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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0049
A21-0050**

In the Matter of the Welfare of the Child of:

J. B. and A. H., Parents (A21-0049),

and

In the Matter of the Welfare of the Children of:

J. B. and A. H., Parents (A21-0050).

**Filed July 6, 2021
Affirmed
Cochran, Judge**

Otter Tail County District Court
File No. 56-JV-20-789

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant-father challenges the district court's decision to terminate his parental rights. He argues that (1) the district court failed to make findings sufficient to allow appellate review, (2) respondent-county failed to make adequate efforts to aid father in correcting the conditions that led to the out-of-home placement of his children, and (3) the record does not support the district court's determination that termination of father's parental rights is in the children's best interests. We affirm.

FACTS

This matter involves seven joint children of appellant A.H. (father) and respondent J.B. (mother)¹: child 2, child 3, child 4, child 5, child 6, child 7, and child 9 (referred to collectively as "the children").² Following a bench trial in late 2020, the district court terminated father's parental rights to the children. The district court also terminated mother's parental rights to child 9. Mother's parental rights to children 2 through 7 were previously terminated. At the time of trial, the children's ages ranged from 7 to 17 years old. We summarize the record as follows.

Father and mother were in a relationship for several years and lived together with the children before separating in 2013. Following the breakup, father moved out of state,

¹ Mother did not participate in this appeal.

² Three additional children were involved in the underlying child-in-need-of-protection-or-services (CHIPS) matters but are not subject to this appeal, including a now-adult joint child of mother and father and two of mother's non-joint children.

and the children stayed with mother in Minnesota. In 2016, the children moved to Missouri to live with father, while mother continued to live in Minnesota.

In 2018, mother gave birth to a non-joint child. Mother's parental rights to that child were involuntarily terminated in February 2019. The underlying bases for the termination were mother's untreated chemical dependency, inadequately treated mental-health issues, lack of functional stability, and lack of compliance and progress with the out-of-home placement plan.

In August 2019, respondent Otter Tail County Department of Human Services (the county) received two separate maltreatment reports that suggested that father and the children had recently returned to Minnesota. One of the maltreatment reports alleged that child 2 was involved in a serious car accident with mother and mother's significant other, which occurred while mother's significant other was driving under the influence of marijuana. The report further alleged that child 2 had been under the influence of a nonprescribed benzodiazepine drug at the time of the accident, which the child received from mother. The other maltreatment report involved allegations of a physical altercation involving a knife between mother's significant other and a now-adult child of mother and father.

Following receipt of the reports, the county opened an investigation. The county learned that father and children 2 through 7 were residing in a rental duplex in Fergus Falls with mother and her significant other. Child 9 had remained in Missouri. Father and children 2 through 7 were residing with mother, despite father's knowledge that mother's parental rights to her newborn, non-joint child had been recently terminated. The duplex

had a basement and an upstairs portion that were separated by a door, which was sealed shut. All occupants of the duplex were living in the upstairs portion.³

On August 27, 2019, the county created an oral safety plan with father and mother. The initial terms of the plan required (1) that all contact between the children and mother be supervised and (2) that mother find her own residence by August 30. On or about August 29, the county temporarily approved a plan whereby mother could reside in the basement portion of the duplex. The county also agreed to give mother more time to move either downstairs or to a different residence.

During two visits to the duplex during this time period, a county child-protection worker observed mother at the duplex, unsupervised with several of the children in violation of the oral safety plan. In September 2019, the county filed CHIPS petitions and a motion for immediate custody of children 2 through 7. The district court granted the county's motion for immediate custody of the children, and the county removed those children from the home. The day after filing the CHIPS petitions, the county filed petitions to terminate mother's parental rights to children 2 through 7.

