STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0268

In the Matter of the Welfare of the Child of:
D. L. U., Sr. and K. M. W., Parents.

Filed August 8, 2022
Affirmed
Cochran, Judge

Carlton County District Court
File No. 09-JV-20-2

Matthew Miller, Cloquet, Minnesota (for appellant)

Lauri Ketola, Carlton County Attorney, Claire M. Klein, Assistant County Attorney, Carlton, Minnesota (for respondent Carlton County Public Health & Human Services)

K. M. W., Hayward, Wisconsin (pro se respondent)

Teresa Day, Red Lake Band of Chippewa, Minneapolis, Minnesota (for respondent Red Lake Band of Chippewa)

Tyler Modderman-Anderson, Duluth, Minnesota (guardian ad litem)

Considered and decided by Bratvold, Presiding Judge; Cochran, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

This appeal arises from the district court's decision to transfer permanent legal and physical custody of appellant-father's minor child to a relative. Appellant seeks reversal, arguing that the record does not support the district court's determination that

respondent-county made reasonable and active efforts to reunify father and child. Because the record supports the district court's determination, we affirm.

FACTS

Appellant D.L.U. is the father of the child who is the subject of this juvenile-protection matter. The child qualifies as an "Indian child" covered by the protections of the Indian Child Welfare Act (ICWA). *See* 25 U.S.C. § 1903(4) (2018); *see also* Minn. Stat. § 260.755, subd. 8 (2020) (defining "Indian child" under Minnesota Indian Family Preservation Act). Following a trial in May 2021, the district court transferred sole legal and sole physical custody of the child to the child's maternal grandmother. At the time of trial, the child was nine years old. We summarize the record as follows.

Background

Prior to the underlying child-protection proceedings, father shared joint legal custody of the child with the child's mother, respondent K.M.W., pursuant to a 2016 Wisconsin court order. Father was the primary placement for the child, and mother would sporadically come in and out of the child's life. Mother and father also share another child who is now over 18 years old and is not a subject of this appeal.

Father and the children moved to Cloquet, Minnesota in 2016. Respondent Carlton County Public Health and Human Services (the county) received several maltreatment reports regarding the family beginning in November 2016. The county opened three family assessments between May 2017 and July 2018, primarily due to concerns about the children's mental health and father's ability to supervise and care for the children. Regarding the child subject to this appeal, a central concern was the child's significant

behavioral struggles at school. While attending a pre-kindergarten "early fives" program during the 2017 to 2018 school year, the child would hit, kick, and scratch adults and some children. The child was often very tired and would fall asleep at school. On some days, the child would come to school appearing "really disheveled." School personnel often had difficulty reaching father to discuss the child's behaviors.

During this time, a county social worker was in contact with father two to three times per week. Father was "often very angry" about the child's behaviors and about "having to be bothered by the school during the day." Father disclosed to the county that the child would accompany father while father worked a newspaper-delivery route in the middle of the night. This arrangement caused the child to have minimal or very interrupted sleep. Father further disclosed that father had a traumatic brain injury and Huntington's disease. He told the county social worker that he had a very difficult time remembering things. He also often made paranoid-seeming statements, including claims that his cigarettes or food had been laced with drugs and someone had bugged his phone.

Beginning in 2017, the county offered several services to father and the child. Father received financial assistance through the county's parent support outreach program, the purpose of which was to prevent out-of-home placement of the child. The county also assisted father in scheduling a diagnostic assessment for the child. Based on that assessment, the county opened a children's mental-health case, which involved establishing a case plan and offering therapy and children's therapeutic services and supports (CTSS). The child was then referred to a kindergarten program for children with special-education needs. When the child's behaviors did not improve, the child underwent

a 35-day evaluation out of the home. The evaluation was done at the recommendation of the mental-health team and with father's agreement. Following the child's discharge from the 35-day evaluation, the county social worker again assisted father in setting up therapy and CTSS for the child. The child was also placed on a waiting list for day treatment.

Despite the services offered, the child continued to do very poorly at school. The child was "nearly inconsolable" and came to school tired and irritable. The child also had poor attendance at school. It became increasingly difficult to reach father on the phone. And father did not follow through with ensuring that the child was receiving therapy and CTSS outside of school. In late January 2019, the child had a very difficult day at school, during which the child lashed out violently and was "out of control." The school and the county social worker made multiple attempts to contact father over several hours but were unable to reach him. The school ultimately called law enforcement, and officers placed the child on a 72-hour hold at a shelter.

