STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1473

In the Matter of the Welfare of the Children of: M. R. M. P., Mother.

Filed February 18, 2025
Affirmed
Connolly, Judge

Winona County District Court
File No. 85-JV-22-169

James R. Martin, Faribault, Minnesota (for appellant mother)

Karin Sonneman, Winona County Attorney, Paul R. Ellison, Assistant County Attorney, Winona, Minnesota (for respondent county)

Darik Anderson, Eyota, Minnesota (guardian ad litem)

Thomas Zolondek, Winona, Minnesota (intervenor)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal from the district court's transfer of custody of a child to the child's paternal grandmother, appellant-mother argues that the record does not support the district court's determinations that the transfer of custody is in the child's best interests, that respondent-county made reasonable efforts to reunite the family, and that a basis for the

transfer of custody existed. Appellant also argues that she was denied due process of law and the effective assistance of counsel. We affirm.

FACTS

Appellant M.R.M.P. (mother) is the mother of Z.P., born in September 2014, and E.O., born in April 2016. In 2022, law enforcement received information alleging that mother was using methamphetamine at her home in front of her children. After further investigation, law enforcement executed a search warrant on October 13, 2022, at the residence where mother was residing with E.O. and Z.P. Several people, including mother, were present during the search, and law enforcement discovered items consistent with drug use at the home. In addition, law enforcement discovered two plastic baggies containing methamphetamine in mother's bedroom, one of which was located on a nightstand that was accessible to children. Mother was subsequently arrested on drug-related charges, and E.O. and Z.P. were removed from mother's care.

On October 17, 2022, respondent Winona County Health and Human Services (county) petitioned to terminate mother's parental rights to E.O. and Z.P.[1] E.O. was placed with her maternal great-grandparents (the great-grandparents), and mother later voluntarily agreed to transfer legal and physical custody of E.O. to the great-grandparents.

[1] The termination-of-parental-rights (TPR) petition also sought to terminate any and all parental rights of E.O.'s father, J.O., and Z.P.'s father, J.C. The parental rights of J.O. to E.O. were later terminated involuntarily in July 2023. And, in November 2023, mother voluntarily agreed to transfer permanent physical custody of Z.P. to J.C. Any issues related to the termination of J.O.'s parental rights, and mother's custody of Z.P., are not relevant to this appeal.

In September 2023, E.O. was removed from the great-grandparents' care after E.O. was discovered in mother's unsupervised care in violation of the transfer-of-custody agreement. A law enforcement officer at the scene observed that mother had "poor teeth," "scabs on her face," and was "unable to sit still." Based on his training, the officer believed that mother was under the influence of controlled substances.

After E.O. was removed from the great-grandparents' care, the county moved to vacate the pending order transferring custody of E.O. to the great-grandparents.[2] A three-day trial was then held to determine if the great-grandparents were an appropriate placement for E.O. Following the trial, the district court vacated the pending transfer-of-custody order, and placed E.O. with her paternal grandmother (the grandmother).

In April 2024, a trial began on the TPR petition. The trial took place on five days over the course of four months. Mother's trial counsel was the fourth attorney appointed for mother since the TPR petition was filed.

On the last day of trial, the county, with the district court's permission, petitioned to transfer permanent legal and physical custody of E.O. to the grandmother. Mother did not object and indicated that she was "happy" to have the TPR petition withdrawn. The grandmother then testified that E.O. is doing well and confirmed that E.O. is comfortable in her home. And the grandmother testified that she is willing to facilitate contact between E.O. and her family, including mother if contact with mother is safe for the child.

[2] The transfer order was not a final order because transfer was deferred pending notice from the county that all Northstar Kinship Assistance requirements had been satisfied.

The district court granted the petition to transfer custody of E.O. to the grandmother, concluding that the county "made reasonable efforts to rehabilitate mother and to reunify her and [E.O.]," but that, despite those efforts, mother "has not corrected the conditions that led to out-of-home placement, including housing instability and substance use." The district court also determined that "[t]ransfer of permanent legal and physical custody of [E.O.] to [the grandmother] is in the best interest of the child." Mother appeals.

DECISION

I.

