STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0016

In the Matter of the Welfare of the Children of: A. S. J., Parent.

Filed July 1, 2024
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-JV-23-1231

Brooke Beskau Warg, Hennepin County Adult Representation Services, Minneapolis, Minnesota (for appellant father A.S.A.)

Mary F. Moriarty, Hennepin County Attorney, Mary M. Lynch, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services Department)

Sonja Royston, Minneapolis, Minnesota (guardian ad litem)

Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge; and Cleary, Judge.*

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant noncustodial father challenges the district court's involuntary transfer of permanent legal and physical custody (TLC) of his child from the child's custodial mother to the child's maternal grandmother. Appellant argues that the district court abused its

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

discretion by concluding that reasonable efforts were made to reunite the family and that the transfer-of-custody factors in Minnesota Statutes section 260C.517(a) (2022) favored the transfer. Because we discern no abuse of discretion in the district court's conclusions, we affirm.

FACTS

Appellant A.S.A. (father) is the noncustodial father of A.R.M.J. (the child). In August 2021, father sought custody of the child, but the St. Louis County district court awarded sole legal and physical custody to the child's mother, A.S.J. (mother).

In June 2022, respondent Hennepin County Human Services and Public Health Department (the department) filed a petition in Hennepin County district court alleging that the child was in need of protection or services (CHIPS). The child is one of mother's five children; father is not a parent to the other four children. The child and the child's siblings were in the care of their maternal grandmother (grandmother) before the CHIPS case began. In June, the department created an out-of-home placement plan for the child.

In July 2022, the department mailed a letter and copy of the CHIPS petition to father. Father contacted a financial case aide for the department, and the case aide emailed the child protection social worker (CPSW) to notify her that father wanted to be a placement for the child. The next day, father called the CPSW. But, because father did not mention that he wanted to be a placement for the child, the CPSW did not consider him as a placement for the child at that time.

In August 2022, the child was adjudicated CHIPS after mother waived her right to trial and entered an admission to the petition. The department made multiple unsuccessful

attempts to serve father with the CHIPS petition after the adjudication in August, but father was ultimately served by publication in November 2022.

In August, October, and November 2022, the department discussed with grandmother a transfer of permanent legal and physical custody of the child. In November 2022, the department held a family group conference with mother and grandmother to discuss a TLC to grandmother. Father was not invited to the conference. In December 2022, the department decided to pursue a TLC of the child to grandmother.

In January 2023, father appeared in court for the first time related to this matter and requested either to have the child placed in his care or to be allowed unsupervised visitation with the child. The district court denied father's requests but ordered that the department consider father as a placement option for the child. The department first created a case plan for father in January and, though father does not believe the case plan was discussed with him, he testified at trial that he had a clear understanding of his case plan since January.

In March 2023, father had his first supervised visit with the child, which was supervised by the CPSW. Subsequently, the department submitted a referral to Minnesota Families United for father to begin weekly supervised visits with the child. The referral did not include a referral for parenting education because the CPSW had not heard back from father's probation officer about his probation requirements and she did not want to duplicate services.[1]

[1] Relevant to the case plan, father has a history of domestic violence and child endangerment in addition to other criminal history. While this matter was pending, father was on probation and subject to various conditions including domestic-violence programming.

Also in March, the district court maintained the order requiring the department to consider father as a placement option. The district court also authorized the addition of several services to father's case plan including: (1) completing parenting education and following all recommendations, (2) completing a chemical use assessment and following all recommendations, and (3) completing a mental health assessment and following all recommendations. The district court also ordered that the department file a permanency petition no later than May 14, 2023, as required under Minnesota law.[2]

In April 2023, father began supervised visits with the child through Minnesota Families United.

On May 15, 2023, the department filed a petition for TLC of the child to grandmother. Father filed a competing petition for TLC of the child to himself.

In June 2023, father began parenting education and domestic-violence programming at Minnesota Families United. In July 2023, father requested the district court to order the department to pay for domestic-violence programming, and the district court granted this request in August 2023.

The matter proceeded to trial, which took place over three days in September, October, and November 2023. At trial, mother testified in support of a voluntary TLC to grandmother. Father, the CPSW, father's cousin/current visitation supervisor, father's

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[2] *See* Minn. Stat. § 260C.503, subd. 1(a) (2022) (providing that permanency proceedings must start "not later than 12 months after child is placed in foster care").

friend, the child's maternal uncle, grandmother, and the guardian ad litem also testified at trial.

