finding anew . . . [or] reconcile conflicting evidence.” *Kenney*, 963 N.W.2d at 221 (quotations and citations omitted).

In all TPR cases, the district court “shall make specific findings . . . that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family.” Minn. Stat. § 260C.301, subd. 8. “Reasonable efforts are made upon the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the individualized needs of the child and the child’s family.” Minn. Stat. § 260.012(f) (2022); *In re Welfare of Children of A.D.B.*, 970 N.W.2d 725, 730 (Minn. App. 2022). The responsible social services agency is separately required to develop a case plan for each parent, and this court has “tied these two statutory requirements together, concluding that an agency fails to make reasonable efforts when it fails to prepare a case plan with an incarcerated parent or otherwise identify any potentially suitable programming available to an incarcerated parent.” *A.D.B.*, 970 N.W.2d at 730 (citing *In re Welfare of A.R.B.*, 906 N.W.2d 894, 900 (Minn. App. 2018)).

The district court determined that the county made reasonable efforts to reunite mother with the children, citing “the many service referrals, family group conferences, . . . coordination of visit logistics, . . . [and] financial assistance for [mother]’s phone and transportation needs in order to minimize barriers to her engagement in the recommended services.” The district court noted that the record was “replete with

references to the [county]’s attempts to engage with [mother] in the development of, and engagement in, her case plan” and concluded that mother’s “lack of progress towards reunification is the result of her repeatedly declining the [county]’s offers of assistance.” These determinations are supported by over nine pages of factual findings on the county’s efforts to engage mother with her case plan.

Mother does not dispute the district court’s underlying factual findings. Instead, she argues that the county did not make reasonable efforts to reunite the family because it “fail[ed] to comply with its obligations regarding a statutory case plan.” She contends that *A.R.B.* requires the county to meet all the statutory criteria for case plans for reunification efforts to be reasonable. And, mother contends, because the county failed to strictly comply with all statutory case-plan requirements, the county’s efforts were not reasonable. We are not persuaded.

In *A.R.B.*, our court concluded that Minnesota law unambiguously requires the social services agency to provide the parent “with a court-approved, written case plan.” 906 N.W.2d at 898. We held that, on the facts presented, the social services agency “did not prove that it made reasonable efforts to reunite [the family]” because the record indicated that it did not develop a case plan that contained “any of the critical elements imposed by statute” and the lack of a case plan was not excused by the circumstances. *Id.* at 898-99. In particular, we pointed out the lack of any evidence that the social services agency “explain[ed] with any specificity” what changes the parent had to make or that any services were offered or provided. *Id.* at 898. We acknowledged that “failure to provide [a written case plan] does not automatically warrant reversal if the circumstances render

the lack of a case plan excusable,” but concluded that the lack of a case plan was not excusable because the parent resisted case-planning efforts only briefly and early in the matter, and later “expressly invited one.” *Id.* (citing *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004); *In re Welfare of R.M.M.*, 316 N.W.2d 538, 542 (Minn. 1982)).

Here, the facts found by the district court are significantly different from *A.R.B.* because the county engaged in significant case-planning efforts with mother, and mother refused the efforts. On April 20, following the EPC hearing mother attended, the district court ordered interim custody of the children to the county and approved a “voluntary interim case plan” directing mother to complete chemical and mental health assessments and follow the recommendations, prove sobriety by submitting random tests, obtain safe and suitable housing, cooperate with the county, and attend visitation. After the same hearing, the county met with mother and discussed available services and its concerns about her mental health and drug use. Before every subsequent hearing, the county submitted to the district court prehearing reports with a section labeled “case plan” that outlined the same expectations and the county’s efforts to engage mother in the plan and provide services. The social worker testified that the prehearing reports were also “distributed to all of the parties.” The county social worker’s notes also show frequent contact with mother and that the social worker consistently responded to mother’s emails and, despite mother’s consistent denial that she had any issues to address, attempted to engage her with the case plan. Thus, unlike in *A.R.B.*, this record supports the district court’s determination that the county made reasonable efforts to reunite the family.

Mother contends that the case plan did not meet the statutory criteria because it was not filed within 30 days of the case being opened, not jointly prepared with mother, not given to mother in written form, and not approved or ordered by the district court. *See* Minn. Stat. §§ 260C.178, subd. 7 (requiring filing of an OHPP within 30 days of a juvenile-protection petition being filed), .212, subd. 1(b) (requiring case plan to be written, signed by the parents, and approved by the district court “as appropriate”) (2022); *see also* Minn. R. Juv. Prot. P. 26.02, subd. 2 (30-day filing requirement), subd. 3 (requiring notation of whether parents participated in preparing the plan), subd. 4 (providing process for district court to approve and order case plan). The record belies mother’s claims. A prehearing report outlining a case plan and the social worker’s efforts to engage mother was filed with the district court within 30 days of the case being opened and was provided to mother, and the district court approved the interim case plan in its EPC order and ordered it in the July 2022 permanency order.

And, to the extent some technical statutory deficiencies may exist in the documents or procedure, it does not change our conclusion. Our court has declined to reverse a TPR where the social services agency failed to timely provide the parent the required written case plan when the failure was partly due to the parent’s actions but the case plan’s “underlying purpose” of “giv[ing] parents a guideline for correcting conditions leading to” placement “was met through numerous court orders.” *In re Welfare of J.J.L.B.*, 394 N.W.2d 858, 863 (Minn. App. 1986), *rev. denied* (Minn. Dec. 17, 1986). Mother attended pretrial hearings, received a copy of the “voluntary initial case plan” ordered by the district court, and testified that the case plan was “read to [her] in court.” The social worker also

offered to re-read the case plan to mother and repeatedly encouraged her to begin working on it, such as by completing chemical and mental health assessments. In short, the plan's "underlying purpose" was served because mother was provided with the guidelines to correct the conditions leading to placement, and the deficiencies mother alleges do not require reversal. *Id.*; *A.R.B.*, 906 N.W.2d at 898 (noting that reversal is not warranted "if the circumstances render the lack of a case plan excusable").²

Affirmed.

² Mother also argues that a statutory basis to terminate does not exist because the statutory bases separately require reasonable efforts. We have concluded that the county made reasonable efforts. Thus, this argument also fails.