STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1815

In re the Matter of the Welfare of the Child of: D. R. L. and J. L. D., Parents.

Filed June 26, 2023
Affirmed
Bryan, Judge

Koochiching County District Court
File No. 36-JV-22-547

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Considered and decided by Larkin, Presiding Judge; Bryan, Judge; and Florey, Judge.*

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

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal following the termination of their parental rights, appellants challenge the district court's determinations that statutory bases for termination exist, termination is in the best interests of the child, and the county provided reasonable efforts to reunify the family. In addition, appellants argue that the district erred in denying their alternative petitions to transfer custody. We affirm.

FACTS

Appellant-father and appellant-mother are the parents of one child, born in 2017. In January 2022, respondent Koochiching County Public Health and Human Services (the county) filed a CHIPS petition against mother and father alleging that the child was in need of protection or services (the CHIPS petition) after mother was arrested for driving under the influence of methamphetamine. The child was placed in emergency protective care and later placed in the care of his maternal aunt. At the time that the CHIPS petition was filed, father was in custody awaiting sentencing for possession of methamphetamine. Father was subsequently sentenced to a term of imprisonment and he is eligible for release in September 2024. Mother and father entered admissions to the CHIPS petition, and the district court adjudicated the child in need of protection or services on January 26, 2022.

Two months after the child was removed, the county filed an out of home placement plan ("case plan") setting forth reunification requirements for mother and father. The case plan required mother to obtain a chemical use assessment, start individual therapy, obtain chemical health services, abstain from using any illegal or unprescribed drugs, submit to

random drug tests, and avoid spending time with people that use illegal substances. The case plan also allowed for mother to visit with the child three or more times a week under supervision. The case plan was later updated to require that mother maintain stable housing and enroll the child into therapy. The case plan required that father obtain an updated chemical use assessment, follow the recommendations of the assessment, comply with all conditions of probation, abstain from using any illegal or unprescribed drugs, and submit to random drug tests. Mother signed the case plan, but father did not.

On August 16, 2022, the county petitioned to terminate mother and father's parental rights. A month later, the district court relieved the county of its duty to provide reasonable efforts towards reunification under Minnesota Statutes section 260C.012 (2022). The case proceeded to trial, and on November 7 and 8, 2022, the district court heard testimony from mother, father, the social worker, four counselors who worked with mother in various therapy programs, the child's maternal grandparents, the child's maternal aunt, the child's former foster parent, and the child's guardian ad litem (GAL). The following factual summary is based on the evidence presented at trial.

The child's maternal grandfather testified that mother had a long history of chemical dependency issues and continues to surround herself with "the wrong crowd." He believed that termination of mother's parental rights was in the best interests of the child, and he expressed concern about the child going back to mother's care and her ability to remain sober. The child's maternal grandmother agreed that termination of parental rights was in the best interests of the child. Additionally, the child's maternal aunt and child's former

foster parent testified that they supported the termination of mother and father's parental rights given their concerns that the child would not be safe in mother's care.

Father testified that after he learned of the CHIPS petition proceedings, he immediately reached out to the social worker to determine what he needed to do to reunify with the child. The social worker provided him with a draft case plan and specific goals for father to accomplish. In his testimony, father acknowledged that he had direct contact with the social worker and that the social worker gave him a "rough draft of things [he] really needed to work on." The social worker testified that she emailed father with a draft case plan and discussed what father would need to work on, but because the outcome of father's criminal case remained uncertain—including whether father would be referred to treatment court—she did not "want to give [father] an exact plan." Father was not referred to treatment court and was sentenced to prison until his anticipated release in 2024.

After sentencing, father was not provided with and did not sign the final, written case plan that the county filed with its CHIPS petition. However, both father and the social worker testified that they remained in contact and that they discussed father's enrollment in parenting classes, inpatient treatment, and college courses while incarcerated. In addition to maintaining direct contact with father, the social worker provided father with parenting materials—including a book to assist father with a parenting course—and an outline of programming. The social worker testified that father was complying with the terms laid out in the case plan while incarcerated, despite not having signed the case plan. The social worker also acknowledged that she had minimal contact with the detention facility but explained that this was because she was communicating directly with father.

