STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0497

In the Matter of the Welfare of the Child of: R.K., Parent

Filed December 26, 2017
Affirmed
Smith, Tracy M., Judge

Blue Earth County District Court
File No. 07-JV-16-4476

Kenneth R. White, Law Office of Kenneth R. White, P.C., Mankato, Minnesota (for appellant-father L.A.)

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Susan Kohls, St. Peter, Minnesota (guardian ad litem)

Considered and decided by Hooten, Presiding Judge; Reyes, 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

Appellant-father challenges the district court's order terminating his parental rights, arguing that the district court failed to make particularized findings necessary for appellate review of the decision. He also contends that, even if the district court's factual findings are sufficient for appellate review, the district court abused its discretion by determining

that the factual findings support a statutory ground for termination and the conclusion that respondent-county made reasonable efforts toward reunification. We affirm.

FACTS

Appellant L.A. is the father of S.K., born in 2010. Prior to any county involvement, S.K.'s mother, R.K., was the sole custodian of S.K. In 2013, S.K. was removed from R.K.'s care in a Child in Need of Protection or Services (CHIPS) case from LeSueur County. Before the LeSueur CHIPS file was dismissed in June 2015, S.K. had spent over a year outside of R.K.'s home. It is unclear whether L.A. was actively involved in the LeSueur County CHIPS proceeding.[1]

On August 4, 2016, Blue Earth County (the county) filed a CHIPS petition after receiving a report from Blue Earth County Human Services (BECHS) that R.K. was using methamphetamine in the home while S.K. was present and that a registered predatory offender may also be living in the home. That same day, the district court ordered BECHS to remove S.K. from the home and place her into foster care.

The county created an out-of-home placement plan (case plan) for S.K., which L.A. signed and the district court adopted on September 16, 2016. The case plan required L.A. to (1) comply with random urinalysis (UA) testing and not have diluted, missed, or positive UAs; (2) undergo a mental-health diagnostic assessment and follow through with subsequent recommendations; (3) obtain and maintain stable housing; (4) maintain employment; (5) have any individuals residing with him be approved by BECHS;

[1] The evidence in the record suggests that L.A. was incarcerated at the time S.K. was removed from R.K.'s care in 2013.

(6) remain law abiding; (7) sign all releases for case management purposes; (8) participate in a family-group-decision-making meeting; (9) work with a parenting educator as recommended by BECHS; (10) attend S.K.'s medical and dental appointments; and (11) provide for S.K.'s basic needs while she was in his care.

On November 16, 2016, the county filed a permanency petition to terminate L.A.'s and R.K.'s parental rights based on three statutory grounds: (1) that L.A. and R.K. "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon [them] by the parent and child relationship," Minn. Stat. § 260C.301, subd. (1)(b)(2) (2016); (2) that "reasonable efforts, under the direction of the court, have failed to correct the conditions leading to [S.K.'s] placement," Minn. Stat. § 260C.301, subd. (1)(b)(5) (2016); and (3) that S.K. "is neglected and in foster care," Minn. Stat. § 260C.301, subd. (1)(b)(8) (2016).

The district court held a pretrial hearing on January 6, 2017, at which R.K. consented to the termination of her parental rights to S.K. The district court then conducted a trial on January 19 to address the permanency petition as it related to L.A.'s parental rights. The district court heard testimony from several individuals, including L.A.

In March 2017, the district court ordered that L.A.'s parental rights to S.K be terminated. The district court determined that the county proved that clear and convincing evidence supported the three separate grounds for termination and that it was in S.K.'s best interests for L.A.'s parental rights to be terminated. The district court also concluded that the county made reasonable efforts to reunite S.K. with L.A.

L.A. appeals.

D E C I S I O N

L.A. contends that the district court failed to make particularized factual findings and that, even assuming the district court made proper findings, the findings are insufficient to support the statutory grounds for termination or to establish that the county made reasonable efforts to reunite L.A. and S.K.[2] Minnesota courts presume that a parent is fit to care for his child. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). "Ordinarily, 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). Therefore, parental rights may only be terminated for "grave and weighty reasons." *J.K.T.*, 814 N.W.2d at 87 (quotation omitted).

