STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0716

In the Matter of the Welfare of the Children of:
K.H. and D.C., Parents.

Filed October 21, 2019
Reversed and remanded
Worke, Judge
Dissenting, Hooten, Judge

Ramsey County District Court
File No. 62-JV-18-994

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John J. Choi, Ramsey County Attorney, Jake D. Murphy, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County Social Services)

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Considered and decided by Hooten, Presiding Judge; Cleary, Chief Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant challenges the termination of his parental rights. Because the record does not support the district court's finding that the county made reasonable efforts to reunite the family, we reverse and remand.

FACTS

Appellant-father D.C. challenges the termination of his parental rights to three children: D.C. Jr. (born January 2012), Z.C., a female twin child, and Z.C., a male twin child (born January 2017) (the children).

In its termination-of-parental-rights (TPR) petition, respondent Ramsey County Social Services Department (the county) alleged that in July 2017, mother[1] and D.C. left the children with a relative. The family was unstable after losing their housing, sleeping in a motor vehicle. When left in the relative's care, the twins were in car seats that were infested with bed bugs, and the eldest child was not enrolled in school. The petition alleged that D.C. did not thereafter resume caring for the children.

One month later, in August 2017, D.C. shot a man. Thereafter, and throughout the child-protection and TPR proceedings, D.C. has been incarcerated. D.C. was held in county jail until he was sentenced on May 30, 2018, after which he was transported to the St. Cloud Correctional Facility. D.C. is currently serving a 160-month sentence; his anticipated release date is in July 2026.

On March 20, 2019, the district court held a trial on the TPR petition. D.C. testified that he cared for the children when he was able, but due to his homelessness and instability issues, he left them with a relative in July 2017. D.C. also testified that he provided for the children when they were in the relative's care, calling frequently to check up on them, and providing financial assistance, including supplying food and diapers. D.C.'s relative

[1] Mother does not challenge the default termination of her parental rights.

corroborated D.C.'s assertion that he provided for the children in his absence and called almost daily to check on them. D.C. testified that he continued to call and talk to the children following his incarceration.

The children have resided with their maternal grandmother since October 2017. The children's grandmother testified that D.C. consistently called the children throughout the duration of the child-protection matter and through his present incarceration. She testified that D.C. talks to the oldest child, but that the twins just listen to his voice. The grandmother testified that she observed a loving relationship between D.C. and the oldest child and that the twins benefited from hearing D.C.'s voice on the telephone. The district court found the grandmother's testimony credible.

The guardian ad litem (GAL) testified that D.C. was appropriate in his conversations with the children and that regular contact with him does not appear harmful to the oldest child. Although the GAL testified that she believed that it was in the children's best interests to maintain a relationship with D.C., she supported termination of D.C.'s parental rights because she believed that it was the only option.

The social worker assigned to provide case management in the child-protection matter testified that she prepared a case plan for D.C. without his input. Instead, she sought input from the maternal grandmother in devising the plan, claiming that D.C.'s incarceration made communication with him difficult, if not impossible. The social worker testified that she was unable to meet with D.C. while he was in the county jail and that she did not mail him the plan because she considered the information it contained to be confidential. The social worker also testified that she was unable to meet with D.C. about

his case plan after he was moved to St. Cloud. She testified that she had great difficulty communicating with D.C. due to the prison's strict policy regarding timing of phone contact and visits, stating that the visitation schedule conflicted with her court schedule. The social worker spoke with D.C. once over the phone during the pending child-protection matter, which was shortly after D.C. was transferred to prison.

D.C.'s case plan was delivered to him by his corrections case manager; by then, the children had been in out-of-home placement for over nine months. The case manager did not go over the plan with D.C. but rather handed him the plan and said he could sign it or not. The case manager testified that she does not give any advice when delivering legal documents. The case manager explained the enumeration of services available at the prison which was provided to D.C. in the form of an orientation booklet when he arrived—some of which related to D.C.'s case plan. The case plan required D.C. to address his chemical health, find stable housing, acquire parenting skills, and remain law abiding. D.C. signed, and his case manager returned, the case plan to the social worker.

