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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0756**

In the Matter of the Welfare of the Children of:
F. K. O., M. L. O., J. R. B., Parents.

**Filed November 12, 2024
Reversed
Harris, Judge**

Isanti County District Court
File No. 30-JV-23-73

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Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

On appeal from the involuntary termination of their parental rights, appellants argue that (1) the record does not support the district court's finding that the county made

reasonable efforts to rehabilitate the parents and reunite the family, (2) the district court abused its discretion by determining that the county proved four statutory grounds for termination, and (3) the district court abused its discretion by determining that termination of parental rights was in the children's best interests. Appellant father separately argues that his trial counsel was ineffective. Because the record does not support the district court's finding that the county made reasonable efforts to reunite each child with their parents, we reverse.¹

FACTS

Appellant F.K.O. is the mother of three minor children that are the subject of this action, C.S.O., J.A.B., and N.J.B. Appellant M.L.O. is married to F.K.O. and is the biological father of C.S.O., who was born during the marriage. Respondent J.R.B., whose parental rights are not at issue in this appeal, is the biological father of J.A.B. and N.J.B, who are involved in this appeal.²

From 2012 through 2019, respondent Isanti County Family Services (the county) had approximately 13 open family assessments or investigations for concerns related to the children regarding chemical use, domestic abuse, and neglect. In August 2022, the county filed a petition alleging that the children were in need of protection or services (CHIPS) following an incident during which law enforcement was called to the appellants' home

¹ Because we conclude that the record does not support that the county made reasonable efforts, we do not decide appellants' alternative arguments.

²At an October 2023 pre-trial hearing, the district court granted J.R.B.'s motion to bifurcate the permanency proceedings. J.R.B.'s appearance was waived at the trial on the issue of permanency for F.K.O. and M.L.O.; thus J.R.B. is not involved in this appeal.

because mother was experiencing a mental-health crisis and an appropriate caregiver could not be found for the children. In March 2023, following a court trial, the children were adjudicated CHIPS and the court adopted the Out-Of-Home Placement Plans (case plans) filed with the court. Both parents' case plan goals included (1) securing employment, (2) maintaining medical assistance, (3) ensuring the home is free of safety hazards, (4) participating in therapeutic services for the children as appropriate, (5) engaging in appropriate and meaningful contact with the children's teachers and educational providers, (6) completing a parenting assessment and following the recommendations, (7) engaging in parenting education and demonstrating an ability to meet the children's needs, and (8) participating in visitation with the children. Father had an additional goal to "recognize, acknowledge, and articulate how violence within the home may have impacted his ability to safely and effectively parent the children." Mother had additional goals to (1) develop a budget, (2) allow unannounced visits by the county, (3) demonstrate an understanding of her children's mental-health needs, (4) demonstrate knowledge and skills to meet the children's daily-care needs, (5) recognize how her mental health may have affected her ability to safely parent her children, (6) work with a family therapist to acknowledge and reflect appropriately on the children's trauma, (7) provide a safe home free of physical and emotional violence and participate in anger management and domestic violence programming, (8) complete a psychological evaluation, and (9) sign releases of information and maintain contact with the case manager and the guardian ad litem (GAL).

In July 2023, the county filed a petition for the termination of appellants' parental rights (TPR). The petition alleged that a TPR was in the best interests of the children and

was warranted under four different statutory grounds. The matter proceeded to a four-day court trial. The district court received over 300 exhibits offered by the county and mother, which included police reports, drug screen results, emails, visit notes, chronological summaries, the children's school records, and various assessments. At trial, the district court heard testimony from three county social workers, the children's school social worker, the licensed professional clinical counselor who completed father's parenting assessment, the CORE counselor who completed mother's parenting assessment, the children's therapists, and the GAL.