Child-in-Need-of-Protection-or-Services Proceedings

Shortly following these events, and after opening another family assessment, the county filed a child-in-need-of-protection-or-services (CHIPS) petition pursuant to Minn. Stat. § 260C.007, subd. 6(3)-(4), (8) (2020).[1] The district court held an emergency

[1] *See* Minn. Stat. § 260C.007, subd. 6(3)-(4), (8) (providing that a child is in need of protection or services if the child is (3) "without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent . . . is unable or unwilling to provide that care"; (4) "without the special care made necessary by a physical, mental, or emotional condition because the child's parent . . . is unable or unwilling to provide that care"; or (8) "without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent").

protective-care hearing and ordered temporary custody of the child to the county for out-of-home placement. The county then developed a reunification plan for father and child and filed the plan with the district court. The plan became effective on February 15, 2019, and included a number of conditions that father was required to meet for the child to return home. Relevant to this case, father was required to: complete a psychological evaluation and follow all recommendations; participate in parenting classes, as available, to learn parenting techniques and strategies; participate in an anger-management program and learn techniques and strategies to help control his temper under all circumstances; and work with the county's disability services to learn about Huntington's Disease, its impact on cognitive and physical health, and how to minimize the effects as they occur.

In May 2019, both father and mother entered limited admissions to the CHIPS petition under Minn. Stat. § 260C.007, subd. 6(4), and waived their rights to a trial on the petition. *See* Minn. Stat. § 260C.007, subd. 6(4) (providing that a child is in need of protection or services if the child "is without the special care made necessary by a physical, mental, or emotional condition because the child's parent . . . is unable or unwilling to provide that care"). The district court thereafter adjudicated the child in need of protection or services and ordered father and mother to comply with their reunification plans.[2]

In January 2020, the county filed a petition to terminate both father's and mother's parental rights to the child. With respect to father, the petition was based on father's lack

[2] The district court's order transferring custody of the child suggests that mother had a reunification plan in place in May 2019. But only a later plan, effective July 21, 2019, is part of the record in this case.

of progress toward reunification. Regarding mother, the petition was based on a complete lack of progress toward reunification and limited-to-no contact with social services or the child during the pendency of the proceedings. A trial was initially scheduled for spring 2020 but was postponed due to the COVID-19 pandemic. The trial was then rescheduled for November 2020 but was again postponed when mother informed the district court on the first day of trial that she was eligible for enrollment in respondent Red Lake Band of Chippewa Indians, a federally recognized Indian tribe. Because the Red Lake Band had not received notice of the proceedings as required by ICWA until a week before the scheduled trial, the district court continued the trial to wait for the tribe's response. In January 2021, the Red Lake Band filed a notice of intent that confirmed that the child and/or parent were eligible for enrollment with the Red Lake Band and that the tribe would intervene in the proceedings.

Custody-Transfer Proceedings

After the Red Lake Band became involved in the proceedings, the county substituted a petition to transfer permanent legal and physical custody of the child to the child's maternal grandmother for its petition to terminate parental rights. The petition was based on the same reasons as the earlier petition to terminate parental rights: mother's and father's lack of progress toward reunification. The petition asserted that father "repeatedly refused to work almost all aspects of his case plan" and was unwilling to engage in services to address why the child was removed from his care. The petition further stated that father had failed to engage in any appropriate services to address his own mental-health issues,

including "working with the adult disability services, parenting classes, and anger management classes."

In May 2021, a qualified expert witness with the Red Lake Band filed an affidavit averring that the matter falls under ICWA because the child is eligible for membership or is enrolled in the tribe. The affidavit stated that the Red Lake Band supports the transfer of permanent legal and physical custody of the child to the child's maternal grandmother. Mother later consented to the transfer of permanent legal and physical custody. Father did not.

The district court held a four-day bench trial in May 2021. The court heard testimony from 15 witnesses, including father, the child's maternal grandmother, several social workers with the county, the lead social worker with the Red Lake Band, the child's guardian ad litem, and various professionals who had provided services to father or the child. Many of the witnesses testified about father's case plan and the county's efforts to support reunification. County social workers, the lead social worker for the Red Lake Band, and the child's guardian ad litem testified that they supported transferring permanent custody to the child's maternal grandmother.

The district court thereafter issued a detailed order transferring sole legal and sole physical custody of the child to the child's maternal grandmother. The district court determined that father had failed to substantially comply with the court's orders and his case plan and that reasonable and active efforts by the county had failed to correct the conditions that led to the child's out-of-home placement. The district court further determined that transferring sole legal and sole physical custody of the child to the child's

maternal grandmother is in the best interests of the child and that the child's maternal grandmother is fit and willing to be the child's legal and physical custodian.

