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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1822

In the Matter of the Welfare of the Child of: D. D. L., Parent

Filed April 2, 2012
Affirmed
Peterson, Judge

Norman County District Court
File No. 54-JV-10-331

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Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and Collins, Judge.*

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

PETERSON, Judge

In this appeal from the termination of his parental rights, appellant-father D.D.L. argues that (a) the district court should not have taken notice of an entire CHIPS file when parts of that file were contested and the result was to deny father due process of law and to prejudice him; (b) the record does not support the district court's determinations

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

that father's case plan was reasonable and that the county made reasonable efforts to reunite the family; (c) because father substantially complied with the comprehensible portions of the case plan, termination for his purported failure to correct the conditions leading to the child's out-of-home placement is improper; and (d) the district court failed to make adequate findings regarding the child's best interests and the record does not support the findings that it made. We affirm.

FACTS

In December 2005, the mother of father's child became ill, and father took custody of the child. In 2007, the child's mother died.

A social worker and a law-enforcement officer met with father in September 2009, after receiving a report that the ten-year-old child had four large, deep scrapes on his back and a scrape in the middle of his nose where his glasses rested. Father refused to speak with the social worker but told the law-enforcement officer that he did not know what had caused the child's injuries.

Following this meeting, the child was removed from father's home and placed in foster care. At an emergency protective-care hearing, the district court ordered supervised visitation at the discretion of social services. For a period of time, the case was on hold because the parties did not know whether criminal charges would be filed against father.

The child has Down syndrome, limited mental abilities, and difficulty communicating. His special needs require establishment of routines and consistent and specialized communication techniques. Other than gestures and facial expressions, the

child was largely unable to communicate orally at the time he was removed from the home, and he used a "Chat PC" device. The device is a personalized mini-computer and has buttons that the child can push to generate images of topics that the child wishes to address.

In February 2010, the district court concluded that the child was a child in need of protection or services (CHIPS). The court found that "[father] did admit that the child is in need of protection or services, but did not admit to any specific factual allegations." The district court approved the out-of-home placement plan prepared by a social worker and ordered father to comply with it "except as provided by Rule 37.02, subd. 4 (c)."[1] The case plan required that father: (1) attend the child's IEP meeting and cooperate in its development; (2) meet with a mediator and cooperate with the school staff to develop a mediation plan; (3) attend all of the child's medical and dental appointments; (4) provide releases of information within ten days; (5) provide the power cord for the Chat PC device to social services within ten days and assist with programming the unit if necessary; (6) provide social services with the child's clothing, bike, and any special toys or games the child may use within ten days; (7) complete all necessary financial paperwork for social services within three days of receiving the information; (8) meet with the developmental-disability social worker and assist with completing the

[1] "A parent may voluntarily agree to comply with the terms of an out-of-home placement plan filed with the court. Unless the parent voluntarily agrees to the plan, the court may not order a parent to comply with the plan until there is a disposition ordered under Minnesota Statutes § 260C.201, subd. 1, and Rule 41." Minn. R. Juv. Prot. P. 37.02, subd. 4(c).

assessment for a developmental-disabilities waiver; (9) schedule and complete a parental exam within 30 days and sign a release of information within ten days to allow social services to exchange all necessary information; (10) visit as ordered by the court or described in the visitation plan and inform the social worker if father cannot attend a visitation; (11) visit with the social worker to discuss progress on the plan; and (12) attend court hearings and meetings.

In March 2010, social services submitted an updated out-of-home placement plan. The district court did not order father to comply with this plan. Other than the initial out-of-home placement plan, no other reunification plan was ever ordered by the district court. On September 1, 2010, the district court ordered that "[social services] is hereby relieved of its reunification efforts." At that time, social services ceased reunification efforts.

In September 2010, shortly after the district court ordered that social services cease reunification efforts, social services filed a petition to terminate father's parental rights. Trial on the petition was held in June 2011. The district court took judicial notice of the underlying CHIPS file. The record indicates that father's attorney stipulated to the admission of the underlying CHIPS file. At the beginning of trial, the following exchange occurred:

> The Court: . . . [A]nother stipulation I believe counsel . . . agreed to is that the Court would take judicial notice of the older CHIPS file which is typically done. We have two files here that we've been working with and so I will take judicial notice of the CHIPS file[.] . . .

> And I'll . . . turn to the attorneys for anything else they might want to say for the record. . . . [County Attorney], did you have anything else you wanted to note for the record?
> . . . .
> The Court: [Father's attorney].
> Father's attorney: No, Judge. We agreed that we would waive opening statements and get right to the testimony.

Following trial, the district court concluded that social services proved by clear and convincing evidence that father's parental rights should be terminated on the statutory basis "that following [the child's] out-of-home placement, reasonable efforts by [social services] have failed to correct the conditions leading to [the child's] placement." The district court concluded that father had "not substantially complied with the Court's orders and a reasonable case plan" and that social services had "made reasonable efforts to rehabilitate [father] and reunite him with [the child]." The district court also concluded that termination of father's parental rights is in the child's best interests. This appeal followed.