At the time of trial, mother had completed a parenting assessment, a psychological evaluation, an anger-management program, domestic-violence programming, a chemical-use assessment, and outpatient chemical-dependency treatment. Mother was also actively engaging in eye movement desensitization and reprocessing (EMDR) therapy and had been working with the same individual therapy provider for six months. One county social worker testified that, since November 2023, there had been a significant improvement in visits and that mother was prepared for visits and engaged with the children. However, the county remained concerned about mother's sobriety and mental health because mother had not submitted urinalysis drug screens (UAs) as requested, had inconsistent participation in individual therapy, and had not acknowledged that domestic violence was a problem in the family and affected the children.

Father completed a parenting assessment and anger-management program and he had been engaged in individual therapy for approximately 18 months. Father also participated in regular visitation with the children and he attended C.S.O.'s medical

appointments, extracurricular activities, and school activities. The county social worker noted that father often took a passive role in communication and was in the background on calls with mother. However, he maintained cordial communication with the county child-protection workers and various service providers and would respond to text messages when contacted directly. Yet, the county remained concerned about father's ability to demonstrate sobriety and protect the children from mother. Although father was on probation, he did not submit UAs to the county, and he continued to enable mother's behavior by driving her to unauthorized visits and delivering gifts and letters from her to the children during his visits.

Following trial, the district court granted the county's petition and involuntarily terminated mother's parental rights to J.A.B., N.J.B., and C.S.O, and father's parental rights to C.S.O. Appellants filed posttrial motions, requesting a new trial because there was newly discovered material evidence involving alleged abuse of C.S.O. by the foster parents. The district court denied the motion for a new trial and determined, "[a]ssuming the allegations in the Affidavit are true, they do not constitute material facts as it relates to the termination of [appellants'] parental rights." The district court noted that appellants' "failure . . . to address the core elements of their case plans—demonstrating sobriety and addressing mental health," and father's "failure to either help [mother] regulate her emotions or protect the children from her erratic behavior formed the basis for the [TPR] [o]rder." This appeal follows.

DECISION

Parental rights may be terminated only for “grave and weighty reasons.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). Before terminating parental rights, the district court must find that: (1) one of the statutory bases for terminating parental rights exists; (2) reasonable efforts toward reunification were made or were not required; and (3) termination is in the children’s best interests. Minn. Stat. §§ 260C.301, subds. 1(b), 7, 8, .317, subd. 1 (2022); *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). The petitioner has the burden of proving the grounds for termination by clear and convincing evidence. *J.K.T.*, 814 N.W.2d at 87.

Before granting a TPR petition, the district court must “make findings and conclusions as to the provision of reasonable efforts” by the county. Minn. Stat. § 260.012(h) (2022). The district court must specifically find “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(1) (2022).

“[W]hat constitutes ‘reasonable efforts’ depends on the facts of each case.” *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 (Minn. App. 2021) (citation omitted), *rev. denied* (Minn. Dec. 6, 2021). However, “[r]easonable efforts at rehabilitation are services that 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) (quotations omitted), *rev. denied* (Minn. Mar. 28, 2007). The district court must consider whether the services

provided by the county were (1) selected in collaboration with the child's family; (2) tailored to the individual needs of the child and the child's family; (3) relevant to the safety, protection, and well-being of the child; (4) adequate to meet the individualized needs of the child and family; (5) culturally appropriate; (6) available and accessible; (7) consistent and timely; and (8) realistic under the circumstances. Minn. Stat. § 260.012(h). "Whether the county has met its duty of reasonable efforts requires consideration of the length of the time the county was involved and the quality of effort given." *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990) (citation omitted), *rev. denied* (Minn. July 6, 1990).

We review the district court's decision that the county made reasonable efforts for an abuse of discretion. *See In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 323 (Minn. App. 2015) (concluding that the district court's "reasonable-efforts finding was not an abuse of discretion"), *rev. denied* (Minn. July 20, 2015). A district court abuses its discretion when it makes findings of fact that lack evidentiary support, misapplies the law, or resolves discretionary matters in a manner contrary to logic and facts on record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022). We review the district court's underlying factual findings on reasonable efforts for clear error. *D.L.D.*, 865 N.W.2d. at 321-22. Factual findings are clearly erroneous if they are "manifestly contrary to the weight of the evidence" or "not reasonably supported by the evidence as a whole." *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 667 (Minn. App. 2020).

