STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1020

In the Matter of the Welfare of the Children of:
V.J. and S.R., Parents.

Filed December 16, 2008
Affirmed
Bjorkman, Judge

Rice County District Court
File No. JV-07-4338

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Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

In this appeal from the termination of his parental rights to three children, appellant contests the district court's findings that (1) he is palpably unfit to parent these children, (2) reasonable efforts have failed to correct the conditions leading to the

children's out-of-home placement, and (3) it is in the children's best interests that his parental rights be terminated. Because we conclude that clear and convincing evidence supports the district court's findings, we affirm.

FACTS

Appellant S.R. is the father of three children by respondent V.J.: G.A.R., a four-year-old; A.L.R.(boy), a three-year-old; and A.L.R.(girl), a one-year-old. On October 30, 2006, respondent Rice County initiated a children-in-need-of-protection-or-services (CHIPS) proceeding regarding the two older children. Appellant appeared in court three days later, waived his right to counsel, and informed the district court he wished to terminate his parental rights. The youngest child, A.L.R.(girl), was born in March 2007 and quickly added to the existing CHIPS matter without objection from either parent.

On April 12, 2007, the county filed a petition to terminate appellant's and V.J.'s parental rights regarding G.A.R. and A.L.R.(boy). At a June 20, 2007 hearing, the parties filed a stipulation that stated, among other things: "further efforts to reunite the children with [appellant] are not in the best interests of the children; . . . [appellant] shall have no contact with [V.J.] or the three children." Although the district court, on August 9, dismissed the first termination of parental rights (TPR) matter on the county's recommendation, the county filed a second TPR petition, this case, on November 16, 2007. The petition alleged four grounds for termination: Minn. Stat. § 260C.301, subd. 1(b)(2) (neglect), 1(b)(4) (palpable unfitness), 1(b)(5) (failure of reasonable efforts), and 1(b)(8) (neglected and in foster care) (2006).

The matter proceeded to trial on February 22, 2008. Seven witnesses testified, including appellant, the children's guardian ad litem (GAL), the social worker assigned to the case, and other counselors, and the district court received 30 exhibits. The district court found that "[appellant] has a long history of domestic abuse against [V.J.] and his children," "a long [and related] history of chemical addiction and abuse," and that "[appellant] has totally failed to cooperate with assessment and treatment." The court determined that appellant poses a danger to his children and does not really want to have a relationship with them. The district court ordered termination of appellant's parental rights on the grounds that he is palpably unfit to be a party to the parent-child relationship, that reasonable efforts have failed to correct the conditions leading to the children's out-of-home placement, and that termination was in the children's best interests.[1] This appeal follows.

D E C I S I O N

"There is perhaps no more grave matter that comes before the court than the termination of a parent's relationship with a child." *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). Nonetheless, courts may order involuntary termination of parental rights on the basis of one or more of the nine criteria listed in Minn. Stat. § 260C.301, subd. 1(b) (2006). "[B]ecause a child's best interests are a paramount consideration in TPR proceedings," the district court cannot terminate parental rights

[1] The district court also terminated V.J.'s parental rights; she did not appeal.

unless it is in the child's best interests. *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 149 (Minn. App. 2007), *review denied* (Minn. Mar. 28, 2007).

We review decisions to terminate parental rights to determine whether the district court's findings address the statutory criteria and are supported by substantial evidence, and whether its conclusions are clearly erroneous. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). We "closely inquire[] into the sufficiency of the evidence to determine whether the evidence is clear and convincing." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). But "[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." *L.A.F.*, 554 N.W.2d at 396. We will affirm the district court's decision to terminate "as long as at least one statutory ground . . . 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).

Appellant challenges the district court's findings regarding: (1) his fitness to parent his children, (2) the adequacy of the county's efforts to correct the conditions leading to the petition, and (3) the children's best interests.

I. Palpable unfitness to be a party to the parent and child relationship

Parental rights may be involuntarily terminated if

> a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable

> future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4). The petitioning party has the burden to "prove [that] a consistent pattern of specific conduct or specific conditions" that are detrimental to the children's welfare exist and will continue for a prolonged period. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 377 (Minn. 1990).

Here, the record is replete with evidence of appellant's propensity for violence. The children were initially placed in protective custody because appellant physically abused A.L.R.(boy) and V.J. in G.A.R.'s presence. The abuse continued even while the CHIPS matter was pending. On June 27, 2007, the three children were returned to V.J.'s care on a trial basis. The trial home placement ended August 15, 2007, after appellant entered V.J.'s home and assaulted V.J. and A.L.R.(boy). Appellant was criminally charged and convicted of assaulting V.J. Following his arrest, and despite clear court orders prohibiting contact—and knowing the calls were being monitored—appellant called V.J. 32 times in 13 days, directing abusive language toward her and referring to his children as "those damn things" or "Rugs."[2]

Appellant's pattern of violent behavior is not unique to his relationship with V.J. and their children. In late March 2007, appellant was arrested and charged with felony domestic abuse of his five-year-old son by another woman and felony harassment of the boy's mother. He pleaded guilty to the harassment charge and was sentenced to 21 months in prison.

[2] The latter term is a shortened form of the pejorative term "rugrats." Appellant testified that he did not mean anything bad by using this term to refer to his own children.