The social worker testified that, after the child was removed from mother's care in January 2022, mother obtained a chemical use assessment, which recommended outpatient treatment. Mother enrolled in a treatment program at Rainy River Recovery, an addiction treatment center. On February 3, mother tested positive for methamphetamine use, but she continued participating in programing at Rainy River. The county began allowing her unsupervised visits with the child on the weekends. In June, mother spent time with an individual who was known by the social worker to abuse drugs. Shortly after, mother tested positive for marijuana use and admitted using marijuana to her social worker. In June, mother planned a weekend camping trip with the child and another person who was known by the county to abuse methamphetamine. The social worker testified that she asked mother to have this person submit a drug test before the trip. Mother and this person went to the county offices to submit to the requested drug test, but ultimately, this person did not take a drug test. Mother went camping with the child and this person anyway and initially denied that she did so to the social worker. The social worker testified that mother did not seem to think that the people with whom she associated was an issue for her or a barrier to her sobriety.

Between February and summer 2022, mother began experiencing strokes leading to bouts of hospitalization. The social worker testified that she suspected mother of misusing her prescription medication, but mother denied doing so. In July, mother had an approved visit with the child at a county fair. Afterward, a law enforcement officer stopped mother's vehicle under suspicion of driving while impaired. The matter had not been formally charged and test results remained pending with the Minnesota Bureau of Criminal

Apprehension as of the time of the termination trial. In September 2022, mother admitted to relapsing and using methamphetamine. Mother completed an updated chemical use assessment and began an inpatient treatment program at Recovery Hope Treatment Center. The program offered medication management, mental health therapy, and other services. Mother's counselor at Recovering Hope testified that, as of the start of trial, mother had taken advantage of services and actively participated in the program. She testified that although mother missed some programing due to health issues, mother regularly attended programs and had almost progressed into needing a lower level of care.

Mother also provided testimony regarding her immediate future. When asked what mother's plans were outside of treatment, mother testified, "I haven't gotten that far in planning yet." Mother testified that she currently had an apartment but that she did not know how long she would have it for as she was not up to date on her rent. Mother did not know where she would live after finishing treatment but wanted to move away. Mother also testified that she had a vehicle but admitted that her license was revoked due to driving under the influence in January and that she had picked up additional charges for driving after the revocation of her license. Finally, mother testified that she was looking to move and had an option for employment, but it is unclear from the record whether mother had secured employment after treatment.

Ultimately, the social worker opined that it would not be in the best interests of the child to be reunified with or continue to have a relationship with either parent. She testified that mother failed to maintain sobriety, failed to remain law abiding, and did not complete

the recommended therapy. She testified that father had remained sober while incarcerated, but he was not available to parent in the foreseeable future.

On December 12, 2022, the district court terminated mother and father's parental rights. The district court determined that the county proved—by clear and convincing evidence—the facts necessary to show the existence of the following three statutory bases for terminating the parental rights of mother and father: (1) mother and father failed to satisfy their parental duties; (2) mother and father were "palpably unfit" to parent the child; and (3) reasonable efforts failed to correct the conditions leading to the out of home placement. The district court also determined that the county made reasonable efforts to reunify the family but that those efforts were unsuccessful. Finally, the district court determined that termination of parental rights was in the child's best interests, but a transfer of custody was not. Mother and father appeal these decisions.

DECISION

First, mother and father contest the district court's decision to terminate their parental rights. Second, they contest the denial of their alternative permanency petitions, which would have transferred legal custody to the maternal aunt without terminating the parents' rights.[1] We are not persuaded to reverse these decisions.

[1] Father also argues that the district court erred in failing to order a contact agreement between himself and the child. Although the relevant statute allows for an adopting parent to enter into an agreement with the birth parent regarding contact, such an agreement must be approved in writing by the adoptive parents and the social services agency, and the district court must first find that the agreement is in the child's best interests. Minn. Stat. § 260C.619 (2022). In this case, father submitted a proposed contact agreement, but neither the adoptive parent nor the county approved the proposal. On appeal, father does not provide relevant legal authority or analysis to support his position that the district court

I. Decision To Terminate Mother's and Father's Parental Rights

"Parental rights are terminated only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). A district court may terminate a person's parental rights when at least one statutory condition under Minnesota Statutes section 260C.301, subdivision 1(b) (2022), exists to support termination, termination is in the child's best interests, and reasonable efforts toward reunification were either made or not required. *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008); *see* Minn. Stat. § 260.012(a) (2022) (identifying circumstances in which reunification efforts are not required). The county bears the burden of proving a statutory ground for termination and must do so by clear and convincing evidence. Minn. R. Juv. Prot. P. 58.03, subd. 2(a); *In re Welfare of Child of H.G.D.*, 962 N.W.2d 861, 873 (Minn. 2021).

