STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1485

In the Matter of the Welfare of the Children of:
L. M. O., S. W., II, and M. N. O., Sr., Parents.

Filed February 12, 2018
Affirmed
Bjorkman, Judge

Anoka County District Court
File No. 02-JV-16-528

Susan Drabek, Circle Pines, Minnesota (for respondent L.M.O.)

S.W., II, Kincheloe, Michigan (pro se respondent)

Dorothy M. Gause, Stillwater, Minnesota (for appellant M.N.O., Sr.)

Tony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County)

Sarah Ellsworth, Anoka, Minnesota (for respondent child)

Kathleen Glewwe, Ramsey, Minnesota (guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

This appeal concerns the transfer of permanent legal and physical custody of a child from his biological parents to relatives. Appellant-father challenges the transfer, arguing

that (1) the record does not support the district court's findings regarding the transfer of custody, (2) the county failed to make adequate reunification efforts, and (3) the district court's determination regarding the child's best interests is flawed and insufficient. We affirm.

FACTS

The child came to the attention of Anoka County Social Services (the county) in early March 2016, when he was nine years old and living with his father, appellant M.N.O. Sr.; his mother, respondent L.M.O.; and his then 16-year-old half-brother.[1] The county investigated a report that father had struck the child with a phone cord. Both the child and his half-brother reported a history of father abusing them, detailing various incidents and showing scars on their bodies. The county also learned that father has a history of alcohol abuse, and that the parents have a history of domestic abuse against each other. The family agreed to work with the county, and the county returned the child and his half-brother to the family home subject to a safety plan.

Within weeks, father took the child to a bar, returning home around 1:00 a.m. Father fell asleep on the toilet while the child fell asleep on the living room floor. In the morning, father's brother came to the apartment and discovered father unconscious on an overflowing toilet and the child asleep in a puddle of toilet water. Father's brother was concerned for the child's safety and removed him from the home. When father awoke and discovered the child missing, he called the police. The responding officers noted that father

[1] The child's half-brother is mother's son with respondent S.W. II, who is not participating in this appeal.

was visibly intoxicated, spoke with father and father's brother to learn what had happened, and arrested father for child endangerment. The child subsequently returned home, and the county continued to work with the family.

On May 31, the county conducted a home visit. The investigator noted an "overwhelming" ammonia-like smell of animal urine and feces. The bunk beds in the boys' room were covered in plastic and lacked sheets; it appeared the children slept on the plastic. And the top bed appeared to have dried feces on the plastic covering. In the basement, there were three apparently malnourished dogs and the floor was covered in urine and feces. The washing machine contained a moldy comforter, and father reported that the family used the bathtub to wash clothes. Because of concerns about these living conditions, the county placed both boys on an emergency hold.

The county filed a petition alleging that the children are in need of protection or services (CHIPS). Both children were adjudicated CHIPS as to mother in June, and they were placed with their maternal great aunt and uncle in mid-August. Father was subsequently served with the petition, and on November 28, the district court adjudicated the child CHIPS based on father's unwillingness or inability due to emotional or mental disability to provide proper care and a safe living environment for the child. *See* Minn. Stat. § 260C.007, subd. 6(3), (8), (9) (2016).

The county established a case plan for father, and the district court ordered him to comply with it. Under the plan, father was required to (1) complete a chemical-dependency evaluation and follow all recommendations; (2) complete a psychological evaluation and follow all recommendations; (3) abstain from all mood-altering substances, including but

not limited to alcohol; (4) submit to random urinalysis testing, with a directive that all missed or diluted tests would be presumed positive; (5) complete a domestic-abuse program and follow all recommendations; (6) obtain safe and stable housing for himself and the child; and (7) show up consistently for visits with the child.

Father did not comply with his case plan. Instead, he continued to use marijuana and alcohol, largely failed to submit to random urinalysis testing, was irregular in his visitation, and lacked stable housing. He underwent the required psychological evaluation in March 2017, but disregarded the recommendation that he complete a psychiatric evaluation for medication management to help with his bipolar affective disorder, alcohol-use disorder, and cannabis-use disorder.

By April, the child had been in out-of-home placement for more than ten months. The county filed a petition to transfer permanent legal and physical custody of both boys to their maternal great aunt and uncle with whom they had been living for eight months.

