STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1688

In the Matter of the Welfare of the Children of: M.F., C.J. and R.T., Parents

Filed May 19, 2009
Affirmed
Larkin, Judge
Dissenting, Stauber, Judge

Hennepin County District Court
File No. 27-JV-07-13932

James A. Kamin, Acting Chief Public Defender, Peter W. Gorman, Assistant Public Defender, 701 Fourth Avenue South, Suite 1400, Minneapolis, MN 55415 (for appellant M.F.)

Howard L. Kaibel, Jr., Assistant Public Defender, 317 Second Avenue, Suite 200, Minneapolis, MN 55401 (for respondent C.J.)

Michael O. Freeman, Hennepin County Attorney, Michelle A. Hatcher, Assistant County Attorney, 1200 Health Services Building, 525 Portland Avenue, Minneapolis, MN 55415 (for respondent Hennepin County Human Services and Public Health Department)

Jean Sanderson, Rachel Funk, Certified Student Attorney, University of Minnesota, 190 Mondale Law Building, 229 19th Avenue South, Minneapolis, MN 55455 (for guardian ad litem Kim Leipold)

Considered and decided by Stauber, Presiding Judge; Minge, Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant-mother challenges the district court's default termination of her parental rights. Appellant argues that (1) the district court abused its discretion by refusing to reopen the default termination based on mistake, inadvertence, surprise, or excusable neglect; (2) appellant was given inadequate notice of the permanency trial in violation of her due-process rights; (3) the district court erred by conducting a "summary default hearing"; and (4) the district court failed to independently review the evidence and legal issues when it signed one party's proposed findings verbatim. We affirm.

FACTS

The Hennepin County Human Services and Public Health Department (department) filed a child-in-need-of-protection-or-services (CHIPS) petition regarding appellant M.F.'s two children, A.J. and M.T., on March 22, 2007. The CHIPS petition was based on an incident of domestic violence that occurred between M.F. and M.T.'s father, R.T., at M.F.'s home on February 26, 2007 and on reports that M.F. used alcohol and marijuana daily. Following an emergency-protective-care hearing, the district court placed A.J. and M.T. under protective supervision with M.F., conditioned on M.F.'s compliance with a court-ordered case plan. The case plan required M.F. to submit to urinalysis, attend domestic-abuse counseling, provide safe and suitable housing for her children, attend individual therapy, remain available to her social worker, and complete a parenting assessment and follow its recommendations. On May 1, 2007, the department filed an amended petition asserting a new finding of maltreatment based on M.F.'s

neglect of M.T. and alleging that M.F. was not in compliance with the provisions of her case plan. The district court held a second emergency-protective-care hearing and ordered the children into out-of-home placement on May 4, 2007. M.F. was granted supervised visits, and her court-ordered case plan became voluntary.

On June 18, 2007, the district court held a pretrial hearing on the amended CHIPS petition. M.F. waived her right to a trial and admitted that her chemical dependency affected her ability to parent. The district court found that the children were in need of protection or services due to M.F.'s chemical dependency and the need for ongoing case planning. The district court transferred legal and physical custody of A.J. and M.T. to the department and ordered a case plan for reunification. The case plan required M.F. to (1) complete a chemical-health assessment, (2) submit to urinalysis and participate in a 12-step program, (3) complete a parenting assessment, (4) participate in a domestic-violence group, (5) complete a parenting-education program, (6) participate in individual therapy, (7) attend medical appointments for the children, (8) have no contact with R.T., and (9) cooperate with the assigned social worker and the guardian ad litem (GAL).