The social worker testified that D.C. failed to correct the conditions leading to the filing of the TPR petition. She testified that D.C. has not completed parenting classes, and while he has not received any criminal charges, he has been in prison segregation at least twice. The social worker testified that it is in the children's best interests to terminate D.C.'s parental rights because the children need a permanent home and to know who makes decisions on their behalf.

On April 18, 2019, the district court filed an order terminating D.C.'s parental rights. The district court found that D.C. is a loving father, but "has not been able to provide the

daily parenting needs for the children for the majority of their lives due, in large part, to his criminal behavior and resulting frequent periods of incarceration during his children's lives to date." The district court noted that on D.C.'s anticipated release date, the eldest child will be 14.5 years old and the twins will be 9.5 years old.

The district court found that, although D.C. was not immediately provided a case plan because the social worker had difficulty meeting with him due to his incarceration, he was given a case plan nine months after the children were placed in foster care. The district court found that D.C. failed to participate in programming relevant to his case plan between July 16, 2018, and April 18, 2019. The district court concluded that several statutory bases supported the TPR, and that the county showed with clear and convincing evidence that it made reasonable efforts to reunify the family and that TPR is in the children's best interests. This appeal followed.

D E C I S I O N

D.C. argues that the district court abused its discretion by terminating his parental rights because the record does not support the determination that the county made reasonable efforts to reunite the family and that TPR is in the children's best interests. D.C. does not challenge any other aspect of the district court's ruling.[2]

Fundamentally, parental rights should not be terminated "except for grave and weighty reasons." *In re Welfare of HGB*, 306 N.W.2d 821, 825 (Minn. 1981). We review

[2] The dissent asserts that D.C. does not contest "that because of his perpetual incarcerations" he will be unable to provide for the children for the foreseeable future. This assertion muddies the sole issue on appeal, which is whether the county satisfied its duties in making reasonable efforts to reunite the family.

the district court's TPR decision for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). In doing so, this court determines whether the district court's findings address the statutory criteria and whether they "are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). A factual finding is clearly erroneous if it is manifestly contrary to the evidence or not reasonably supported by the evidence. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008).

Reasonable efforts

Reasonable efforts 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) (quotation omitted), *review denied* (Minn. Mar. 28, 2007). "Whether the county has met its duty of reasonable efforts requires consideration of the length of 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), *review denied* (Minn. July 6, 1990). In determining whether a county's efforts were reasonable, the district court considers whether the services offered were: "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Minn. Stat. § 260.012(h) (2018). Incarceration does not release a county from its duty to make reasonable efforts, though it presents a circumstance that "might change what qualifies as 'reasonable.'" *In re Welfare of A.R.B.*, 906 N.W.2d 894, 899 (Minn. App. 2018).

D.C. argues that the district court abused its discretion by determining that the county made reasonable efforts to reunify the family because the social worker failed to timely file a case plan and did not work with him in creating his case plan. *See T.R.*, 750 N.W.2d at 664 (stating that in a TPR proceeding, the district court must determine whether the county made reasonable efforts to reunite the family). We agree with D.C. that the social worker's efforts fell short of what the law requires.

First, within 30 days of the children's out-of-home placement, the social worker did not, as required by law, timely create a case plan with D.C. jointly. *See* Minn. Stat. § 260C.212, subd. 1(a), (b) (2018) (requiring social services agency to prepare, within 30 days of out-of-home-placement, a case plan jointly with the parent). It is undisputed that the social worker did not prepare the case plan with D.C. Indeed, the record shows that the social worker neither spoke to nor directly communicated with D.C. until July 16, 2018, when she spoke with him by phone. Further, the record indicates that the social worker accepted accountability for much of the delay in her inability to communicate with D.C.

The social worker claimed that, beginning in December 2017, she tried to make contact with D.C. on "several occasions" while he was in county jail. The social worker explained that she called the jail, but did not hear back. Other times, she called and was transferred to someone who would not answer. Sometime in the beginning of 2018, the social worker, frustrated by her inability to connect with anyone at the jail, called the county workhouse in an attempt to reach a "live body at the jail." The social worker testified that she was again transferred to someone and left a voice message that went unanswered.