When reviewing termination decisions, appellate courts give "[c]onsiderable deference" to the district court due to its "superior position to assess the credibility of witnesses." *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009) (quotation omitted); *see also Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). We review the district court's findings of the underlying facts for clear error (taking into account the clear-and-convincing evidence standard of proof), but we review the determination of whether a particular statutory basis for involuntarily terminating parental

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need not follow the provisions of section 260C.619, and we decline to address this argument. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed question); *In re Child of P.T.*, 657 N.W.2d 577, 586 n.1 (Minn. App. 2003) (applying *Wintz* in an appeal regarding termination of parental rights), *rev. denied* (Minn. Apr. 15, 2003).

rights is present for an abuse of discretion. *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 900-02 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). A factual finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted). When reviewing factual findings for clear error, we do not reconcile conflicting evidence or "weigh the evidence as if trying the matter de novo." *In re Civil Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted); *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* in a juvenile protection appeal), *rev. denied* (Minn. Dec. 6, 2021). "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Kenney*, 963 N.W.2d at 223 (quotation omitted). When reviewing a decision for an abuse of discretion, we determine whether the district court's decision is against logic or the factual findings. *In re Welfare of A.M.C.*, 920 N.W.2d 648, 660 (Minn. App. 2018).[2]

[2] We note that neither mother nor father identifies any specific factual findings that they believe were clearly erroneous. Nor do they argue that the factual findings made by the district court do not support the district court's determination. Instead, they argue that the evidence presented is consistent with alternative findings that the district court should have made and that, based on these alternative findings, the district court should not have terminated their parental rights. Because it is immaterial that the record might provide a basis for these alternative findings, *Kenney*, 963 N.W.2d at 223, we do not accept mother and father's argument. Nevertheless, we proceed to review the district court's underlying factual findings for clear error and review for an abuse of discretion the determinations that a statutory basis for termination exists, termination is in the child's best interests, and the county made reasonable efforts toward reunification.

A. Statutory Basis for Termination

Mother and father first argue that the county did not present sufficient evidence that a statutory basis for termination exists. We conclude that the district court's factual findings are supported by the record and its determination that a statutory basis for termination exists is consistent with logic and the factual findings.

Minnesota Statutes section 260C.301 provides nine bases for termination, including if "the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship." Subd. 1(b)(2) (2022). Parental duties include "providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able." *Id.* To determine that this statutory basis exists, the "district court must also determine that, at the time of termination, the parent is not presently able and willing to assume [their] responsibilities and that the condition will continue for the reasonably foreseeable future." *A.M.C.*, 920 N.W.2d at 655; *see also In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). Here, the district court determined the county proved by clear and convincing evidence that both mother and father failed to comply with the duties and responsibilities imposed on them as a parent and that they would not be able to assume their parental duties in the reasonably foreseeable future. We address the district court's findings with respect to mother and father in turn.

As for mother, the district court found that mother "faile[d] to complete multiple treatment programs for her addiction and remain sober," and that mother did not have stable

housing, a driver's license, or verified employment. The district court found that mother had "been to at least four or five in-patient chemical dependency treatment programs and at least two out-patient programs over the last ten years" and that, at the time of trial, mother "had only maintained a short period of sobriety in a controlled and supervised setting." The district court also found that mother had not established a sober network to help her remain sober outside of a controlled setting. In addition, the district court reasoned that mother's choice to have continued relationships with people using illegal substances "call[ed] into question the testimony of all of Mother's treatment providers that indicated she was learning concepts and applying them to her life." The district court found that these factors established that mother could not offer the child safety and stability.