After M.F. failed to comply with all of the terms of her case plan, the department filed a permanency petition seeking to terminate M.F.'s parental rights or to transfer permanent legal and physical custody of M.F.'s children.[1] M.F. was personally served with the summons and permanency petition on October 25, 2007, and an admit-deny

[1] We refer to the petition as a "permanency petition" because it seeks alternative forms of relief. *See* Minn. R. Juv. Prot. P. 33.02, subd. 4(b). "Any permanent placement petition filed by the county attorney . . . may seek alternative permanent placement relief, including termination of parental rights, transfer of permanent legal and physical custody to a relative, or placement of the child in long-term foster care." *Id.*

hearing was held that same day. M.F. denied the petition, and the district court scheduled a pretrial conference for December 11, 2007. M.F. signed a hearing notice that explained that the consequences for failure to appear may include "permanent termination of your parental rights." M.F. did not appear at the December 11, 2007 hearing and the pretrial conference was rescheduled to January 24, 2008. M.F. again failed to appear.[2]

The district court scheduled a March 10, 2008 trial on the permanency petition. M.F. did not appear at the March 10 trial because she was incarcerated at the Hennepin County Public Safety Facility on suspicion of kidnapping and deprivation of parental rights following her alleged abduction of A.J. M.F.'s attorney was present at the March 10 permanency trial, however, and participated in rescheduling the trial to June 3, 2008. The district court sent notice of the June 3 trial date to M.F. at her home address that was on file with the district court. This notice was returned to the district court as undeliverable. On June 3, M.F.'s attorney appeared for the permanency trial, but M.F. did not appear. M.F.'s social worker testified that M.F.'s whereabouts were unknown. It was noted that M.F. had an outstanding felony warrant for failing to abide by the terms of conditional release following her arrest for the alleged kidnapping. The district court granted petitioner's request to proceed by default. M.F.'s attorney did not object. The assigned social worker and the GAL testified in support of termination of M.F.'s parental rights. The district court received several documents into evidence. At the time of the

[2] In its findings of fact, conclusions of law and order on M.F.'s motion to reopen default findings, the district court found that M.F. failed to appear for the scheduled pretrial hearings on December 11, 2007 and January 24, 2008.

default proceeding on June 3, 2008, M.F.'s children had been in continuous out-of-home placement for 13 months.

On June 16, 2008, the district court issued an order terminating M.F.'s parental rights. The district court found that M.F. had failed to cooperate with her court-ordered case plan and to correct the conditions that led to her children's out-of-home placement. Specifically, the district court found that M.F. failed to (1) follow the recommendations of her chemical-health assessment, her parenting assessment, and her individual therapy; (2) document sobriety through urinalysis or participate in a 12-step program; (3) attend a domestic-violence group; (4) attend her children's medical appointments; and (5) cooperate with the assigned social worker and the GAL. The district court concluded that there was clear and convincing evidence that M.F.'s parental rights to A.J. and M.T. should be terminated pursuant to Minn. Stat. § 260C.301, subds. 1(b)(1)-(2), 1(b)(5), 1(b)(8) (2006), and that termination of parental rights (TPR) is in the best interests of the children.

On June 17, 2008, M.F. filed a motion to reopen the default termination pursuant to Minn. R. Juv. Prot. P. 46.02. At the motion hearing, M.F.'s attorney explained that on the day of the default proceeding, M.F. had appeared in Hennepin County District Court for a hearing in a criminal case and was arrested on an outstanding felony warrant. M.F.'s attorney argued that M.F. was "unaware that both of the court dates were at the same time. . . . [She] was in custody while [the district court held] the termination of the parental rights trial. . . [,] but as soon as she realized, she called [her attorney]

immediately." The district court denied M.F.'s motion to reopen the default judgment. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by refusing to reopen the default termination of M.F.'s parental rights based on mistake, inadvertence, surprise or excusable neglect.

On appeal, the district court's decision on a motion to vacate a default order will stand absent an abuse of discretion. *In re Welfare of Children of Coats*, 633 N.W.2d 505, 510 (Minn. 2001). Generally, reopening of default judgments should be liberally undertaken to allow resolution of matters on their merits. *See Kosloski v. Jones*, 295 Minn. 177, 179-80, 203 N.W.2d 401, 403 (1973) (explaining a policy that favors trial of causes on their merits but noting that the right to be relieved of a default judgment is not absolute). Minn. R. Juv. Prot. P. 46.02 provides that a court may relieve a party from a final order for reasons that include "mistake, inadvertence, surprise, or excusable neglect." Minn. R. Juv. Prot. P. 46.02 is a counterpart to Minn. R. Civ. P. 60.02.[3] *Coats*, 633 N.W.2d at 510 n.4. In order to obtain relief from a default judgment, the party seeking relief must demonstrate, "(1) she has a reasonable defense on the merits of the case; (2) she has a reasonable excuse for her failure to act; (3) she acted with due diligence after the notice of entry of the default judgment; and (4) the opposing party will

