

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1370**

In the Matter of the Welfare of the Children of:
A. L. D., Z. P. and J. J. D., Parents.

**Filed February 8, 2011
Affirmed
Kalitowski, Judge**

St. Louis County District Court
File No. 69VI-JV-09-334

Terri Port Wright, Cloquet, Minnesota (for appellant J.J.D.)

Mark S. Rubin, St. Louis County Attorney, Patricia I. Shaffer, Assistant County Attorney, Duluth, Minnesota (for respondent St. Louis County Public Health and Human Services Agency)

Colleen Loraas, Canyon, Minnesota (guardian ad litem)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant father J.J.D. challenges the district court's order transferring permanent physical and legal custody of child C.D. to C.D.'s maternal grandparents, arguing that: (1) the district court failed to make adequate findings that the transfer of custody was in C.D.'s best interests; and (2) St. Louis County Public Health and Human Services Agency did not make reasonable efforts to reunite C.D. with J.J.D. We affirm.

DECISION

When reviewing a permanent-placement order, we determine whether the district court's findings "address the statutory criteria and are supported by substantial evidence, or whether they are clearly erroneous." *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996) (quotation omitted). We will set aside the district court's factual findings only if a review of the entire record "leaves us with a definite and firm conviction that a mistake has been made." *In re Welfare of D.T.J.*, 554 N.W.2d 104, 107 (Minn. App. 1996) (quotation omitted).

After a district court finds a child to be in need of protection or services and the child is placed in foster care, a district court can transfer permanent physical and legal custody to the child's relative if it is in the best interests of the child. Minn. Stat. § 260C.201, subs. 1(a)(2), 11(a), 11(d)(1) (Supp. 2009). When transferring custody, the district court must make detailed findings on: (1) how the best interests of the child are served by the order; (2) the nature and extent of reasonable efforts to reunite the family; (3) the parent's efforts and ability to use services to correct the conditions that led to out-of-home placement; and (4) how the conditions that led to the out-of-home placement have not been corrected. *Id.*, subd. 11(i) (Supp. 2009). Appellant challenges the district court's findings addressing the first two factors.

I.

Appellant argues that the district court failed to make sufficient written findings on how the transfer of custody is in C.D.'s best interests. In a permanency proceeding, the "best interests of the child" means all relevant factors to be considered and evaluated."

Id., subd. 11(c)(2) (Supp. 2009). A district court's best-interests findings should provide insight into the facts and opinions most persuasive to the district court's decision. *In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990). "[A]n appellate court's combing through the record to determine best interests is inappropriate because it involves credibility determinations." *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003) (citing *Schmidt v. Schmidt*, 436 N.W.2d 99, 105 (Minn. 1989)).

In its order transferring custody, the district court referenced the best-interests findings it made in its orders in a separate CHIPS file for C.D. Although more specific findings on how the transfer of C.D.'s permanent custody to her maternal grandparents is in her best interests would be preferable, the district court did make findings of fact that address this factor. The district court noted that J.J.D.'s criminal history includes felony assaults, first-degree burglary, violation of a domestic-abuse no-contact order, and possession of a stolen firearm. The district court also noted that J.J.D. had been charged with 19 criminal offenses since the filing of the CHIPS petition, less than one year before the first day of trial. The district court found that J.J.D. was unwilling to participate in the Range Intervention Project, which was ordered because J.J.D. "has a significant history of violent conduct toward women and others on his record," and that J.J.D. failed to recognize the effect of his conduct on C.D.

The district court found that J.J.D. had very little contact with C.D. during the year-long permanency proceeding because of his repeated incarceration or decisions to reschedule visits, completing only two 1-hour visits. The district court concluded that

appellant's belief that his lack of contact with C.D. did not adversely affect his relationship with her indicates "a significant lack of insight."

The district court discussed J.J.D.'s financial instability and found that J.J.D. failed to demonstrate any effort to become employed or show that he is disabled. Finally, the district court addressed the testimony of numerous witnesses about C.D.'s experience in the home of her maternal grandparents and found that she is "happy and well-adjusted" and "appear[s] to be thriving." It also found that C.D.'s maternal grandparents are "the only parents that [C.D.] has known," that she has a close relationship with her half-brother, and that separation from him would not be in her best interests.