Appellants argue that the district court abused its discretion by terminating their parental rights because the district court's finding that the county made reasonable efforts

is not supported by the record. Under the facts in this case, we agree that the district court's reasonable efforts finding was an abuse of discretion.

The district court found that the county provided the following services to the family:

The Agency provided: case management, transportation assistance, gas cards, offers to assist in repairing the family vehicle, collateral contacts, exploring available resources and providing them to the family, in-person visits with the children in the foster home, referrals to CORE for parenting assessments, payment for the parenting assessments as they were not covered by insurance, referrals for anger management services for Father and coordination for payment of those services, drug screening, coordination with MN Monitoring for sweat patch testing, collaboration with the children's therapists, provided resources to the family for free phone and internet services, coordination of supervised visits and phone visits with the children, coordination with the Guardian ad Litem, communication with [J.A.B.'s] attorney, provided collateral contact for Mother and Father's individual therapy, participated in meetings with the parents' attorneys and the Guardian ad Litem to work on case planning, collateral contact with law enforcement, provided a family skills worker during supervised visitation, collateral contact with grandparents, relative search efforts, assisted Father's half brother in foster care licensing process, and referral and engagement of a mediation service to assist in re-establishing visits for Mother.

The district court also found that the county provided a second case manager to assist the family, and that one social worker credibly testified to spending "more than 450 hours on this case." The district court detailed the county's efforts regarding family therapy, including that the county "began efforts to locate a family therapist in July 2023," "went through the list of every family therapist within approximately one hour of the family," and located a family therapist in November 2023 and provided a release to mother. The district

court determined that “Mother returned a very limited release, which only allowed the county to make the referral to verify attendance,” so the county did not make the referral because the county “thought it was very important for the family therapist to be able to collaborate with the children’s therapist and with Mother’s individual therapist,” and believed that “family therapy without collaboration would not allow the family to progress towards reunification.” The district court determined that all of these efforts were reasonable because the services were offered consistent with the statutory factors outlined in section 260.012(h). While we agree with the district court that the county provided numerous services to the family, the county did not provide efforts in the areas most critical to reunifying the family and rehabilitating appellants.

At trial, the county social workers testified that throughout the county’s involvement with this family, the areas of greatest concern for mother were her mental health and sobriety. Similarly, the main areas of focus for father were sobriety and protecting the children from mother. These are the same areas on which the district court relied in its order terminating appellants’ parental rights.

Mother argues that the county failed to provide her with “real, genuine assistance” in the areas where the county and the court “had its gravest concerns,” which included family therapy, parenting skills, and visitation.³ Specifically, mother argues that the county made no effort to identify a family therapist until eleven months into out-of-home placement, discontinued efforts to assist with parenting education when visits ended in

³ Testimony of the agency social workers confirm family therapy, parenting skills, and visitation were the areas of gravest concern.

February 2023, and did not provide mother with a consistent opportunity to engage in visitation. Similarly, father argues that the county did not provide him with a reasonable opportunity to demonstrate his parenting. These arguments have merit.

At trial, one county social worker testified that “family therapy was a big part of this case,” and was “something that had to happen.” Another county social worker agreed that “as early as December 2022, it was repeatedly discussed that family therapy was going to be critical for this family.” The social worker testified that, in February 2023, mother informed the county that she scheduled a family therapy session, and the county told mother that if appellants “wanted to start that process,” they could, and that the county “would bring the children in when their therapists thought appropriate.” The county did not make any additional efforts to identify a family therapist until July 2023, the same month the TPR petition was filed and eleven months after the children were placed out of the home. And after identifying an available provider, the county deliberately decided not to make a referral based on its belief that the limited release signed by mother was insufficient.⁴ A family therapist was not identified until December 2023. Because the county did not pursue family therapy in a timely manner, we hold that the district court erred by finding that the county made reasonable efforts to reunify the family.

