STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0768

In the Matter of the Welfare of the Children of:
A. A. L., N. P. C., and M. H., Parents.

Filed October 28, 2019
Reversed
Worke, Judge

Itasca County District Court
File Nos. 31-JV-18-3543 and 31-JV-17-3289

Darla Nubson, Grand Rapids, Minnesota (for appellant father M.H.)

Matti R. Adam, Itasca County Attorney, Jennifer E. Ryan, Assistant County Attorney, Grand Rapids, Minnesota (for respondent Itasca County Health and Human Services)

Ellen E. Tholen, Grand Rapids, Minnesota (for respondent mother A.A.L.)

Kim Allen, Grand Rapids, Minnesota (guardian ad litem)

Considered and decided by Hooten, Presiding Judge; Worke, Judge; and Klaphake, Judge.[*]

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

WORKE, Judge

Appellant challenges the termination of his parental rights, arguing that the record does not show that (1) he failed to satisfy his parental duties, (2) the county's reasonable

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

efforts failed to reunite the family, and (3) termination is in the child's best interests. Because we agree that the district court abused its discretion in terminating appellant's parental rights, we reverse.

FACTS

A.A.L. is the biological mother of five children. This appeal relates to the termination of appellant-father M.H.'s parental rights to one of A.A.L.'s children, B.B. born July 2014. B.B. is referred to as a twin because he has a sister born on the same day but who is the offspring of a different father.[1] A.A.L. voluntarily terminated her parental rights to the twins, and the father of the female twin had his rights involuntarily terminated; neither challenge the termination of parental rights (TPR).[2]

The current matter first came before the district court in November 2017 when police were dispatched to A.A.L.'s home for a domestic disturbance. The children were subsequently removed from the home and adjudicated children-in-need-of-protection-or-services (CHIPS). Following the CHIPS adjudication, the county learned that M.H. had been adjudicated the father of B.B. in 2016. At the time, the district court found that it was in B.B.'s best interests to award A.A.L. sole legal and sole physical custody, and that M.H., who lives in Michigan, receive no parenting time. M.H. was ordered to pay child support, which he has done.

[1] Heteropaternal superfecundation is a form of atypical twinning in which twins are genetically half siblings.

[2] Custody of A.A.L.'s eldest child was transferred to the child's maternal grandfather. The two youngest children are with their father.

After the current CHIPS petition was filed, M.H. participated by telephone in a January 2018 pretrial hearing. M.H. agreed that B.B. was CHIPS, even though the facts leading to that determination did not pertain to him. M.H. indicated that he wanted to be involved in the proceedings, but stated that he did not feel that he needed any services. M.H. stated that he wanted to be considered a permanent placement option for B.B.

In February 2018, a social worker talked to M.H. about a case plan. M.H. was required to: communicate honestly, respectfully, and consistently with the social worker; remain law abiding; engage in visitation; comply with drug testing; complete a mental-health diagnostic assessment; and maintain reliable transportation. At a hearing on February 7, 2018, M.H. informed the district court that it would be difficult for him to visit B.B. in person due to inflexibility with his employment.

At a hearing in May 2018, the county informed the district court that, although M.H. stated that he wanted B.B. to be placed with him, it was still working on reunification with mother. Again in August 2018, the county stated that it was "doing reunification efforts primarily with [mother]." The county expressed concern that M.H. was not working the case plan. M.H. indicated that he received "the same case plan that was sent to [mother]," requesting that he do the things required of mother, despite their different circumstances.

In October 2018, a home study was done at M.H.'s home that he shares with his mother. The study approved placement of B.B. with M.H., concluding: "The home is appropriate and there is adequate space for [B.B.] There were no concerns noted. [M.H.] expresses that he wants his child with him, and he has many family members in the area that want him in their lives as well." At a hearing the same month, M.H. again objected to

the requirements of the case plan, but stated that he was complying to the best of his ability and was willing to work with the county.

Regarding his case plan, M.H. engaged in 30 Skype calls with B.B. over the course of approximately one year. But he did not comply with the requirements of the case plan that related only to A.A.L.'s circumstances. That led to the county filing a TPR petition in January 2019. The county alleged that M.H. refused or neglected to comply with the duties of the parent-child relationship, and that reasonable efforts failed to correct the conditions leading to out-of-home placement. In February 2019, M.H. met B.B. and B.B.'s twin. M.H. and his mother engaged in three visits with the children.

