STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0585

In the Matter of the Welfare of the Child of:
R. A. M. and S. D. B.,
Parents

Filed August 28, 2017
Affirmed
Ross, Judge

Benton County District Court
File No. 05-JV-16-1840

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Amy J. Shantry, Rice, Minnesota (for respondent mother, R.A.M.)

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Travis Smithers, Waite Park, Minnesota (guardian ad litem)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and J. Smith, Judge.*

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

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

ROSS, Judge

Benton County took custody of S.D.B.'s son because of S.D.B.'s methamphetamine use. S.D.B. refused to comply with a case plan designed to reunite him with his son. Shortly before trial on the county's petition to terminate S.D.B.'s parental rights, S.D.B. admitted that he used methamphetamine twice, and his probation officer discovered drugs, scales, and baggies in S.D.B.'s home. The district court terminated S.D.B.'s parental rights on two statutory bases: neglect of parental duties and failure to correct conditions that led to the removal. S.D.B. appeals, arguing that the record includes no evidence showing how his drug use affected his parenting, that the county made no reasonable efforts toward reunification, that the district court's best-interests analysis was deficient, and that the county failed to notify him of the underlying CHIPS proceedings. We affirm because sufficient evidence shows that S.D.B. did not correct the condition leading to the child's removal, because the record supports the district court's finding that the county made reasonable efforts toward reunification, because we see no error in the district court's best-interests determination, and because S.D.B. did not raise his due process argument.

FACTS

S.D.B. and R.A.M. are the divorced parents of six-year-old C.D.B. Benton County Human Services removed the boy from R.A.M.'s custody in 2014 due to her methamphetamine use. S.D.B. then had custody of the child until April 2015, when the county heard that S.D.B. was using methamphetamine and selling drugs. S.D.B. admitted to using but denied selling the drugs. The county placed C.D.B. in foster care until R.A.M.

progressed in her drug treatment. The county returned C.D.B. to her custody in September 2015. R.A.M. relapsed into drug use the next year.

The county petitioned to terminate R.A.M.'s and S.D.B.'s parental rights under Minnesota Statutes, section 260C.301 (2016). The county alleged two statutory bases for termination: failure to comply with parental duties under subdivision 1(b)(2), and failure of reasonable efforts to correct the conditions leading to the child's out-of-home placement under subdivision 1(b)(5). S.D.B. requested custody of C.D.B., but he refused to comply with a case plan the county designed to reunite him with the boy.

At the termination trial in February 2017, the district court heard limited testimony, took judicial notice of prior child protection cases involving the parties, and received 31 stipulated exhibits. The exhibits included the following:

- S.D.B.'s drug test results from January 18 to February 19, 2017;
- A letter from a probation officer stating that S.D.B. admitted to consuming alcohol and methamphetamine within five days before January 3, 2017, that S.D.B. tested positive for and admitted to using methamphetamine during a random home visit on January 14, 2017, and that the officer discovered "methamphetamine, numerous controlled substance prescription medications in unmarked bottles, two scales that are commonly used for weighing street drugs, and a large number of small baggies commonly used to store street drugs" in S.D.B.'s home;
- S.D.B.'s signed admission that he used methamphetamine on January 11, 2017;
- S.D.B.'s criminal record; and
- The county's proposed but unsigned parenting plan for S.D.B.

Guardian ad litem Travis Smithers testified that he had "extreme concern" about R.A.M.'s and S.D.B.'s ability to provide "a consistent, supportive, healthy, or safe environment" for C.D.B., because although they had been given "many opportunities" to correct the conditions leading to C.D.B.'s placement, "substance abuse continues to be a concern." He believed termination to be in C.D.B.'s best interests.

S.D.B. testified that he had recently begun a relapse-prevention program, and that he had voluntarily undergone a psychological examination a week before trial. He admitted that he told his parole officer that he had used methamphetamine, and that he tested positive for drug use on January 14, 2017. But he represented that he had remained sober since then. He claimed that the county refused his offer to be drug tested in order to regain custody of C.D.B. But he admitted on cross-examination that he "refused to work a case plan" after the county told him a drug test was insufficient.

The district court terminated S.D.B.'s parental rights. It found that C.D.B.'s "interest in a stable, drug-free environment in which [C.D.B.] is adequately supervised and safe outweighs the parents' interest in continuing to parent the child." It found that the county made reasonable efforts toward reunification "by offering services including chemical dependency treatment, psychological testing, random drug testing, parental capacity assessment, [and the] design and implementation of a family safety plan." It also found that those efforts were futile, as S.D.B. refused to cooperate with the county and participate in a case plan. It determined that the county proved by clear and convincing evidence that S.D.B. had neglected his parental duties, that reasonable efforts toward reunification failed to correct the conditions leading to placement, and that termination was in C.D.B.'s best interests because S.D.B. failed to address his drug use, failed to cooperate with the county, and failed to provide a safe and secure home.

