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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0821**

In the Matter of the Welfare of the Child of:

S. K. S., Parent.

**Filed December 13, 2021
Affirmed
Cochran, Judge**

Chisago County District Court
File No. 13-JV-21-8

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Considered and decided by Connolly, Presiding Judge; Cochran, Judge; and Klaphake, Judge.*

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant-father challenges the termination of his parental rights, arguing that the district court (1) clearly erred by finding that respondent-county made reasonable efforts

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

to reunite the family and (2) abused its discretion by determining that termination is in the child's best interests. We affirm.

FACTS

Appellant S.K.S. (father) has two children. Both children have the same mother. Respondent Chisago County Health and Human Services (the county) has been involved with and providing services to the family since 2016. In August 2017, father's parental rights to his first child were voluntarily terminated because of concerns about father's domestic violence, criminal history, active criminal charges, and substance abuse. Father's second child, who was born in 2018, is the subject of this case.

In April 2020, the county opened a family assessment for domestic violence/threatened injury after receiving a report about an incident that occurred in the presence of the child. The report related to a physical altercation involving father, mother, and others. The report alleged that father was armed with knives, yelling, and throwing objects. According to law enforcement who observed father just after the alleged incident, father appeared to be under the influence of chemicals. Father was subsequently arrested for domestic assault. In May 2020, the county received a second report involving father. This report alleged that father physically assaulted his half-sister while the child was present. In response to these reports, a county investigator made numerous efforts to reach the family for purposes of conducting the family assessment but was unable to make any contact with the family or locate the child.

On June 29, 2020, the county received a third intake report and opened a new investigation. The report stated that father had been arrested for shooting an individual

who father believed had sold drugs to mother. Father allegedly shot the individual after mother overdosed (but not fatally). Father was charged with felony second-degree assault with a dangerous weapon.

The day after receiving this report, the county petitioned to have the child adjudicated as a child in need of protection or services. The district court granted the petition on an emergency basis and the child was placed into temporary foster care.

After the placement of the child, the county made efforts to develop a case plan with father to address the concerns that led to the out-of-home placement. The case plan, which father signed in August 2020, focused on addressing father's chemical health, mental health, domestic violence, and criminal activity. To address these concerns, the plan required father to do the following: complete a chemical-dependency evaluation and follow its recommendations; comply with an initial hair-follicle test; comply with additional drug testing as requested by the county; complete a psychological evaluation including an anger-testing component and follow its recommendations; complete an offender-based domestic-violence program; attend all scheduled visits with the child; work on parenting skills; remain law-abiding; and participate in assessments and services for the child.

In October 2020, mother tragically passed away from another suspected overdose. A few months later, in January 2021, the county petitioned to terminate father's parental rights to the child.

In the petition, the county identified the following statutory grounds for termination of father's parental rights: (1) refusing or neglecting to comply with the duties imposed by the parent-child relationship, (2) palpable unfitness to be a party to the parent-child

relationship, (3) failure of reasonable efforts to correct the conditions leading to the child's out-of-home placement, and (4) the child's status as neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(2), (4)-(5), (8) (2020). In support of the statutory grounds, the petition alleged that father had "struggled to demonstrate consistent progress, insight, sobriety, responsibility, and compliance with his case plan." Specifically, he continued to test positive for methamphetamine and engage in criminal activity. In addition, father completed a psychological assessment which diagnosed him with borderline personality disorder, posttraumatic stress disorder, and two chemical-use disorders. The psychological assessment concluded that father was "not appropriate to independently parent" the child because of his unmanaged mental illness. In addition, the petition for termination expressed concern about father's ability to provide stable housing for the child. Based on these factual allegations, the petition asserted that termination of father's parental rights was in the best interests of the child. The petition emphasized that the child was particularly vulnerable because of her trauma history, had been in out-of-home placement for a significant portion of her life (197 days), and needed permanency and stability.