The county has the burden of proving a statutory ground for termination by clear and convincing evidence. *Id.* We will affirm the district court's decision to terminate parental rights if 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 T.R.*, 750 N.W.2d 656, 661 (Minn. 2008), and, where required, the county made reasonable efforts to reunite the parent with the child, *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). Although we give "considerable deference" to the district court's decision, we conduct a close review of the record in determining whether the evidence supporting

[2] With respect to whether termination is in S.K.'s best interests, L.A. argues that the factual findings are not sufficiently particularized but does not argue that, if the findings are proper, they are insufficient to support the district court's conclusion regarding S.K.'s best interests.

termination is clear and convincing. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

In addressing whether a statutory ground supports terminating a parent's rights to a child, the district court must make findings that consider the "underlying" or "basic" facts relating to the statutory basis for termination. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 899-900 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). The district court must next assess whether the underlying facts demonstrate that a basis for terminating parental rights is present and then, if there is clear and convincing evidence that termination would be in the child's best interests, decide whether to terminate parental rights. *Id.* at 900. We review this exercise of judgment for an abuse of discretion. *Id.* at 901. An abuse of discretion occurs if the district court's factual findings are clearly erroneous, if the district court misapplies the law, or if it resolves the matter in a manner that is against logic and the facts on the record. *See Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997); *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

I. The district court's factual findings are sufficiently particularized.

L.A. first argues that we should reverse the district court's decision because the district court failed to make sufficiently particularized findings. He contends that the majority of the district court's findings are "merely recitations" of testimony. L.A.'s argument relies significantly on *In re Civil Commitment of Spicer*, a case in which this court determined that it is insufficient for the district court to recite or summarize excerpted portions of a witness's testimony without providing independent comment on the testimony. 853 N.W.2d 803, 810 (Minn. App. 2014). "[A] district court's recitation of

what others have observed is not a finding of fact that those observations are true." *Id.* (quotation omitted).

For effective appellate review, the district court's findings must provide insight into the facts that are most persuasive of the ultimate decision and demonstrate the district court's consideration of the statutory bases for termination. *In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990). This court has been critical of a district court's findings that are limited to recitations beginning with phrases such as "petitioner claims," "according to petitioner's application," and "respondent asserts," and has stated that recitations of claims or testimony do not constitute "true findings." *Spicer*, 853 N.W.2d at 810 (quotations omitted).

L.A. points to paragraphs in the district court's order in which the district court uses phrases such as the witness "testified," to assert that the district court failed to make "true findings." He also claims that other paragraphs in the order are not factual determinations but are rather conclusory statements regarding his conduct. L.A. argues that a review of the district court's order will reveal only a few paragraphs in which the district court made actual factual findings. *See id.* We disagree.

The district court's findings, as a whole, do more than merely recite or summarize the testimony. The district court made findings regarding L.A.'s compliance with the case plan independent of any language suggesting that it was simply reciting the testimony of witnesses. For instance, the district court found that L.A. was not fully compliant with the requirement to submit to random UA testing, citing missed and positive tests. The district court later tied these concerns to L.A.'s criminal history and his longstanding issues with

chemical dependency. The district court also emphasized that L.A. had missed several therapy and psychiatric appointments to the point of being suspended from therapy services. The district court also found L.A. to have been untruthful with the parenting assessor about his mental-health history, his medications, his treatment history, his visitation history with S.K. and other matters.