S.D.B. appeals.

D E C I S I O N

S.D.B. challenges the district court's termination decision. A district court may terminate parental rights if clear and convincing evidence establishes that (1) at least one statutory basis supports termination; (2) the county made reasonable efforts to reunite the family, unless reasonable efforts are not required under the statute; 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); Minn. Stat. § 260C.301, subds. 1(b)(1)–(9), 7, 8(1)–(2). We review a district court's ultimate termination decision for an abuse of discretion. *In re Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). But we review the district court's factual findings for clear error. *In re Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008). And we give considerable deference to the district court's termination decision. *S.E.P.*, 744 N.W.2d at 385.

S.D.B. offers four arguments on appeal: that the county provided insufficient evidence that he failed to comply with his parental duties; that the county did not make reasonable efforts toward reunification; that the district court's best-interests analysis was deficient; and that he was denied due process because of insufficient service. The arguments do not lead us to reverse.

I

S.D.B.'s appellate argument focuses on whether the county proved he neglected his parental duties in a way that negatively affected C.D.B. We observe that the district court could have more clearly distinguished between its analysis of S.D.B.'s and R.A.M.'s individual behaviors and expressly detailed how S.D.B.'s methamphetamine use

endangered the child and rendered S.D.B. unable to parent him. But the district court terminated S.D.B.'s parental rights on *two* statutory bases. S.D.B. does little to challenge whether the county proved that its reasonable efforts failed to correct the conditions leading to out-of-home placement. That barely challenged statutory basis supports the termination.

We may affirm even if the record supports only one statutory basis. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). The district court may terminate parental rights if clear and convincing evidence establishes "that 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). We closely examine the record to determine whether there was sufficient clear and convincing evidence supporting termination. *S.E.P.*, 744 N.W.2d at 385.

S.D.B. correctly maintains that the focus in termination proceedings should be on circumstances as they exist at the time of the hearing rather than on prior history. *See In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). But prior history can provide context for existing circumstances. *See id.* at 894. And minimal cooperation shortly before the termination hearing cannot avoid termination. *See In re Welfare of D.C.*, 415 N.W.2d 915, 918–19 (Minn. App. 1987).

The circumstances at the time of trial were these: S.D.B. had used the highly addictive drug methamphetamine at least twice in the previous month (following a history of methamphetamine use that resulted in the removal of his son); S.D.B. possessed methamphetamine and drug-dealing paraphernalia in his home in the previous month;

S.D.B. had begun but not completed a relapse-prevention program; and S.D.B. completed a psychological examination.

S.D.B. declares only that "the conditions have been corrected and continue to be worked on daily." In support, he reasons that the district court failed to give him sufficient credit for undergoing a voluntary psychological examination and entering a relapse-prevention program shortly before trial. Although we do not reweigh the evidence considered by the district court in its fact-finding role, *see In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992), the record reveals several obvious reasons the district court may not have seen much in the examination results or the drug-program enrollment.

Regarding the psychological examination, the record counterbalances S.D.B.'s argument that the results showed that he had made substantial progress as demonstrated by the examiner's not recommending further treatment. The report indicates that the examiner made no mental-health diagnosis or recommendations because S.D.B. did not report any relevant issues. And it indicates that S.D.B. claimed that he had been sober for the previous six years and that he had no criminal involvement since a felony in 2012, both of which the district court would know were plainly false. Regarding relapse prevention, S.D.B. had just begun and had not completed the program. The district court might have seen his participation as an insincere, last-minute performance rather than a sincere effort, particularly in light of its late timing and S.D.B.'s answers to questions posed during his psychological examination; S.D.B. responded "No" to the questions, "Have you ever felt the need to cut down on your drinking or drug use?" and "Have you ever felt guilty about your drinking or drug use?"

In this context, we have no ground on appeal to give the psychological report and drug program the favorable meaning that S.D.B. would have us attribute to them. We hold that the district court did not abuse its discretion by determining that S.D.B.'s continued drug activity outweighed his minimal and tardy cooperation with the county's reunification efforts.

II

S.D.B. argues that the county did not make reasonable efforts toward reunification. Before terminating S.D.B.'s parental rights, the district court had to make "specific findings" that the county made reasonable efforts to rehabilitate S.D.B. and to reunite the family. *See* Minn. Stat. § 260C.301, subd. 8(1). The district court was required to consider "whether services to the child and family 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" unless reasonable efforts were futile. *See* Minn. Stat. § 260.012(h) (2016). We review a district court's reasonable-efforts finding for clear error. *See S.E.P.*, 744 N.W.2d at 386–87.

