STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0166

In the Matter of the Welfare of the Child of:
M. D. R. and K. E. B., Parents

Filed July 3, 2017
Affirmed
Smith, Tracy M., Judge

Anoka County District Court
File No. 02-JV-16-368

Jennifer L. Eichten, Minneapolis, Minnesota (for appellant father K.E.B.)

Gretchen R. Severin, Munstenteiger & Severin, P.A., Anoka, Minnesota (for respondent mother M.D.R.)

Anthony C. Palumbo, Anoka County Attorney, Kathryn M. Timm, Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County)

Jena Schuler, Ramsey, Minnesota (guardian ad litem)

Considered and decided by Connolly, Presiding Judge; Peterson, Judge; and Smith, Tracy M., Judge.

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

SMITH, TRACY M., Judge

On appeal from the termination of his parental rights to child M.R.R., appellant-father K.E.B. challenges the district court's determinations that termination is supported by a statutory basis, that termination is in the child's best interests, and that the county made reasonable efforts to reunite the family. We affirm.

FACTS

Mother M.D.R. gave birth to M.R.R. in August 2015. M.R.R. was born prematurely, and her meconium tested positive for methamphetamine. M.R.R. remained hospitalized for two months because she was frequently experiencing apnea and spells in which her heart rate would drop. She has continuing special needs related to apnea, a heart murmur, and developmental delays with respect to motor skills and verbal skills.

Shortly after M.R.R. was born, M.D.R. told K.E.B. that M.R.R. had been born, was his daughter, and was hospitalized due to a medical condition. M.D.R. had not told K.E.B. about the pregnancy. K.E.B. and M.D.R. visited M.R.R. in the hospital together twice in September.[1]

Anoka County Social Services (the county) became involved after M.R.R.'s birth because of the methamphetamine-screening result. In October 2015, M.R.R. was adjudicated to be a child in need of protection or services and temporarily placed in the custody of the county. Later in October, M.R.R. was discharged from the hospital for the first time and brought to the foster home where she currently resides.

K.E.B. was never married to M.D.R., is not named on M.R.R.'s birth certificate, did not register with the Father's Adoption Registry, and did not sign a recognition of parentage

[1] As of the trial, K.E.B. had never interacted with M.R.R. outside of these two visits. K.E.B. testified that he attempted to visit M.R.R. on other occasions and was not allowed, but the district court found that testimony not credible.

of M.R.R. until after appearing in these court proceedings.[2] Both parents testified that M.D.R. never told K.E.B. that social services was involved or that M.R.R. was in foster care; instead, M.D.R. claimed that M.R.R. was still in the hospital and then changed the subject whenever K.E.B. asked about her.

M.D.R. initially refused to tell the county who M.R.R.'s father was. When she eventually disclosed his name, she misspelled it and did not provide his birthdate, address, and phone number. On March 23, 2016, the county filed a petition to terminate the parental rights of both M.D.R. and K.E.B. to M.R.R., but K.E.B.'s name was misspelled and no address was listed for him on the petition.

The county had no contact with K.E.B. until June 21, 2016, when K.E.B. called the county after seeing published notice of a hearing on the petition to terminate his parental rights. K.E.B. told the county that he did not have a permanent address because he was avoiding active warrants for his arrest.

K.E.B. attended the termination-of-parental-rights hearing on June 29, 2016.[3] He was then arrested on his outstanding warrants and taken into custody. K.E.B. eventually received a 13-month prison sentence, with expected release on parole in March 2017.

[2] Genetic testing done during the proceedings determined that there is a 99.99% probability that K.E.B. is the biological father of M.R.R.

[3] M.D.R. also attended the June 29 hearing, where she voluntarily consented to M.R.R.'s adoption, conferred guardianship and legal custody of M.R.R. on the commissioner of human services, and waived notice in any adoption hearing for M.R.R.

K.E.B. signed a recognition of parentage for M.R.R. in July 2016. The county developed a case plan that addressed K.E.B.'s chemical dependency, mental health, and parenting skills, and directed him to begin as many services as possible while incarcerated.

At trial in December 2016, K.E.B. testified that, while in prison, he had (1) completed a chemical-dependency evaluation concluding that he did not need chemical-dependency treatment, (2) completed a psychological evaluation that resulted in no further recommendations, and (3) completed 14 of the 16 classes in the prison's parenting-skills course, pursuant to his case plan. The district court found this testimony not credible.

The district court determined that K.E.B.'s parental rights to M.R.R. should be terminated pursuant to Minn. Stat. § 260C.301, subd. 1(b)(1), (5), (7), and (8) (2016), and determined that terminating K.E.B.'s parental rights is in M.R.R.'s best interests. The district court terminated K.E.B.'s parental rights to M.R.R. and granted legal custody of M.R.R. to the commissioner of human services.