Following trial, the district court filed an order transferring permanent legal and physical custody to grandmother. Father filed a posttrial motion, seeking a new trial and amended findings. The district court filed an order amending its findings and denying father's motion for a new trial.

Father appeals.

DECISION

Father challenges the district court's order transferring physical and legal custody of the child to grandmother. When reviewing a TLC order, this court reviews a district court's "factual findings for clear error and its finding of a statutory basis for the order for an abuse of discretion." *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321 (Minn. App. 2015), *rev. denied* (Minn. July 20, 2015). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted). When reviewing factual findings for clear error, appellate courts (1) view the evidence in the light most favorable to the findings, (2) do not find their own facts, (3) do not reweigh the evidence, and (4) do not reconcile conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021); *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* to a review of a juvenile-protection order), *rev. denied* (Minn. Dec. 6, 2021). Appellate courts "need not go into an extended discussion of the evidence

to prove or demonstrate the correctness of the findings of the [district] court. . . . [A]n appellate court's duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision." *Kenney*, 963 N.W.2d at 222 (quotations and citation omitted).

Under Minnesota Statutes section 260C.517(a), the district court's TLC order must include "detailed findings" on the following four factors:

> (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 or guardian . . . ;
> (3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
> (4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

All four statutory factors must be proved by clear and convincing evidence. Minn. R. Juv. Prot. P. 58.03, subd. 1; *In re Welfare of Child. of J.C.L.*, 958 N.W.2d 653, 656 (Minn. App. 2021), *rev. denied* (Minn. May 12, 2021).

On appeal, father asks this court to reverse the TLC order and remand to the district court for further proceedings, arguing that the district court abused its discretion by concluding that the department made reasonable efforts and in analyzing the statutory factors for TLC. We address each issue in turn.

I. The district court did not abuse its discretion by concluding that the department made reasonable efforts.

The district court found that the department provided father with "supervised visitation, funding to attend the visits, and funding for domestic violence programming."

It also found that father initiated his own parenting education, at least in part. Further, it found that the department "monitored [father's] compliance with the terms of his probation, in an effort not to duplicate programming he was already required to complete in his criminal matters." Based on these findings, the district court concluded that the department provided reasonable efforts.

Father challenges the district court's conclusion that the department made reasonable efforts, arguing that the district court abused its discretion because the district court failed to consider whether the department exercised due diligence in assessing him as a placement option and because the department's efforts to assist him in becoming a placement option were not genuine or timely. Father's arguments are not persuasive.

A. The district court considered whether the department exercised due diligence in assessing father as a placement option.

"Once a child alleged to be in need of protection or services is under the court's jurisdiction . . . the court must ensure that the responsible social services agency makes reasonable efforts to finalize an alternative permanent plan for the child." Minn. Stat. § 260.012(a) (2022). In cases involving noncustodial parents, reasonable efforts to finalize a permanent plan require "due diligence by the responsible social services agency to . . . assess a noncustodial parent's ability to provide day-to-day care for the child and, where appropriate, provide services necessary to enable the noncustodial parent to safely provide the care, as required by section 260C.219." *Id.* (e)(2) (2022). "If, after assessment, the responsible social services agency determines that the child cannot be in the day-to-day care of either parent, the agency shall . . . prepare an out-of-home placement plan

addressing the conditions that each parent must meet before the child can be in that parent's day-to-day care." Minn. Stat. § 260C.219, subd. 1(c)(1) (2022).

Father argues that "the district court failed to consider whether the department exercised 'due diligence' in assessing and considering father as a placement option" and therefore "the district court abused its discretion in finding that the department made reasonable efforts." Father cites various findings of fact that demonstrate a delay in considering father as a placement option and contends that these findings in turn demonstrate that the department failed to exercise due diligence to assess father as a placement option.

First, father asserts that he expressed interest in being a placement option as early as July 2022. But father told a financial case aide that he wanted to be considered as a placement option and that information was emailed to the CPSW; father did not tell the CPSW that he wanted to be considered as a placement option when he called her the following day. Ultimately, despite multiple phone calls with the CPSW, father did not tell the CPSW that he wanted to be a placement option until January 2023, which is why the CPSW did not assess father for placement earlier. And, in those early phone conversations with the CPSW, father asked more about the child than about wanting to see the child.