Father's case-plan compliance improved thereafter, but only slightly. He completed a chemical-dependency assessment in May and was diagnosed with a severe alcohol-dependency disorder. But he did not comply with the treatment recommendations and continued to disregard the recommendation that he manage his mental health through medication. He never consistently submitted to random urinalysis testing, sometimes refusing requested testing for months at a time. And while he participated in a domestic-abuse program and visited the child more regularly, especially after the county found a St. Paul visitation site, he did not find stable housing. Rather, he continued to stay with

friends or in his mother's one-bedroom apartment, where he could not be added to the lease.

Trial on the custody-transfer petition occurred on August 16, 2017. In his testimony, father acknowledged that he had not undergone chemical-dependency treatment; he completed only five of the 45 requested urinalysis tests and used both marijuana and alcohol into early 2017; and he had not followed the recommendation to seek medication for his bipolar disorder because he preferred to address it through meditation, yoga, diet, and vitamins.

A psychologist who evaluated the child testified that the child and father have an unhealthy, conflictual relationship, and that the child's living environment in the family home had been "extremely hostile, rigid, punitive, and neglectful." The psychologist explained that the child feels unloved, is extremely self-critical, and has expressed a suicidal ideation, but that he has exhibited resilience and is "thriv[ing] with a non-abusive family member." To continue that positive progress, the psychologist recommended that the child remain with the maternal great aunt and uncle. The guardian ad litem and the social worker likewise testified that they believe it is in the child's best interests that permanent legal and physical custody be transferred to his maternal great aunt and uncle.

The district court ordered the custody transfer, finding that the county made reasonable reunification efforts; that despite those efforts the conditions leading to the child's out-of-home placement had not been corrected and father is unable to provide the

child adequate care in the foreseeable future; and that transferring custody to the maternal great aunt and uncle is in the child's best interests.[2] Father appeals.

D E C I S I O N

On appeal of a juvenile-protection order transferring custody, we apply a two-part standard of review. *See In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321-22 (Minn. App. 2015) (citing *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900-01 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012)), *review denied* (Minn. July 21, 2015). We review factual findings to determine whether they address the statutory criteria and are supported by "substantial evidence," or whether they are clearly erroneous. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). "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 mistake occurred." *D.L.D.*, 865 N.W.2d at 321 (quotation omitted). But we review a district court's ultimate decision that there is a statutory basis for a permanency disposition for an abuse of discretion. *Id.*

A transfer of legal and physical custody to a fit and willing relative is one of several permanency dispositions a district court may order in a child-protection proceeding. Minn. Stat. §§ 260C.513, .515, subds. 1, 4 (2016). An order permanently transferring legal and physical custody of a child must address (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 to reunify the child with the parent; (3) the parent's efforts and ability to use services

[2] The district court also ordered the transfer of custody of the child and his half-brother from mother to her aunt and uncle. That decision is not at issue in this appeal.

to correct the conditions which led to the out-of-home placement; and (4) that the conditions leading to the out-of-home placement have not been corrected to permit the child to safely return home. Minn. Stat. § 260C.517 (2016).

I. Substantial evidence supports the district court's factual findings.

Father argues that the district court made several erroneous findings that cumulatively undermine confidence in the permanency disposition. We address each alleged error in turn.

First, father challenges the district court's finding that he "participated in a psychological assessment conducted by Dr. Winskowski." This challenge is unavailing. While it is true that a licensed doctoral student conducted the assessment, she did so under Dr. Winskowski's supervision. Dr. Winskowski attended part of the assessment interview, reviewed and countersigned the final report, and testified about the assessment process and findings at trial. Moreover, father does not dispute the substance of the report or any of the district court's related findings, including that father "may be unwilling or unable to recognize personal limitations or difficulties, which may serve to increase his risk for engagement in dysfunctional parenting behavior," and has a history of "problematic use of alcohol and marijuana with an accompanying pattern of interpersonal conflict while intoxicated." We discern no error in the district court's findings regarding father's psychological evaluation.

Second, father contests the finding that he has a "history of non-compliance with his medications," noting that none was prescribed for him during this case. We are not persuaded. The non-compliance finding is consistent with father's own reports and

medical history indicating a past pattern of medication refusal. It also is consistent with father's recent conduct; the fact that medication was not prescribed for father during the course of the child's out-of-home placement is directly attributable to father's failure to comply with the explicit recommendation that he consult a psychiatric professional for medication. The record reveals no error in the district court's finding regarding father's medication non-compliance.

