STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0850

In the Matter of the Welfare of the Child of: L. N., Parent

Filed November 6, 2017
Affirmed
Bratvold, Judge

Ramsey County District Court
File No. 62-JV-16-883

John J. Choi, Ramsey County Attorney, Kathryn M. Eilers, Assistant County Attorney, St. Paul, Minnesota (for respondent county)

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Considered and decided by Florey, Presiding Judge; Rodenberg, Judge; and Bratvold, Judge.

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

BRATVOLD, Judge

In this appeal, appellant-father challenges the district court's termination of parental rights. Appellant argues the district court abused its discretion in determining that clear and convincing evidence establishes the respondent-county made reasonable efforts to

rehabilitate father and reunite the family, a statutory basis for termination exists, and termination is in the best interests of the child. We affirm.

FACTS

Appellant-father, C.J., and mother, L.N.,[1] are the biological parents of S.O., who was born in January 2010. For the first five years of S.O.'s life, she was in mother's care and had very little contact with father until the fall of 2014 when father started visiting S.O. At the time, father lived with his girlfriend, S.A., and during visits, S.O. stayed at S.A.'s house and shared a bed with father and S.A. Father and S.A. lived with S.A.'s two children, one of whom was approximately 13 years old (Child 2).

In November 2014, respondent Ramsey County Community Human Services Department (the county) initiated a child-protection investigation after mother reported to police that S.O. had been sexually abused. Mother reported that S.O. had told her that father had laid on top of, next to, or underneath S.O., and father had pulled his pants down and put his private parts in front of S.O.'s face. The county interviewed father, who denied any sexual abuse.

In December 2014, S.O. went to Midwest Children's Resource Center (Midwest) for a sexual abuse consultation. Mother reported to Midwest that since S.O.'s last visit with father in October 2014, S.O. "had been acting differently." Mother stated that father told her that his girlfriend's son, Child 2, and S.O. had been involved in "inappropriate touching." Mother also stated that father said he spanked S.O. and put her in timeout

[1] Before the termination trial, mother voluntarily consented to termination of her parental rights and her parental termination is not at issue in this appeal.

because she touched Child 2's private parts. Additionally, mother repeated S.O.'s other statements as discussed in the preceding paragraph. Midwest interviewed S.O., who denied any inappropriate touching and said that she had never seen any boys without their clothes on.

In January 2015, the county concluded there was not a preponderance of the evidence to support a maltreatment finding against father. Still, the county had concerns about allowing unsupervised contact between S.O. and father. Mother signed an agreement that stated she would not allow unsupervised contact between father and S.O. and that mother would obtain therapy for S.O.

In April 2015, the county learned that mother had given birth. Both mother and the baby tested positive for methamphetamine and oxycodone; later, test results came back positive for cocaine. The county filed a child in need of protection or services (CHIPS) petition for mother's three children, including S.O. In June 2015, mother admitted the CHIPS petition and S.O. was adjudicated to be a child in need of protection or services. Ultimately, S.O. was placed with her maternal aunt.

In spring 2015, S.O. told her aunt that Child 2 had touched her "birdie." S.O. made similar statements to a school social worker in September 2015. S.O. "looked ashamed and concerned she was going to get in trouble when she made these disclosures."

Midwest conducted another sexual abuse consultation with S.O. in November 2015. S.O. stated that Child 2 invited her into the bathroom, asked her to touch and suck his private parts, which she did. S.O. also explained that the incident occurred while father and his girlfriend were watching television. Midwest found that S.O.'s account was detailed.

Midwest recommended that S.O. not have any contact with Child 2 and that child protection should decide whether she should have contact with father while he lived in the same home as Child 2. The county had stopped visits between father and S.O. in summer 2015, based on S.O.'s statements, and after receiving Midwest's recommendation, the county recommended that father have no contact with S.O. until her therapist determined that contact was in her best interests.