After the children were placed out of the home, the county proposed a second safety plan. Among other provisions, the safety plan required the parties to live separately. The

³ The county also substantiated the allegations in the August 2019 maltreatment report concerning the car accident. The county learned that mother's significant other had been driving without a valid license at the time of the accident and had admitted to police that he had smoked marijuana shortly before the accident. The county also learned that child 2 had reported to hospital staff that mother gave the child the nonprescribed benzodiazepine drug. And the county substantiated the additional allegations in the report concerning the physical altercation.

plan directed mother to terminate her lease on the duplex and provide evidence that she had secured separate housing. If mother was unable to do those things, the safety plan required father to move to another residence that was large enough to accommodate the children in hopes that the children later would be reunited with father. At a September 19, 2019 hearing, the district court adopted the safety plan and directed that the children be returned to father if the plan's terms were achieved.

The district court held a trial in November 2019 on the CHIPS petitions and the petition to terminate mother's parental rights to children 2 through 7. It found that mother and father were still living together at the time of trial. The district court adjudicated children 2 through 7 to be in need of protection or services and continued their out-of-home placement. The district court also terminated mother's parental rights to children 2 through 7.

In March 2020, the county received a report alleging that child 9 had returned to Minnesota and was living with mother and father. The county filed a CHIPS petition concerning child 9, and the district court granted the county's request for immediate custody of child 9. Soon after, the county filed a petition to terminate mother's parental rights to child 9. In June 2020, child 9 was adjudicated in need of protection or services. In July 2020, the county filed a petition to terminate father's parental rights to all seven children on three separate statutory grounds. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4)-(5) (2020) (identifying statutory grounds for terminating parental rights). The county's primary reason for filing the termination petition was father's continued cohabitation with

mother. The county was also concerned about reports that father had mistreated the children and that father was unable to meet the children's needs.

In October and November 2020, the district court held a two-day bench trial on the county's petitions to terminate father's parental rights to the children as well as mother's parental rights to child 9. The district court heard testimony from three child-protection specialists with the county who had worked with the family, a clinical psychologist, a child-development-and-attachment expert, and father. Three of the children also testified at trial, and two more submitted written statements. All five of those children expressed that they wanted to be reunited with father.

One of the county's child-protection specialists testified that mother and father were still living in the same duplex at the time of trial despite the mandate in the court-ordered safety plan that they find separate housing. Father admitted during his own testimony that he and mother were still living together in the duplex but asserted that they would be living separately within about a week's time. The expert witnesses provided conflicting opinions about whether father and the children should be reunified. The clinical psychologist testified to her opinion that reunification of father and the children was an appropriate goal, while the child-development-and-attachment expert did not recommend reunification. Via a written submission, the children's guardian ad litem recommended termination of father's parental rights. Mother did not participate in the trial.

In December 2020, the district court issued written findings of fact, conclusions of law, and an order terminating father's parental rights to the children and mother's parental rights to child 9. The district court terminated mother's parental rights to child 9 on the

basis that she is palpably unfit. *See* Minn. Stat. § 260C.301, subd. 1(b)(4) (defining palpable unfitness). The court determined that clear and convincing evidence existed to terminate father’s parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5), on the basis that reasonable efforts by the county had failed to correct the conditions that led to the children’s out-of-home placement. The court noted that there were two primary conditions that led to the children’s out-of-home placement: (1) the previous involuntary termination of mother’s parental rights to a non-joint child, and (2) the fact that father and the children were residing with mother after that termination. The court concluded that the county put forth reasonable efforts but those efforts failed to resolve the housing issue because father continued to cohabit with mother. The court emphasized that father’s continued cohabitation with mother would pose a substantial risk of harm to the children and that father’s statements that he intended to find a residence separate from mother were not credible. The district court further determined that terminating father’s parental rights is in the best interests of the children and ordered that father’s parental rights to the children be terminated.

Father appeals.

DECISION

Parental rights may only be terminated for “grave and weighty reasons.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (quotation omitted). To involuntarily terminate parental rights, a district court must find that one or more statutory conditions for termination exist and that termination is in the best interests of the child.