Mother challenges the transfer of custody of E.O. to the grandmother. When ordering a transfer of permanent physical and legal custody through juvenile-protection proceedings, the district court must make detailed findings as to (1) "how the child's best interests are served by the order"; (2) "the nature and extent" of the county's reasonable efforts to reunify the family; (3) the "parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement"; and (4) "the conditions which led to the out-of-home placement [that] have not been corrected so that the child can safely return home." Minn. Stat. § 260C.517(a) (2024). Each of these statutory findings must be proved by clear and convincing evidence. *See* Minn. R. Juv. Prot. P. 58.03, subd. 1.

When reviewing an order transferring permanent physical and legal custody through a juvenile-protection proceeding, we review the district court's factual findings for clear error and the "finding of a statutory basis for the order for abuse of discretion." *In re Welfare of D.L.D.*, 865 N.W.2d 315, 321 (Minn. App. 2015), *rev. denied* (Minn. July 21, 2015). "A district court abuses its discretion if it makes findings of fact that lack

evidentiary support, misapplies the law, or resolves discretionary matters in a manner contrary to logic and the facts on record." *In re Welfare of Child of T.M.A.*, 11 N.W.3d 346, 355 (Minn. App. 2024). When assessing for clear error, we view the evidence in the light most favorable to the findings, do not find facts or reweigh evidence, do not reconcile contradictory evidence, and "'need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the district court.'" *Id.* (quoting *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021)).

Mother argues that the record does not support the district court's determinations that (A) the transfer of custody is in E.O.'s best interests; (B) the county made reasonable efforts to reunite the family; and (C) a basis for the transfer of custody existed. These arguments are addressed in turn.

A. Best interests

"The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2(a) (2024). The best interests of the child is defined as "all relevant factors to be considered and evaluated" and requires "a review of the relationship between the child and relatives . . . with whom the child has resided or had significant contact." Minn. Stat. § 260C.511 (2024); *see also In re Welfare of Child. of J.C.L.*, 958 N.W.2d 653, 658 (Minn. App. 2021) (discussing the district court's review of the relationship between the child and the proposed relative custodian), *rev. denied* (Minn. May 18, 2021). A district court's best-interests analysis is reviewed for an abuse of discretion. *T.M.A.*, 11 N.W.3d at 357.

Mother argues first that the "district court must address each of the best interest criteria" set forth in Minn. Stat. § 260C.212, subd. 2 (2024), to be "legally sufficient," and that "[w]hen proper weight is given to [the criteria set forth in this statute], it should be determined that there should be no transfer to the . . . grandmother." We disagree. The statute cited by mother identifies 11 factors that a social-services agency must consider in determining the needs of a child when the agency is recommending an out-of-home placement for the child. *See* Minn. Stat. § 260C.212, subd. 2(b). But section 260C.212, subdivision 2(b), "is limited to the situation in which a social-services agency is selecting an out-of-home placement." *J.C.L.*, 958 N.W.2d at 657. As this court recently explained, section 260C.212, subdivision 2(b),

> promotes the best interests of a child in foster care by ensuring that the selected home will serve the needs of the child in the event that the child later remains in the home pursuant to an adoption or a transfer of custody. But the statute does not refer to a district court's decision to order a permanency disposition, . . . and the statute is not referenced in the statutes governing permanency dispositions . . . . The factors in section 260C.212, subdivision 2(b), are aligned with the best interests of a child in a permanency proceedings, but those factors are not required by section 260C.511, which governs and specifies the best-interests criteria that must be considered before ordering a permanency disposition other than a termination of parental rights.

Id. (quotation and citations omitted).

Here, the district court recognized its obligation to make findings concerning "how the child's best interests are served by the order" under Minn. Stat. § 260C.517(a)(1), and its obligation to consider "all relevant factors," including "the relationship between the child and relatives and the child and other important persons with whom the child has

resided or had significant contact" under Minn. Stat. § 260C.511(a), (b). To fulfill this obligation, the district court looked to section 260C.212, subdivision 2(b), for detailed criteria. After considering the factors set forth in section 260C.212, subdivision 2(b), the district court determined that "[t]ransfer of permanent legal and physical custody of [E.O.] to [the grandmother] is in the best interests of [E.O.]" But under *J.C.L.*, the district court was not required to consider the factors set forth in section 260C.212, subdivision 2(b), because section 260C.511 "governs and specifies the best-interests criteria that must be considered before ordering a permanency disposition other than a [TPR]." 958 N.W.2d at 657.

