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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1144**

In the Matter of the Welfare of the Child of: E. A. M., Parent.

**Filed December 27, 2011
Affirmed
Collins, Judge***

Blue Earth County District Court
File No. 07-JV-11-492

Marisela E. Cantu, Cantu Law Firm, P.A., Mankato, Minnesota (for appellant R.G.)

Ross E. Arneson, Blue Earth County Attorney, Mark A. Lindahl, Assistant County Attorney, Mankato, Minnesota (for respondent county)

Considered and decided by Wright, Presiding Judge; Bjorkman, Judge; and Collins, Judge.

UNPUBLISHED OPINION

COLLINS, Judge

Appellant-father challenges the termination of his parental rights, arguing that substantial evidence does not support the district court's findings that (a) he neglected to comply with the duties imposed by the parent-child relationship; (b) respondent-county made reasonable efforts to correct the conditions leading to the out-of-home placement; (c) the child is neglected and in foster care; and (d) termination is in the child's best

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

interests, and that the district court therefore abused its discretion in terminating his parental rights. We affirm.

FACTS

Blue Earth County Human Services filed a petition to terminate the parental rights of mother, E.A.M., and father, R.G., to their child, A.M., who was born in April 2009. A child-in-need-of-protection-or-services (CHIPS) petition had been filed with respect to the child in August 2010, and the child was placed in foster care. The termination petition alleged that father, who had been identified as the child's biological father, was registered as a sex offender, was under probation supervision, and signed a case plan with respect to the child. However, about a week after signing the case plan, father was arrested on charges of selling controlled substances, and he did not have a foreseeable release-from-custody date. The petition alleged that father had failed to comply with his case plan by his failure to, among other conditions, maintain a suitable residence for the child; attend early-childhood-family-education (ECFE) classes or doctor, educational, or assessment appointments for the child; and consistently attend scheduled visits with the child. The petition recommended termination of the parental rights of both parents. Mother entered an admission to the CHIPS petition and did not contest the termination of her parental rights; father challenged the termination.

At a district court hearing on the petition, an officer with the Minnesota River Valley Drug Task Force testified that father had recently been investigated in connection with controlled buys of narcotics occurring in September through November 2010, and an informant had identified father's voice in recorded calls arranging the purchase of

crack cocaine. The officer testified that police surveillance showed father coming and going at all hours at the home of his brother, who has been involved in gang-related activity, and apparently spending nights there. As a result of this investigation, the State of Minnesota charged father with several counts of felony controlled-substance crimes. Father has previous convictions of third-degree criminal sexual conduct and a fifth-degree controlled-substance crime; he was incarcerated during 2007 based on a violation of his conditions of probation.

DNA testing established father's paternity in late August 2010. But earlier in August, as soon as the CHIPS petition was filed, the county initiated phone contact with father and began to develop a case plan for him. Father attended only five of eight scheduled visits with the child in September 2010 and only two of six scheduled visits in October 2010.

On October 26, 2010, father signed the case plan, which required him to continue with outpatient sex-offender treatment (CORE); follow probation and its recommendations; obtain appropriate housing for himself and the child; participate in ECFE classes, doctor appointments, and educational appointments for the child; and find employment or attend school. He was also required to follow recommendations of the child's evaluation for developmental services, which qualified the child for services based on developmental and speech delays. On November 3, 2010, father was arrested based on the allegations in the criminal complaint, and he has been incarcerated ever since.

The county social worker assigned to the case testified that prior to father's incarceration he had poor compliance with his case plan, based on his inconsistency with visits and his failure to attend the child's appointments or to demonstrate suitable housing. Although father told the social worker that he was living with a couple in Lake Crystal, when she mailed the required background-check materials information was never returned. She testified that father was initially working "on and off" and attending technical college, but he did not follow up to attend ECFE classes or the doctor or educational appointments for the child. She stated that father had voluntarily terminated his rights to another child in 2008, when his completion of the CORE requirements was also at issue. She testified that based on father's failure to follow his case plan and his lifestyle before incarceration, she did not believe that continued reasonable efforts at reunification would be successful. She indicated that part of father's probation requirement was to refrain from criminal activity and that his case plan was still in place, and she acknowledged that the county did not make further attempts at reunification after father's incarceration.

The child's guardian ad litem (GAL) testified that her review of father's visitation notes indicated no particular problems but also that not a lot of interaction occurred between father and the child. She testified that she had concerns with father's ability to maintain the schedule of appointments required for a special-needs child.