The social worker testified that she attempted to communicate with D.C. after court hearings when the deputies did not immediately remove him from the courtroom. She had arranged to meet D.C. after one hearing, but D.C. did not attend that hearing. The social worker admitted that by March 18, 2018, she had yet to have contact with D.C.

In March 2018, the social worker was aware that D.C.'s sentencing was approaching, and she again called the jail and was told that she would not be assisted because her call was not related to the reason D.C. was incarcerated. After D.C. was sentenced at the end of May 2018, the social worker called the prosecutor and asked for assistance in connecting with D.C. in the jail. The prosecutor advised her to wait and connect with D.C. when he was transferred to St. Cloud.

In June 2018, the social worker contacted D.C.'s case manager at St. Cloud. The social worker testified that she discovered that she was unable to visit D.C. due to the inflexible visitation schedule and visit times falling on her court dates. The social worker admitted that she could have mailed D.C. about his case plan, but because of confidential information in the plan, decided to email the case plan to D.C.'s case manager to make sure that he was aware of its contents. On July 16, 2018, the social worker finally spoke with D.C. on the phone and discussed his case plan. Thus, between October 2017 and July 16, 2018, the social worker had no direct contact with D.C.

D.C. was not involved in the creation of his case plan that had a start date of October 4, 2017. And for approximately nine months, D.C. did not know the specific actions he needed to take to accomplish reunification. The social worker admitted that she could have mailed D.C. his case plan when he was in jail, but stated that she was reluctant

to do so without assistance from the jail in sending confidential information and ensuring it reached D.C. and only him. But there is nothing in the record to indicate that the social worker could not have sent a letter to D.C. that did not include confidential information and that merely requested that he engage in communication with her. Therefore, the social worker's efforts in creating a case plan jointly with D.C. were legally inadequate.

Second, the case plan did not describe the "specific actions" D.C. was to take. *See id.*, subd. 1(c)(3)(i) (2018) (requiring case plan to set forth "a description of the services offered and provided" to reunify the family, including the "specific actions" to be taken by the parent).

The social worker testified that on July 16, 2018, she and D.C. spoke on the phone and discussed his case plan "at length," "point by point." His case plan required him to complete a rule 25 assessment, complete a psychological assessment, complete a parenting class, and remain law abiding. But the record does not show that the social worker explained to D.C. how to complete these requirements while he was incarcerated.

The case plan itself indicates that D.C. is "unable to participate" in therapy and a mental-health assessment and services because he was in jail. D.C.'s prison case manager testified that D.C. received an orientation book that provides information about services available to prisoners. Programs available at St. Cloud include: educational, chemical-dependency and psychological services, and parenting classes. The case manager testified that while these services are *available*, a prisoner has to request participation. The case manager testified that an exception to requesting to participate is enrollment in a parenting class, which is recommended to all prisoners who have children. The social worker

testified that when she talked to D.C. about his case plan, they "went over what was expected of him [and] [h]e got the book on what was available . . . at St. Cloud." But there is nothing in the record to show that the social worker gave D.C. a clear directive that he needed to request to participate in educational, chemical-dependency, or psychological services. Therefore, D.C. was without a case plan that included the "specific actions" he needed to take to accomplish reunification. *See id.*

Finally, the county's efforts were not "reasonable" as they were not "real, genuine assistance." *See S.W.*, 727 N.W.2d at 150. As explained, it took the social worker nine months to initiate contact with D.C. And still then, she did not prepare a case plan jointly with D.C. Instead, the social worker provided D.C. with a case plan that was created in October 2017. The social worker could have updated the case plan after meeting with D.C. in July 2018, and provided him with clear direction on the requirement that he request to participate in the prison programs that are relevant to his case plan. Additionally, following a hearing in late 2018, the social worker and the GAL went to a holding cell to talk to D.C. This was the social worker's first face-to-face meeting with D.C. She testified that D.C. was provided a case plan at this meeting, and the GAL testified that they spoke with D.C. "at great length" about his case plan. However, there is nothing in the record to show that this was a case plan that was updated after the social worker talked to D.C. in July 2018 or that the social worker explained that, although services were available at the prison, D.C. had to take the initiative to request participation.