Minn. Stat. § 260C.301 (2020); *see also In re Welfare of L.A.F.*, 554 N.W.2d 393, 396-97 (Minn. 1996).

In reviewing a district court's decision to terminate parental rights, we employ a two-part standard of review. *Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900-01 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). We 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. *Id.* at 901. A factual finding is clearly erroneous "if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred." *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 322 (Minn. App. 2015) (quotation omitted), *review denied* (Minn. July 20, 2015). An abuse of discretion occurs if the district court's factual findings are not supported by the record, if the district court misapplies the law, or if it resolves the matter in a manner that is against logic and the facts on the record. *Sinda v. Sinda*, 949 N.W.2d 170, 175 (Minn. App. 2020).

Father raises three arguments on appeal. He contends that (1) the district court failed to make findings of fact sufficient to allow appellate review, (2) the district court abused its discretion by concluding that the county made reasonable efforts to aid father in correcting the conditions that led to the children's out-of-home placement, and (3) the record does not support the district court's determination that termination of father's parental rights is in the children's best interests. We address each of father's arguments in turn.

I. The district court made sufficient findings of fact to allow appellate review.

Father argues that the district court's termination of his parental rights must be reversed because the court failed to make sufficiently particularized findings. Specifically, father asserts that the majority of the district court's findings are merely recitations or summaries of witness testimony. He contends that the district court failed to affirmatively state the facts it determined to be true or identify what testimony it determined to be credible.

To facilitate effective appellate review, the district court's findings must "provide insight into which facts or opinions were most persuasive of the ultimate decision" and demonstrate the court's consideration of the statutory bases for termination. *In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990). It is insufficient for a district court to merely recite what others have observed because such a recitation "is not a finding of fact that those observations are true." *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 810 (Minn. App. 2014) (quotation omitted). Similarly, it is insufficient for a district court to merely summarize portions of testimony without commenting independently on the witnesses' opinions, the foundation for those opinions, or the relative credibility of the witnesses. *M.M.*, 452 N.W.2d at 239.

We conclude that the district court's findings of fact and conclusions of law, considered together, do more than merely recite or summarize the evidence. For instance, in reaching its conclusion that the conditions leading to the children's out-of-home placement have not been corrected, the district court affirmatively found that mother was still residing in the duplex with father at the time of trial and noted that it did not find

credible father's assertions at trial that he planned to find separate housing from mother. In reaching its determination that the county had made reasonable efforts to correct the conditions leading to the children's out-of-home placement, the district court made specific findings concerning the resources that the county had provided to father and mother to aid them in finding separate housing. Furthermore, in concluding that termination of father's parental rights would serve the children's best interests, the district court assessed the relative credibility of various witnesses, including the expert witnesses and father. And, based on the testimony and reports summarized in its findings of fact, the district court made specific findings regarding father's ability to parent the children and meet their basic needs.

Considered as a whole, the district court's decision sufficiently identifies the facts and opinions that the district court found to be persuasive in reaching its conclusion to terminate father's parental rights. Thus, we conclude that the district court's findings are sufficient to facilitate appellate review. That said, we acknowledge that a number of the district court's findings include mere recitations of testimony. We encourage the district court to include less recitation of testimony and more particularized findings in future orders.

II. The district court did not abuse its discretion by concluding that the county made reasonable efforts to correct the conditions leading to the children's out-of-home placement.

Father next argues that the district court abused its discretion by concluding that the statutory basis for termination of his parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5), was met. To terminate parental rights under Minn. Stat. § 260C.301,

subd. 1(b)(5), the district court must find by clear and convincing evidence “that following the child’s placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child’s placement.” This statutory basis for termination of parental rights contains two distinct requirements: (1) that the conditions leading to the child’s placement were not corrected and (2) that the county used reasonable efforts to correct those conditions. Father appears to argue that the district court abused its discretion by concluding that the county demonstrated by clear and convincing evidence that both of those requirements were satisfied in this case.

