STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0515

In the Matter of the Welfare of the Child of:
N. J. G. and J. H., Parents.

Filed October 16, 2017
Affirmed
Halbrooks, Judge

Scott County District Court
File Nos. 70-JV-16-9081, 70-JV-16-19453

Kevin Wetherille, Shakopee, Minnesota (for respondent N.J.G.)

Laura L. Schultz, Laura L. Schultz Law Office, Bloomington, Minnesota (for appellant J.H.)

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, First Assistant County Attorney, Shakopee, Minnesota (for respondent Scott County)

Sandy Peterson, Dundas, Minnesota (guardian ad litem)

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

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

HALBROOKS, Judge

Appellant challenges the district court's entry of default judgment terminating his parental rights and denial of his motion to vacate judgment. Appellant argues that he

received insufficient notice that his parental rights could be terminated if he failed to appear and that he satisfied the standard for vacating a default judgment. We affirm.

FACTS

Respondent-mother N.J.G. and appellant-father J.H. have a child together, J.G., who was born on May 6, 2016. Shortly after birth, J.G. was placed on a 72-hour health-and-safety hold because of N.J.G.'s chemical use. Scott County filed a child in need of protection or services (CHIPS) petition that alleged J.H. to be the father of J.G. Since May 13, 2016, J.G. has resided with foster parents.

The district court scheduled an admit/deny hearing on the CHIPS petition for May 26. The district court sent J.H. notice of the hearing but it was returned as undeliverable. After the county made several attempts to contact J.H., he contacted the county on May 24 and agreed to meet with a social worker. On the day of the hearing, a social worker met with and explained to J.H. that he would need to establish parentage before reunification could occur. J.H. chose not to engage in case planning with the social worker and left the courthouse before the admit/deny hearing began. The district court adjudicated the child in need of protection or services and ordered the parents to comply with a case plan.

The district court held an intermediate disposition hearing on July 28 and three review hearings on August 25, September 28, and October 27. The district court sent notices to J.H. for each hearing. J.H. did not attend any of these hearings. The county repeatedly tried to contact J.H. throughout this time, but was only able to speak with him once after J.H. called N.G.J. while she was meeting with a social worker. When N.G.J handed the phone to the social worker, J.H. stated that his mail was being held but refused

to provide another address. The county scheduled a meeting for October 7, but J.H. did not attend the meeting or advise the county that he was unable to attend.

On October 27, after N.J.G. and J.H repeatedly failed to comply with the case plan, the county petitioned to terminate both parents' parental rights. J.H. met with the county on November 2 to discuss his willingness to participate in case planning, which would include regular meetings with the county. J.H. failed to appear for their next scheduled meeting, did not return the county's phone calls, and did not follow up on the agreed-upon services. A combined review hearing for the CHIPS proceeding and an admit/deny hearing for the termination of parental rights (TPR) proceeding was scheduled for November 22, and a hearing for the related paternity action was scheduled for December 7. J.H. attended the December 7 paternity hearing but did not attend the November 22 hearing.

A combined review hearing on the CHIPS petition and a continued admit/deny hearing on the permanency petition was scheduled for December 20. The county tried to contact J.H. before the hearing. The district court sent J.H. notice of the hearing, but it was again returned as undeliverable. J.H. attended the December 20 hearing and agreed to schedule a meeting with the county to work on reunifying with J.G. At the conclusion of the hearing, the district court scheduled a pretrial hearing on the permanency petition for January 26, 2017, and the court clerk handed J.H. a notice of the January 26 hearing.

On the morning of the January 26 pretrial hearing, J.H. called the district court to inform it that he was ill and could not attend. N.J.G. also called the district court and informed it that both she and J.H. had overslept. Although J.H. did not attend the January 26 pretrial hearing, he was represented by counsel. The county moved to proceed on the

petition to terminate J.H.'s parental rights. The district court agreed to proceed with a TPR by default over the objection of J.H.'s attorney after it determined that J.H. had received adequate notice that his parental rights could be terminated if he failed to appear. A social worker testified at the hearing about J.H.'s violence towards N.J.G., his criminal history, his lack of cooperation with the county, the fact that he was currently living in a car, and that it was in J.G.'s best interests to have both parents' parental rights terminated and allow the foster parents to adopt J.G.

The district court issued an order, finding that there was clear and convincing evidence to terminate J.H.'s parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2016). J.H. subsequently moved to vacate the default judgment, on the grounds that he was not provided with sufficient notice, he took immediate corrective action, and his failure to participate should only be analyzed after he was adjudicated to be the father. The district court denied J.H.'s motion. This appeal follows.

D E C I S I O N

I.

J.H. argues that the district court erred in entering default judgment because he did not receive proper notice that his rights could be terminated if he failed to appear. "Whether a parent's due-process rights have been violated in a [TPR] proceeding is a question of law, which this court reviews de novo." *In re Welfare of Children of B.J.B.*, 747 N.W.2d 605, 608 (Minn. App. 2008). The applicable due-process standard in TPR proceedings resides in the guarantees of fundamental fairness. *Santosky v. Kramer*, 455 U.S. 745, 753-54, 102 S. Ct. 1388, 1394-95 (1982). Due process requires that a party is

provided reasonable notice. *Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 565 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995). "[T]he amount of process due in a particular case varies with the unique circumstances of that case," but "prejudice as a result of the alleged violation is an essential component of the due process analysis." *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008). Although this court carefully reviews the record, we will overturn the district court's findings of fact only if those findings are clearly erroneous. *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995).