Whatever the reasons for the continuous rupture in communications, it remains true that (a) D.C.'s case plan was constructed without his statutorily required input; and (b) the

plan that was developed was not transmitted to D.C. for another nine months, precluding him from knowing what he needed to achieve to allow reunification and severely limiting the timeframe in which he could accomplish the goals once he learned of them.

Because the county's reunification efforts were inadequate and unreasonable, the district court clearly erred in finding that the county showed that its reasonable efforts failed. We, therefore, reverse and remand for further action and proceedings consistent with this opinion.[3] Because we reverse and remand based on the county's failure to employ reasonable efforts to reunite the family, we do not reach D.C.'s best-interests argument.

Reversed and remanded.

[3] We realize that remanding to the district court for either additional findings on the county's efforts or for further action by the county in creating a case plan with D.C. extends the children's out-of-home placement. However, the record shows that the children are thriving in a loving home with their grandmother and there is no indication that the children will not remain in the care of their grandmother during D.C.'s incarceration. Moreover, if the district court is unable to make additional findings that show by clear and convincing evidence that the county made reasonable efforts under the special circumstances in this case, and the county is required to develop a new case plan with D.C., that does not necessarily mean that the children will be without permanency until D.C. is released from prison. We require only that the county follow the mandate of the law and create a case plan with D.C. that includes the specific acts he must take in order to accomplish reunification with the children. If D.C. fails to satisfy the requirements of such a case plan, the county may then again petition to terminate his parental rights.

HOOTEN, Judge (dissenting)

Child protection timelines require permanency proceedings to commence no later than one year after a child is placed in foster care. *See* Minn. Stat. § 260C.503, subd. 1(a) (2018). These children were removed from their home in October 2017, and at the time of the TPR trial, had already been in out-of-home placement for approximately 17 months. The reason for these timelines is that "[w]e require an expeditious resolution of permanency because we will not allow children to linger in uncertainty." *In re Welfare of Child of R.K.*, 901 N.W.2d 156, 162 (Minn. 2017); *see also In re Welfare of J.R.*, 655 N.W.2d 1, 5 (Minn. 2003) (explaining that "time for a child is different than time for adults," and "from a child's view, a delay is a delay regardless of the reason").

The district court terminated father's parental rights on the statutory grounds that father has refused or neglected to comply with the duties imposed upon a parent, father is palpably unfit, reasonable efforts have failed to correct the conditions that led to the children's out-of-home placement, and that the children were neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b) (2), (3), (5), (8) (2018). On appeal, father does not contest that because of his perpetual incarcerations, he has been and, for the foreseeable future, will be unable to provide his children with the "necessary food, clothing, shelter, education, and other care and control necessary for the child[ren]'s physical, mental, or emotional health and development." *See* Minn. Stat. § 260C.301, subd. 1(b)(2). Under this provision, termination is required if "either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable." *Id.*

Father also does not dispute that, as required for termination under Minn. Stat. § 260C.301, subd. 1(b)(5)(i-iii), the children have been in out-of-home placement for more than 12 months within the preceding 22 months, the district court approved an out-of-home placement plan, and the conditions leading to the children's out-of-home placement plan have not been corrected. Because all of the children were under the age of eight at the time they were removed from their home, there is a legal presumption that if the children remain in out-of-home placement for six months, reasonable efforts have failed to correct the conditions that led to out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5)(i).

The only two challenges to his termination of parental rights that father raises on appeal is whether the county made reasonable efforts to "rehabilitate [him] and reunite the family" as required under Minn. Stat. § 260C.301, subd. 1(b)(5)(iv) and whether termination of his parental rights was in his children's best interests. Because there is ample support in the record supporting the district court's findings and conclusions, I disagree that the district court abused its discretion by concluding that the county made reasonable efforts to unite father with his children and that termination was in his children's best interests.

First, there is no evidence in the record of any reasonable social program or any combination of services that would allow father, notwithstanding his incarceration, to unify with the children and otherwise comply with his parenting duties within the foreseeable future. The requirement of reasonable efforts is not meant to create parental relationships where none existed or provide additional efforts where reunification in the foreseeable future is unlikely. *See In Welfare of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004) ("The purpose

of the child-protection laws is not to create relationships between children and their biological parents where none previously existed, but rather to preserve existing relationships where reunification in the foreseeable future is possible and such relationships are in the children's best interests.").