The district court found that C.D.B. had been placed out of the home for 519 days over the five years preceding trial. And it found that the county had provided reasonable efforts toward reunification and that further efforts would be futile because of S.D.B.'s refusal to participate in a reunification case plan.

Contrary to S.D.B.'s argument that the county did not "identify reasons why [C.D.B.] could not be placed with [S.D.B.]," the county demonstrated the reasons why

C.D.B. could not live with S.D.B. by removing C.D.B. from S.D.B.'s custody because it discovered that, shortly after receiving custody of the child, S.D.B. was using and selling drugs. The county recommended a case plan that required him to abstain from using drugs, among other rehabilitative requirements. The record contains case plans that detail a variety of sobriety-related services, as well as reports of S.D.B.'s deficient cooperation and performance.

S.D.B. also argues that the district court failed to make specific findings regarding the six factors listed in section 260.012(h). The district court found, "The case plan requirements for [S.D.B.] were reasonable, attainable and essential to the health and safety of [C.D.B.], given [S.D.B.]'s history of involvement with controlled substances and the deleterious effect of his drug use on the health, safety, and welfare of [C.D.B.]" It also found that the services offered satisfied the criteria in section 260.012(h). The district court is not required to make the 260.012(h) findings if it determines that rehabilitative services are futile. *See* Minn. Stat. § 260.012(h); *see also J.R.B.*, 805 N.W.2d at 904 (stating that detailed analysis of section 260.012(h) factors was not required because record clearly showed father's unwillingness to work with county). S.D.B. does not challenge the district court's finding that reunification efforts were futile based on "his unwillingness to cooperate and participate in the [c]ounty's proposed care plan." In fact, S.D.B. admitted that he refused to work a case plan tailored toward his drug use, and he continued to use methamphetamine almost two years after the county first removed C.D.B. from his custody because of his methamphetamine use. We see no clear error in the district court's reasonable-efforts findings and determination.

III

S.D.B. also challenges the district court's best-interests determination. Even after determining a statutory basis for termination, the district court cannot terminate parental rights unless it also concludes that termination is in the child's best interests. *See* Minn. Stat. § 260C.301, subd. 7. We review best-interests determinations for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

The district court found that C.D.B.'s "interest in a stable, drug-free environment in which [he] is adequately supervised and safe outweighs the parents' interest in continuing to parent the child." It determined that C.D.B. "needs a safe, stable, caring home environment and to be with caregivers who are attuned to his needs," and that R.A.M. and S.D.B. "failed to provide such an environment in the past due to their chronic chemical dependency and cannot provide such an environment in the foreseeable future."

S.D.B. argues that the district court's analysis is deficient because it failed to consider C.D.B.'s custody preference. "In analyzing the best interests of the child, 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." *R.T.B.*, 492 N.W.2d at 4; *see also* Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). The district court appears to have weighed S.D.B.'s interest in parenting C.D.B. against C.D.B.'s "competing interests," but it made no finding regarding C.D.B.'s desired custody arrangement. Although it did not expressly find that C.D.B. was too young to indicate a preference (C.D.B. was approximately six and a half years old at trial), we disagree with S.D.B. that the missing finding requires reversal. The district court

implicitly found either that C.D.B. was too young to appreciate the dangers of living in the care of a methamphetamine user and drug seller for the child's preference to be given substantial weight, or that C.D.B.'s interest in a stable, safe, and drug-free home would override any stated preference to live with S.D.B. Either finding is reasonable.

S.D.B. also argues that the district court did not consider any "therapist recommendations or opinions" about C.D.B.'s best interests, that the guardian ad litem's best-interests testimony was not based on any observation of S.D.B. and C.D.B. together, and that S.D.B. "has and can provide a stable, safe, healthy, and secure environment" for C.D.B. But S.D.B. offers no legal authority requiring a therapist's support for a best-interests determination or requiring the district court to reject a guardian ad litem's opinion under these circumstances.

IV

S.D.B. argues that he was denied due process because he was not given "an opportunity to challenge whether [C.D.B.] was properly adjudicated a child in need of protection or services." The record does not establish that S.D.B. raised in the district court any of the due process arguments he now makes on appeal. We generally decline to address arguments that were not presented to the district court, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), including constitutional arguments. *See In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981) (declining to address constitutional claims raised for the first time in TPR appeal). We therefore decline to reach his argument, and deem the issue forfeited.

Affirmed.