Around this time, father moved to intervene in the CHIPS proceeding. The county provided services to S.O. and her parents in 2015. Additionally, the county prepared a case plan in the fall of 2015, which father received, but the plan referred to mother, not father.

In January 2016, the county assigned child protection worker Chantel Houg to provide services to mother, her children, and all three of her children's fathers. Father informed Houg that he lived between S.A.'s home (including Child 2) and his mother's home. Father also told Houg that he did not believe that Child 2 had sexually abused S.O. They discussed father's mental health issues, and father informed Houg that he had been diagnosed with depression, anxiety, and post-traumatic stress disorder and was receiving individual therapy and dialectical behavioral (DBT) group therapy.

In February 2016, father and Houg drafted an updated case plan, specifically addressing father and his needs. The plan identified areas including housing, mental-health therapy, chemical health, and parenting. This plan determined that father had already received anger management, parenting, and chemical-dependency treatment programs. The updated case plan required father to complete random UAs, DBT groups, and individual therapy.

The plan also stated that S.O. could not reside in a home with Child 2 or have any contact with Child 2. The plan provided that whether father would have contact with S.O. would be based primarily on the advice of S.O.'s therapist. The plan also stated that, if father were to have regular contact with S.O., he would have to commit to making his mother's home his primary residence or find his own housing and a reliable means of supporting himself. The plan specifically stated that the county would not recommend that S.O. reside in the home of father's girlfriend, S.A. Father signed the plan in March 2016.

After the case plan was updated, Houg and father had regular contact and, during their discussions, Houg reminded father that S.O. was not to have contact with Child 2 or S.A. and the county would not recommend that S.O. reside in S.A.'s home.

In spring 2016, S.O.'s foster placement was disrupted because of physical abuse and S.O. was moved. In summer 2016, S.O. demonstrated extreme emotional and behavioral issues, including threats to harm herself and aggression toward others. S.O. was hospitalized for 10 days in June 2016 and was eventually placed on psychotropic medication. She was diagnosed with reactive attachment disorder, post-traumatic stress disorder, and attention deficit disorder.

Sometime in mid-2016, Houg recommended that father contact S.O.'s care providers.[2] Also about this time, Houg discontinued father's UA requirement because his UAs were continuously clean.

[2] The record is not entirely clear when Houg made this suggestion to father, but it appears to have happened as early as spring 2016 and no later than September 2016.

In August and September 2016, Houg prepared an updated case plan for father which continued earlier requirements, including that S.O. not have any contact with Child 2, and father continue individual and DBT group therapy services. The updated case plan added that father should contact S.O.'s care providers regularly, take an active role in S.O.'s treatment, and attend S.O.'s treatment meetings.

Also in August 2016, the court authorized the county to begin supervised visits between father and S.O. to attempt reunification. The foster care provider and father's mother initially supervised these visits. Houg and father had many conversations about the parameters for these visits. For example, before visits began, father showed Houg a photo album of his family members that he wanted to show S.O. The album contained pictures of Child 2 and S.A., and Houg reminded father that S.O. was to have no contact with S.A. and Child 2. Houg directed father to remove these pictures before showing the album to S.O. After visits began, father pressed Houg to allow visitation with S.A. Houg responded that S.O. was not to have any contact with S.A. or her family. After several requests by father to allow contact with S.A., Houg told father that he would have to make a choice between S.A. and S.O. Father became upset and complained.

In October 2016, the county approved unsupervised visits between father and S.O. On October 13, 2016, S.O. told her foster care provider that she had seen Child 2 during a visit with her father. The foster care provider testified that S.O. "became distressed and began to shake" when she recounted what happened. The foster care provider informed Houg, who met with S.O. S.O. told Houg that she and Child 2 played zombie video games

on a cell phone. S.O. appeared scared and also told Houg for the first time about the incident in 2014 involving Child 2.