Here, the district court found that the primary conditions leading to the children’s out-of-home placement were (1) mother’s prior involuntary termination of parental rights and (2) the fact that father and the children were living with mother. The district court determined that the county made reasonable efforts to help father address these conditions and secure separate housing. The district court further determined that those efforts were reasonable in light of the circumstances of this case but that father (and mother) nonetheless failed to correct the housing situation.

Father raises three arguments to support his position that the statutory basis for terminating his parental rights was not met. First, father argues that the county imposed “confusing and conflicting” expectations regarding the requirement that he find separate housing from mother. He asserts that the county’s initial approval in August 2019 of a plan in which mother would move to the basement unit of the duplex misled him to believe that such an arrangement would satisfy the separate-housing requirement. This argument

appears to challenge the district court's determination that the conditions leading to the children's out-of-home placement were not corrected. We are unpersuaded.

Father does not dispute that the initial oral safety plan established by the county—under which mother was permitted to move to the basement of the duplex—was temporary in nature. And father does not challenge the district court's finding that the subsequent court-ordered written safety plan required either mother or father to move out of the duplex and to secure separate housing. Under those circumstances, father's contention that he did not understand the county's expectation that he and mother live in separate buildings is unconvincing. Moreover, father's repeated statements to the county and the district court that mother had plans to move out of the duplex further belie his assertion that he was confused about the mandates of the separate-housing requirement. The record supports the district court's finding that the conditions leading to the children's out-of-home placement were not corrected.

Second, father argues that the record does not support the district court's determination that the county made reasonable efforts to reunite father with the children. Father argues that the record shows that the county's efforts were inadequate because father's "case plan fail[ed] to set forth specific steps designed to assist [f]ather with successfully accomplishing the goal or requirement of finding separate housing from" mother. Father asserts that the "only" service provided by the county with regard to housing was a referral to a local agency that was unable to assist father.

When assessing whether the county has made reasonable efforts to reunify parent and child, the district court must consider whether the services 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) (2020). “The county’s efforts must assist in alleviating the conditions that gave rise” to the out-of-home placement. *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). “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.” *Id.*

In light of the record in this case, we are not persuaded by father’s argument. The record reflects that the county did more than offer father just a referral to a local housing agency. The county also offered father transportation services. There is no indication in the record that father was precluded from using the transportation services to find housing. The record also reflects that the county provided a family resource worker to father who was available to help father find housing. Furthermore, father’s own statement at trial that he had been “in the process of buying . . . a \$500,000 home” in 2012 suggests that father has the skills to obtain housing when desired. And the record amply supports the district court’s conclusion that father had no intention to find separate housing from mother, and that further efforts by the county to aid father in finding housing would have been futile. For example, the record reflects that father and mother were both still residing in the duplex at the time of trial in November 2020 and had lived there together almost continuously since the children were removed from the home in September 2019; father had made repeated claims to both the county and the court that mother had plans to move to a different

residence; in each instance “such action ha[d] not taken place”; and father had told one of the county’s child-protection specialists that the duplex was his home and that he was not moving. Father did testify at trial that he would be living separately from mother within about a week’s time, but the district court did not find this testimony to be credible. Based on those findings, the district court determined that father had no intention of finding a residence separate from mother. The district court thus concluded that the county’s efforts were reasonable because “there were no other efforts that the [county] could have implemented to solve the housing situation.” Under the circumstances of this case, the district court did not abuse its discretion by determining that the county made reasonable efforts to assist father with addressing his housing situation.