K.E.B. appeals.

D E C I S I O N

A natural parent is presumptively a "fit and suitable person to be entrusted with the care of his or her child," and "[o]rdinarily, it is in the best interest of a child to be in the custody of his or her natural parents." *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). As a result, 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).

A decision to involuntarily terminate a person's parental rights is discretionary with the district court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136-37 (Minn. 2014). To terminate parental rights, a district court must determine both that at least one statutory basis for termination exists and that termination is in the best interests of the child. Minn. Stat. § 260C.301, subd. 1, 7 (2016); *R.D.L.*, 853 N.W.2d at 137 (explaining that "an involuntary termination of parental rights is proper only when at least one statutory ground for termination is supported by clear and convincing evidence *and* the termination is in the child's best interest"). Both of these determinations are discretionary with the district court and must be based on underlying findings of fact that are supported by clear and convincing evidence. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012).

Determinations of whether a statutory basis for involuntarily terminating parental rights is present, whether termination is in the best of interest of the child, and whether parental rights should be terminated are reviewed for an abuse of discretion. *Id.* at 900-02. A district court abuses its discretion if its underlying findings of fact are clearly erroneous, if it misapplies the law, or if it resolves the matter in a manner that is against logic and the facts on the record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) (noting that clearly erroneous findings and misapplication of law constitute abuse of discretion); *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984) (stating that resolving matter in manner contrary to logic and facts on the record constitutes abuse of discretion). In termination proceedings, appellate courts review the district court's underlying findings of fact for clear error, taking into account the clear-and-convincing evidence standard of proof used in

juvenile-protection proceedings. *J.R.B.*, 805 N.W.2d at 900-02. A factual finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted).

Unless not required in the particular case, a decision to involuntarily terminate parental rights also requires a finding, based on clear and convincing evidence, that the county made reasonable efforts to reunite the parent and child. Minn. Stat. § 260C.301, subd. 8 (2016) (requiring district courts to make specific findings that reasonable efforts at reunification were either made or were not required under Minn. Stat. § 260.012 (2016)); *In re Children of T.A.A.*, 702 N.W.2d 703, 709 (Minn. 2005). Appellate courts review the district court's findings regarding reasonable efforts for clear error, again taking into account the clear-and-convincing-evidence standard of proof used in juvenile-protection proceedings. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 387 (Minn. 2008).

I. The district court did not abuse its discretion in determining that K.E.B. abandoned M.R.R.

K.E.B. challenges the district court's determination that he abandoned his child. Abandonment is one of the statutory bases on which a termination of parental rights may be based. Minn. Stat. § 260C.301, subd. 1(b)(1).

To support an order terminating parental rights, the district court must "make clear and specific findings which conform to the statutory requirements for termination" and those findings must "address conditions that exist at the time of the [termination] hearing." *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980). The decision should rely "to

a great extent upon the projected permanency of the parent's inability to care for his or her child." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) (quotation omitted).

Abandonment may be established under Minn. Stat. § 260C.301, subd. 1(b)(1), if the parent has actually deserted the child with the intention to forsake parental duties. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 398 (Minn. 1996). A parent's failures to have contact with the child, show consistent interest in the child's well-being, and offer help with child-rearing expenses are factors that support a finding of abandonment. *Id.* at 398-99. Incarceration alone is not enough to support a finding of abandonment, and the parental rights of an incarcerated parent "may be preserved if a parental relationship existed prior to incarceration, and if the imprisoned parent continued the relationship to the best of his ability while incarcerated." *In re Children of Wildey*, 669 N.W.2d 408, 413-14 (Minn. App. 2003), *aff'd*, 678 N.W.2d 47 (Minn. 2004). Inferences about a parent's intentions are best made by the district court and will not be disturbed on appeal absent clear error. *L.A.F.*, 554 N.W.2d at 399.

The district court found that K.E.B. deserted M.R.R. by having no contact with her at any point after his second hospital visit in September 2015, even though more than nine months passed after that before he was taken into custody for criminal charges. The district court found that K.E.B. intended to abandon his parental duties, and that he manifested this intent by "not personally taking any steps to provide for [M.R.R.], care for her, bond with her, visit her, learn how to care for her, learn what her special needs were, learn if her medical condition was improving and/or learn what medical conditions she had that needed on-going care" from September 2015 through June 2016 when he learned about the

involvement of social services. The district court also found that K.E.B. never financially supported M.R.R.