It is true that the district court described witness testimony, but the district court also indicated which testimony it found credible and persuasive. The district court described the testimony of the parenting assessor and the case manager, including their concerns regarding L.A.'s lack of stability and an established, bonded relationship with the child. The district court then outlined the testimony of L.A.'s witnesses and explained why their limited knowledge about L.A. undermined the relevance of their testimony. The district court described L.A.'s testimony, in which he claimed progress in his case plan and a commitment to attending therapy in the future. The court immediately followed that summary with a finding that "[f]ather's credibility is questionable," noting L.A.'s untruthfulness with the parenting assessor and his prior conviction of a crime of dishonesty. In laying out the witnesses' testimony and finding L.A.'s testimony not to be credible, the district court indicated that it found the testimony of other witnesses to be more credible and more persuasive. We defer to the district court's credibility determinations. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990). Together, the findings have sufficient detail to explain what evidence the district court found to be persuasive. We conclude that the district court's findings are sufficient to permit effective appellate review.

II. The findings support a statutory basis to terminate parental rights.

L.A. also contends that the district court erred by determining that the factual findings sufficiently support the alleged statutory grounds for termination of his parental rights. In this case, the district court determined that three different statutory grounds warranted termination of L.A.'s parental rights, including that S.K. "is neglected and in foster care." *See* Minn. Stat. § 260C.301, subd. (1)(b)(8).

The district court concluded that S.K. is neglected and in foster care because she had been living in foster care for over 700 days and L.A.'s conduct and circumstances demonstrate that she cannot be placed with him. "Neglected and in foster care" is defined by statute as a child:

> (1) who has been placed in foster care by court order; and
>
> (2) whose parents' circumstances, condition, or conduct are such that the child cannot be returned to them; and
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> (3) whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child.

Minn. Stat. § 260C.007, subd. 24 (2016). In deciding whether a child is neglected and in foster care, the district court considers the following factors:

> (1) the length of time the child has been in foster care;
>
> (2) the effort the parent has made to adjust circumstances, conduct, or conditions that necessitates the removal of the child to make it in the child's best interest to be returned to the parent's home in the foreseeable future, including the use of rehabilitative services offered to the parent;

> (3) whether the parent has visited the child within the three months preceding the filing of the petition, unless extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevented the parent from visiting the child or it was not in the best interests of the child to be visited by the parent;
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> (4) the maintenance of regular contact or communication with the agency or person temporarily responsible for the child;
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> (5) the appropriateness and adequacy of services provided or offered to the parent to facilitate a reunion;
>
> (6) whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time, whether the services have been offered to the parent, or, if services were not offered, the reasons they were not offered; and
>
> (7) the nature of the efforts made by the responsible social services agency to rehabilitate and reunite the family and whether the efforts were reasonable.

Minn. Stat. § 260C.163, subd. 9 (2016). Although the district court did not specifically address each of these factors, it is sufficient if the district court makes "detailed findings of fact [that] demonstrate the existence of many of the factors outlined in the statute." *See A.D.*, 535 N.W.2d at 648-49.

L.A. argues that the county failed to prove that the "present conditions of neglect will continue for a prolonged, indeterminate period." *See In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980). He further asserts that the district court could not make an adequate prediction for the foreseeable future because it had "little to say" regarding his ongoing ability to parent S.K. or his circumstances that were unlikely to change. We disagree.

The district court explicitly found that S.K., who is now seven-years old, was placed outside the home from September 2013 to October 2014 before undergoing trial home visits with R.K. during the LeSueur County CHIPS proceeding. After LeSueur County's CHIPS petition was dismissed in June 2015, S.K. had spent 664 days in out-of-home placement. She was again removed from R.K.'s care and placed in foster care on August 4, 2016 when the county filed its CHIPS petition. Accordingly, the district court calculated that S.K. had been placed outside the home for over 700 days. The district court also noted that L.A.'s recent cooperation with portions of his case plan was relatively minor in duration when compared to the amount of time S.K. had stayed in foster care. These findings demonstrate that the district court strongly considered the length of time that S.K. had been in the foster-care system and further support the need for permanency.