Father appeals.

DECISION

A district court may order one of several possible dispositions in a permanency proceeding initiated under Minn. Stat. §§ 260C.503-.521 (2020). Minn. Stat. § 260C.515. One available disposition is a transfer of "permanent legal and physical custody to a fit and willing relative in the best interests of the child." *Id.*, subd. 4. An order that permanently places a child out of the home of the parent "must include the following detailed findings":

> (1) how the child's best interests are served by the order;
> (2) the nature and extent of the responsible social services agency's reasonable efforts or, in the case of an Indian child, active efforts to reunify the child with the parent or guardian where reasonable efforts are required;
> (3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
> (4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

Minn. Stat. § 260C.517(a). Father's sole argument on appeal is that the record does not support the district court's determination pursuant to section 260C.517(a)(2) that the county made reasonable and active efforts to reunify father and the child.

Generally, when a non-Indian child in need of protection or services is under the district court's jurisdiction, the responsible social services agency must make "reasonable efforts" to reunify the child and parent. Minn. Stat. § 260.012(a) (2020); *see also In re Welfare of A.M.C.*, 920 N.W.2d 648, 655 (Minn. App. 2018) (discussing reasonable-efforts

requirement in context of termination of parental rights). "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), *rev. denied* (Minn. July 6, 1990). Under the reasonable-efforts standard, the district court must consider whether the services provided to the child and family 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).

When the child is an Indian child, a higher standard applies. In such cases, the social services agency must make "active efforts" to reunify the child and parent. 25 U.S.C. § 1912(d) (2018); Minn. Stat. § 260.762, subd. 3 (2020). The district court, in turn, must "make specific findings . . . [t]hat active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family." Minn. R. Juv. Prot. P. 28.07, subd. 4(b); *see also* Minn. Stat. § 260.762, subd. 3. Minnesota law defines "active efforts" as

> a rigorous and concerted level of effort that is ongoing throughout the involvement of the local social services agency to continuously involve the Indian child's tribe and that uses the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe to preserve the Indian child's family and prevent placement of an Indian child and, if placement occurs, to return the Indian child to the child's family at the earliest possible time.

Minn. Stat. § 260.755, subd. 1a (2020). Similarly, ICWA regulations define "active efforts" in part as "affirmative, active, thorough, and timely efforts intended primarily to

maintain or reunite an Indian child with his or her family." 25 C.F.R. § 23.2 (2021). In determining whether a county's efforts were "active," the district court must also consider "whether . . . the social services agency made appropriate and meaningful services available to the family based upon that family's specific needs." Minn. Stat. § 260.762, subd. 3.[3] In a permanency proceeding such as this one, which does not involve the termination of parental rights, the standard of proof is clear and convincing evidence. Minn. R. Juv. Prot. P. 28.07, subd. 4(b).

When reviewing a permanent transfer of custody, we review the district court's findings of the underlying facts for clear error and its ultimate determination as to whether a county has made reasonable or active efforts for an abuse of discretion. *See In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321-23 (Minn. App. 2015) (reviewing reasonable-efforts determination for an abuse of discretion), *rev. denied* (Minn. July 20, 2015). "A finding is clearly erroneous only 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

[3] Section 260.762, subdivision 3, also requires the district court to make findings regarding whether certain activities were appropriate. Specifically, the court must consider whether the responsible social services agency: (1) made efforts at the earliest possible point to identify whether the child is an Indian child and request the tribe's participation in the proceedings; (2) asked a tribally designated representative to assist in developing a case plan; (3) provided services to members of the Indian child's family, including "financial assistance, food, housing, health care, transportation, in-home services, community support services, and specialized services" throughout the agency's involvement with the family; (4) notified and consulted with extended family members about the proceedings; (5) provided services and resources to relatives who are considered the primary placement option for the Indian child; and (6) arranged for visitation to occur, whenever possible, in the home of the Indian child's parent, custodian, or other family member or in another noninstitutional setting. Minn. Stat. § 260.762, subd. 3(1)-(6). Father does not challenge the district court's findings regarding any of these activities.

mistake occurred." *Id.* at 322 (quotation omitted). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted).

Here, the district court made extensive findings regarding the county's efforts to reunify father and the child. It found that the county offered father a wide range of services beginning with the adoption of father's case plan in 2019 and extending to the May 2021 trial in this case. The court determined that the county's provision of those services constituted "reasonable and active efforts . . . to correct the conditions that led to the child's placement and promote reunification and prevent the breakup of the Indian family." It determined that the services provided were "appropriate and meaningful to the family's specific needs" and that the Red Lake Band was appropriately involved in the proceedings and the provision of services. The district court further determined that, despite the county's reasonable and active efforts, father substantially failed to engage in the services recommended in his case plan and "refused to change or acknowledge any of the reasons why his child was removed from his care," including father's neglect of the child, his poor parenting skills, and his inability to meet the child's mental-health needs.