[3] The *Coats* decision applies Minn. R. Civ. P. 60.02 because at the time Coats moved the district court to vacate the default judgment, the rules of juvenile procedure did not include a rule comparable to rule 60.02. 633 N.W.2d at 510 n.4. But the supreme court noted that Minn. R. Juv. P. 81.02, which had been adopted by the time of the supreme court proceedings and is currently renumbered as Minn. R. Juv. Prot. P. 46.02, was a counterpart to Minn. R. Civ. P. 60.02. *Id.*

not be substantially prejudiced if the motion to vacate the default judgment is granted." *Id.* at 510. All four parts of the test must be met to justify relief under Minn. R. Juv. Prot. P. 46.02. *Coats*, 633 N.W.2d at 510. But in light of the preference for deciding a case on the merits, a weak showing on one factor may be outweighed by a strong showing on the remaining factors. *Riemer v. Zahn*, 420 N.W.2d 659, 662 (Minn. App. 1988).

The district court concluded, and the parties do not dispute, that M.F. had a reasonable excuse for her failure to appear at the June 3 trial because she was taken into custody on a bench warrant and that M.F. acted with due diligence by promptly contacting her attorney following the default judgment. Therefore, our analysis focuses on the district court's conclusions that (1) M.F. does not have a reasonable defense on the merits, and (2) reopening the default judgment would substantially prejudice an opposing party.

M.F. argues that she has a reasonable defense on the merits and that the district court therefore abused its discretion by denying her motion. Specifically, M.F. points to evidence that shows decreasing levels of T.H.C. in her blood and argues that she complied with several provisions of her case plan, including completion of a parenting evaluation and a psychological evaluation, and cooperation with African American Family Services.

A reasonable defense is one that, once established, "provides a defense to the plaintiff's claim . . . [and] clearly demonstrates the existence of a debatably meritorious defense." *Northland Temporaries, Inc. v. Turpin*, 744 N.W.2d 398, 403 (Minn. App. 2008) (applying Minn. R. Civ. P. 60.02), *review denied* (Minn. Apr. 29, 2008). In the

context of a TPR proceeding, the supreme court has held that a proffered defense on the merits is deficient if it is supported by no more than conclusory statements. *Coats*, 633 N.W.2d at 511 (rejecting mother's argument that she had established a reasonable defense on the merits based on her alleged demonstrated interest in her children's health and well-being). The *Coats* decision cited mother's overall failure to comply with her case plan as support for its determination that mother had not established a reasonable defense on the merits. *Id.* The supreme court noted that mother was provided a case plan designed to address the mental-health and chemical-abuse problems that resulted in her inability to meet her children's basic needs, but repeatedly refused to participate in therapy and continued to abuse drugs. *Id.*

M.F.'s non-compliance with her case plan is similar to that in *Coats*. In support of its order for termination of M.F.'s parental rights, the district court found that M.F. failed to cooperate with her court-ordered case plan, as indicated by her failure to document sobriety through urinalysis; participate in a 12-step program; attend a domestic-violence group; follow the recommendations of her chemical-health assessment, parenting assessment, and individual therapy; attend medical appointments for her children; and cooperate with the social worker. After a hearing on the motion to reopen, the district court made similar findings and noted that M.F. failed to address several aspects of her case plan over the course of one year. The district court also found that M.F. failed to appear for hearings even when she was not incarcerated. The district court concluded that M.F. has no reasonable defense on the merits. We agree.