The parties agreed that parenting skills and visitation were also essential for appellants to demonstrate parenting capabilities and the ability to provide nurturing and

⁴ The social worker acknowledged that to start the family therapy process, he could have used the limited release, but chose not to, and acknowledged that additional releases could have been requested after therapy started but he again chose not to do so. Moreover, the agency did not seek court intervention regarding releases.

emotional support to the children. The county assisted appellants with completing a parenting assessment and coordinating supervised visitation. Additionally, the county provided a parenting skills worker during visitation from December 2022 until February 24, 2023.⁵ However, the county did not make any efforts to assist appellants with parenting skills after February 2023. And while we recognize that parenting skills services were limited in Isanti County, the county was still required to make some efforts to provide these services. Lastly, the county did not increase the visitation schedule or provide any less restrictive visitation. At trial, one county social worker testified that father has “always been positive during visits,” and that mother has consistently demonstrated her ability to regulate her emotions during visits with the children for the past six months. However, while the county provided supervised visitation and made efforts to encourage the children to attend visits, the county did not increase the visitation schedule or provide less restrictive visitation, despite appellants’ progress.⁶ These efforts by the county were not adequate, timely, or realistic, as all parties agreed that family therapy was essential to reunite the family, and the children were not removed from the home due to concerns related to appellants’ sobriety. *See J.K.T.*, 814 N.W.2d at 88 (“The county’s efforts must be aimed

⁵ The county suspended visits from February 24, 2023, until June 2023 because of mother’s behavior at a visit on February 24. While visits were suspended, the county engaged in efforts to resume visits, including arranging phone calls, engaging a mediation group, and paying to hold a spot for the family at the visitation center.

⁶ The county did discuss expanding mother’s visits and mother provided a list of five names for possible visit supervisors. The county did not move forward with expanding visits because mother only signed a limited release and had not demonstrated sobriety.

at alleviating the conditions that gave rise to out-of-home placement, and they must conform to the problems presented.”).

The county contends that its efforts were reasonable because appellants’ own behavior delayed the county’s ability to provide services. One county social worker testified that mother’s “inconsistency in attending her mental health services . . . impacted the [county] and her ability to participate in other services.” And both county social workers testified that appellants could not progress with family therapy, parenting skills, and less restrictive visitation because appellants did not cooperate with signing releases and did not demonstrate sobriety by providing UAs. We are unpersuaded.

First, “a case plan that has been approved by the district court is presumptively reasonable.” *S.E.P.*, 744 N.W.2d at 388. And “[t]he requirement that the parties follow the case plan is a two-way street.” *In re Child. of T.R.*, 750 N.W.2d 656, 665 (Minn. 2008). Family therapy, parenting skills, and visitation do not appear to be entirely contingent on appellants’ sobriety or signing full releases, as the case-plan items were intended to work together. Additionally, while the county would have preferred appellants to demonstrate sobriety and sign additional releases, the county acknowledged that it was possible for the county to use the limited releases signed by mother to at least make a referral for family therapy and contact potential visit supervisors for community visits. The county further acknowledged that if additional releases were needed, it could have brought this issue to the district court’s attention but decided not to do so.

Instead of making these efforts, the county appears to have unilaterally determined that it would be futile to make a referral to family therapy and did not make further efforts

related to parenting skills and less restrictive visitation. This was unreasonable because the county cannot “decide for itself that further efforts are futile.” *Id.* “Rather, if the county decides that further efforts to rehabilitate a parent and reunify parent and child would be futile, its remedy is to seek . . . a court determination that reasonable efforts at reunification are no longer required.”⁷ *Id.* at 666.

We also agree with father that the county did not provide reasonable efforts to allow him to demonstrate his parenting. The county social worker testified that the main areas of focus for father were sobriety and protecting the children from mother. And the social worker further testified that father was not able to progress to less restrictive visits because father “hasn’t ever demonstrated sobriety,” and “has refused to separate himself” from mother. However, the county provided limited efforts in these main areas of concern.