Testimony of a social worker and the guardian ad litem indicates that C.D.'s maternal grandparents have provided excellent care in a safe and stable home and that C.D. is closely bonded to them and to her half-brother. The record also shows that C.D. has had little contact with J.J.D., who has taken few steps to strengthen his relationship with her or demonstrate that he can provide a stable environment for her. When recommending the transfer of custody, the guardian ad litem noted that transferring custody would allow both parents to continue contact with C.D. and would preserve the option of returning C.D. to the custody of her parents if they can provide a safe, stable home for her.

We conclude that the district court's findings indicate the factors it considered when determining that transfer of permanent custody was in C.D.'s best interests and that these findings are supported by substantial evidence.

II.

Appellant argues that the district court's findings as to the reasonable efforts made by St. Louis County Public Health and Human Services Agency (the county) to reunite C.D. and J.J.D. are not supported by substantial evidence. *See A.R.G.-B.*, 551 N.W.2d at 261 (stating burden of proof). "Reasonable efforts" are made where the responsible social-services agency exercises due diligence "to use culturally appropriate and available services to meet the needs of the child and the child's family." Minn. Stat. § 260.012(f) (Supp. 2009); *see also* Minn. Stat. § 260.012(h) (Supp. 2009) (listing factors to consider in determining whether reasonable efforts have been made). "[A] case plan that has been approved by the district court is presumptively reasonable." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 388 (Minn. 2008). Whether services constitute "reasonable efforts" depends on the nature of the problem, the duration of the county's involvement, and the quality of the county's effort. *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990).

J.J.D.'s out-of-home placement plan addressed concerns about violence, drug use, unemployment, and homelessness. The plan included submitting to random urinalysis, participating in a domestic-violence-intervention program, completing a mental-health assessment and following its recommendations, attending supervised visits with C.D., and demonstrating the ability to financially support C.D. and provide a safe, stable home for her. The district court adopted the placement plan in September 2009. Because of concerns about drug use, the district court ordered J.J.D. to complete a hair-follicle drug test before visits with C.D. could begin.

The record includes testimony from two social workers about their outreach to J.J.D. and discussions with him about his case plan. The county facilitated appellant's participation in the Range Intervention Project nearest his home and at an alternative location. Although transportation to the alternative site was a problem, appellant did not inform the county that he was not participating in that program or request help to find another treatment option. The record shows that appellant delayed completing the drug test necessary to begin visitation with C.D., then canceled and rescheduled several visits. Visits were also canceled on several occasions because appellant was in custody, including for the two months before trial. Appellant did not complete the mental-health assessment until eight months after it was ordered, and the social workers testified that they did not follow up on the results of the assessment because J.J.D. was in custody and could not receive many of the recommended services. The district court did not credit J.J.D.'s testimony that he made numerous calls to try to arrange the assessment earlier. *See In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) (requiring reviewing courts to defer to district court credibility determinations). The county also offered to facilitate J.J.D.'s participation in Intensive Family-Based Services, which offers parenting education tailored to the goals of each family. J.J.D. scheduled—but did not attend—an initial meeting, explaining at trial that he could not complete the program because he was being held in jail.

The record demonstrates that J.J.D. was offered services to address his persistent problem with violence, to support his mental health, to improve his parenting skills, and to develop a connection with C.D. and that the county made concerted efforts to gain

J.J.D.'s participation. But the county was confronted with appellant's repeated incarceration. The district court detailed each service offered to J.J.D. and discussed how those services responded to the reasons for the county's initial intervention. And we conclude that the district court's findings on the county's reasonable efforts are supported by substantial evidence.

Because the district court's findings address the statutory criteria for transfer of permanent custody, are supported by substantial evidence, and are not clearly erroneous, we affirm the district court's decision. *See A.R.G.-B.*, 551 N.W.2d at 261 (stating standard of review).

Affirmed.