D E C I S I O N

I.

Father argues that the district court committed reversible error by taking judicial notice of the entire underlying CHIPS file without specifying which portions of the file it was considering. A district court's ruling on admission of evidence is discretionary, and this court will not disturb an evidentiary ruling unless the district court has erroneously interpreted the law or abused its discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997); *see In re Child of Simon*, 662 N.W.2d 155, 160 (Minn. App. 2003) (applying *Kroning*). An appellate court will grant a new trial because of

improper evidentiary rulings only if a party demonstrates prejudicial error. *Kroning*, 567 N.W.2d at 46.

Generally, the rules of evidence apply in juvenile-protection proceedings, and a district court may take judicial notice of any court order involving the child or the child's parent. Minn. R. Juv. Prot. P. 3.02, subds. 1, 3.

> In addition to the judicial notice permitted under the Rules of Evidence, the court, upon its own motion or the motion of any party or the county attorney, may take judicial notice only of findings of fact and court orders in the juvenile protection court file and in any other proceeding in any other court file involving the child or the child's parent or legal custodian.

Id. subd. 3. In *In re Welfare of Clausen*, 289 N.W.2d 153, 156 (Minn. 1980), the district court in a proceeding to terminate parental rights took judicial notice of the files and records of the district court's juvenile and criminal divisions, over the objection of the father whose parental rights were terminated. Citing Minn. R. Evid. 201(b), which states that, "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the [district] court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,"[2] the supreme court affirmed the decision to admit the files and records. *Clausen*, 289 N.W.2d at 156-57. The supreme court explained: "The function of judicial notice is to expedite litigation by eliminating the cost or delay of

[2] Minn. R. Evid. 201(b) has not been amended since the supreme court interpreted the rule in *Clausen*.

proving readily verifiable facts. Judicial notice of records from the court in which a judge sits would appear to greatly serve this function and satisfy the requirement of Rule 201(b)(2)." *Id*. at 157 (citation omitted).

Although a district court may take judicial notice of its records, this court has noted that "the law treats different portions of the files and records differently," and concluded that it is a mistake for the district court to take judicial notice of an entire juvenile-protection-case file without clarifying what portions of the file it is considering. *In re Welfare of D.J.N.*, 568 N.W.2d 170, 175 (Minn. App. 1997). Here, the district court took judicial notice of an entire file without specifying what portions of the file it was considering. Respondent county argues that, because father stipulated to the admission of the CHIPS file by judicial notice, the district court did not err. But a stipulation to the admission of evidence by judicial notice does not divest the district court of its obligation to admit evidence in accordance with the rules of procedure. Rule 3.02 limits judicial notice to "findings of fact and court orders" contained within the CHIPS file. Minn. R. Juv. Prot. P. 3.02, subd. 3. The district court erred by taking judicial notice of the entire file without specifying the portions of the file that it was considering.

But father bears the burden of showing prejudice based on the erroneously noticed records. *D.J.N.*, 568 N.W.2d at 176. The district court's findings derived from the erroneously noticed CHIPS file describe events leading to the child's out-of-home placement and summarize documents in the CHIPS file. It appears that the district court based 32 findings of fact on the content of the CHIPS file.

We conclude, however, that these findings of fact are not necessary to support the district court's conclusion that the statutory basis for terminating father's parental rights was proved. The statute permits termination of parental rights if the district court finds

> that 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. *It is presumed that reasonable efforts under this clause have failed upon a showing that*:
>
> (i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. . . .;
>
> (ii) the court has approved the out-of-home placement plan required under section 260C.212 and filed with the court under section 260C.178;
>
> (iii) conditions leading to the out-of-home placement have not been corrected. *It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan*; and
>
> (iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

Minn. Stat. § 260C.301, subd. 1(b)(5)(i-iv) (2010) (emphasis added).

Under the plain language of the statute, the juvenile court may terminate parental rights if it finds that, after a child was placed out of the home, reasonable efforts, under the direction of the court, failed to correct the conditions that lead to the child's placement. And, significantly, it is presumed that reasonable efforts failed to correct the conditions that lead to the child's placement if the evidence shows that (1) the child has resided outside the parent's home for a specified period of time, (2) the court approved the out-of-home placement plan, (3) conditions leading to the out-of-home placement

plan have not been corrected, and (4) the social-services agency made reasonable efforts to rehabilitate the parent and reunite the family. *Id.* Under the plain language of the statute, it is also presumed that conditions leading to an out-of-home placement have not been corrected if the evidence shows that the parent has not substantially complied with the court's orders and a reasonable case plan. *Id.*, subd. 1(b)(5)(iii). And "a case plan that has been approved by the district court is presumptively reasonable." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 388 (Minn. 2008).