Third, father notes two sets of apparent typographical errors in the disposition order. The district court twice used the child's name when describing his half-brother's stated desire to remain in the relative foster home. But these misstatements are plainly no more than that and had no bearing on the district court's decision to transfer custody of the child. Similarly, while the district court twice referred to father as "Mr. Cook," the substance of its findings—that *father* denies abusing the children and *father* fails to comprehend the negative effects of his conduct—is clear and consistent with the record. In short, the district court's isolated referential errors are harmless.

Finally, father argues that the district court erred in finding that he would have to make "exhaustive efforts" to improve his parenting ability. We disagree. The phrase "exhaustive efforts" accurately characterizes the extent to which father's circumstances must change for him to safely parent the child. The case plan set demanding, but reasonable, expectations for father, which he failed to meet. At trial, father substantially acknowledged that failure but declared himself ready and willing to follow the county's recommendations if the child was returned to his care. The district court's finding that father "has demonstrated that he does not have the capacity to parent or to engage in

exhaustive efforts to improve his ability to parent," is supported by the record and implicitly rejects father's promises to change as being too little and too late.

Ultimately, father does not challenge and the record amply supports the district court's critical findings that father has substantial mental-health and chemical-dependency problems that have directly led to abusive and inappropriate parenting behaviors in the past, and that father had, as of the time of trial, taken no more than minimal steps to address those problems.

II. The district court did not abuse its discretion by determining that the county made reasonable reunification efforts.

When a child is removed from the family home, the responsible social services agency must make "reasonable efforts" to reunify parent and child. Minn. Stat. § 260.012(a) (2016). What constitutes "reasonable efforts" depends on the problem presented. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008). A permanent placement out of the family home, such as a transfer of custody, generally is warranted only when reasonable efforts have failed to correct the conditions that led to the out-of-home placement. *See* Minn. Stat. §§ 260.012(e) (addressing "[r]easonable efforts to finalize a permanent plan for the child"), 260C.513 (permanency when child cannot return home) (2016). When ordering such a disposition, a district court must make findings as to the provision of reasonable efforts, based on several enumerated considerations. Minn. Stat. §§ 260.012(h), 260C.517 (2016).

Father argues that the district court abused its discretion by determining that the county made reasonable reunification efforts because it did not make findings as to what

those efforts were or articulate how they were reasonable based on the considerations listed in Minn. Stat. § 260.012(h). This argument is unavailing. The district court found that the county established a court-approved case plan for father. Father never challenged the case plan, so it is presumptively reasonable. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 388 (Minn. 2008). And the district court's detailed findings regarding father's noncompliance demonstrate that his plan specifically identified the problems that contributed to the child's removal from the home—chemical dependency, untreated mental illness, anger-management problems, unstable housing—and guided father toward correcting them.

Further, the record is replete with evidence that the county supported father's progress under the case plan, including making numerous referrals for mental-health, chemical-dependency, and housing services in three different counties; providing transportation assistance; and repeatedly adjusting services and visitation plans to address father's scheduling and transportation difficulties. For the most part, father does not dispute that the county provided these services or argue that they were inappropriate. Nor does he identify any services that the county failed to provide that would have secured his reunification with the child.

On this record, we conclude the district court did not abuse its discretion by determining that the county made reasonable, though unsuccessful, efforts to reunify father with the child.

III. The district court did not abuse its discretion by determining that the transfer of custody is in the child's best interests.

Father broadly challenges the district court's best-interests determination, stating that the district court failed to explain its reasoning. We disagree. As noted above, the district court found, consistent with the record, that the conditions that led to the child's out-of-home placement have not been corrected, so the child cannot be returned to father's care. Accordingly, the district court was required to and did consider whether the child's best interests would be served by permanent out-of-home placement. The district court expressly found that the child has bonded with his maternal great aunt and uncle, feels safe in their home, and desires to remain there, along with his half-brother. The district court also found that the maternal great aunt and uncle have ensured that the child receives the necessary services and provided the child an environment in which he can be himself "without repercussions." And the court noted that adoption is not in the child's best interests. These findings have ample support in the testimony and reports of the psychologist who evaluated the child, the guardian ad litem, and the social worker, all of whom noted many positive aspects of the child's placement and expressly recommended that he remain there for the foreseeable future. Father does not dispute any of these findings. In sum, we discern no abuse of discretion in determining that the transfer of custody serves the child's best interests.

Affirmed.