Nonetheless, the district court's findings in this case satisfy section 260C.511. The district court made detailed findings on all the relevant factors set forth in section 260C.212, subdivision 2(b), including the ninth factor, "the child's current and long-term needs regarding relationships with parents, siblings, relatives, and other caretakers." Minn. Stat. § 260C.212, subd. 2(b)(9). In addressing the ninth factor, the district court determined that the grandmother has demonstrated "a willingness and capability to facilitate contact with [E.O.'s] sibling and extended family," such as encouraging E.O. to see her brother "at least once per month." The district court determined that the grandmother encourages visits with "[m]other (when [m]other is healthy) and [m]other's family." Moreover, the district court found that E.O. and the grandmother "have a good relationship" and that E.O. "is very comfortable" with the grandmother. And the district court found that the grandmother "is committed to meeting [E.O.'s] needs on an ongoing basis" and has "given [E.O.] love, affection, and guidance." The district court's findings are supported by the

record. Thus, because, here, the ninth factor in section 260C.212, subdivision 2(b), substantially overlaps with section 260C.511, and the district court made detailed findings on this factor that are supported by the record, the district court's best-interests findings satisfy the requirements of section 260C.511.

Next, mother contends that the district court's best-interests consideration is flawed because "[i]t is the situation at the time of trial that is controlling." Although mother acknowledges that the "main problem" involved her chemical usage, she claims that the "only evidence of what her usage was at the time of trial were the tests indicating no use of amphetamines or other unprescribed chemicals."

We are not persuaded. In the TPR context, evidence supporting a TPR "must relate to conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period." *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001). TPR proceedings are similar to transfer-of-custody proceedings. But mother cites no authority indicating that, in addition to present conditions, a district court cannot also consider evidence of conduct related to the proceedings in their entirety in either a TPR or a transfer-of-custody proceeding.

Here, the district court found that "[m]other has failed to maintain sobriety, as demonstrated by the significant evidence presented at trial showing positive drug tests and test refusals." The district court also found that "[m]other has shown no commitment to being consistently sober" as demonstrated by her "very limited" engagement in chemical-dependency treatment. In fact, the district court found that mother "was not engaged in treatment at the time of trial."

The district court's findings are supported by the record. The record reflects that mother participated in a drug-testing program between November 2022, and October 2023, and that during this period, mother refused testing 60 times out of 101 attempts to have mother submit to a test. In fact, the record reflects that, in October 2023, mother had five refusals out of eight attempts. The record also reflects that, during the time that mother was engaged in the drug-testing program, mother had many positive tests for methamphetamine in addition to her test refusals. And the record reflects that mother's refusal to engage in drug testing continued up until the time of trial, as demonstrated by testimony that mother refused a drug test in April 2024.

In addition to evidence that mother consistently failed, as well as refused to participate in, drug testing, evidence was presented that mother was discharged from chemical-dependency treatment in June 2023, after canceling two sessions and missing two other sessions without notifying the treatment center. And mother acknowledged at trial that the only type of chemical-dependency programming that she was presently participating in was conducted through a cell phone application. The evidence presented at trial demonstrates that mother's use of controlled substances was rampant throughout these proceedings and continued up until the time of trial. As such, the district court properly considered mother's failure to maintain sobriety in determining that transferring custody of E.O. to the grandmother was in E.O.'s best interests.

Mother argues further that, in evaluating and considering "all relevant factors" pursuant to Minn. Stat. § 260C.511(a), the district court should have considered the best-interests factors set forth in Minn. Stat. § 518.17, subd. 1(a), (b) (2024). But the supreme

court has recognized that section 518.17 "applies to the *creation and initial approval of parenting plans*." *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018) (emphasis added).[3] This case involves a transfer of custody, not the creation and initial approval of a parenting plan. And mother cites no caselaw indicating that the best-interests factors set forth in section 518.17 are applicable in transfer-of-custody matters. As such, the district court was not required to consider the best-interests factors set forth in section 518.17.