We acknowledge that M.F. provided urinalysis results that were negative for controlled substances on June 5, 11, and 25, 2008. But M.F. also provided positive results on May 7, 16, 21, 28 and 30, 2008. And M.F. provided 18 positive results during the months of March, April, May, June, July, October, November 2007 and February, March, and April 2008. We also recognize that M.F. completed some court-ordered evaluations. But we consider these efforts in the context of the entire record. On May 7, 2007, M.F. entered New Guidance Counseling Clinic, Inc. for chemical-dependency treatment and was discharged on May 21, 2007. M.F.'s prognosis upon discharge was "poor based on the level of involvement in the treatment process." M.F. completed a parenting assessment during the months of May and June 2007. Additionally, M.F. participated in psychological evaluations at African American Family Services on November 27, 2007 and on February 14, 2008. But at the time of the permanency trial in June 2008, there was no evidence that M.F. had followed the recommendations of the evaluations. When considered in the context of the entire record, M.F.'s three negative urinalysis results and completion of two assessments is inadequate to establish a reasonable defense on the merits. The district court did not abuse its discretion by rejecting M.F.'s proffered evidence as a reasonable defense to the department's claims.

In addressing the fourth factor, M.F. argues that reopening the default judgment would not prejudice either the department or the GAL because permanency planning for the two children was already underway at the time of the permanency trial, and because there would have been no inconvenienced witnesses or unavailable evidence had the matter been reopened. M.F. argues that the delay that is suffered by any litigant when a

case is continued is insufficient to establish prejudice, at least where no evidence has become unavailable or witness lost. But the precedential cases that M.F. cites for this proposition are not child-protection permanency cases, and the unpublished opinion cited by M.F. is not precedential. Minn. Stat. § 480A.08, subd. 3 (2008).

M.F. understates the potential prejudice to the GAL, who represents the best interests of M.F.'s children. Minn. R. Juv. Prot. P. 21.01, subd. 1(a) (stating GAL is a party to a juvenile-protection matter); Minn. R. Juv. Prot. P. 26.01, subd. 1 (requiring that the district court appoint a GAL to advocate for the best interests of the child). Reopening the default judgment would necessarily delay the children's permanent placement. Our supreme court has noted "the importance of emotional and psychological stability to a child's sense of security, happiness and adaptation, as well as the degree of unanimity among child psychologists regarding the fundamental significance of permanency to a child's development." *In re Welfare of J.J.B.*, 390 N.W.2d 274, 279 (Minn. 1986). Because the GAL is a party to the matter and is appointed to advocate for the children's best interests, and because permanent placement is in the best interests of children, delaying permanency would substantially prejudice the interests that the GAL represents. The district court did not abuse its discretion by concluding that there would be substantial prejudice to the parties if the default order were vacated.

M.F. failed to establish a reasonable defense on the merits and failed to establish that reopening the default judgment would not substantially prejudice an opposing party. "Although one weak factor may be overcome by three strong factors, there is no authority by which we can conclude that two weak factors are overcome by two strong factors."

Wiethoff v. Williams, 413 N.W.2d 533, 536 (Minn. App. 1987). Accordingly, the district court did not abuse its discretion by refusing to reopen the default termination of M.F.'s parental rights. *See Coats*, 633 N.W.2d at 512 (holding that the district court did not abuse its discretion by refusing to vacate where two factors were not satisfied).

II. The district court did not abuse its discretion by refusing to reopen the default termination of M.F.'s parental rights based on due-process grounds.

M.F. argues that she is entitled to relief under Minn. R. Juv. Prot. P. 46.02, based on alleged due-process violations. Minn. R. Juv. Prot. P. 46.02 provides that a court may relieve a party from a final order for reasons that include "any other reason justifying relief from the operation of the order." Satisfaction of the four factors discussed above is not always a prerequisite to obtaining relief. *See In re Welfare of Children of M.L.A.*, 730 N.W.2d 54, 61-62 (Minn. App. 2007) (discussing the principle in the context of Minn. R. Civ. P. 60.02 and Minn. R. Juv. Prot. P. 46.02). The supreme court has declined to apply the four-factor test "when there are 'procedural defects of such consequence that . . . the mere showing of that failure in and of itself is grounds to set aside [a] default judgment.'" *Id.* at 61 (quoting *Lyon Dev. Corp. v. Ricke's, Inc.*, 296 Minn. 75, 84-85, 207 N.W.2d 273, 279 (1973)). Further, the supreme court has held that where the appellant was not served, there was "a strong inference of irregularity concerning the entire proceeding," and the case was "precisely the type of case in which ['any other reason justifying relief'] was designed to operate." *Sommers v. Thomas*, 251 Minn. 461, 467-68, 88 N.W.2d 191, 196 (1958) (applying Minn. R. Civ. P. 60.02).

