STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0964

In the Matter of the Welfare of the Child of:
K.-A. M. C. and A. L. W., Parents.

Filed October 22, 2012
Affirmed
Bjorkman, Judge

Anoka County District Court
File No. 02-JV-11-1261

Stephen R. Nicol, Nicol & Greenley, Ltd., Anoka, Minnesota (for appellant K.-A.M.C.)

Jennifer L. Eichten, Minneapolis, Minnesota (for appellant A.L.W.)

Anthony C. Palumbo, Anoka County Attorney, Lisa B. Jones, Special Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County Social Services)

Judi Albrecht, Ramsey, Minnesota (guardian ad litem)

Considered and decided by Johnson, Chief Judge; Bjorkman, Judge; and Crippen, Judge.*

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

BJORKMAN, Judge

Appellants challenge the district court's termination of their parental rights, arguing that the evidence does not support the district court's determinations that (1) the

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

county made reasonable efforts to reunify them with their son, (2) the county proved the statutory ground for termination, and (3) termination of their parental rights is in their son's best interests. We affirm.

FACTS

Appellant K.-A.M.C. is the mother of L.L.C., born March 2009. Appellant A.L.W. was subsequently adjudicated the father of L.L.C. Mother retained sole legal and physical custody of L.L.C. Father was ordered to pay, but has never paid, child support.

On July 22, 2011, mother was arrested and charged with possession of cocaine, and L.L.C. was placed in foster care. Five days later, Anoka County Social Services (the county) filed a child-in-need-of-protection-or-services petition alleging that L.L.C. lacked proper parental care and his environment posed a risk of injury or danger to him or others. *See* Minn. Stat. § 260C.007, subd. 6 (2010). The petition described mother's arrest, her chemical-dependency issues, domestic violence between mother and father (including an order for protection mother obtained against father in April 2011), and both parents' criminal histories. The district court adjudicated L.L.C. in need of protection or services and continued his placement in foster care.

The county social worker met with mother on August 5 and prepared a reunification case plan. The case plan requires both parents to complete chemical-dependency and psychological evaluations and follow recommendations; participate in random chemical testing; abstain from all mood-altering, non-prescribed chemicals, including alcohol; ensure that L.L.C. is not exposed to drug use or domestic violence; remain law abiding; and avoid domestic violence. Father reviewed the case plan at an

August 25 disposition hearing and refused to sign it, indicating that he was not willing to comply with its terms or interested in accessing any services. The district court approved the case plan and ordered both parents to comply with it.

In the following months, mother was unsuccessfully discharged from five chemical-dependency treatment programs. Mother attended only five visits with L.L.C. between late July and December and was under the influence of chemicals during at least one of those visits. She also was charged with aiding and abetting aggravated first-degree robbery, possession of cocaine, and prostitution. Father did not participate in any aspect of the case plan.

On January 17, 2012, the county filed a termination-of-parental-rights (TPR) petition, alleging that the county's reasonable efforts to reunite the family failed to correct the conditions leading to L.L.C.'s out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5) (2010). During the pendency of the TPR proceedings, father was charged with selling cocaine, and mother was arrested for failing to appear for trial on the pending robbery charge. Mother fled prosecution after posting bail and was still missing at the time of the TPR trial in May 2012. The district court granted the petition, finding the statutory termination ground proved with respect to both parents and that termination of their parental rights is in L.L.C.'s best interests. This appeal follows.

D E C I S I O N

Parental rights may be terminated "only for grave and weighty reasons." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). Termination requires clear and convincing evidence that (1) the county has made reasonable efforts to

reunite the family, (2) there is at least one statutory ground for termination, and (3) termination is in the child's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). On appeal, we determine whether the district court's findings address the statutory criteria and whether they are supported by substantial evidence. *Id.* We review the district court's underlying factual findings for clear error. *Id.* But we review the court's determination that the statutory requirements for termination have been established by clear and convincing evidence for an abuse of discretion. *See In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900-01, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

Father argues that the district court improperly adopted the county's proposed findings verbatim. Both parents challenge the district court's determination that all three requirements for termination are met. We address each argument in turn.