The case proceeded to trial in April and May of 2021, during which the district court received over 70 exhibits and heard testimony from a number of witnesses, including father, an expert toxicologist, the expert who conducted father's psychological assessment, the child's guardian ad litem, and the social workers who managed the case. Relevant to this appeal, the social workers testified that they engaged in various efforts to rehabilitate father and reunify the family. After placing the child in appropriate foster care, they facilitated supervised visits between father and the child, providing a visit supervisor and

a parenting-skills educator for each visit. They referred father to various providers for his chemical-use and psychological assessments and for the resulting treatment recommendations. They provided father with an application for state-funded treatment and health insurance. They facilitated regular drug testing and provided father with gas cards to help with the cost of transportation. They arranged weekly phone calls with father that included his case manager and his case manager's supervisor.

The social workers also testified that father had not substantially completed his case-plan requirements by the time of trial. He complied with an initial hair-follicle drug test and completed chemical-use and psychological assessments but did not complete chemical-dependency treatment. And he continued to test positive for methamphetamine. In addition, he did not complete individual therapy, delayed in starting dialectical behavior therapy (DBT) (prescribed to treat borderline personality disorder), and did not complete a domestic-violence program as recommended.

At trial, father testified that he no longer uses methamphetamine and no longer struggles with chemical dependency. However, an expert toxicologist testified that the amount of methamphetamine appearing in father's drug-screen test results was consistent with chronic, repeated use over the previous year. Father also testified that he believed his borderline-personality-disorder diagnosis was wrong and that he had his mental health under control.

The district court granted the county's petition to terminate father's parental rights. The district court determined that clear and convincing evidence supported termination on three separate statutory grounds: (1) refusing or neglecting to comply with the duties

imposed by the parent-child relationship, (2) being palpably unfit to be a party to the parent-child relationship, and (3) the failure of reasonable efforts to correct the conditions leading to the child's out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(2), (4)-(5). The district court made detailed findings as to each ground for termination.

Separately, the district court made specific findings as to whether the county engaged in reasonable efforts to finalize the permanency plan, rehabilitate father, and reunify the family, as required by Minn. Stat. §§ 260.012(a), 260C.301, subd. 8(1) (2020). The district court determined that the county "repeatedly provided reasonable efforts and services" to father and the child throughout the proceedings that were relevant to the child's safety and protection, adequate to meet the family's needs, culturally appropriate, available and accessible, and consistent, timely, and realistic given the circumstances. The district court also determined that termination was in the child's best interests.

Father appeals.

DECISION

"Parental rights should only be terminated for grave and weighty reasons." *In re Welfare of Children of B.M.*, 845 N.W.2d 558, 563 (Minn. App. 2014) (quotation omitted). Generally, we will affirm a district court's termination of parental rights when (1) "at least one statutory ground for termination is supported by clear and convincing evidence," (2) the county has made reasonable efforts to reunite the parent and child, and (3) termination is in the child's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). When reviewing a decision to terminate parental rights, we review a district court's factual findings 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).

Here, the district court concluded that clear and convincing evidence supports three statutory bases for termination. It also concluded that the county engaged in reasonable efforts to rehabilitate father and reunify the family. Father does not challenge the specific statutory grounds for termination found by the district court. Instead, father’s appeal focuses on the district court’s determination that the county made reasonable efforts at reunification. Father argues that the district court clearly erred in making this determination. And father further argues that the district court abused its discretion when it found that terminating father’s parental rights was in the child’s best interests.

I. The district court did not clearly err by finding that the county made reasonable efforts to reunite father and the child.

Unless relieved of its obligation by the district court, a county seeking to terminate a person’s parental rights must make reasonable efforts to rehabilitate the parent and reunite the parent with their child. Minn. Stat. § 260.012(a); *In re Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008). “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), *rev. denied* (Minn. July 6, 1990). Reasonable efforts must “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), *rev. denied* (Minn. Mar. 28,

2007). The efforts must be: “(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). And the district court must make “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).