M.F. argues that her due-process rights were violated in two ways. First, M.F. argues that she did not receive notice of the June 3, 2008 permanency trial. Second, M.F. argues that the district court should have transported her from jail to court on March 10, 2008 for the purpose of signing a hearing notice for the June 3 trial.

Both the United States and Minnesota Constitutions guarantee due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. Whether a parent's due-process rights have been violated in a TPR proceeding is a question of law, which this court reviews de novo. *In re Child of P.T.*, 657 N.W.2d 577, 583 (Minn. App. 2003), *review denied* (Minn. Apr. 15, 2003). The parent-child relationship is among the fundamental rights protected by the constitutional guarantees of due process. *In re Welfare of Children of B.J.B.*, 747 N.W.2d 605, 608 (Minn. App. 2008). The applicable due-process standard in a TPR proceeding resides in the guarantee of fundamental fairness. *Santosky v. Kramer*, 455 U.S. 745, 753-54, 102 S. Ct. 1388, 1394-95 (1982); *B.J.B.*, 747 N.W.2d at 608. Due process requires reasonable notice, a timely opportunity for a hearing, the right to counsel, the opportunity to present evidence, the right to an impartial decision-maker, and the right to a reasonable decision based solely on the record. *Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 565 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995). With regard to notice,

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information and it must afford a reasonable time for those

> interested to make their appearance. But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met the constitutional requirements are satisfied.

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-315, 70 S. Ct. 652, 657 (1950) (citations omitted).

M.F. received notice that complied with the Minnesota Rules of Juvenile Protection Procedure and due process. *See* Minn. R. Juv. Prot. P. 32.02, subds. 2-5 (describing service requirements in juvenile protection proceedings). On October 25, 2007, M.F. was personally served with the summons and a copy of the permanency petition that requested termination of her parental rights. Minn. R. Juv. Prot. P. 32.02, subd. 3 (requiring that the summons and petition be personally served). The summons and petition informed M.F. of the nature of the proceeding, stated the relief requested and the basis for the request, and provided notice of the initial hearing. The summons also explained that her failure to appear may result in her parental rights being permanently severed pursuant to a TPR petition. *See* Minn. R. Juv. Prot. P. 32.02, subd. 4 (addressing the required content for a summons and petition).

While the rules require personal service of the summons and petition, the rules do not require personal service of notice of hearings that follow the emergency-protective-care or admit-deny hearing; only written notice is required. Minn. R. Juv. Prot. P. 32.04 (stating that written notice of subsequent hearings "shall be delivered at the close of each hearing or mailed"). Where personal service is not required, service upon counsel for a party shall be deemed service upon the party. Minn. R. Juv. Prot. P. 31.04.

On March 10, 2008, the original trial date, M.F.'s attorney appeared, but M.F. was in jail. The parties agreed that it was infeasible to arrange to transport M.F. to court for trial that day, so the district court rescheduled the permanency trial to June 3. The district court issued an order suspending M.F.'s visitation and stating that the permanency trial was rescheduled for June 3, 2008. The district court sent notice of filing of the order, along with a copy of the order, to M.F. and her attorney. Thus, M.F.'s attorney received written notice that the permanency trial was rescheduled for June 3, 2008, as required by Minn. R. Juv. Prot. P. 32.04.

M.F. claims that she received no notice of the June 3 permanency trial, arguing that there is no evidence that anyone told her about the June 3 date or ordered her to appear. Such evidence is unnecessary given that notice on M.F.'s attorney is deemed notice on M.F. Minn. R. Juv. Prot. P. 31.04. And we question the assertion that M.F. was unaware of the June 3 trial date because at the hearing on M.F.'s motion to reopen, her attorney stated that M.F. failed to appear on June 3, because "she had a criminal court matter and was unaware that both of the court dates were at the same time." Uncertainty that both hearings were at the same time is not the same as lacking notice that the permanency trial was scheduled for the same day. Moreover, M.F.'s motion to reopen makes no claim that M.F. did not have notice of the June 3 trial date. Instead, the motion states that M.F. was taken into custody on a warrant on the day of the permanency trial and "was unable to attend her Termination trial due to no fault of her own. [M.F.] notified her attorney the next day." These statements appear to indicate that M.F. knew of the permanency trial on June 3. But further speculation regarding whether M.F. was

aware of the June 3 date is unnecessary because her attorney had proper notice of the hearing date and "service upon counsel for a party . . . shall be deemed service upon the party." *Id.*