Houg suspended father's visits with S.O., and the county began investigating whether maltreatment had occurred. When the county interviewed father, he initially indicated that S.O. did not have any contact with S.A. or Child 2. Father also told the county investigator that Child 2 did not sexually abuse S.O. and that, when the child protection case was over, he would live with S.A. S.A. told the county investigator that father brought S.O. to her home and that she had contact with S.O., but Child 2 was not present. The county concluded that neglect had occurred because father allowed S.O. to have contact with Child 2 and S.A.

Father's termination trial took place on November 1, 3 and 10, 2016, March 30, 2017, and April 14, 2017.[3] The court heard testimony from father, his mother, Houg, S.O.'s foster care provider, guardian ad litem, and several other care providers, including S.O.'s teacher, school social worker, and psychiatrist. S.O.'s foster care provider and other care providers testified about S.O.'s special needs, emotional and behavioral problems, and the care and services that S.O. needs. The district court also heard testimony about father's mental health history. Notably, the county social worker testified at trial that she was confident that father had not sexually abused S.O.

[3] Houg and father met in February 2017 to prepare an updated case plan. Father informed Houg that he was no longer receiving mental health services, and refused to sign a waiver for Houg to verify with his providers that he no longer needed services.

Father testified that he did not believe that S.O. was sexually abused by Child 2 or anyone else while she was in his care in 2014. Regarding unsupervised visits in October 2016, father testified he and S.O. fished, spent time with relatives, and that S.O. was a "normal child" when they were together. Father denied that he allowed contact between S.O. and Child 2 in 2016, but admitted that he and S.O. had stopped at S.A.'s home, adding that Child 2 was not present and S.A. did not talk to S.O. Father also testified, as of March 2017, that he no longer lived with S.A. and was "in the process" of breaking up with her.

On May 12, 2017, the district court terminated father's parental rights. The district court found the county's witnesses to be credible and did not find father's testimony credible. For example, father testified that he had reported to the county in 2014 that S.O. had told him that a babysitter and neighbor had sexually abused her. But the district court found that the county records do not reflect this report. The district court also found "no evidence that [S.O.] was confused about who sexually abused her. [S.O.'s] statements about the sexual abuse by Child 2 have been clear and consistent." The court also determined that the county made reasonable efforts to reunify the family; father failed to satisfy the duties of the parent-child relationship; father is palpably unfit, had failed to correct the conditions leading to S.O.'s out of home placement, and S.O. is neglected and in foster care. Finally, the district court determined that it is in S.O.'s best interests to terminate father's parental rights. Father appeals.

D E C I S I O N

A natural parent is generally presumed to be fit and suitable to care for his or her child. *In re P.T.*, 657 N.W.2d 577, 583 (Minn. App. 2003), *review denied* (Minn. Apr. 15,

2003). We presume that it is in a child's best interests to remain in the natural parent's care. *Id.* Nevertheless, "parental rights are not absolute" and will not be "enforced to the detriment of the child's welfare and happiness." *Id.*

This court will affirm a district court's termination of parental rights where there is clear and convincing evidence that (1) the county made reasonable efforts to reunite the family, (2) a statutory ground for termination exists, and (3) termination is in the child's best interest. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We review "whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *Id.* "A 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 Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted). Appellate courts "review the district court's findings of the underlying or basic facts for clear error, but [] review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

I. The district court did not abuse its discretion in determining by clear and convincing evidence that the county made reasonable efforts to rehabilitate father and reunify the family.

In a termination of parental rights proceeding, the district court must determine whether the county has provided reasonable efforts to rehabilitate the parent and reunite the child and parent. *In re T.R.*, 750 N.W.2d at 664. "Reasonable efforts at rehabilitation are services that go beyond mere matters of form so as to include real, genuine assistance."

In re Welfare of Children of S.W., 727 N.W.2d 144, 150 (Minn. App. 2007) (quotations omitted), *review denied* (Minn. Mar. 28, 2007). For efforts to be reasonable, the services the county offers must be: (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). The district court must make "specific findings" that the county made reasonable efforts. Minn. Stat. § 260C.301, subd. 8 (2016).