The record contains clear and convincing evidence to support these findings. K.E.B.'s testimony and the hospital nurses' notes support the finding that K.E.B. saw M.R.R. only twice, both times in September 2015. There is no evidence that K.E.B. took any steps to understand M.R.R's special needs, learn how to care for her, develop a relationship with her, or provide financial support for her at any time before his incarceration. At the time of the hearing, K.E.B. still had had no contact with M.R.R. and had not made efforts to get to know her or to show interest in her well-being.

This case is factually similar to *In re Welfare of Staat*, in which the supreme court held that an incarcerated father's lack of financial support, visits, correspondence, or evidence showing his interest in the welfare of the children, after refusing to acknowledge his fatherhood for the first ten months of their lives, constituted abandonment. 287 Minn. 501, 178 N.W.2d 709 (1970). The father in *Staat* had seen his children only once, for a two-hour visit. *Id.* at 507, 178 N.W.2d at 713. Similarly, K.E.B. saw M.R.R. only in two short visits and has been absent from her life since less than three weeks after her birth. K.E.B. never expressly denied his parenthood like the father in *Staat*, but he also never meaningfully accepted responsibility for supporting or raising M.R.R. Although he made an effort to challenge the termination of his parental rights and claims that he wishes to parent M.R.R., he has not demonstrated that interest by making efforts to get to know M.R.R., to ask anyone in contact with her about her well-being, or to learn how to care for her special needs.

The facts of this case are also analogous to *L.A.F.*, in which the supreme court upheld the district court's finding that the father intentionally abandoned the child because his only contact with the child was in one visit two weeks after the child's birth, he showed no consistent interest in the child's well-being, he never offered to help with child-rearing expenses, and he did not attempt to legally establish paternity until a court required it. *L.A.F.*, 554 N.W.2d at 398.

Because the district court's findings of fact underlying its determination that K.E.B. intentionally abandoned M.R.R. are not clearly erroneous, K.E.B. has not shown that the district court abused its discretion by invoking abandonment under Minn. Stat. § 260C.301, subd. 1(b)(1), as a statutory basis for involuntarily terminating K.E.B.'s parental rights. Further, if one statutory basis for terminating parental rights is affirmable, other bases invoked by the district court to terminate parental rights need not be addressed. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004) ("Termination of parental rights will be affirmed as long as at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests."). Therefore, we decline to address the other statutory bases for terminating K.E.B.'s parental rights invoked by the district court, though we note that the record clearly supports the district court's determination that reasonable efforts failed to correct the conditions leading to placement under Minn. Stat. § 260C.301, subd. 1(b)(5), as a separate statutory basis for terminating K.E.B.'s parental rights.

II. The district court did not abuse its discretion in determining that termination of K.E.B.'s parental rights is in M.R.R.'s best interests.

In proceedings to terminate parental rights, the best interests of the child are the paramount consideration. Minn. Stat. § 260C.301, subd. 7. A district court must make findings regarding how the order is in the best interests of the child. Minn. R. Juv. Prot. P. 42.08, subd. 1(b). The district 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). A district court's determination that termination of parental rights is in a child's best interests is reviewed for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

The district court did not abuse its discretion in determining that the termination of K.E.B.'s parental rights is in M.R.R.'s best interests. The district court acknowledged K.E.B.'s interest in preserving the parent-child relationship, but questioned the weight of that interest in light of the lack of interest K.E.B. showed in M.R.R. before he learned of the petition to terminate his parental rights. We note that by actively avoiding being found for the first ten months of M.R.R.'s life, K.E.B. placed his personal interest in eluding arrest above M.R.R.'s and his own interests in preserving the parent-child relationship.

The district court made detailed findings related to several of M.R.R.'s interests that conflict with the preservation of the parent-child relationship. The district court found that M.R.R. has continuing special needs related to apnea, developmental and language delays, difficulty with fine motor skills, and a heart murmur, and did not believe that K.E.B. would

be able to understand, care for, and continue to monitor those needs sufficiently. The district court also found that it is in M.R.R.'s best interests to remain in the care of her foster parents, with whom she has a "stable, trusting relationship," in "the only home she has ever known." These findings are supported by the record.

K.E.B. does not allege that any specific finding underlying the district court's best-interests analysis is clearly erroneous, but he argues that the district court abused its discretion by failing to consider M.R.R.'s interest in preserving relationships with her younger brother and her two older half-sisters. Although M.R.R. is biologically related to these children, the record indicates that she has never met them or interacted with them. Under the facts of this case, it was within the district court's discretion to conclude that the termination of K.E.B.'s parental rights was in M.R.R.'s best interests without addressing any interest M.R.R. might have in establishing relationships with other relatives.