Because of father's multiple felonies, including crimes of violence that resulted in lengthy incarcerations, the oldest child, who is now seven years old, has watched father bounce back and forth from jail or prison to home. His only contact with his father now is a telephone call once every two weeks. The twin children, who are now two years old, do not know their father, as he has spent most of their lives either in jail or in prison. Not only is there little evidence that father ever assumed his parenting duties so as to create a parent-child relationship, as the district court found, he continues to be "incarcerated and unable to care for the children for the foreseeable future." At the time father is released from prison for his current conviction in 2026, the oldest child will be nearly 15 years old and the twins will be nearly 10 years old. It is unreasonable to expect the county to continue to provide additional services to a parent of children with whom he had no real parent-child relationship or where reunification with the children within the near foreseeable future is unlikely or impossible. Such a result is particularly unreasonable if it further delays an already overdue determination of permanency for these children under the statutory timelines.

In finding that the county made reasonable efforts to unify father with the children, the district court correctly considered all of the relevant factors in determining the reasonableness of the county's efforts, including father's incarcerations and the impact that

such incarcerations have had on his ability to parent the children. In doing so, the district court cited to *In re Welfare of A.R.B.*, which indicates that incarceration "might change what qualifies as 'reasonable'" efforts by social services. 906 N.W.2d 894, 899 (Minn. App. 2018). While incarceration in jail and prison would not automatically disqualify a parent from receiving services in order to reunify that parent with a child, the difficulties involved in coordinating with the myriad of restrictions on personal contact and communication with a parent who is in jail or prison may be considered by the district court in its determination of what efforts are reasonable.

The social worker's testimony in this case is illustrative of these difficulties. She claimed that when the children were first placed out of the home, she attempted to contact father, who was being held at the Hennepin County jail. Despite numerous attempts between December 2017 and March 2018, which included telephoning the jail, asking to speak to father, and leaving messages with the jail for him to call her, she was unable to contact him. Finally, she solicited the assistance of a Hennepin County prosecutor, who advised her that she would have better success in contacting father if she waited until he was transferred from the Hennepin County jail to a prison in St. Cloud.

The record supports the district court's finding that father had more than 420 days or nearly 14 months to make progress on his case plan. The social worker testified that when she was unable to make contact with father while he was in the Hennepin County jail, she created a case plan with the help of the children's maternal grandmother and relative care provider, who had known father for many years, supported his contact with the children, and knew about his life circumstances.

Based upon the relative's assistance and insights, the social worker prepared a case plan and served it on father's counsel on January 24, 2018. *See* Minn. R. Juv. Prot. P. 14.02 (providing that service upon a party's attorney is deemed sufficient for service upon the party). At no time did father's counsel, who presumably was retained to advise father regarding his rights and obligations, object to the manner in which the case plan was developed at the time the case plan was approved by the district court. There is no evidence that father's counsel ever argued to the district court, or to this court, that the services offered by the county were irrelevant to the safety and protection of the children, were inadequate to meet the family's needs, were culturally inappropriate, or any other requirement under Minn. Stat. § 260.012(h) (2018). Even though there were multiple court hearings held before the district court prior to the TPR trial, there is no indication in the record that counsel raised any concerns regarding father's ability to access the services recommended in the plan while he was in prison. As the district court observed, citing *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 388 (Minn. 2008), a court approved plan is presumptively reasonable, and if a parent believes some part of the plan is unreasonable, "the appropriate action . . . is to ask the court to change it, rather than simply ignore it." *Id.*

Contrary to the arguments made by father, there is no legal support for his assertion that the county's failure to include him in the initial preparation of his case plan, which was ultimately signed by father and approved by the court, merits a reversal of father's termination of parental rights as a matter of law. Father cites *In re Welfare of A.R.B. and D.T.R.*, 906 N.W.2d 894 (Minn. App. 2018) and *In re Welfare of R.M.M. III*, 316 N.W.2d

538 (Minn. 1982), as supportive of his argument that his termination of parental rights should be reversed because of the county's failure to include him in the preparation of the case plan. *A.R.B.* is clearly distinguishable in that the reversal of the termination of parental rights was based primarily on the fact that there was no written case plan, even though the parent had requested one. 906 N.W. 2d at 897–98. And, in *R.M.M. III*, another case where there was no written case plan, the supreme court actually affirmed the termination of parental rights on the basis that it was the parent's lack of cooperation that was responsible for the county's failure to construct the written plan. 316 N.W.2d at 542.