J.H. contends that it is unclear whether the district court clerk actually handed him the notice of the hearing. A district court may either receive evidence in support of the petition or reschedule the hearing if a parent fails to appear for a pretrial hearing if the party received a summons pursuant to Minn. R. Juv. Prot. P. 32.02 or a notice pursuant to Minn. R. Juv. Prot. P. 32.03 or 32.04. Minn. R. Juv. Prot. P. 18.01. If the absent party was provided appropriate notice, the district court may enter an order granting the relief sought in the petition if the petition is sufficiently proved. Minn. R. Juv. Prot. P. 18.01-.02.

Here, the district court found that J.H. received the notice of the January 26 pretrial hearing before he left the December 20 hearing. The record supports the finding. At the January 26 hearing, the district court clerk informed the district court that she had handed J.H. the notice at the close of the December 20 hearing and mailed the notice to N.J.G. Because the district court's finding that J.H. received the notice is supported by the district court clerk's statement, the district court's finding is not clearly erroneous.

J.H. also argues that, even if he received notice of the January 26 hearing before he left the December 20 hearing, it is unclear whether the notice's language properly advised him of the consequences of failing to appear. Minn. R. Juv. Prot. P. 32.04 outlines the notice requirements for hearings following an admit/deny hearing. The district court administrator must "serve upon each party . . . a written notice of the date, time, and location of the next hearing . . . and such notice shall be personally served by the close of the current hearing." Minn. R. Juv. Prot. P. 32.04(a), (c). TPR matters must also include "a statement pursuant to Rule 18.01 that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in termination of the person's parental rights." Minn. R. Juv. Prot. P. 32.02, subd. 4(c). The Minnesota Supreme Court has held that a notice stating that a party "was required to appear at the hearing and specifically provided that if she failed to appear the court would conduct a hearing and 'may order your parental rights . . . be terminated'" satisfies the notice requirement for a default termination-of-parental-rights hearing. *In re Welfare of L.W.*, 644 N.W.2d 796, 796 (Minn. 2002).

The notice of the hearing that J.H. received stated, "IF YOU FAIL TO APPEAR AT THE HEARING: The court may conduct the hearing without you . . . and . . . may enter an Order . . . permanently severing the parent's rights pursuant to a termination of parental rights petition . . . ." This language is nearly identical to the language discussed in *L.W.* *See id.* Therefore, we conclude that the district court complied with the notice requirements set out in the Minnesota Rules of Juvenile Protection Procedure. The notice of the hearing

properly advised J.H. that his parental rights could be terminated if he failed to appear at the hearing, and the district court did not err by proceeding with a default hearing.

II.

J.H. also argues that the district court erred by refusing to vacate the default judgment terminating his parental rights. On appeal from the district court's denial of a motion to vacate a default judgment, the district court's decision will be upheld "absent clear abuse of discretion." *In re Welfare of B.J.J.*, 476 N.W.2d 525, 526-27 (Minn. App. 1991). A district court may relieve a party from a default judgment for "mistake, inadvertence, surprise, or excusable neglect." Minn. R. Juv. Prot. P. 46.02(a). A party moving to vacate a default judgment has the burden of showing that (1) it has a reasonable defense on the merits, (2) it has a reasonable excuse for its failure to act, (3) it proceeded with due diligence after notice of entry of default judgment, and (4) no substantial prejudice to the opposing party will result from vacating the judgment. *Hinz v. Northland Milk & Ice Cream Co.*, 237 Minn. 28, 30, 53 N.W.2d 454, 456 (1952); *see also In re Children of Coats*, 633 N.W.2d 505, 510 (Minn. 2001) (applying Minn. R. Civ. P. 60.02 to motion to vacate default judgment terminating parental rights); *In re Welfare of Children of M.L.A.*, 730 N.W.2d 54, 61 (Minn. App. 2007) (noting Minn. R. Juv. Prot. P. 46.02 is "very similar to Minn. R. Civ. P. 60.02"). All four parts of the test must be met to justify relief under Minn. R. Juv. Prot. P. 46.02. *See Coats*, 633 N.W.2d at 510.[1]

[1] The district court did not explicitly address the four *Hinz* factors in its analysis, but both J.H. and the county rely on these factors in their arguments to this court.

First, J.H. must show he has a reasonable defense on the merits. *Id*. J.H. argues that he has a reasonable defense on the merits because lesser alternatives to involuntary termination of parental rights exist. He contends that if a default hearing had not been held, he could have voluntarily terminated his parental rights and made contact arrangements with the child. The district court found that the county made reasonable efforts to reunify the child with J.H. but that J.H. failed to correct the conditions that led to the out-of-home placement. The county also reported that J.H. consistently failed to cooperate in its reunification efforts. The district court concluded:

> [J.H.]'s rights were ultimately terminated because he repeatedly failed to take steps towards reunification since these matters were initiated in May of 2016. This is clearly outlined in the record before the Court which shows [J.H.]'s ongoing unwillingness to cooperate with the Agency, to engage in case planning, to follow through with services provided by the Agency, and to participate in court proceedings.

J.H. must demonstrate more than conclusory statements to show that he has a defense on the merits. *Id.* at 511. Because J.H. has not satisfied the first *Hinz* factor—that he has a reasonable defense on the merits—we do not need to address the remaining three factors. The district court acted within its discretion by denying J.H.'s motion to vacate default judgment.

Affirmed.