III. The district court did not err in finding that the county made reasonable efforts to reunite the family.

K.E.B. challenges the district court's finding that the county made reasonable efforts to reunite him with M.R.R. Before terminating a person's parental rights, the district court must make specific findings either "that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made[,] including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family," or that reasonable efforts for reunification are not required. Minn. Stat. § 260C.301, subd. 8. The county's efforts must be aimed at alleviating the conditions that gave rise to out-of-home placement and must conform to the

problems presented. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 88 (Minn. App. 2012). The district court must consider whether the services offered by the county 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). "Whether the county has met its duty of reasonable efforts requires consideration of the length of the time the county was involved and the quality of effort given." *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990).

The district court identified two steps the county took in its efforts to place M.R.R. in K.E.B.'s care. First, the district court found that the county "made every possible effort to identify [K.E.B.] during the proceedings." Second, the district court found that the county developed a case plan for K.E.B. after meeting with him and consulting with his prison case manager.

The district court found that the county "made every possible effort" to identify K.E.B. early in the process but "did not have the power to identify [K.E.B.] because he made no effort to be identifiable." The record supports this finding. The county asked M.D.R. to identify K.E.B. and requested a court order compelling her to provide information about him. The county searched multiple databases and websites for the misspelled names M.D.R. provided, attempting to identify K.E.B. K.E.B. did not make himself identifiable by signing a recognition of parentage, registering with the Father's Adoption Registry, or filing a paternity action, and he deliberately did not keep a permanent address because he did not want to be found due to warrants for his arrest.

The county's efforts to identify K.E.B. were aimed at alleviating one of the conditions that led to M.R.R.'s placement in foster care. *See J.K.T.*, 814 N.W.2d at 88. From the county's perspective, when M.R.R. was placed in foster care in October 2015, K.E.B. was absent from M.R.R.'s life. Until the county could identify and contact K.E.B., it had no way to move forward with efforts to assess K.E.B.'s ability to care for M.R.R. and to determine what services were needed to rehabilitate him and reunite the family. Thus, the county's efforts to locate K.E.B. were part of its reasonable efforts to reunite him with M.R.R.

The district court also found that the county created a case plan for K.E.B. that identified areas of concern—chemical dependency, mental health, and parenting skills—that "were reasonable in light of the fact that" K.E.B. had been convicted of fifth-degree drug possession, provided a urinalysis that tested positive for methamphetamine while on probation three weeks before M.R.R.'s birth, and failed to fulfill a probation requirement that he address mental-health concerns. The district court found the parenting-skills part of the case plan reasonable because K.E.B. had shown poor parenting skills by not regularly visiting M.R.R. when he believed she was hospitalized for ten months and not making efforts to learn about M.R.R.'s medical needs, care for her, bond with her, or parent her. The district court noted that all of the areas of concern identified in the case plan were "issues that [K.E.B.] could address while in prison."

The district court's discussion about the appropriateness of the case plan reflects consideration of all of the factors in Minn. Stat. § 260.012(h), with the exception of the "culturally appropriate" factor. K.E.B., however, does not challenge the cultural

appropriateness of the county's efforts in this case, and nothing in the statute indicates that the district court must make findings on an uncontested factor in Minn. Stat. § 260.012(h). Therefore, the district court's failure to address the cultural propriety of the county's plan does not require reversal of the district court.

K.E.B. argues that the county did not provide any services and that the case plan alone is not enough to constitute "reasonable efforts." The county argues that its efforts were reasonable under the circumstances because there was nothing more it could have done before K.E.B. was identified in June 2016 or while he was incarcerated from June 2016 to March 2017.

We conclude that the district court did not clearly err in finding that the county made reasonable efforts. This case is factually similar to *R.W.*, in which the supreme court concluded that the county was not required to make efforts to establish a relationship between a father and his children where the father had previously lived with the children but provided only "marginal" care, and the father was now incarcerated and failing to "maintain any type of meaningful relationship with the children." *R.W.*, 678 N.W.2d at 52, 56 (quotation omitted). In *R.W.*, the district court found that there was "nothing" the county could do to reunify the family, meaning that creating a case plan would be futile and therefore not a reasonable effort. *Id.* at 56. Although the district court in this case did not make a finding that further efforts would be futile, it did make findings, supported by the record, that K.E.B. "does not know [M.R.R.]" and "has not shown an interest in learning what it means to care for [M.R.R.] or get to know her."

Given the minimal existing relationship between M.R.R. and K.E.B. and the fact that the county created a case plan addressing areas of concern that K.E.B. could work on while incarcerated, we conclude that the district court did not err in finding that the county made reasonable efforts to reunify M.R.R. and K.E.B.

Affirmed.