We discern no abuse of discretion in the district court's conclusion that the county's efforts were "reasonable and active."[4] As the district court found, the record demonstrates

[4] Because the child qualifies as an "Indian child" covered by ICWA, the county was required to make "active efforts." 25 U.S.C. § 1912(d); Minn. Stat. § 260.762, subd. 3. As discussed above, "active efforts" is a higher standard than "reasonable efforts"—the standard applied to non-Indian children. The district court applied both standards—active

that the county offered father the following services during the two-and-a-half years after the filing of the CHIPS petition: child-protection case management; relative foster-care placement; supervised visits with the child; individual therapy for both father and the child; family therapy; residential treatment for the child; parenting classes; anger-management classes; neuropsychological evaluation; disabilities services; medication management and assistance; independent living-skills services; and coordination with the Red Lake Band. Based on the record evidence of the many services the county offered to father, the district court did not abuse its discretion by determining that the county made reasonable and active efforts to reunify father and the child and prevent the breakup of the family.

We are not persuaded otherwise by father's numerous arguments in support of his position that the county's efforts were not reasonable or active. Father first contends that the county's efforts were not reasonable or active because "little was provided by the [county] by way of explanation to [father] as to how to actually access the services required within the [case] plan." To support this argument, father identifies two services which he claims were "unobtainable" during the COVID-19 pandemic. Specifically, he notes that parenting classes were not "readily available" and the only anger-management program offered by the county had an extensive waiting list. Father argues on this basis that these services were not accessible or reasonable under the circumstances and that active efforts

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efforts and reasonable efforts—to evaluate the county's efforts, presumably because the county made significant efforts before the child's status as an Indian child was known to the county. Because the district court applied both standards and father likewise argues both standards on appeal, we address the arguments as framed by father. We note, however, that our analysis of the district court's determination that the county's efforts were "reasonable and active" encompasses the applicable legal standard of "active efforts."

would have required the county to assist father "in actually establishing enrollment in such classes or programming."

While the record does reflect that parenting and anger-management classes were not as readily available after the onset of the pandemic in March 2020, the record also demonstrates that the county made reasonable and active efforts to assist father in accessing these services both before and during the pandemic. The underlying CHIPS matter was initiated in January 2019. Keith Hauswirth, the social worker assigned to manage the child-protection case, testified that he offered father information about parenting and anger-management classes during an April 2019 meeting, nearly a year before the COVID-19 pandemic began. Although father initially appeared open to receiving services, he later changed his mind and consistently told the county that he did not need parenting or anger-management classes and was not willing to work his case plan. Hauswirth also testified that he again provided father with contact information for those services "a couple of months" before the May 2021 trial. Hauswirth further testified that father could have addressed his anger issues and parenting skills in individual therapy sessions. Under these circumstances, any limited availability of parenting and anger-management classes during the pandemic does not negate the county's reasonable and active efforts.

Second, father argues that the county failed to make reasonable and active efforts because the living-skills services offered to him were inadequate. To support this argument, father relies on his own testimony that the service provider "didn't help . . . with anything" and twice asked father to pick him up when he was intoxicated and unable to drive. However, the district court found that father's testimony regarding the living-skills

provider was not credible. "We defer to the district court's determinations of witness credibility and the weight given to the evidence." *In re Welfare of Child of J.L.L.*, 801 N.W.2d 405, 413 (Minn. App. 2011), *rev. denied* (Minn. July 28, 2011). Accordingly, we discern no abuse of discretion in the district court's determination of reasonable and active efforts on this ground.

Third, father challenges the district court's factual finding that the county provided diagnostic assessments to father at Nystrom and Associates and the Human Development Center (HDC). Father asserts that he obtained those assessments on his own without the county's involvement and that the county "had no knowledge of them even having been obtained." We acknowledge that the record does not clearly reflect that the county provided the diagnostic assessments to father. But the record does demonstrate that the county provided father with a host of other services related to his mental health, including a neuropsychological examination that the county social worker scheduled for father. One of the recommendations of the neuropsychological examination was that father continue seeing his existing therapist at Nystrom and Associates. The county also provided father with contact information for therapy at HDC, where father ultimately obtained one of the diagnostic assessments. Moreover, the record shows that the only reason the county was unaware that father obtained diagnostic assessments at Nystrom and HDC was father's failure to inform the county that he had participated in those services. Because the county made a concerted, affirmative effort to provide father with mental-health services, any error by the district court in its finding regarding the diagnostic assessments was harmless error. *See Hanka v. Pogatchnik*, 276 N.W.2d 633, 636 (Minn. 1979) (explaining that where the

findings necessary for a legal conclusion are adequately supported, a court's inclusion of other unsupported findings is harmless error).