Father's former domestic partner, with whom father has another child, testified that father had a close and warm relationship with her young daughter from a previous relationship. Father testified that he had a sexual relationship with mother but did not

live with her and that when the child was eight months old, he cared for the child for one week when mother was working, although at the time he did not believe he was the child's father. Father testified that he planned to take the child to Hennepin County, where he has family, and that he would allow his brother, who had rehabilitated from gang activity, to care for the child. He testified that, as a condition of probation, he was required to complete CORE programming but that he had not yet finished that programming. He stated that he missed ECFE classes because he was employed at the time and was tired from night-shift work and had not slept.

The district court ordered the termination of both mother's and father's parental rights. The district court found that mother had been recently hospitalized for mental health issues and had failed to maintain contact with the child or the county. The district court found that father had not completed his case plan, had inconsistent participation in visitation, had failed to comply with conditions of probation, and had not been truthful with county authorities regarding his residence and activities. The district court found that clear and convincing evidence showed that father had been involved in drug dealing and with persons involved with drug dealing, that there was no indication that he could be attentive to the child's special needs, and that he would likely remain incarcerated until his sentence expires in 2012.

The district court concluded that both parents had substantially, repeatedly, or continuously refused or neglected to comply with the duties imposed by the parent-child relationship in violation of Minn. Stat. § 260C.301, subd. 1(b)(2) (2010); that reasonable efforts by the county had failed to correct the conditions leading to the child's placement

under Minn. Stat. § 260C.301, subd. 1(b)(5) (2010); that the child is neglected and in foster care as defined in Minn. Stat. § 260C.007, subd. 24 (2010); and that the child's best interests compel the termination of parental rights. Father's appeal followed.

D E C I S I O N

We review a termination-of-parental-rights decision “to determine whether the district court's findings address the statutory criteria and whether the district court's findings 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). We defer to the district court's decision on termination if at least one statutory ground for termination is proved by clear and convincing evidence and termination is in the child's best interests. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). “Thus, . . . we will review the district court's findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion.” *In re Welfare of Children of J.R.B.*, ___ N.W.2d ___, ___, 2011 WL 5119364, at *4 (Minn. App. Oct. 25, 2011). Our review closely evaluates the sufficiency of the evidence, taking into account that it is the district court that assesses the credibility of witnesses. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

I.

A district court may terminate parental rights if it finds that a parent “has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed . . . by the parent and child relationship . . . and [] reasonable efforts by the

social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable.” Minn. Stat. § 260C.301, subd. 1(b)(2). Failure to satisfy the requirements of a court-ordered case plan provides evidence of a parent’s noncompliance with the duties and responsibilities under subdivision 1(b)(2). *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003).

Father challenges the district court’s termination of his parental rights on this ground, arguing that the district court’s finding that he minimally participated in his case plan is clearly erroneous. We disagree. While father contends that before his incarceration he was enrolled in school, had suitable housing for himself and the child, and was exercising visitation with the child, the record shows that father missed half of his scheduled visits with the child in September and October and that he failed to attend any of the scheduled appointments relating to the child’s special needs. It also shows that the county attempted to verify the housing information he provided and was unable to do so. Thus, the evidence supports the district court’s finding that father minimally participated in his case plan.

Father also argues that, while he was incarcerated, the county was required to assist him with the case-plan elements of obtaining suitable housing and employment and failed to do so. We disagree. Although incarceration does not excuse a county from making reasonable efforts, reasonable efforts do not compel efforts that would be futile. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004) (stating that efforts were futile when father was incarcerated and failed to make any effort to maintain

relationship with children). On the record before us, the county's prior unsuccessful efforts to verify suitable housing made further efforts to obtain housing unrealistic. Additionally, father has provided no evidence that during his incarceration he made any effort to arrange visitation with the child. Having carefully reviewed the entire record, we conclude that the district court's finding that further reasonable efforts would be futile was not clearly erroneous and that the determination that father neglected to comply with the duties of the parent-child relationship is supported by clear and convincing evidence.

II.

Minn. Stat. § 260C.301, subd. 1(b)(5) allows a district court to terminate a party's parental rights if, "following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." A presumption exists that a failure to correct conditions occurs if a parent has not substantially complied with the court's orders and case plan despite reasonable efforts of the social service agency. Minn. Stat. § 260C.301, subd. 1(b)(5)(iii)-(iv).