We similarly reject M.F.'s argument that the district court's failure to transport her to court on March 10, 2008 to sign a hearing notice for the June 3 trial violated her due-process rights. The rules do not require a signed hearing notice. Minn. R. Juv. Prot. P. 32.04 (addressing notice of subsequent hearings). The district court mailed written notice of the June permanency-trial date to M.F. at her home address that was on file with the court and sent written notice to her attorney. Although M.F's notice was returned as undeliverable, the district court's effort to provide M.F. written notice, regardless of the written notice to her attorney, was reasonable and complied with the requirements of rule 32.04.

We likewise reject M.F.'s argument that nothing in the rules or case law allowed the district court to grant a default termination order based on "the sort of 'pretend' trial" that was conducted in this case. M.F. contends that she was entitled to a "full adjudicatory trial" governed by the rules of procedure and evidence. M.F. specifically complains that the testimony offered in support of termination was (1) the result of leading questions, (2) not cross-examined, and (3) "surely based on multiple levels of hearsay." M.F. also complains that the exhibits contained hearsay.

The district court acted within its discretion when it proceeded by default. The district court may proceed by default and "receive evidence in support of the petition" if a parent fails to appear for trial after proper service and notice. Minn. R. Juv. Prot. P.

18.01. Moreover, M.F.'s attorney did not object to the default proceeding. The district court received evidence in support of termination of M.F.'s parental rights by way of testimony and exhibits. M.F.'s attorney was present and had the opportunity to raise objections and cross-examine witnesses. M.F. does not claim that her attorney's participation was restricted in any way, nor does she claim that her attorney's performance was deficient. Finally, M.F. cites no legal authority to support her contention that the proceeding was procedurally inadequate. We reject M.F.'s claim that she is entitled to relief on this ground.

In conclusion, M.F. fails to demonstrate a procedural defect that justifies reopening the default judgment based on due-process grounds, and the district court did not abuse its discretion by refusing to grant relief on this ground.

III. The district court's verbatim adoption of proposed findings does not constitute reversible error.

M.F. argues that the district court erred by adopting the department's proposed findings verbatim, contending that the district court could not possibly have independently evaluated the evidence. M.F. identifies specific findings that contain typographical errors and one finding that is unsupported by the record. M.F. points out that these errors are contained in the department's proposed findings and that their inclusion in the district court's findings indicates that the district court signed the proposed findings verbatim.

It appears that the district court adopted the department's proposed findings verbatim. But a district court's "verbatim adoption of a party's proposed findings and

conclusions of law is not reversible error per se." *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993). Verbatim adoption may raise questions regarding whether the district court independently evaluated the evidence. *Id.* Accordingly, verbatim adoption of proposed findings and conclusions is discouraged "because it does not allow the parties or a reviewing court to determine the extent to which the court's decision was independently made." *Lundell v. Coop. Power Ass'n*, 707 N.W.2d 376, 380 n.1 (Minn. 2006).

When we review a district court's verbatim adoption of one party's proposed findings, we conduct a careful review of the record, and if we conclude that the district court's findings are not clearly erroneous, then "the verbatim adoption, standing alone, is insufficient grounds for reversal." *Dukes v. State*, 621 N.W.2d 246, 258-59 (Minn. 2001) (holding that the post-conviction court's verbatim adoption of the state's proposed findings, standing alone, was not grounds for reversal).[4] The district court's individual fact findings are clearly erroneous in a TPR case if "our 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). Our review of the record leads us to conclude that one of the district court's findings is clearly erroneous.