In light of the presumptions that apply in a proceeding to terminate parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5), the facts that needed to be proved to terminate father's rights were that (1) the child had resided outside father's home for the specified period of time, (2) the court approved the out-of-home placement plan, (3) father had not substantially complied with the court's orders and the case plan, and (4) the social-services agency made reasonable efforts to rehabilitate father and reunite the family. Because the court orders in the CHIPS file and the testimony presented during the trial on the petition to terminate father's parental rights were the only evidence needed to prove these facts, and the 32 findings of fact derived from the CHIPS file are neither necessary nor relevant to determining these facts, father was not prejudiced by the error in taking judicial notice of the entire CHIPS file.

II.

"An order terminating parental rights is reviewed to determine whether the district court's findings address the statutory criteria and whether those findings are supported by substantial evidence and are not clearly erroneous." *In re Children of T.A.A.*, 702

N.W.2d 703, 708 (Minn. 2005) (quotation omitted). Parental rights may be terminated only for "grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). Courts presume that a natural parent is a fit and suitable person to be entrusted with the care of the parent's child and that it is usually in the best interests of the child to be in the custody of a natural parent. *Clausen*, 289 N.W.2d at 156. But a district court may terminate the parental rights to a child if one of nine statutory bases exists and termination is in the child's best interests. Minn. Stat. § 260C.301, subds. 1(b), 7 (2010). The petitioning party bears the burden of proving a statutory basis by clear and convincing evidence. *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011) (citing Minn. Stat. § 260C.317, subd. 1 (2010); Minn. R. Juv. Prot. P. 39.04, subd. 2(a)), *review denied* (Minn. Jan. 6, 2012). The district court's decision to terminate parental rights will be affirmed if "at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

The district court determined that clear and convincing evidence proved the basis for terminating father's parental rights under Minn. Stat. §260C.301, subd. 1(b)(5). As we have already discussed, that statute allows a court to terminate parental rights if the court finds "that 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." Minn. Stat. § 260C.301, subd. 1(b)(5). Also, "[i]t is presumed that conditions leading to a child's out-of-home placement have not been corrected," if it is shown that the parent has "not substantially

complied with the court's orders and a reasonable case plan." Minn. Stat. § 260C.301, subd. 1(b)(5)(iii). And "a case plan that has been approved by the district court is presumptively reasonable." *S.E.P.*, 744 N.W.2d at 388.

In terminating father's parental rights, the district court found that father had failed to correct the conditions leading to the out-of-home placement because father did not substantially comply with the court's orders and a reasonable case plan. The district court also determined that social services made reasonable efforts to rehabilitate father and reunite him with the child. Father argues that the evidence does not support these findings because (1) the social worker was not a credible witness, (2) father was receiving "mixed messages" from social services, (3) the basis for the psychologist's opinion was inaccurate or incomplete, and (4) the case plan was unreasonable because the district court ordered only a parenting evaluation and not mental-health services.

Father's arguments are directed at the district court's factual findings. When determining whether findings are clearly erroneous, this court will review the record in the light most favorable to the district court's factual findings, which will be set aside only if a review of the entire record leaves us with "the definite and firm conviction that a mistake has been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotation omitted). On review, "[c]onsiderable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

The district court assessed the social worker's credibility and found that she was a credible witness. The district court weighed the evidence regarding father's interactions

with social services and found that father was uncooperative with social services and had not substantially complied with his case plan. The district court also found that the psychologist was credible. The psychologist testified at trial and was subject to cross-examination by father's attorney regarding the basis for her opinion. Finally, the case plan was approved by the district court in October 2009, and thus is presumptively reasonable. *S.E.P.*, 744 N.W.2d at 388. The tasks set forth in the case plan were simple and aimed at assisting father and the child to pursue reunification. The district court's failure to order father to obtain mental-health services did not make the case plan unreasonable. Upon reviewing the record, we are not left with the definite and firm conviction that the district court made a mistake in its findings.

III.

In a proceeding to terminate parental rights, a child's best interests are paramount, so long as a statutory ground for termination is met. Minn. Stat. § 260C.301, subd. 7. "In analyzing the best interests of the child, the court must balance three factors: (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." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *Id.*

The district court concluded that it is in the child's best interests to terminate father's parental rights. In reaching this conclusion, the district court focused on the importance of parenting skills, in light of the child's special needs, and father's

combative and uncooperative behavior over a long period, when working with service providers to obtain these parenting skills. The district court noted that the child is doing extremely well in his foster-care placement and that the child's ability to communicate has increased since his out-of-home placement. The district court also noted the mutual love that father and the child have for each other.

Father argues that the record does not support the district court's findings that termination is in the child's best interest. But the record supports the district court's conclusion that the child has special needs that required father to obtain better parenting skills and that, rather than working with service providers to obtain these skills, father exhibited combative and uncooperative behavior. *See In re Welfare of D.D.K.*, 376 N.W.2d 717, 721 (Minn. App. 1985) (stating that because child had special needs "demanding exceptional parenting skills . . . there was clear evidence that her mother's inability to provide adequate care would continue in the future"). The record also supports the district court's finding that the child's communication has improved since being placed out-of-home.

Because a statutory ground for termination was established by clear and convincing evidence, and because the district court properly concluded that it is in the child's best interests to terminate father's parental rights, we affirm.

Affirmed.