The district court concluded that the county met the six requirements for services constituting reasonable efforts under Minn. Stat. § 260.012(h). The district court specifically found that the county provided the following services in its effort to finalize a permanency plan, rehabilitate father, and reunify father with the child:

- Placed the child in foster care that met her needs
- Ensured regular communication between father, foster-care providers, and other professionals to make sure appropriate services were provided
- Conducted a relative search and developed an out-of-home permanency placement plan which was reviewed with father and subsequently filed and approved by the district court
- Provided reasonable supervised visits between father and the child, though the county could have allowed more visitation once father started consistently participating in visits
- Assisted in locating, arranging, and providing referrals for father to complete chemical-use and parenting assessments and comply with their recommendations
- Provided services for the child including a diagnostic assessment
- Provided gas cards to father and transported the child for visits
- Provided drug testing to assist father in remaining sober from illicit drugs
- Helped father and the child obtain health insurance

The district court found that despite these reasonable efforts, father's chemical dependency, mental illness, criminal activity, and domestic-violence issues prevented him from appropriately parenting and providing a stable environment for the child.

Whether the county made reasonable efforts at reunification is an underlying factual finding that we review for clear error. *S.E.P.*, 744 N.W.2d at 387. "A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of S.R.K.*, 911 N.W.2d 821, 830 (Minn. 2018) (quotation omitted). "We defer to the district court's determinations of witness credibility and the weight to be given to the evidence." *In re Welfare of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007).

Father argues that the district court clearly erred when it found that the county made reasonable efforts to reunify father and the child for the following reasons: (1) the county brought its petition to terminate too soon; (2) the case workers were "just going through the motions" and did not help father obtain necessary services; and (3) obtaining services was more difficult because of pandemic-related closures.

To support these arguments, father makes several specific assertions. He contends that he attended chemical-dependency therapy consistently and would have completed the program by the time of trial if not for his own request to voluntarily extend his participation in the program. He emphasizes that he followed through with the psychological evaluation just after the death of the child's mother in October 2020 because he was committed to reunification. And he asserts that he was delayed in starting his DBT therapy because he was left to fend for himself. He claims he called every provider on the DBT referral list

that he received from the county, but none of them were accepting new patients due to the pandemic. He states that he later found a DBT counseling service on his own, but he was unable to get an appointment before March 2021. He also asserts that he was unable to start classes addressing domestic violence until March 2021 due to the pandemic. And he argues that the county's failure to increase his visitation with the child and involve him in the child's diagnostic assessment demonstrates the county's lack of reasonable efforts to reunify the family. We are not persuaded for several reasons.

First, we disagree that the county brought its petition to terminate father's parental rights too soon. The record demonstrates that the county brought its petition to terminate father's parental rights within the timeframe required by statute. Generally, a permanency or termination of parental rights petition *must be filed at or prior to* the time the child has been in foster care for 11 months. Minn. Stat. § 260C.505(a) (2020). Further, a review hearing must be held after only six months to evaluate the parent's progress on the case plan and the county's reasonable efforts and provision of services. Minn. Stat. § 260C.204(a) (2020). Here, the county filed its petition to terminate father's parental rights approximately six months after the child was placed in foster care. Therefore, as noted by the district court, the county properly filed its petition in accordance with the timeline established by statute. While we recognize that the statutory timeline prescribed by the legislature is expedited, the timeline reflects a recognition that an efficient resolution is essential for the best interests of the child. *See In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 134 (Minn. 2014) (noting that child-protection proceedings "are expedited because a quick resolution is essential for the best interests of children who are

in need of protection”). Furthermore, the record in this case reflects that the county brought its petition only after making numerous efforts to reunify father and the child.

Second, the record fully supports the district court’s finding that the efforts made by the county at reunification were reasonable. The social workers managing father’s case testified to their efforts to work with father toward reuniting him with the child. As described in detail by the district court, these efforts included, but were not limited to, the following: engaging in multiple attempts to meet with father to develop the case plan, facilitating weekly visitation with the child, holding weekly phone calls with the case manager and a supervisor to address father’s progress and concerns, coordinating outpatient treatment, facilitating drug testing, and referring father to service providers and programs to help him stay sober and stabilize his mental health.

To the extent that father is asking us to reweigh the evidence on appeal, we may not do so. Our role is to review the record to confirm that evidence exists to support the factual findings made by the district court. *In re Commitment of Kenney*, 963 N.W.2d 214, 223 (Minn. 2021). And 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).