I. The district court independently considered the evidence and statutory criteria.

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). But a district court's verbatim adoption of proposed findings does not warrant reversal if the findings are sufficient for appellate review and have substantial record support. *See In re Children of T.A.A.*, 702 N.W.2d 703, 707 n.2, 709-11 (Minn. 2005) (criticizing verbatim adoption of proposed findings but upholding termination because substantial record evidence supported those findings); *Bliss v. Bliss*,

493 N.W.2d 583, 590 (Minn. App. 1992) (emphasizing that findings and conclusions must be "detailed, specific and sufficient enough to enable meaningful review"), *review denied* (Minn. Feb. 12, 1993).

Father argues that the district court's findings do not reflect thoughtful consideration of the statutory criteria. We disagree. First, while the district court adopted many of the county's proposed findings verbatim, it also altered certain of the proposed findings and made many wholly independent findings. For example, the court made independent findings regarding the significant role L.L.C.'s maternal grandmother has played in his life, L.L.C.'s current physical and emotional status, and the dual chemical-dependency and mental-health features of the treatment programs offered to mother. Second, father has not demonstrated that any of the district court's findings are clearly erroneous. To the contrary, the record amply supports the findings that father challenges, including findings that (1) various members of L.L.C.'s extended family are significantly involved in his life; (2) mother "would do a good job parenting" L.L.C., but only if she could "maintain sobriety and maintain her mental health"; and (3) the guardian ad litem had never, in over 20 years as a guardian ad litem, "worked with two parents that have done so little to be reunified with their child or to even have contact." As a whole, the district court's decision reflects consideration of the statutory criteria and adoption of proposed findings when those findings accurately and fairly addressed the evidence presented. We conclude both that the district court did not adopt the county's proposed findings and that, to the extent that the court did rely on those proposed findings, such reliance does not undermine its decision.

II. Clear and convincing evidence supports the district court's reasonable-efforts determination.

Before parental rights may be terminated, the county must make reasonable efforts to reunite the child with the parents. Minn. Stat. § 260C.301, subd. 8(1) (2010); *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). "Reasonable efforts" means "the exercise of due diligence by the [county] to use culturally appropriate and available services to meet the needs of the child and the child's family." Minn. Stat. § 260.012(f) (2010). In determining whether reasonable efforts have been made, the district court must consider 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) (2010). Services outlined in a court-ordered case plan are "presumptively reasonable." *S.E.P.*, 744 N.W.2d at 388.

The county identified chemical dependency, mental health, and domestic violence as areas of concern for both parents and established a case plan focused on those concerns. The district court ordered both parents to comply with the case plan; neither objected to or sought to revise any particular aspect of the case plan. At trial, the social worker detailed the county's efforts to engage with the parents to identify, explain, and promote access to specific services. The social worker also explained the county's efforts to follow up and support both parents' compliance with the case plan.

Father argues that the district court's finding that he was represented by counsel but never objected to the case plan improperly placed the responsibility for providing

reasonable efforts on father's attorney. We disagree. Because a parent has "the ability . . . to seek an alteration of a problematic provision of a case plan," failure to do so may be considered in determining the reasonableness of the case plan. *See id.* (stating that "the appropriate action for a parent who believes some aspect of the case plan to be unreasonable is to ask the court to change it, rather than to simply ignore it"). The district court's finding regarding father's counseled failure to object to the case plan solely relates to the plan's reasonableness.

Father also contends that the county's efforts were not reasonable because the county never provided any services to him. We are not persuaded. Father resisted meeting with the county, repeatedly failed to show up for meetings to address the case plan or the status of the court proceedings, and consistently declared his refusal to participate in any aspect of the case plan. The county was obligated to and did encourage and support father's compliance; the county could not force him to accept the services.

Mother also challenges the district court's reasonable-efforts determination. She acknowledges that the county provided "numerous services . . . to address her chemical health issues" but argues that the county's reunification efforts were unreasonable because the county failed to address her mental-health issues. We are not persuaded. The county prioritized mother's chemical-dependency needs because sobriety is essential to effective resolution and treatment of mental-health issues. Moreover, the record indicates that the county provided a variety of services to address mother's mental-health needs, including providing multiple options for psychological evaluations, identifying

dual-diagnosis treatment programs, and communicating with mother about access to psychological medications.

On this record, we conclude that the district court did not abuse its discretion by determining that the county made the required reasonable efforts to rehabilitate both parents and reunite this family.

III. Clear and convincing evidence supports the district court's determination that reasonable efforts failed to correct the conditions leading to the out-of-home placement.