Statutory requirements regarding reunification are met if the court determines that (1) the county made reasonable efforts; or (2) the provision of further services is "futile and therefore unreasonable under the circumstances"; or (3) reasonable efforts are not required under one of the circumstances provided by statute. Minn. Stat. § 260.012(h). Here, the district court determined that the county made reasonable efforts to rehabilitate father and no other efforts were practical or likely to remedy the underlying problems. The court concluded that the county provided the necessary services to address father's parenting deficits and other issues that made it "unsafe and unhealthy" for S.O. to be in his care. The district court concluded that services beyond those already provided were unlikely to "bring about lasting parental adjustment" for father and S.O. Further, the court concluded additional services would be futile because the trauma experienced by S.O. in father's care and the adverse impact of S.O.'s contact with father had made further efforts to reunify contrary to S.O.'s "health and safety."

Although father intervened in the CHIPS proceeding in fall 2015, the county admits he was not given an individualized case plan until January 2016. In January 2016, however,

Houg provided father with a detailed case plan, which was in effect for more than a year before his parental rights were terminated. The case plan was updated several times throughout these proceedings; the plan evaluated services father was already receiving and required father to complete UAs and participate in mental health therapy. We conclude that the district court did not err when it determined that clear and convincing evidence established the county provided father with appropriate services.

Father argues that the county did not provide him with appropriate services because he did not receive the education he needed to fully understand S.O.'s trauma and needs. To demonstrate his own efforts to understand S.O.'s needs, father correctly notes that he testified to having frequent contact with S.O.'s foster parent. But Houg specifically recommended that father contact S.O.'s mental health care providers and learn more about her diagnoses. Later, Houg also suggested that father attend S.O.'s treatment sessions in order to learn more about her needs. Father testified that he reached out to S.O.'s providers, but did not hear anything back from them and that S.O.'s psychiatrist required a release, which Houg did not provide.

The district court found that father's follow through on making contact with S.O.'s care providers was "very minimal." The district court also found father's testimony that he had contacted S.O.'s care providers and had not received a response not credible. Additionally, the court found that father indicated "for the first time" during trial that S.O.'s psychiatrist would not speak to him without a release. While the psychiatrist's testimony confirmed she required a release to speak with father, the district court found father did not take the necessary steps to get a release. The record supports the district court's conclusion

that the county provided appropriate services, including the county's efforts to support contact between father and S.O.'s care providers.

Father's case plan provided that before father and S.O. would be reunified, father must make his mother's home his primary residence or obtain alternative housing and support himself. The plan also provided that S.O. should not have any contact with father's girlfriend, S.A., or Child 2. Father argues that he did not fully understand the importance of the requirement that S.O. not have any contact with S.A. or Child 2. We are not persuaded. The record includes clear and convincing evidence, for example, of father's many discussions with Houg, supporting the district court's finding that the county had informed father that S.O. was not to have any contact with Child 2 or his family. Because father disagreed with the county's requirement and repeatedly stated his disagreement, the record also supports the district court's determination that father understood this requirement. In short, the record fully supports the district court's determination that the county made reasonable efforts to reunite father with S.O.

Finally, father argues that if evidence "indicates that within a foreseeable time, the parent will be able to care for the child, then the district court should decline to terminate parental rights and should establish a supervised plan to give custody to the parent with whatever counseling and assistance is appropriate." *Matter of Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). More specifically, father argues that the district court should not have found that further reunification efforts would be futile because the county did not seek this determination under Minn. Stat. § 260.012(a). But, as the county correctly points out,

the statute allows the court to determine that future efforts would be futile. Minn. Stat. § 260.012(h).