The record also supports the district court's finding that father understood the case plan and had access to a number of services while at the prison. The social worker testified that months after she served the case plan on father's counsel, she coordinated with prison staff in St. Cloud to set up a time to speak with father about his case plan. Father's prison case manager gave father a copy of his case plan on July 12, 2018. And, on July 16, 2018, the social worker had a lengthy phone conversation with father, in which they went over each point in the case plan and specifically what the case plan required of father. Following the conversation, the social worker was confident that father understood that he was to follow the case plan. Father signed the case plan that day and was provided with a copy of the case plan, which was ultimately approved by the district court.

When father was transferred to prison, he received an orientation booklet, which contained information about all of the services available to the inmates, including parenting classes, mental health and chemical dependency treatment programs, psychological services, and a GED program. Father's prison case manager testified that her usual course

of action was to recommend parenting classes to any inmates who had children. She also confirmed that the prison offered all of the services that were mentioned in the orientation manual, but noted that father never inquired about the available services or asked for her assistance in signing up for any of the programs. Father was obviously cognizant of the educational programing available at the prison because once he arrived, he began taking a reading and math class for completion of his GED.

There is no dispute that father failed to make any progress on his case plan, despite the fact that he had an attorney, a social worker, and a case manager at the prison, all of whom were available to assist him if he needed help. Although he started his GED classes, he was discharged from the classes because of repeated absences resulting from his placement in segregation for misconduct. Father admitted that he received multiple copies of the case plan, that he signed the case plan, and that it was explained to him by the social worker. The district court, in rejecting father's claims that he made no progress because he did not understand the case plan and received inadequate assistance in accessing the services at the prison, obviously did not find any of father's excuses for such failure credible. On appeal, "[c]onsiderable deference is due 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).

After considering all of these relevant factors, the district court determined that the county made reasonable efforts to unify the children with father and that father had "had ample opportunity to work his case plan, request changes to the plan, or ask for additional assistance, guidance, or explanation of the plan's requirements." In reaching this

conclusion, the district court balanced the evidence presented at trial and concluded that the county's efforts, "while not admirable, were enough to satisfy the relevant statutory requirement." This court must not substitute its judgment on appeal when the district court weighed the evidence and assessed father's credibility in reaching its conclusions.

There is also no basis to reverse the district court's conclusion that it is in the best interests of these children that father's parental rights are terminated. Although father loves the children, he, because of his lifestyle of crime and resulting incarcerations, has not been able to perform his parenting duties by providing the care that these children need for their physical, mental, and emotional health and development. As a result, there is not a strong bond between the children and their father. The children's guardian ad litem testified that none of the children express that they want to see their father, ask how he is doing, or request to call him.

Unfortunately, father's lifestyle, along with the instability and inconsistency that accompanies the failure of both parents to perform their parental duties, has negatively impacted the children. The district court noted that when the oldest child started kindergarten, his school recommended that he attend intensive day treatment to deal with his severe behavioral and anger issues. But, once he had lived in a loving, stable home of a relative care provider, he no longer needed treatment as his behavior improved dramatically and he is "healthy, growing, and meeting his development milestones." The district court also found that the twins, who were never able to develop a parent-child relationship with their father, are happy, healthy, and growing, and that they are "very active, and enjoy[] singing and dancing" in their new home. They are especially bonded

to their relative care provider. The children's guardian ad litem testified that the children needed permanency and that it was in their best interests that father's parental rights are terminated so that they could have a permanent, loving, and stable home, where their on-going needs are met.

Based upon this record and our standard of review, I would affirm the district court's findings and conclusions that the county, under these extremely difficult circumstances, made reasonable efforts to unify father with his children and that termination of father's parental rights was in his children's best interests.