Parental rights may be terminated if, following a 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). A presumption that reasonable efforts have failed arises if (1) the child is under age eight and has resided in court-ordered out-of-home placement for six months; (2) the court approved an out-of-home placement plan; (3) the conditions leading to the out-of-home placement have not been corrected, which is presumptively shown by a parent's failure to "substantially compl[y] with the court's orders and a reasonable case plan"; and (4) the county made reasonable efforts to rehabilitate the parent and reunite the family. *Id.* This presumption applies here.

L.L.C. is not yet four years old and had resided in out-of-home placement for more than nine months by the time of the TPR trial. During that time, mother repeatedly failed chemical-dependency and mental-health treatment programs, made inappropriate and infrequent use of her visitation and other contacts with L.L.C., continued to use chemicals, engaged in other criminal behavior, lied to the county about contact with and

domestic violence at the hands of father, fled prosecution for criminal charges and has been on the run since December 2011, and was not present for the TPR trial. This record amply supports the district court's finding that mother "is in a worse position than when [L.L.C.] was placed in foster care" and "appears to be completely out of control." Clear and convincing evidence supports the district court's determination that mother has not corrected the conditions that led to L.L.C.'s out-of-home placement.

Father has demonstrated even less progress toward correcting the conditions that led to L.L.C.'s out-of-home placement. He was aware of what he needed to do, as demonstrated in the case plan, and the potential short-term consequences (lack of visitation) and long-term consequences (loss of parental rights) of his noncompliance. He consistently refused to engage in any aspect of the case plan and has not demonstrated any interest in parenting L.L.C. Father argues that the district court improperly used the fact of his incarceration to terminate his parental rights. But Minnesota law, while prohibiting termination of parental rights based solely on a parent's incarceration, consistently recognizes the potential relevance of incarceration and the underlying criminal conduct. *In re Welfare of Children of A.I.*, 779 N.W.2d 886, 892-93 (Minn. 2010) (discussing the relevance of parental incarceration in TPR cases). The district court noted that father was in jail at the time of trial, but its decision focused on father's extensive history of criminal conduct and his complete failure to engage in the reasonable case plan, rather than his incarceration.

After careful review of the record, we conclude that the district court did not abuse its discretion by determining that despite the county's reasonable efforts, both parents

failed to make any progress toward correcting the conditions that led to L.L.C.'s out-of-home placement.

IV. Clear and convincing evidence supports the district court's best-interests determination.

The "paramount consideration" in all TPR proceedings is the best interests of the child. Minn. Stat. § 260C.301, subd. 7 (2010). A child's best interests may preclude terminating parental rights even if a statutory ground for termination exists. *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009). Analyzing the best interests of the child requires balancing the child's interest in preserving a parent-child relationship, the parent's interest in preserving that relationship, and 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.* "Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7.

The district court determined that it is in L.L.C.'s best interests for mother's and father's parental rights to be terminated, "giv[ing] due consideration [to] the interests of the parents and the child in preserving the relationship." The district court found that L.L.C.'s "need for permanency with stable, nurturing, and competent caregivers outweighs any competing interests" and that "[d]elaying the permanency decision is not consistent with [L.L.C.]'s best interests" because providing additional services to either parent "will not lead to reunification within the foreseeable future."

Father argues that the district court did not make sufficient factual findings to support its best-interests determination, and mother broadly asserts that "[n]o child's best interests are served by permanent separation from a mother he loves and who loves him and who has shown that love." We are not persuaded. The district court made numerous factual findings bearing on the best-interests factors, and ample record evidence supports those findings.

As to L.L.C.'s interest in preserving a parent-child relationship, the district court found that L.L.C. "knows or senses that his parents are unavailable and is desperate to be part of a family," even without mother and father. This finding is supported by the social worker's testimony that L.L.C. has asked the social worker and "strangers on the street whether they are going to be his mommy." Regarding the parents' interest in preserving the relationship, the district court found that father has never demonstrated any interest in parenting L.L.C.; and mother, despite her declared interest, has not seen L.L.C. since December 2011 and has demonstrated more interest in avoiding criminal prosecution than in opposing termination of her parental rights. And as to the child's competing interests, the record is replete with testimony from the social worker, the guardian ad litem, and L.L.C.'s extended family members regarding his great need for permanency and security and both parents' inability to meet these needs in the foreseeable future. Viewing the record and the district court's decision as a whole, we conclude that the district court carefully considered the best-interests factors and did not abuse its

discretion by concluding that termination of mother's and father's parental rights is in L.L.C.'s best interests.

Affirmed.