Third, father argues that the district court abused its discretion by determining that the county’s reunification efforts were reasonable because the district court identified “multiple issues and concerns” regarding the family’s situation other than housing “for which reasonable efforts towards reunification were not made.” But those additional considerations—including the district court’s concerns about father’s ability to meet the children’s basic needs, allegations that father had mistreated the children, and the children’s lack of secure attachment to father—were cited by the district court in its analysis of the best-interests factor. Those concerns did not play a role in the district court’s analysis of whether the county demonstrated that reasonable efforts had failed to correct the conditions that led to the out-of-home placement as required under Minn. Stat. § 260C.301, subd. 1(b)(5). We therefore do not consider the county’s efforts to

remedy those issues in our analysis of whether the county used reasonable efforts within the meaning of Minn. Stat. § 260C.301, subd. 1(b)(5).

In sum, the district court did not abuse its discretion by determining that the county used reasonable efforts to correct the conditions leading to the children's out-of-home placement and that the conditions leading to the children's out-of-home placement were not corrected.

III. The district court did not abuse its discretion by concluding that terminating father's parental rights is in the children's best interests.

Lastly, father contends that the district court abused its discretion by concluding that terminating his parental rights is in the children's best interests. He argues that the district court failed to make findings that demonstrate it considered the impact of its decision on each individual child based on that child's age and unique circumstances. And he argues that the district court failed to assign appropriate weight to the children's stated preferences. Again, we disagree.

When deciding whether to terminate parental rights, the interests of the child are paramount. Minn. Stat. § 260C.301, subd. 7. "The 'best interests of the child' means all relevant factors to be considered and evaluated." Minn. Stat. § 260C.511(a) (2020). "We review a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion." *J.R.B.*, 805 N.W.2d at 905. And we grant "considerable deference" to the district court's determination. *J.K.T.*, 814 N.W.2d at 92.

In analyzing the best interests of a child, the district court must consider "(1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in

preserving the parent-child relationship; and (3) any competing interest of the child.” *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). “Competing interests [of the child] include such things as a stable environment, health considerations and the child’s preferences.” *R.T.B.*, 492 N.W.2d at 4.

The district court’s order demonstrates that the district court considered the relevant factors including the impact of its decision on each child and the stated preferences of the children. The district court made many findings of fact specific to the needs of the individual children. For instance, the court made specific findings concerning the educational needs of children 2 through 7, the dental and eye care needs of child 3, 5, and 6, and the mental health diagnoses of every child. The district court also made numerous findings and determinations relevant to the interests of all of the children regardless of their age and unique circumstances. The court found that father had severely neglected the children’s educational and medical needs while living in Missouri and that “at least some” of the allegations against father of “inappropriate forms of discipline” are true. The court further found that father has demonstrated deficits in meeting the children’s mental health needs and that if the children were returned to father, their basic needs would go unmet. And the court concluded that father has failed to recognize his role in contributing to the children’s level of functioning, which led the court to conclude that father is unable to make meaningful changes in his parenting style.

The district court further acknowledged that five of the children had expressed their wishes to be reunified with father and noted that it assigned those stated preferences “considerable weight.” Nonetheless, after weighing the relevant factors, the district court

determined that the children's stated preferences were not in their best interests. In reaching that determination, the court concluded that the statements of three of the children that they wished to return home were likely influenced by the fact that those children were living in residential treatment, shelter care, or a similar facility. The court also agreed with the guardian ad litem that all of the children's stated preferences are "most likely due to the fact that they want to reside together as siblings, and less likely due to the fact that they want to be reunified with [father]." This court defers to a district court's credibility determinations. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007).

Based on a balancing of the relevant considerations, the district court determined that "[c]lear and convincing evidence indicat[es] a termination of [father's parental] rights is in [the children's] individual best interests." And the district court specifically noted that it "does not take lightly the decision that is made here today and the [e]ffect it will have on the children going forward." But it concluded that "[t]he children's need for a safe and stable home, and a caregiver that can meet their needs, can be best met by a termination of parental rights and a subsequent adoption or other permanent placement."

The district court's findings demonstrate that the court appropriately considered both the individual and collective interests of the children and assigned appropriate weight to their stated preferences. The district court did not abuse its discretion by concluding that terminating father's parental rights to the children is in the children's best interests.

Affirmed.