The record supports the district court's findings. The county established a case plan for mother which required her to abstain from illegal and nonprescribed substances and avoid associating with people who were known to abuse substances. The record shows that mother tested positive for methamphetamine in February 2022, tested positive for marijuana in June 2022, and admitted to using methamphetamine again in September 2022. The record also shows that mother spent time with people that the county believed were abusing drugs, including going on a weekend camping trip with the child and one such person, and later denying that she did so. Mother conceded that she was discharged without completion of an outpatient treatment program in 2022, and at the time of trial, mother was enrolled in inpatient treatment, but she had only participated in the program for three weeks. Mother's father, mother, and sister testified that mother had a long history of substance abuse and had been through numerous inpatient treatment programs before.

Along with the county social worker, mother's family expressed concerns about mother's ability to remain sober in the future and each testified that they supported the county's termination petition. Additionally, mother could not provide details regarding her living situation after completion of her inpatient treatment program, testifying that she "ha[d]n't gotten that far in planning yet," did not know how long she would have her current apartment because she was behind on rent payments, and could not legally drive because her license was revoked for driving under the influence. Finally, while mother testified that she had an option for employment in the future, the record at trial was unclear whether mother had secured employment.

Mother argues that other evidence presented indicates that she complied with her case plan. Under our standard of review, however, we do not reweigh conflicting evidence and we do not consider whether this evidence might provide a reasonable basis for inferences and findings contrary to the factual findings that the district court made. *Kenney*, 963 N.W.2d at 223. For these reasons, we conclude that substantial evidence in the record before us clearly and convincingly supports the district court's factual findings regarding mother's ability and willingness to comply with the duties of a parent and child relationship. In addition, given these findings of fact, we conclude that the district court's determination that a statutory basis for termination exists under subdivision 1(b)(2) is consistent with these factual findings and logic.

With respect to father, the district court found that father had not been present in the child's life, did not have a strong bond with the child, and had not exercised parenting time in the past due to incarceration and a difficult relationship with mother. The district court

found that father had not provided regular care for the child in the past and that he will be unable to in the foreseeable future based on his "ongoing issues with chemical dependency and the legal system." The district court noted that father would be incarcerated until September 2024 and had been unable to demonstrate sobriety when not incarcerated.

These findings are also supported by the record. Father testified that he did not "have the greatest bond" and was "locked up through a lot of [the child's] life." He testified that he helped mother care for the child during the first 10 months of the child's life but that after they separated, he "didn't really see [the child] very much." Both the child's daycare provider and child's maternal aunt testified that the child did not refer to father as "dad" but instead referred to father by his first name. In his testimony, father agreed that he would not be able to reunify with the child due to his incarceration status. Father also testified that he first abused substances when he was around seven years old and had been addicted to methamphetamine since he was 19 years old. Although father was attending treatment and had been sober since his incarceration, father had not demonstrated ongoing sobriety outside of that secured setting.

Father argues that conflicting evidence indicates that he provided financial support to the child, had lived with and cared for the child at one point in time, and expressed a desire to remain in contact with the child. But, as stated above, our role is not to reweigh evidence. *Kenney*, 963 N.W.2d at 223. Thus, we conclude that substantial evidence in the record before us clearly and convincingly supports the district court's factual findings regarding father's ability and willingness to comply with the duties of a parent and child

relationship. We also conclude that the district court's determination that a statutory basis exists under subdivision 1(b)(2) is consistent with these factual findings and logic.[3]

B. Best Interests Factors

Mother and father next challenge the district court's determination that termination of their parental rights was in the child's best interests.

In termination proceedings in which at least one statutory basis to terminate parental rights exists, the best interests of the child is the paramount consideration. Minn. Stat. § 260C.301, subd. 7 (2022); *see also J.R.B.*, 805 N.W.2d at 902. The 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 W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004) (quotation omitted); *see* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) (requiring the district court to make findings addressing these three factors in proceedings to terminate parental rights). Competing interests of the child "include a stable environment, health considerations, and the child's preferences." *In re Welfare of M.A.H.*, 839 N.W.2d 730, 744 (Minn. App. 2013).

Mother reiterates the arguments made regarding whether a statutory basis for termination exists, asserting that the evidence presented is consistent with factual findings that the district court did not make, including findings that mother was capable of caring

[3] Based on our determination regarding subdivision 1(b)(2), we need not address the remaining statutory bases for termination. *See A.M.C.*, 920 N.W.2d at 654 (recognizing that only one statutory ground must be proven to support termination of parental rights).

for the child, loved the child very much, established a bond with the child, and was taking steps in the right direction to be able to at some point provide a safe home. Father similarly directs our attention to evidence indicating that the child knew that he was the child's father, he loved the child, worked hard while incarcerated, and called the child frequently. Both parents argue that, in light of this evidence, the district court abused its discretion when it weighed the three best interests factors.