On February 25, 2019, the district court began a trial on the petition. The social worker testified that when the case plans were created, they were based on correcting the conditions that led to the CHIPS petition. She conceded that at the time of the CHIPS petition, the county had no communication with M.H. She testified that she did not create a different case plan for each parent. The social worker testified that in her conversations with M.H. he agreed to take both B.B. and his twin.

The social worker's reasonable efforts to reunify the family were summarized as: encourage M.H. to visit B.B. in Minnesota, facilitate Skype visits, provide M.H. with release forms for urinalysis testing and scheduling a diagnostic assessment, and offering/providing funding. The social worker testified that it was in B.B.'s best interests to terminate M.H.'s parental rights because B.B. needs a parent who is able to meet his needs and M.H. has not shown the ability to accomplish that. She also testified that it

would not serve B.B.'s best interests to move to Michigan without an established relationship with M.H.

A psychologist who treated the twins testified that she had concerns about separating them because they operate as a team. The psychologist also testified that B.B. has some cognitive limitations and anxiety and behavioral concerns resulting from trauma he suffered while living with A.A.L. She testified that B.B. is connected to his care providers in Minnesota and that it would be a difficult move to Michigan without services in place.

A guardian ad litem (GAL) testified that it would be in B.B.'s best interests to terminate M.H.'s parental rights because B.B. needs someone who is going to be there for him. She testified that she had concerns about M.H. because he is young,[3] but noted that he has a close family and a lot of support. The GAL also testified that she did not know M.H. well enough to opine whether he would be an appropriate caretaker for B.B. She also commented that keeping the children together was not a concern because M.H. wanted both children.

M.H. testified that he attempted to have contact with B.B. prior to the CHIPS proceeding, but A.A.L. hindered contact. M.H. admitted that the social worker encouraged him to visit B.B., but stated that he could not take off work. M.H. testified that he was consistent with his Skype visitations. M.H. also admitted that the social worker attempted to have him sign releases, but that he did not sign the releases or undergo a diagnostic

[3] M.H. was 24 years old at the time of this appeal.

assessment because his insurance would not cover it. But M.H. testified that he has never been treated for a mental-health illness.

On April 3, 2019, the district court determined that it was in B.B.'s best interests to terminate M.H.'s parental rights. The district court concluded that M.H. failed to demonstrate an ability to meet B.B.'s special needs due to his unwillingness to schedule his own services required by his case plan. The district court concluded that the county proved that M.H. repeatedly refused to comply with the duties of the parent-child relationship and that reasonable efforts failed to correct the conditions leading to the out-of-home placement. This appeal followed.

D E C I S I O N

M.H. argues that the district court abused its discretion by terminating his parental rights. This court presumes "that a natural parent is a fit and suitable person to be entrusted with the care of a child." *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980). Therefore, parental rights should not be terminated "except for grave and weighty reasons." *In re Welfare of HGB*, 306 N.W.2d 821, 825 (Minn. 1981). A district court may only involuntarily terminate parental rights if at least one statutory basis for termination exists and it finds that termination is in the child's best interests. Minn. Stat. § 260C.301, subds. 1(b), 7 (2018).

This court reviews the district court's TPR decision for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). In doing so, this court determines whether the district court's findings address the statutory criteria and whether they "are supported by substantial evidence and

are not clearly erroneous." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). A factual finding is clearly erroneous if it is manifestly contrary to the evidence or not reasonably supported by the evidence. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008). This court gives "considerable deference" to the district court's TPR decision, while carefully reviewing the sufficiency of the evidence to determine whether it is clear and convincing. *S.E.P.*, 744 N.W.2d at 385.

M.H. argues that the district court's findings are insufficient to support a conclusion that he failed to satisfy his parental duties and that reasonable efforts failed to correct the conditions that led to the out-of-home placement. M.H. also argues that the district court erred in finding that the county made reasonable efforts to reunite him with B.B. and that TPR is in B.B.'s best interests. We agree.