In sum, as required by section 260C.511, the district court considered all relevant factors related to the best interests of E.O., including her relationship with relatives and other important persons with whom she has resided or had significant contact. Moreover, the district court's findings on these best-interests factors are supported by the record.

[3] *Hansen* is a family law opinion. This is an appeal in a juvenile-protection matter. Juvenile-protection matters are governed by Minnesota Statutes chapter 260C, and the Rules of Juvenile Protection Procedure. Neither chapter 260C nor the Rules of Juvenile Protection Procedure use the term "parenting plan." In family-law matters, "parenting plans" are governed by Minnesota Statutes section 518.1705 (2024). Thus, in a family-law context, "parenting plan" is not a generic term referring to any plan for the care of a child. In the family-law context, "parenting plan" is a term of art referring to a mechanism to address the care of a child when that mechanism fits the profile set out in Minnesota Statutes section 518.1705. Thus, in the family-law context, all "parenting plans" are plans to address the care of a child, but a mechanism to address the care of a child that does not satisfy section 518.1705 is not a "parenting plan." *See, e.g.*, *Rutz v. Rutz*, 644 N.W.2d 489, 492 (Minn. App. 2002) (discussing "parenting plans" and Minn. Stat. § 518.1705 (2012)); *In re Welfare of B.K.P.*, 662 N.W.2d 913, 916 (Minn. App. 2003) (noting that "parenting time" is a concept distinct from a "parenting plan"). As a result, prudence counsels avoiding use of the term "parenting plan" to refer to a mechanism to address the care of a child when that mechanism does not fit the profile in section 518.1705. Because the point is not before us, nothing in this opinion addressing this appeal in a juvenile-protection matter is an expression of this court's opinion about whether this case involves a "parenting plan" under Minnesota Statutes section 518.1705.

Therefore, the district court did not abuse its discretion in determining that transfer of permanent legal and physical custody of E.O. to the grandmother is in E.O.'s best interests.

B. Reasonable efforts

Mother also questions the district court's determination that the county proved by clear and convincing evidence that it made reasonable efforts to reunify her with E.O. Except under circumstances not applicable here, "reasonable efforts for rehabilitation and reunification are always required" under Minn. Stat. § 260.012(a) (2024). *T.M.A.*, 11 N.W.3d at 357 (quotation omitted). In an order permanently placing a child out of the home, a district court must make "detailed findings" about "the nature and extent of the responsible social services agency's reasonable efforts . . . to reunify the child with the parent or guardian where reasonable efforts are required." Minn. Stat. § 260C.517(a)(2). Under the reasonable-efforts standard, the district court must consider various statutory factors, including whether the services provided by the county were "relevant to the safety, protection, and well-being of the child"; "adequate to meet the individualized needs of the child and family"; "available and accessible"; "consistent and timely"; and "realistic under the circumstances." Minn. Stat. § 260.012(h) (2024). Whether the county made reasonable efforts towards reunification "depends on the problem presented." *In re Welfare of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008) (quotation omitted).

The district court found that the primary "concern throughout this case was [m]other's ongoing substance use." The district court then found that the county developed case plans addressing this concern, which included providing "ongoing services to address [m]other's chemical use." The district court also found that the services set forth in the

case plan included "drug testing, visitation services, gas cards, assistance with appointments, referrals and ongoing contact." And the district court determined that these "services were relevant to the safety and protection of [E.O.], adequate to meet the needs of [E.O.] and the family, culturally appropriate, available, . . . accessible, consistent and timely, and realistic under the circumstances." Thus, the district court concluded that the county made reasonable efforts to rehabilitate mother and to reunify her with E.O.

Mother argues that the district court's findings are unsupported by clear and convincing evidence because "there has been no showing that the programming recommended by social services would have an effect on any problem [mother] may have had, nor has it been shown that any chemical usage experienced by [mother] had any effect whatsoever on [her] children or [her] ability to parent." We disagree. The record is replete with evidence supporting the district court's finding that the problem presented involved mother's chemical use and its effect on the health and safety of her children. For example, the record reflects that a hair follicle test from Z.P. was positive for methamphetamine, that methamphetamine and drug paraphernalia were accessible to E.O. and Z.P. while they were in mother's care, that mother exhibited signs of being under the influence of chemicals while caring for E.O., and that mother continued to use methamphetamine. The record also reflects that the county developed a case plan to address mother's chemical usage and that the case plan was relevant to the safety and protection of E.O. Although mother disputes much of the evidence presented at trial, it is not the province of this court to reconcile conflicting evidence or reweigh the evidence. *See T.M.A.*, 11 N.W.3d at 355. Moreover, mother is unable to identify any different or additional services that the county