We are not convinced for two reasons. First, as before, adopting this argument requires us to reweigh conflicting evidence and make factual findings, something appellate courts do not do. *Kenney*, 963 N.W.2d at 223; *see also In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (recognizing that best interests findings must be made by the district court and that a best-interests determination "is generally not susceptible to an appellate court's global review of the record" (quotation omitted)).

Second, the district court duly balanced the three best interests factors. The district court reasoned that the child had "some interest in maintaining a parent-child relationship" but that because he was only five years old, it was "difficult to determine a preference." The district court also determined that both mother and father had an interest in preserving their parental rights and maintaining a relationship with the child. In its analysis regarding the third factor, the district court considered the degree to which the child had been affected by multiple transitions in a short amount of time and had been placed in dangerous situations by mother. The district court emphasized that the child needed a "stable, loving, structured childhood going forward" which could only occur if mother and father's parental rights were terminated. The district court also relied on testimony from the social worker,

GAL, and the child's maternal relatives, which supported the termination of mother and father's parental rights. We discern no abuse of discretion in the district court's best interests factors analysis or the weight given to each factor.

C. Reasonable Efforts[4]

Father contends that the district court abused its discretion when it determined that the county provided reasonable reunification efforts. Again, we are not persuaded.

For the county to satisfy its burden to provide reasonable efforts, the county's efforts must reasonably serve to prevent placement of children outside the home, to rehabilitate the family, and to reunify the family. *See* Minn. Stat. § 260.012(a) (2022). Reasonable efforts are "services that go beyond mere matters of form so as to include real genuine assistance." *In re Welfare of Child. of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *rev. denied* (Minn. Mar. 28, 2007). In determining whether the county's efforts are reasonable, the court should consider whether the services provided were:

> (1) selected in collaboration with the children's family and the children;
> (2) tailored to the individualized needs of the children and the children's family;
> (3) relevant to the safety and protection of the child;
> (4) adequate to meet the needs of the child and family;
> (5) culturally appropriate;
> (6) available and accessible;
> (7) consistent and timely; and
> (8) realistic under the circumstances.

[4] Mother does not contest this aspect of the district court's termination decision.

Minn. Stat. § 260.012(h) (2022). Whether a county has satisfied this burden depends on the facts of each case. *See A.M.C.*, 920 N.W.2d at 663. Incarceration of a parent can change what is considered "reasonable," but incarceration alone does not excuse a county from making reasonable efforts. *In re Welfare of A.R.B.*, 906 N.W.2d 894, 899 (Minn. App. 2018).

In addition to the statutory requirement that the county make reasonable efforts, a case plan shall be prepared within 30 days after any child is removed from the home and placed in foster care. Minn. Stat. § 260C.212, subd. 1(a) (2022). Further, subdivision 1(b) (2022) defines a case plan as "a written document . . . that is prepared by the responsible social services agency jointly with the child's parents [and others]." These statutory provisions can be considered together with the provisions mandating the county to make reasonable efforts, meaning that failure to follow the statutory requirements regarding written case plans can, in certain circumstances, amount to a failure to make reasonable efforts to reunify the family. *See A.R.B.*, 906 N.W.2d at 900 ("Because the county did not provide D.T.R. with a written case plan . . . or even attempt to determine whether any prison programming might have been available to D.T.R. and suitable to include in a case plan . . . , the county failed to make reasonable efforts.").

Father argues that the district court abused its discretion when it concluded that the county made reasonable efforts, contending that the county's failure to strictly comply with the case plan requirements in section 260C.212 amounts to a failure to make reasonable efforts. Father asserts that the county did not develop a case plan with father within 30 days of the child's removal, failed to obtain father's signature on the case plan, and failed

to identify programs in which father could participate while incarcerated. In support of this argument, father analogizes these allegations of statutory noncompliance to those discussed in *A.R.B.*, 906 N.W.2d at 899, and *In re Welfare of A.D.B.*, 970 N.W.2d 725, 733-34 (Minn. App. 2022). The county does not dispute that it failed to satisfy certain provisions of section 260C.212. However, the county argues that such deficiencies do not automatically or necessarily preclude a determination that the county made reasonable efforts. We agree with the county.