Parental duties

Parental rights may be terminated when a parent has "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed . . . by the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(2). Such duties include providing "food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development." *Id.* "The [district] court must find that at the time of termination, the parent is not presently able and willing to assume [parental] responsibilities" and that the parent's neglect of these duties will likely continue in the future. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 90 (Minn. App. 2012) (quotation omitted).

The district court determined that the county proved that M.H. failed to satisfy the duties of the parent-child relationship because M.H. insisted "on receiving placement [of B.B.] without meeting [B.B.] in person [which] shows that he does not understand or appreciate B.B.'s needs and leads the [district] [c]ourt to question his ability to meet B.B.'s needs currently or in the foreseeable future."

Despite recognizing that M.H. lives an approximate 13-hour drive away from B.B., and that if he flew he would have to drive from Minneapolis to Grand Rapids, Minnesota, the district court found that M.H. "had the means and ability to travel to Grand Rapids to meet [B.B.], but he chose not to make his son a priority." But the district court also found that M.H. stated that it was lack of flexibility with his job that prevented him from visiting B.B. sooner. M.H. testified that from February to October 2018, he worked six days a week, was not given vacation, and could not request several consecutive days off. The county did not rebut this evidence. The county offered to assist with gas cards and a hotel stay, but the financial component of a face-to-face visit was not the major hindrance. Further, if the county's main concern was M.H. meeting B.B. face to face, there is nothing in the record to show that the county offered to find a half-way meeting point.

Additionally, even though M.H. did not immediately meet B.B., he was consistent with his 30 Skype visits. The GAL testified that she saw all of the Skype visits and stated that they were nice and went well. She stated that she was "impressed" that M.H. always asked about B.B.'s twin during the Skype visits. Therefore, the evidence does not support the district court's conclusion that M.H. failed to satisfy his parental duties by failing to make B.B. a priority.

The district court also determined that the county showed that M.H. failed to satisfy his parental duties by failing to comply with his case plan. A parent's "[f]ailure to satisfy requirements of a court-ordered case plan provides evidence of a parent's noncompliance" with parental duties and responsibilities. *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 666 (Minn. App. 2012). While the record shows that M.H. did not satisfy the majority of the requirements of his case plan, he raised valid concerns about the case plan.

The case plan was created before M.H. was involved in the proceedings. When the social worker talked to M.H. about the case plan, he expressed his concerns immediately and the district court found that M.H. never signed the case plan. The social worker admitted that the case plan was created with the intent to reunify B.B. with A.A.L. And that is evident because the case-plan requirements address A.A.L.'s circumstances, but not M.H.'s. For example, M.H. was required to remain law abiding, but he has no criminal history. M.H. was required to comply with drug testing, but he has no history of chemical-dependency issues. M.H. was required to complete a mental-health assessment, but he has no history of mental-health issues. Further, the list of services provided in the case plan are all located in Minnesota when M.H. lives in Michigan. Finally, while the district court stated that M.H. failed to comply with his case plan because he did not have an in-person meeting with B.B., the case plan requires only that M.H. "attend and be engaged appropriately in all scheduled visits." The case plan did not require M.H. to travel to Minnesota, only to have visits, which he did through Skype.

Although M.H. should not have ignored the requirements of the case plan because they were not tailored to his specific circumstances, his lack of full compliance is not clear

and convincing evidence that M.H. failed to satisfy his parental duties, and the district court erred in so concluding. *See S.E.P.*, 744 N.W.2d at 385.

Correct conditions leading to out-of-home placement

Parental rights may be terminated when reasonable efforts fail to correct the conditions leading to the child's out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5). The district court determined that reasonable efforts presumptively failed because B.B. was in out-of-home placement for 15 months and M.H. failed to substantially comply with the case plan. *See id.*, subd. 1(b)(5)(i). However, the record does not support a conclusion that M.H. substantially failed to comply with his case plan, because he substantially complied with the requirements that pertained to him.