Finding of fact 13.6 states that "[M.F.] has followed the recommendation of her psychological assessment." There is no evidence in the record to support this finding. In

[4] The *Dukes* standard for reversal was cited in *Pederson v. State*, 649 N.W.2d 161, 163 (Minn. 2002). And the supreme court has cited *Pederson* when discussing the problem of verbatim findings in termination of parental rights cases, noting that it has "declined to adopt a blanket prohibition on the practice." *In re Children of T.A.A.*, 702 N.W.2d 703, 707 n.2 (Minn. 2005).

fact, the record contradicts this finding. Accordingly, we are left with the definite and firm conviction that a mistake has been made and that this finding is clearly erroneous.[5] However, this error in no way prejudices M.F.; it works in her favor. Correction of this finding to reflect the record evidence would provide additional support for the district court's order. We therefore conclude that the district court's adoption of this erroneous finding is not a basis for reversal. *See In re Welfare of D.J.N.*, 568 N.W.2d 170, 175-76 (Minn. App. 1997) (affirming a TPR order when appellants failed to demonstrate that the district court's error was prejudicial). Likewise, other findings that contain grammatical errors are not prejudicial. *See id.*

Although we disapprove of the district court's verbatim adoption of the department's proposed findings and conclusions, the evidence in this case was essentially unchallenged. Thus, the district court was not called upon to weigh competing evidence or to determine witness credibility based on cross-examination. Given the unchallenged nature of the evidence and because the sole erroneous finding was not prejudicial, the district court's adoption of the department's proposed findings verbatim does not constitute reversible error.

Affirmed.

Dated: _____ _____

The Honorable Michelle A. Larkin

[5] This finding appears in a group of findings, numbered 13.1-13.9, reciting the ways in which M.F. "has not" cooperated with her case plan. In this context, and given the record, it appears that finding 13.6 contains a typographical error in that the word "not" was erroneously omitted after the word "has."

STAUBER, Judge, dissenting

I respectfully dissent.

> The parent-child relationship is among the fundamental rights protected by substantive due process. The applicable due-process standard for juvenile proceedings is *fundamental fairness*. A court considering whether a party has been deprived of due process balances the private interest affected by official action, the risk of erroneous deprivation of that interest through the procedures used and the value of additional or substitute safeguards, and the government's interest.

In re Welfare of Children of B.J.B., 747 N.W.2d 605, 608 (Minn. App. 2008) (citations omitted) (emphasis added).

Here, the record shows a protracted CHIPS matter wherein the mother (and absent birth fathers) did not adequately correct the conditions which led to the out-of-home placements of their two young daughters. The government then brought this termination of parental rights (TPR) petition. The facts are set forth in the majority opinion.

Mother (and birth fathers) failed to appear for the June 3, 2008 trial date. Default judgment was entered terminating their parental rights following brief testimony and submission of exhibits. The court signed the findings and order prepared by the county without change on June 16, 2008. Shortly after the default hearing, mother contacted her lawyer and informed him that, on the hearing date, she had been taken into custody on a warrant and was therefore unable to appear for her TPR trial. Her lawyer moved to re-open the TPR proceedings to allow "due process to defend the allegations against her in

the Termination of Parental Rights matter." Mother's motion to re-open was heard and denied. Against this background, mother appeals.

Mother argues that TPR should not have been entered against her because she had not been adequately notified of the trial date, that she was detained in jail on the trial date, and that the district court erred in signing the county-prepared findings without independent review. Essentially, mother complains that she was not provided her due process right to a hearing to present her case.

The majority weighs heavily on the mother's record of non-compliance with her CHIPS reunification plan, in other words, that she would not have prevailed at trial even if she had appeared. But that is not the issue. Mother was denied her fundamental due process right–an opportunity to appear and present a defense. Any inconvenience to the system would have been minimal when weighed against mother's due process rights. *Due process.*

The dissent in *Coats* is applicable here. The facts and issues in *Coats* are similar and equally compelling.

> I respectfully dissent. The issue before us is not whether the termination of respondent Deloris Coats' parental rights was justified on the merits. Rather, the issue is whether the district court was justified in terminating her parental rights based on her failure to "appear" at a pretrial hearing. Put another way, was the process fair? I conclude that it was not. Moreover, in reinstating the district court's decision, this court, like the district court below, has treated Deloris Coats' parental rights in a wholly cavalier fashion.