These findings demonstrate that the district court considered the delay in assessing father as a placement option and support its conclusion that reasonable efforts were made. Section 260.012(e) does not provide a timeframe under which the department must operate when assessing noncustodial parents for placement—it only requires "due diligence" in assessing a noncustodial parent. The fact that father did not explicitly tell the CPSW that

he was interested in being considered a placement option and that he asked more about how the child was than about wanting to see the child demonstrate that it was not clearly unreasonable or a violation of the department's duty of due diligence to refrain from assessing father as a placement option immediately. Furthermore, when father explicitly requested to be considered a placement option in January 2023, the district court ordered the department to consider father as a placement option and the department asked for additional requirements to be added to his case plan and offered him supervised visits.

Father also notes that the department discussed a TLC with grandmother in August, October, and November 2022; it held a family group conference to which father was not invited in November 2022; and it decided to pursue a TLC with grandmother as the permanency option in December 2022, which was before it began to consider father as a permanency option. But the department was required, by statute, to engage in concurrent permanency planning while the child was in out-of-home placement. *See* Minn. Stat. § 260C.223, subd. 1(b) (2022). These findings about the department's required concurrent permanency planning efforts do not clearly demonstrate that the department failed to exercise due diligence by not assessing father as a placement option earlier.

Father also points out that the department did not visit or assess his home. The district court found this fact and therefore considered it when determining whether reasonable efforts were made. And the district court did not abuse its discretion by implicitly concluding that this fact, within the greater context of the father's engagement and the department's efforts, did not constitute a violation of the department's duty of due diligence or render the department's efforts unreasonable.

After reviewing all of the district court's relevant findings, we are satisfied that the district court considered the delay in assessing father as a placement option. Further, we conclude that the district court did not abuse its discretion in determining that the department made reasonable efforts because its determination is supported by its findings and the record and is not contrary to law.

B. The district court did not abuse its discretion by determining that the department made reasonable efforts to assist father in becoming a placement option.

Father also argues that the district court abused its discretion by concluding that the department made reasonable efforts to help him become a placement option because the efforts were untimely and not genuine. Considering the context of father's engagement and his specific circumstances, we disagree.

First, father argues that the department should have begun more comprehensive efforts in July 2022 when he told the financial case aide that he wanted to be a placement option and not in January 2023 when he finally told the CPSW. He argues that the delay in developing a case plan had a detrimental impact on his ability to complete or make progress on the plan. However, as discussed above, the department's delay in making more comprehensive efforts earlier was not clearly unreasonable.

Second, father also notes that he testified that he did not believe the case plan was ever discussed with him. But the district court found that father attended every hearing since January 18, 2023, the components of his case plan were included in prehearing reports and discussed at the hearings, and father testified that he had a "clear understanding" of his case plan since January 2023. Father's contention that the case plan

was never discussed with him does not render the department's efforts clearly unreasonable because father ultimately had a "clear understanding" of his case plan.

Third, father points out that the department did not make a referral for him to begin parenting education with its initial referral for supervised visits in March 2023 and that it made the parenting education referral in May, the same time it filed the TLC petition. But the district court found that the initial referral did not include parenting education because the CPSW had not heard from father's probation officer about probation requirements and did not want to duplicate services. In the context of father's specific circumstances, the department's delay in making the parenting education referral was not clearly unreasonable.

Based on our review of the record and the district court's findings, we conclude that the district court did not abuse its discretion because its determination that the department made reasonable efforts was supported by its findings of fact and the record and was not contrary to law.

II. The district court did not abuse its discretion in its analysis of the statutory factors for a TLC.

Father next contends that the district court abused its discretion in its analysis of the statutory factors for a transfer of permanent legal and physical custody, arguing that two of the factors—the nature and extent of the department's reasonable efforts, and father's efforts and ability to use services to correct to the conditions that led to the out-of-home placement—"weigh in favor of, at a minimum, continuing the case to allow [f]ather the opportunity to continue working on his case plan." We disagree.

As discussed above, the district court did not abuse its discretion by concluding that the department made reasonable efforts. As for the other factor, we conclude that the district court's analysis of father's efforts and ability to use the services to correct conditions was likewise not an abuse of discretion. The district court considered father's argument that his failure to complete domestic-violence programming was due to the department's failure to provide reasonable efforts but found this argument unpersuasive because father was ordered to complete domestic-violence programming over a year before trial as part of his probation. And, although the district court found that father's parenting education was "delayed through no fault of his own," it also questioned "his level of engagement in th[e] service." The district court's findings are supported by the record and demonstrate that it fully considered father's efforts and ability to use the services provided to correct the conditions leading to the out-of-home placement. We therefore discern no abuse of discretion in the district court's analysis of the two statutory factors that father cites.

Affirmed.