The findings also indicate that L.A. has not made adjustments to his circumstances, conduct, or conditions that required placing S.K. in foster care. *See* Minn. Stat. § 260C.163, subd. 9(2). L.A.'s conduct shows that S.K. will continue to be neglected even if she were placed in his home. Based on the parenting educator's evaluation, the district court noted that L.A. "tends to use children to meet his own self-needs, and expects children to make life better for him by providing love, assurance and comfort." The parenting educator's evaluation, along with L.A.'s difficulties in complying with his UA testing and addressing his mental-health issues, illustrate the district court's reasonable concerns that S.K. "cannot continue to wait to see if [L.A.]" can improve his own issues to ensure that it is in S.K.'s best interests to be placed with him in the foreseeable future. Additionally, L.A.'s interactions with S.K. demonstrate that there is not a secure bond between them.

During their visits, S.K. was reluctant to engage with L.A., did not make eye contact, and did not greet L.A. when he entered the room. It is appropriate, based on the findings, to conclude that the present conditions of neglect would likely continue if S.K. were placed in L.A.'s care.

We therefore conclude that the district court did not abuse its discretion by deciding that Minn. Stat. § 260C.301, subd. 1(b)(8) is a proper basis for terminating L.A.'s parental rights. And because we conclude that one statutory ground for terminating parental rights exists, we need not review the other two grounds identified by the district court for terminating L.A.'s parental rights. *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.").

III. The findings support the conclusion that the county made reasonable efforts to reunite L.A. and S.K.

L.A. also argues that the district court erred by concluding that the county made reasonable efforts towards reunification. Minn. Stat. § 260C.301, subd. 8(1) (2016), requires the district court to make "specific findings" in a termination proceeding regarding whether "reasonable efforts to finalize the permanency plan to reunify the child and the parent were made." These must be "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." *Id.*

In deciding whether the county made reasonable efforts, the district court must determine 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) (2016). These services must include real, genuine assistance and be more than mere matters of form. *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007), *review denied* (Minn. Mar. 28, 2007). "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). Here, the district court concluded that the county made reasonable efforts to reunite L.A. with S.K.

L.A. asserts that the district court's findings fail to support its determination that the county undertook reasonable efforts toward reunification. He claims that the district court failed to address the nature of the problem relating to his parenting skills. But the findings demonstrate that, as part of the case plan, the county offered L.A. several different services that were specifically tailored to his needs and intended to further his relationship with S.K. The county provided him with the following services: outpatient treatment, individual therapy, a parenting assessment, a family-group-decision-making meeting, random UA testing, medication management, mental-health diagnostic assessment and psychotherapy, and supervised visits with S.K. Despite these services, L.A. failed to provide UA samples,

failed to cooperate with the parenting educator, and failed to attend numerous therapy, psychiatric, and medication-management appointments.

L.A. argues that because the case plan was only in effect for 90 days before trial, the duration of the county's services was insufficient to constitute reasonable efforts. But it appears from the record that the county provided him with some of these services as part of probation before filing the CHIPS petition and executing the case plan. And the findings show that L.A. was unwilling to fully cooperate with these services until after the county filed the permanency petition. For example, he did not start undergoing random UA testing until December—one month before trial. L.A. appeared to blame his lack of full compliance with his case plan on not understanding the process, being overwhelmed with his services, believing that his outpatient treatment did not require random testing, and his learning disability. But, in light of his service providers' attempts to help him achieve full compliance, the district court did not find his alleged justifications to be persuasive.

Even if the duration of these services is relatively short, the reasonableness of the services must also be evaluated in the context of S.K.'s circumstances. *See* Minn. Stat. § 260C.301, subd. 7 (2016) (stating that the "best interests of the child" are the "paramount consideration" in a termination proceeding). Between September 2013 and January 2017, S.K. had spent over 700 days in out-of-home placement. Long-term foster care is "highly disfavored" for a child under the age of 12. *In re Welfare of J.M.*, 574 N.W.2d 717, 722 (Minn. 1998). For these reasons, we conclude that the district court did not abuse its discretion by concluding that the county made reasonable efforts to reunite L.A. with S.K.

Affirmed.