Although the social worker stated that she discussed the plan with M.H., M.H. did not participate in the preparation of the case plan, as required by law. *See* Minn. Stat. § 260C.212, subd. 1 (2018) (stating that an out-of-home placement plan shall be prepared by the social services agency jointly with the parent). One case plan was created for both parents before M.H. was involved in the matter, and it was created with the intention of reuniting B.B. with A.A.L. As a result, many of the requirements do not pertain to M.H. M.H. recognized immediately that the case plan was created to address A.A.L.'s circumstances, and he repeatedly objected to the case plan and raised his concerns to the social worker and the district court. Thus, the evidence does not support the district court's determination that reasonable efforts presumptively failed.

Reasonable efforts to reunite the family

In a TPR proceeding, the district court must determine whether the county made reasonable efforts to reunite the family. *T.R.*, 750 N.W.2d at 664. Reasonable efforts are "services that go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Mar. 28, 2007). "The county's efforts must be aimed at alleviating the conditions that gave rise to out-of-home placement, and they must conform to the problems presented." *J.K.T.*, 814 N.W.2d at 88.

In determining if efforts were reasonable, the district court considers whether the services were: "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Minn. Stat. § 260.012(h) (2018). The district court determined that the county developed a case plan for M.H. that satisfied the requirements of section 260.012(h) and were relevant to address B.B.'s emotional and behavioral needs that arose from the "trauma he suffered as a result of exposure to drug use and domestic abuse in Mother's home." But a review of the record shows that the county did not make reasonable efforts to reunite B.B. and M.H.

Most significantly, testimony from the GAL and the psychologist who treated B.B. noted that knowing how to care for and address B.B.'s emotional and behavioral issues was very important. There was testimony that there was concern that M.H. is a young man with no other children, and he might not be equipped to parent a child with emotional and

behavioral issues. However, the social worker admitted that she did not offer parenting services to M.H. or request that he do a parent-capacity assessment.

Additionally, the social worker testified that in order to facilitate an in-person meeting, she offered M.H. gas vouchers and payment for a hotel stay. But this effort is not reasonable as it does not, standing alone, address the issue that M.H. was unable to visit B.B. because of the 13-hour drive-time distance and his inability to take off work.

Finally, the efforts were not reasonable concerning reunification efforts with M.H. because they addressed concerns with A.A.L., such as her chemical-dependency and mental-health issues, her failure to remain law abiding, and her inability to maintain employment and stable housing. These efforts are irrelevant to M.H. M.H. has no history of chemical-dependency issues or any drug-or-alcohol-related criminal offenses. M.H. has no history of mental-health issues. M.H. has no criminal history. M.H. is employed. M.H. has a safe and stable home. Based on the record, the county's efforts were not reasonable with respect to reunifying B.B. and M.H.

Best interests

Finally, TPR must be in the child's best interests. Minn. Stat. § 260C.301, subd. 7. A best-interests analysis involves balancing: "(1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *J.R.B.*, 805 N.W.2d at 905 (quotation omitted). If there is a conflict between the parent's interests and the child's interests, "the interests of the child are paramount." *Id.* (quotation omitted). This court reviews a best-interests determination for an abuse of discretion. *Id.*

The district court determined that, although B.B. and M.H. are interested in building a relationship, B.B.'s competing interests outweigh either interest in preserving the parent-child relationship. The district court determined that B.B.'s interests in "a stable and permanent home with a caregiver who can meet his many specialized needs" outweigh his affection for M.H. and his interest in cultural ties. The district court determined that "B.B.'s needs are considerable" and M.H. "has not demonstrated an ability to meet those needs, despite the [county]'s reasonable efforts to assist him." This determination is not supported by the record.

The county focused its efforts on reuniting B.B. with A.A.L., rather than on educating and training M.H. on how to meet B.B.'s needs. The county's efforts in requiring M.H. to remain law abiding, submit to drug testing, and scheduling a mental-health assessment are not aimed at engaging M.H. in addressing B.B.'s needs. With the goal in mind of addressing B.B.'s needs, the county's efforts should have initially been aimed at setting M.H. up with a parenting assessment and requiring parenting classes. Finally, the district court recognized that B.B. should not be separated from his twin, and that it is in his best interests to keep them together. But M.H. stated that he wants both children. Therefore, the district court abused its discretion in determining that it is in B.B.'s best interests to terminate M.H.'s parental rights.

Reversed.