should have offered during the pendency of this case. The district court made detailed findings addressing the county's reasonable efforts, and those findings are supported by the record. Thus, mother is unable to show that the district court abused its discretion in determining that the county made reasonable efforts to rehabilitate mother and to reunify her with E.O.

C. Underlying basis to transfer custody

Mother argues that the district court "erred by finding that an underlying basis for a transfer of custody to the . . . grandmother existed." We disagree. In a permanency proceeding under Minn. Stat. §§ 260C.503-.521 (2024), a district court may order any one of several dispositions. *J.C.L.*, 958 N.W.2d at 655. One of the possible dispositions is a transfer of permanent legal and physical custody to "a fit and willing relative" in the best interests of a child. Minn. Stat. § 260C.515, subd. 4.

Here, the district court ordered that permanent legal and physical custody of E.O. be transferred to the grandmother pursuant to Minn. Stat. § 260C.515, subd. 4. In ordering this disposition, the district court found that transfer of custody is in E.O.'s best interests. As addressed above, the record supports this finding. Moreover, the district court found that the grandmother "is a fit, willing, and suitable relative to have permanent legal and physical custody of [E.O.]," and evidence presented at trial, including the grandmother's testimony, supports this finding. Although mother disputes much of the evidence supporting the district court's findings, and argues at length that the evidence demonstrated that mother's most recent drug tests were negative and that "[v]ery little evidence" was

presented related to the grandmother's ability to care for E.O., we do not reweigh the evidence. *See T.M.A.*, 11 N.W.3d at 355.

Because the record supports the district court's determinations that the grandmother is a fit and willing relative and that the transfer of custody to the grandmother is in E.O.'s best interests, the district court did not clearly err in finding the underlying statutory basis for granting the transfer-of-custody petition. Thus, the district court did not abuse its discretion in transferring permanent legal and physical custody of E.O. to the grandmother.

II.

Mother argues that she was denied due process and a fair hearing because, on the last day of the five-day trial, the district court allowed the county to amend the TPR petition to a petition to transfer custody. But the record reflects that mother never objected to the county's request to amend the TPR petition to a transfer-of-custody petition. Instead, the record reflects that mother was "willing to agree to amend [the] matter to be a transfer of legal and physical custody rather than a [TPR] case," and was "happy actually to have that issue or [the] petition withdrawn and removed." The "failure to raise constitutional issues in the district court precludes the issues from being raised on appeal." *In re Welfare of M.H.*, 595 N.W.2d 223, 229 (Minn. App. 1999). Because mother never objected to the amendment of the TPR petition, and the district court never considered mother's due-process argument, the issue is not properly before us.

III.

Finally, mother claims that she was denied the effective assistance of counsel because there was a "lack of communication" between her four attorneys regarding the

three-day hearing related to the removal of the pending placement of E.O. with the great-grandparents, which deprived her of the opportunity to examine the great-grandparents "on the issues relating to the amended petition to transfer custody." But mother fails to cite any authority supporting her position. An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is forfeited. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971); *see Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017) (noting that a party forfeits a claim by failing to support it with authority), *rev. denied* (Minn. Apr. 26, 2017); *see also State Dep't of Lab. & Indus. by Special Comp. Fund v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address inadequately briefed question); *In re Welfare of Child. of V. R. R.*, 2 N.W.3d 587, 595 (Minn. App. 2024) (applying *Wintz* in an adoptive placement dispute under Chapter 260C), *rev. dismissed* (Minn. Mar. 22, 2024); *In re Child of P.T.*, 657 N.W.2d 577, 586 n.1 (Minn. App. 2003) (applying *Wintz* in an appeal from a termination of parental rights), *rev. denied* (Minn. Apr. 15, 2003). Therefore, mother has forfeited her ineffective-assistance-of-counsel argument.

Affirmed.