In re Welfare of children of Coats, 633 N.W.2d 505, 513 (Minn. 2001) (Page, J., dissenting).

As the majority correctly notes, vacating a default order is discretionary but should be liberally allowed. *Kosloski v. Jones*, 295 Minn. 177, 179–80, 203 N.W.2d 401, 403 (1973). They apply the four *Hinz* factors required for relief from default judgment, acknowledging that two of those factors strongly favor mother–that she acted with due diligence to reopen and that she had a reasonable excuse for not appearing as she was in jail. *See Hinz v. Northland Milk & Ice Cream Co.*, 237 Minn. 28, 30, 53 N.W.2d 454, 456 (1952). But the majority finds that mother would be unable to present a reasonable defense because of her CHIPS failures, and that reopening would delay "permanency" (adoption) for the children. While it cannot be argued that mother's CHIPS failures were insubstantial, there was an offering of the possible beginnings of rehabilitation–her use of marijuana was decreasing, she was somewhat cooperative with her case plan, she had completed a psychological evaluation, and she was cooperating with African-American Family Services. A weak showing on one of the *Hinz* factors may be outweighed by a strong showing on the remaining factors. *Riemer v. Zahn*, 420 N.W.2d 659, 662 (Minn. App. 1988).

The delay-in-permanency factor is also misplaced by the majority. Here, the two daughters had been placed in pre-adoptive placements with their respective paternal grandmothers, not in an independent pre-adoptive placement where the prospective adoptive parents would be anxious to complete the adoptive process.[6] Moreover, in the

[6] Both birth fathers' parental rights have also been terminated. Upon the completion of the proposed adoptions, each birth father will become the brother to his terminated child. It is likely that these birth fathers will have contact with their new siblings while the birth mother likely will have no similar contact.

time taken by the district court to receive, review, schedule, hear, and decide mother's motion to reopen, it could have easily conducted the trial.

The eloquent closing in the *Coats* dissent highlights the need for a flexible and heightened application of due process in T.P.R. cases.

> What is more disturbing is the fact that victims of these practices, like Deloris Coats, are likely to be poor people and/or people with chemical dependency or mental health problems. When it comes to due process, these practices treat them as second-class citizens. But their parental rights are no less valuable and should be accorded no less respect than the rights of any other person. I simply cannot imagine that a default judgment on the merits for failure to personally appear at a pretrial hearing attended by their counsel would ever be entered against people who were not poor. This disparity in treatment is irreconcilable with a legal system that purports to dispense equal justice under the law. Nor can I imagine that counsel for parents with financial wherewithal would ever seek to withdraw from their representation in such a situation. These practices are "so offensive to a civilized system of justice that they must be condemned." *State v. Williams*, 535 N.W.2d 277, 287 (Minn. 1995). Yet this court condones them and in the process gives truth to the proverb, "the court is most merciful when the accused is most rich."
>
> I am appalled and dismayed, but, more than anything, I am disappointed.

Coats, 633 N.W.2d at 516 (Page, J., dissenting)

Independent findings.

This district court continues to ignore the cautionary suggestions of this court and the supreme court that a trial court should not adopt verbatim a party's (here the government's) proposed findings and conclusions. In *In re Children of T.A.A.*, the supreme court stated:

> [W]e take this opportunity to repeat that our preference is for a court to independently develop its own findings. We recognize the short deadline facing district courts in issuing an order on a petition to terminate parental rights. However, the district court's findings should reflect the court's independent assessment of the evidence and this is best accomplished by the district court exercising its own skill and judgment in drafting its findings.

702 N.W.2d 703, 707 n.2 (Minn. 2005) (quotations and citation omitted).

I note that, recently, another TPR was reversed for adopting "the county's proposed findings of fact and conclusions of law verbatim." *In re Welfare of M.L.P.*, No. A08-0970, 2009 WL 22319, at *1–2 (Minn. App. Jan. 6, 2009) (holding that the court's review of the record did not allow a determination of whether the district court's decision was independently made). In *M.L.P.*, the county's findings, as adopted by the court, contained significant inaccuracies, including "a statutory ground that was not alleged in the termination petition. *Id.* at *1. This troublesome policy continues unabated.

I would reverse.