Fourth, father argues that the active-efforts standard cannot be satisfied in this case because the county "did not even verify if [the Red Lake Band] understood or agreed with [father's] case plan." He asserts that the lead social worker for the Red Lake Band testified that she had no understanding of father's case plan. However, father mischaracterizes the testimony. The lead social worker for the Red Lake Band testified that she reviewed father's case plan, that the Red Lake Band believed the plan was appropriate and reasonable, and that she understood that father did not adequately complete the plan. While the social worker also testified that she lacked "an understanding" of the specific aspects of the plan that father had completed, this testimony does not indicate that the Red Lake Band did not understand or agree with father's case plan. To the contrary, the record demonstrates that the Red Lake Band understood father's case plan, believed it was appropriate, and further believed that the county had provided active efforts since November 2020, when the tribe became involved in the case, to reunify father and the child.

Fifth, father argues that the county failed to provide reasonable and active efforts because father "was presented with a case plan, absent any input by him" and because his attorney suggested amendments to the case plan that the county failed to implement. He argues on this basis that the county failed to comply with the requirements of Minn. Stat. § 260C.212, subd. 1(b) (2020), which provides that an out-of-home placement plan must be "prepared by the responsible social services agency jointly with the parent."

Despite father's contentions, the record reflects that father attended a meeting with Hauswirth and the child's guardian ad litem in April 2019, at which they went over the case plan "point-by-point." At that meeting, father said that he was open to receiving services and that he thought certain components of the plan would be helpful. However, at a subsequent meeting in June 2019, father reportedly changed his mind and stated that he was not willing to work a case plan because he did not need services. The case plan was submitted to and ultimately approved by the district court. Father fails to direct us to any part of the record that shows that he ever objected to any specific components of the case plan or that his attorney offered amendments to the plan as he asserts in his brief. Accordingly, father adequately participated in the development of the case plan and his assertion that the county failed to provide reasonable and active efforts on this ground is unavailing.

Sixth, father contends that the county did not provide reasonable or active efforts because "there [were] no modification[s] or adjustments made to support memory related concerns" due to father's traumatic brain injury. While the record does reflect that father has experienced some issues with his short-term memory, there is no indication that father's failure to participate in the services required under his case plan is due to any lapses in memory. Indeed, father himself testified that he "refused" to participate in any component of his case plan other than individual therapy and that "nothing is affecting [his] ability" to follow through with services. Both father and Hauswirth also testified that father never asked the county for assistance in setting up services. Moreover, father fails to identify any specific modification or adjustment to the case plan that would have helped

him. Father's case plan included the requirement that he work with the county's disability services; the record demonstrates that father participated in those services for a number of months but stopped participating because he felt they were no longer necessary. On this record, the district court did not abuse its discretion by determining that the county made reasonable and active efforts—that were appropriate to father's specific needs—to engage father in his case plan for the purpose of promoting reunification.

Finally, father argues that the record reflects that the county failed to assist him in "overcoming the barriers" that he faced in completing the requirement of his case plan that he attend therapy. Father asserts that various therapy providers and the guardian ad litem "continually hampered" his efforts to obtain and utilize therapy. The record does not support father's assertions. Instead, the record demonstrates that father's own conduct and inability to make progress in therapy caused him to fail to complete this aspect of his case plan. For instance, father's therapy sessions with the child and a clinical social worker were discontinued after father took a phone call during a session and became aggressive and was yelling and swearing on the phone. And, after attending several individual therapy sessions with a therapist at HDC, the therapist decided to stop working with father because five months had passed with no progress and father had demonstrated insight into his behavior only one time in ten sessions. When father later attempted to schedule an appointment with that therapist in November 2020, around the time trial was initially scheduled, the therapist declined to meet with father because he still was not demonstrating insight and she did not know what his motivations were for attempting to make an appointment. Contrary to father's contentions, the record demonstrates that father was

provided with contact information for therapy several times and either refused those services or failed to meaningfully participate in them. He cannot successfully argue that the county failed to make reasonable or active efforts on that basis.

For the above reasons, we conclude that the district court did not abuse its discretion by determining that the county made reasonable and active efforts to reunify father and the child.

Affirmed.