Here, the district court made thorough and detailed findings based on the testimony at trial and other evidence. In particular, the district court credited the testimony of the social workers, the toxicologist who testified to the validity of father’s drug tests, and the expert who conducted father’s parenting assessment. The district court did not credit father’s testimony that he no longer struggled with chemical dependency despite

continuing to test positive for methamphetamine. Similarly, the district court did not credit father's testimony that his mental health was under control or his testimony minimizing his history of domestic violence.

In sum, the evidence reasonably supports the district court's finding—including its express credibility determinations—that the social workers managing the case “repeatedly provided reasonable efforts and services” to father and the child that were relevant to the child's safety and protection, adequate to meet the needs of the family, culturally appropriate, available and accessible, and consistent, timely, and realistic under the circumstances. We discern no clear error in the findings that led the district court to determine that the county made reasonable efforts to rehabilitate father and reunify father with the child.

Any potential effect of pandemic-related closures on father's ability to access services does not alter this conclusion. The district court's finding that father had not substantially satisfied the requirements of his case plan *was not* based on pandemic-related reasons but rather was based on father's continued use of methamphetamine throughout the proceedings, his mental health issues, his criminal history, and his inability to parent. Specifically, the district court found that father had not accepted or addressed his ongoing chemical dependency, mental illness, criminal activity, and domestic-violence issues. The district court also found that father lacked awareness of his own dangerous behaviors and how they could affect the child's safety and well-being. These concerns are supported by

the record. Accordingly, we conclude that the district court did not clearly err when it found that the county engaged in reasonable efforts to reunify father and the child.¹

II. The district court did not abuse its discretion by determining that termination is in the best interests of the child.

Father also argues that the district court abused its discretion when it concluded that termination of his parental rights was in the child's best interests. Father's best-interests argument is tied to his previous argument that the county failed to make reasonable efforts to reunify father and the child.

The child's best interests are the "paramount consideration" in all termination cases. Minn. Stat. § 260C.301, subd. 7 (2020). When analyzing the best interests of the child, a district court must balance three factors: "(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 Child of J.H.*, ___ N.W.2d ___, ___, 2021 WL 5045274, at *7 (Minn. App. Nov. 1, 2021) (quotation omitted). Competing interests of the child may include the child's need for a stable environment, health considerations, and the child's preferences. *Id.* We review a district court's best-interests determination for an abuse of discretion. *In re Welfare of Child of K.L.W.*, 924 N.W.2d 649, 656 (Minn. App. 2019), *rev. denied* (Minn. Mar. 8, 2019).

¹ Father does not challenge the district court's determination that statutory grounds for termination exist under Minnesota Statutes section 260C.301, subdivision 1(b)(2), (4), or (5). Therefore, because we conclude that the district court did not err in finding that the county engaged in reasonable efforts, there is no basis to reverse the district court's determination that each of these statutory grounds support termination of father's parental rights.

Here, the district court determined that the county established by clear and convincing evidence that termination of father's parental rights was in the child's best interests. Specifically, the district court found that the child's diagnostic assessment indicated that permanency was important to help the child recover from mental health issues. The district court also credited the testimony of the child's guardian ad litem and father's case manager—they both testified that they believed termination was in the child's best interests because the child's current placement is appropriate and she "deserves permanency." The district court explained how it considered the three balancing factors, finding that father had "not demonstrated an ability to put [the child's] needs above his own by taking the actions necessary to stop using methamphetamine and address his chemical dependency," failed to acknowledge his mental health diagnosis, failed to remain law-abiding, and had "not credibly resolved his domestic assaultive behaviors." The district court concluded that "[w]hile those issues might not diminish [father's] love for [the child], they do have a critical impact on his ability to parent." The district court then determined that the child's "overriding interest in developing [a] stable and positive relationship[] with a parent who can meet [the child's] basic and unique needs" outweighs the child's and father's interests in preserving the parent-child relationship.

Father argues that the district court abused its discretion when it made this determination. Father contends that, because the county failed to make reasonable efforts at reunification, it is not in the child's best interests to terminate father's parental rights. We are not persuaded. As discussed above, the district court did not clearly err when it found that the county made reasonable reunification efforts. Moreover, while the record

shows that father loves the child and the two have a bond, the record also fully supports the district court's determination that termination of father's parental rights is in the child's best interests. We discern no abuse of discretion by the district court in making that determination.

Affirmed.