In addition to his violent history, the evidence supports the district court's finding that appellant is chemically dependent. The district court found that appellant's violence and chemical abuse are related—he becomes violent when he is intoxicated. In the CHIPS proceeding, the district court ordered appellant to maintain sobriety; complete parenting, psychological, and chemical dependency assessments; follow the assessments' recommendations; submit to random urinalysis; complete an anger-management program; and maintain appropriate housing for the children. The evidence supports the district court's finding that appellant "totally failed to cooperate," except while he was incarcerated. For example, he participated in, at most, three outpatient chemical-dependency treatment sessions, even though the program is designed to last four to five months. And even when incarcerated, appellant's documented attendance at programs was poor: he participated in only 9 of 30 AA or NA meetings held during the stretches of time he spent in the Rice County Jail. It is apparent that the district court had adequate evidence that appellant simply has not addressed his chemical dependency and anger issues.

The evidence substantially supports a finding that, in the near-total absence of any real effort to break the cycle of chemical dependency and violence, appellant is palpably unfit to be a parent to G.A.R., A.L.R.(boy), and A.L.R.(girl).

II. Reasonable efforts failed to correct conditions leading to out-of-home placement

The district court may terminate parental rights when: "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). "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." *Id.*, subd. 1(b)(5)(iii).

Here, appellant does not directly challenge the nature or extent of the county's efforts, nor does he assail the district court's finding that the efforts were reasonable. He does not identify any appropriate services that the county failed to provide. Rather, he argues that the county failed to comply with two specific duties—to provide him with legal counsel and to timely file out-of-home placement plans with the district court—and that these failures make the district court's findings clearly erroneous.

Both of appellant's arguments fail. First, appellant voluntarily waived his right to legal counsel during the first hearing in the CHIPS matter. The county did not fail to comply with its duty; rather, it respected the wishes of a parent who did not want counsel. And when the county filed the TPR petition underlying this appeal, the district court appointed an attorney to represent appellant.

Second, any technical deficiencies in the county's formal case plans are not determinative of the reasonable-effort question. A social-services agency is required to file out-of-home placement plans with the district court in CHIPS cases involving out-of-home placements. Minn. Stat. §§ 260C.178, subd. 7(a), .201, subd. 6(a) (2006). But the failure to timely file these plans is not reversible error when, due to numerous court orders, parents know what they must do to correct the conditions leading to the

placement. *In re Welfare of J.J.L.B.*, 394 N.W.2d 858, 863 (Minn. App. 1986), *review denied* (Minn. Dec. 17, 1986). Appellant was well aware of what he needed to do to be reunited with his children. The district court's orders repeatedly instructed appellant to comply with the programming and other services the county offered, and to meet specific requirements, including maintaining sobriety. Appellant was present at the hearings in the CHIPS matter and acknowledged at the TPR trial that he knew what he must do. The district court's finding that the county made reasonable efforts to address appellant's parenting challenges is amply supported by clear and convincing evidence.

III. Best interests

"[T]he best interests of the child must be the paramount consideration" in a TPR proceeding. Minn. Stat. § 260C.301, subd. 7. In performing a best-interests analysis, "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," such as the need for a stable environment. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992).

Appellant argues the district court made insufficient findings to support its best-interests determination. He specifically asserts that the district court erred in relying on the GAL's recommendation, which was based in part on appellant's prior expressions of a desire to terminate his parental rights. We disagree. The GAL's recommendation was also based on the "very, very volatile[,] violent relationship" between the parents and their unwillingness to sever that relationship for their children's sake. And it is undisputed that appellant has repeatedly indicated his desire to be relieved of his parental

rights. In addition to his statements to the district court regarding his intent to terminate his parental rights, during the course of the CHIPS case, appellant left a late night voicemail message for the social worker saying, "I'm going to go, give up my parental rights and I mean that and I'm not going to change my mind again." The next day, appellant called the social worker to tell her to disregard the message. Appellant's vacillation on the issue of whether he wants to be part of his children's lives would make a reunified environment inherently unstable.

Appellant also asserts that the district court erred because it ignored the parenting assessor's favorable testimony. The record does not support this argument. The parenting assessor candidly observed that there was an emotional bond between the children and appellant, but clearly stated that there was no "secure[,] healthy attachment." She expressed concerns about appellant's ability to show empathy toward his children and their needs, his aggression toward V.J. and A.L.R.(boy), his lack of consistent presence in the children's lives, and his lack of insight as to how his continued abuse of alcohol affected his parenting. The parenting assessor ultimately did not recommend reunification, in part because of her fundamental concerns about the children's safety in appellant's care. The district court heard substantial evidence showing that appellant is unwilling to break the cycle of chemical dependency and physical abuse that threatens his children's safety.

Additionally, appellant gives short shrift to the third factor of the best-interests analysis—the children's competing interest in stability. Our review of the record demonstrates that ample evidence supports the district court's finding with respect to the

children's interests. The record reflects appellant does not offer the children the stability they need at their young age. His commitment to his children is tenuous, at best. When he was allowed contact with his children, he rarely took advantage of the opportunity.[3] The district court considered appellant's violent history, unaddressed chemical dependencies, and inconsistent expression of a true interest in his children's welfare, all of which run counter to the children's safety and well-being and their need for stability.

Clear and convincing evidence supports the district court's finding that it is in the children's best interests to terminate appellant's parental rights.

Affirmed.

[3] The record evidence of appellant's interactions with his children consists solely of the parenting assessment, his unauthorized and violent intrusion into V.J.'s home, and two hospital visits to the newborn A.L.R.(girl).