Neither this court nor the Minnesota Supreme Court has adopted a rule requiring strict compliance with section 260C.212 in order to satisfy the statutory obligation to provide reasonable efforts. We decline to do so here, observing that such a rule would conflict with previous decisions in which we have upheld a determination of reasonable efforts despite similar deficiencies and failures to strictly comply with section 260C.212. *E.g.*, *In re Welfare of R.M.M.*, 316 N.W.2d 538, 542 (Minn. 1982) (concluding that an absence of a written case plan does not necessarily warrant reversal or preclude a finding that the county made reasonable efforts); *In re Welfare of J.J.B.*, 390 N.W.2d 274, 280 (Minn. 1986) (concluding that the failure of the social worker to read the case plan word for word to the parent did not preclude a determination that the county made reasonable efforts where the terms of the plan were known to that parent); *In re Welfare of J.J.L.B.*, 394 N.W.2d 858, 863 (Minn. App. 1986) (concluding that the lack of a written case plan was not reversible error because the parent clearly knew what was required of her under the plan), *rev. denied* (Minn. Dec. 17, 1986).

Instead of requiring strict compliance with section 260C.212, we have emphasized the circumstances of each case and the nature of the county's noncompliance in the context of how and whether the county's conduct prejudiced the parent or otherwise constituted something more than a harmless error. *E.g.*, *In re Welfare of D.J.N.*, 568 N.W.2d 170, 176 (Minn. App. 1997) (refusing to reverse termination of parental rights for harmless error); *In re Welfare of S.R.A.*, 527 N.W.2d 835, 839-40 (Minn. App. 1995) (refusing to reverse termination for harmless error) (implicitly overruled on other grounds by *In re Welfare of D.D.G.*, 558 N.W.2d 481, 485 (Minn. 1997)), *rev. denied* (Minn. Mar. 29, 1995).

Here, we conclude that, unlike in *A.R.B.* and *A.D.B.*, the county's failure to strictly comply with section 260C.212 in this case does not preclude a determination that the county made reasonable efforts to reunify. In *A.R.B.*, the county never prepared a written case plan, even after the incarcerated parent requested one. *A.R.B.*, 906 N.W.2d at 895. Furthermore, the county in *A.R.B.* made no attempt to help the incarcerated parent identify available programs. *Id.* at 895, 899. In fact, this court emphasized that the social worker's own testimony revealed that the social worker was unable to articulate at trial the steps that the incarcerated parent needed to take. *Id.* In *A.D.B.*, this court reversed a posttrial determination that reasonable efforts would have been futile, reasoning in part that the county's failure to comply with section 260C.212 amounted to a failure to provide reasonable efforts because the county made no effort to identify potentially suitable

programming for the incarcerated parent and did not even attempt to contact the incarcerated parent's case manager at the detention facility. *A.D.B.*, 970 N.W.2d at 732.[5]

In contrast with the facts of both *A.R.B.* and *A.D.B.*, father in this case received a draft and final written case plan. In addition, father testified after he learned of the CHIPS petition, he immediately called the social worker to see what he needed to do to reunify with the child. Father further testified that the social worker gave him a "rough draft of things [he] really needed to work on." Although the social worker did not have much contact with the detention facility, unlike *A.R.B.* and *A.D.B.*, the social worker explained that this was because she was in direct communication with father. Father's testimony also showed that he and the social worker remained in direct communication throughout the CHIPS proceeding, and that they discussed father's programming. In addition, the social worker provided father with parenting materials to assist him in a parenting course and an outline of items for father to work on. Finally, the social worker also testified that father was complying with the terms laid out in the case plan even though he had not signed the final case plan that the county filed with the district court.

Given these facts, father has not identified how he was prejudiced by the county's failure to strictly comply with the provisions of section 260C.212. Absent more, we conclude that the district court did not abuse its discretion when it determined that the

[5] We note that here, unlike in *A.D.B.*, the district court made a pretrial determination of futility and relieved the county of its statutory obligation to provide reasonable efforts. Father does not challenge this decision and only argues that the county failed to make reasonable efforts prior to the date of the district court's pretrial determination of futility.

county provided reasonable efforts to father, despite not strictly complying with the provisions of 260C.212.