The county is required to "continue to provide services" until the court determines that further reasonable efforts are futile. *See In re T.R.*, 750 N.W.2d at 665-66. In this case, the county continued to provide services throughout the termination trial. We conclude that the district court's finding that future efforts would be futile was not clearly erroneous. The district court considered father's disregard for the requirement that S.O. not be exposed to Child 2, as well as the trauma that S.O. experienced, and found that future efforts would be contrary to S.O.'s "health and safety." We conclude the district court did not abuse its discretion in finding that the county made reasonable efforts to rehabilitate father and reunify the family.

II. The district court did not abuse its discretion in determining by clear and convincing evidence that a statutory basis for terminating father's parental rights exists.

A district court may terminate parental rights "when at least one statutory ground for termination is supported by clear and convincing evidence" and the court determines that "termination is in the child's best interest." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014); *see also* Minn. Stat. § 260C.301, subd. 1(b)(1)-(9). The district court concluded that the county proved four statutory bases for the termination of father's parental rights. Father contends that the district court abused its discretion in each of these determinations. To affirm, we only need to find one statutory ground supported by clear and convincing evidence. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005) ("Only one ground must be proven for termination to be ordered.").

A district court may terminate parental rights if a parent fails to satisfy the duties of the parent-child relationship by not providing "necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development." Minn. Stat § 260C.301, subd. 1(b)(2). Under this statute, parents also have the duty to protect and care for the child. *In re J.R.B.*, 805 N.W.2d at 902.

Father has a duty to provide necessary mental and emotional care to S.O. and to protect her from future harm. Minn. Stat. § 260C.301, subd. 1(b)(2). The district court's finding that father failed to comply with his parental duties is supported by clear and convincing evidence. The district court determined that, for the first five years of S.O.'s life, father had little contact and no significant relationship with S.O. The court also found that father disregarded Houg's directions, and exposed S.O. to Child 2 and further trauma. Finally, the court determined that S.O. is not safe in father's care because he does not believe that Child 2 sexually abused S.O., and therefore "does not understand the need to protect" S.O. from Child 2. The court also determined that father lacks the skills to provide S.O. with the necessary care. These determinations are supported by clear and convincing evidence. For example, Houg testified that father failed to take an active role in S.O.'s mental health treatment plan, insisted that Child 2 did not abuse S.O., and failed to provide emotional support to S.O.

Accordingly, the district court did not abuse its discretion in determining that a statutory ground for termination exists. Minn. Stat. § 260C.301, subd. 1(b)(2). Because one statutory ground for termination is supported by clear and convincing evidence, we need not review the district court's conclusions regarding the other statutory grounds.

III. The district court did not abuse its discretion in determining that termination is in S.O.'s best interest.

Once a district court has determined that there is a statutory basis for termination of parental rights, it must consider whether termination is in the child's best interes+ts. *In re J.R.B.*, 805 N.W.2d at 905. The court balances 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." *Id.* "Competing interests include such things as a stable environment, health considerations and the child's preferences." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). The district court can consider such things as "the children's need for stability and predictability, [and a parent's] limited bond with the children." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 668 (Minn. App. 2012).

First, the district court concluded that S.O. does not have an interest in preserving the parent-child relationship. S.O. has spent most of her life in mother's care, with minimal contact with father. The district court found S.O. does not ask about father or request to see him. Second, the district court determined father has a strong desire to parent S.O., that father is opposed to the termination of his parental rights, and that father would like to develop a relationship with S.O. Third, the district court found termination is in S.O.'s best interest because of S.O.'s mental and emotional health, her need for stability and a caretaker that can meet her special needs, and her need for a permanent home as soon as possible. The district court found that father could not meet S.O.'s needs now or in the

foreseeable future and concluded that S.O.'s needs outweigh father's interest in preserving the parent-child relationship.

The district court's findings are supported by clear and convincing evidence and are not clearly erroneous. We conclude that the district court did not abuse its discretion in determining that it is in S.O.'s best interests to terminate father's parental rights.

Affirmed.