Father argues that the court erred in terminating his parental rights on the ground that reasonable efforts by the county failed to correct the conditions that caused the child's out-of-home placement. We disagree. Father contends that because the case plan was only in effect for nine days before his incarceration, the county has not shown reasonable efforts to reunite him with the child. But father does not contest that the county actually made efforts beginning in August 2010, before and after his paternity was confirmed. These efforts included attempting to verify father's housing, employment, and education; scheduling father's visits with the child; and informing father of the

child's health and developmental appointments. Despite these efforts, father participated only sporadically in visitation and did not attend ECFE classes or any of the child's appointments. He also failed to continue with his probationary requirement of CORE programming. "Failure to cooperate with the rehabilitation plan supports the conclusion that the present conditions will continue for a prolonged, indeterminate period." *In re Welfare of J.S.*, 470 N.W.2d 697, 703 (Minn. App. 1991), *review denied* (Minn. July 24, 1991). Father's inability or unwillingness to fully participate in the county's reunification plan supports the district court's finding that the conditions leading to the child's placement have not been corrected, and the district court did not abuse its discretion by terminating father's parental rights on that basis.

III.

Parental rights may be terminated when a child is found to be neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(8) (2010). "Neglected and in foster care" means that the child is in foster care by court order; the parent's circumstances are such that the child cannot be returned to the parent; and the parent has failed to make reasonable efforts to correct conditions, despite the availability of rehabilitative services. Minn. Stat. § 260C.007, subd. 24. To determine whether parental rights should be terminated because a child is neglected and in foster care, courts look at the length of time the child has been in foster care; the parent's effort to adjust circumstances, conduct, or conditions to allow reunification; the parent's contact with the children preceding the petition; the parent's contact with the responsible agency; the adequacy and availability of relevant services; and the social-service agency's efforts to rehabilitate and reunite.

Minn. Stat. § 260C.163, subd. 9 (2010). The district court found that father had been unable to or failed to make reasonable efforts to adjust his conditions or conduct so that the child could be returned to him in the reasonably foreseeable future.

Father argues that the district court clearly erred in finding that the child was neglected and in foster care because the county failed to prove that his circumstances were such that the child could not be returned to him. We disagree. The district court found on clear and convincing evidence that, after father learned of his paternity, he participated in drug transactions and stayed overnight at a residence where such transactions were occurring. And in view of father's failure to attend any appointments with the child, the district court did not clearly err in finding that no indication exists that father is able or willing to attend to the child's special needs. *See In re Welfare of D.D.K.*, 376 N.W.2d 717, 721 (Minn. App. 1985) (concluding that district court properly terminated parental rights when parent was unable to provide structured, predictable home environment required by special-needs child). We therefore conclude that substantial evidence supports the district court's finding that the child was neglected and in foster care, and the district court's decision to terminate father's parental rights on this ground was not an abuse of discretion.

IV.

Even if a statutory ground for termination exists, the district court must also find that termination is in the best interests of the child. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). In considering the child's best interests, the district court must balance the preservation of the parent-child relationship against any competing interests

of the child. *In re Welfare of M.G.*, 407 N.W.2d 118, 121 (Minn. App. 1987). “Competing interests include such things as a stable environment, health considerations and the child’s preferences.” *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). The absence of statements noting the importance of the parent-child relationship is not a basis for reversal if the court explains why terminating parental rights is in the child's best interests. *See* Minn. Stat. § 260C.301, subd. 7 (2010) (stating that in every termination proceeding, “the best interests of the child must be the paramount consideration”); Minn. Stat. § 260C.001, subd. 3 (2010) (stating that safety of the child and permanency of the home are factors to be considered in a termination proceeding).

Father argues that the district court made insufficient findings on the child’s best interests. We disagree. A district court’s findings fail to adequately address a child’s best interests if they are “inadequate to facilitate effective appellate review, to provide insight into which facts or opinions were most persuasive of the ultimate decision, or to demonstrate the [district] court's comprehensive consideration of the statutory criteria.” *In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990). Here, the district court found that father’s interest in maintaining his parental rights conflicted with the child’s need for safety and security. The district court also found it to be in the child’s best interest that the child “be raised in a safe, stable home, free from substance abuse, or drug dealing, with attentive caregivers who are present for the child’s needs.” These findings are abundantly supported by the record and adequately explain the district court’s conclusion that the child’s best interest supports termination of father’s parental rights.

Affirmed.