II. Decisions Denying Alternative Petitions to Transfer Custody

Finally, mother and father argue that the district court erred in denying their petitions to transfer custody of the child to the child's maternal aunt. We are not convinced to reverse this decision.

The Minnesota legislature has created various alternatives to termination petitions, including petitions to transfer legal custody to a relative. Prior to 2022, Minnesota law stated a preference for "termination and adoption," without specifying whether that included non-relative adoptions: "[t]ermination of parental rights and adoption or guardianship to the commissioner of human services through a consent to adopt, are preferred permanency options for a child who cannot return home." Minn. Stat. § 260C.513(a) (2021 Supp.) (amended 2022). This provision also stated that if the district court determines that these options are "not in the child's best interests, the court may transfer permanent legal and physical custody of the child to a relative." *Id*. In 2022, however, the Minnesota Legislature amended this provision to make clear that termination of parental rights and adoption by a non-relative is no longer a preferred placement option:

> For a child who cannot return home, a permanency placement with a relative is preferred. A permanency placement with a relative includes termination of parental rights and adoption by a relative, guardianship to the commissioner of human services through a consent to adopt with a relative, or a transfer of permanent legal and physical custody to a relative. The court must consider the best interests of the child and section 260C.212, subdivision 2, paragraph (a), when making a permanency determination.

2022 Minn. Laws ch. 98, art. 8, § 23; Minn. Stat. § 260C.513(a) (2022).

Mother and father argue that the district court erred by not granting their alternative petitions for transfer of legal custody to the maternal aunt. Specifically, mother cites to the current version of section 260C.513(a),[6] arguing that the district court erred because transfer of legal custody was preferred to termination of parental rights. We are not convinced to reverse the district court's denials of mother and father's petitions for three reasons. First, contrary to the parents' argument, section 260C.513(a) includes termination of parental rights as a preferred permanency placement option if the termination is accompanied by a relative adoption: "[a] permanency placement with a relative includes termination of parental rights and adoption by a relative." *Id.* After the termination decision, the district court proceeded with adoption of the child by the maternal aunt as the permanency placement option and did not move forward with adoption by a non-relative.

Second, the district court determined that the alternative transfer of legal custody was not in the child's best interests. Under both versions of the statute, the district court can grant a petition for transfer of legal custody if it determines that the transfer is in the best interests of the child. Here, the district court found that a transfer of legal custody was

[6] The county filed its petition prior to the amendment's effective date, but the district court filed its decision after the amendment's effective date. For purposes of this opinion, we assume without deciding that the current version of section 260C.513(a) applies. *Cf. Interstate Power Co. v. Nobles County Bd. of Comm'rs,* 617 N.W.2d 566, 575 (Minn. 2000) (noting that, generally, appellate courts apply the law in effect at the time they file their decision, unless doing so will alter vested rights or result in manifest injustice); *McClelland v. McClelland*, 393 N.W.2d 224, 226-27 (Minn. App. 1986) (making a similar observation about district courts), *rev. denied* (Minn. Nov. 17, 1986).

not in the child's best interests because it would not result in the necessary stability and permanency that could only occur upon termination of the parties' parental rights.

Third, to the extent that mother and father's argument can be construed as challenging this determination, we conclude that the district court did not clearly err in making its underlying factual findings and its ultimate determination was not against logic or these facts. *See In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321 (Minn. App. 2015) (reviewing the facts underlying a decision to transfer legal custody for clear error and the ultimate decision for an abuse of discretion), *rev. denied* (Minn. July 20, 2015).[7] The record includes the social worker's testimony that a continued relationship with the parents would cause harm to the child. In addition, the evidence presented shows that both parents struggled with sobriety, the child lacks a significant bond with father, several relatives supported termination of mother and father's parental rights, and the child was negatively affected by multiple transitions and instability. This evidence clearly and convincingly supports the underlying factual findings made by the district court and based on these findings, we discern no abuse of discretion in the decision to deny mother and father's alternative petitions to transfer legal custody.

Affirmed.

[7] As before, neither mother nor father identifies specific factual findings that they believe were clearly erroneous. Nevertheless, we review both the underlying findings and the ultimate decisions made by the district court.