It was undisputed at trial that father did not provide UAs or sweat patch monitoring as requested by the county after he had one positive UA for methamphetamine in April 2023. And while the county continued to make efforts to engage father in substance use testing and was concerned that father did not acknowledge chemical use, the county never provided a referral for a chemical-use assessment.⁸ *See T.R.*, 750 N.W.2d at 665 (stating

⁷We recognize that the county and mother had a contentious relationship. This opinion does not excuse mother’s actions that contributed to the county’s difficulties in providing services to the family. And the district court may consider mother’s behavior when determining the best interests of the children. Still, even in these circumstances, the county maintains the burden of demonstrating that it has made reasonable efforts. Minn. Stat. § 260.012(f) (2022).

⁸ At trial, one county social worker testified that the county *offered* to make a referral for a chemical-use assessment, but the referral did not happen because mother told the county that father refused to sign the release. Additionally, the county *offered* chemical-health

that “simply testing for substance use, without more, is not realistic under the circumstances to rehabilitate a parent who, that testing shows, suffers from chemical dependency issues”).

Furthermore, the record does not support the conclusion that father’s alleged chemical use interfered with his ability to parent or participate in less restrictive visits. The county social workers testified that father’s visits with the children were positive, father attended school events and medical appointments without any issues, and that the county did not receive any reports from professionals concerned about father’s chemical use. *See id.* at 663.

Next, the record demonstrates that the county had conflicting expectations about how father would demonstrate his ability to protect the children. One county social worker testified that father would demonstrate his ability to protect the children by “acknowledging and articulating the needs and safety of the children,” and that “I think until that step occurred, it’s hard to say what service could be beneficial.” Another county social worker testified that father would demonstrate his ability to protect the children by “redirect[ing] [mother] back to just being positive and enjoying these visits with these kids and having it not be a traumatic situation for them.” But the same social worker testified to never having spoken with father about how he could redirect his behavior, and the social

case management. The record does not demonstrate what efforts, if any, the county made to attempt to have father sign these releases, other than a weekly text message reminding him about chemical use. And one county social worker testified that father “signed releases,” and “[s]ometimes it’s hard to get a hold of him. But when I’ve asked, he’s signed them.”

worker acknowledged that this is something that father would have focused on during family therapy.

The evidence the county produced to terminate father's parental rights focused primarily on his inability to separate himself from mother. The county communicated with father's individual therapist, had conversations with father about protecting the children and having successful visits, and offered individual visits with father and the children. However, as discussed above, the county never made a referral for family therapy and did not provide any real assistance to help father separate himself from mother. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 377 (Minn. 1990) (concluding that the county's expectations seemed "especially daunting considering the county's admitted failure to provide services, counseling or assistance to aid [appellant] in coming to grips with her conduct").

Overall, it appears the county focused its efforts on mother without making reasonable attempts to engage father. *See T.R.*, 750 N.W.2d at 666 (stating, when considering whether the county's efforts were reasonable and , "we are struck first by the disparity in the services offered to [mother]—whose actions led to [the child's] out-of-home placement in the first place—and those offered to [father]—a noncustodial parent who is not alleged to have contributed in any way to [the child's] out-of-home placement"). Of note, the county did not meaningfully attempt to engage in case planning with father. *See* Minn. Stat. § 260C.212, subd. 1(a), (b) (2022) (requiring the social services agency to prepare, within 30 days of out-of-home-placement, a case plan jointly with the parent).

And the county had minimal contact with father throughout this case, despite father's apparent willingness to independently communicate with the agency and sign releases.

In sum, the district court's determination that the county made reasonable efforts to reunify the family is not substantially supported by the evidence. Therefore, the district court's reasonable-efforts finding was an abuse of discretion. Although we conclude that the county did not provide reasonable efforts to rehabilitate the parents and reunite the family, we do not suggest that the district court is required to modify the children's out-of-home placements. We conclude only that the county's failure to provide reasonable efforts requires reversal of the district court's order terminating appellants' parental rights.

Reversed.