STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0387

In the Matter of the Welfare of the Child of:
T. K. U. and T. D. K., Parents.

Filed August 13, 2018
Affirmed
Cleary, Chief Judge

Otter Tail County District Court
File No. 56-JV-17-2352

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Deanne Raitz, Fergus Falls, Minnesota (guardian ad litem)

Considered and decided by Peterson, Presiding Judge; Cleary, Chief Judge; and Schellhas, Judge.

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

CLEARY, Chief Judge

On appeal from the termination of his parental rights, appellant-father T.D.K. argues that the record does not support the district court's determinations that: (1) he failed to satisfy his parental duties and failed to correct the conditions leading to R.K.U.'s

placement; (2) termination is in the child's best interests; and (3) the agency's reunification efforts were adequate. We affirm.

FACTS

R.K.U. was born in November 2016. Prior to her pregnancy, respondent Otter Tail County Human Services (the agency) provided services to R.K.U.'s mother. Before R.K.U. was born, mother acknowledged appellant-father's paternity[1] and expressed that she did not believe she could care for the child but that she did not want father to care for R.K.U. The day after R.K.U. was born, an emergency-protective-care order for custody was granted. At the emergency-protective-care hearing in December 2016, the district court found that it would be in R.K.U.'s best interests to remain placed with the agency.

The agency implemented an out-of-home placement plan in June 2017 that identified tasks father needed to complete for R.K.U. to be placed in his care and custody.[2] Notable recommendations included financially providing for R.K.U., completing an anger-management assessment and following all recommendations, signing an authorization to release information, submitting to random drug testing, following through with any chemical-dependency-assessment recommendations, contacting the agency if he could not appear at a scheduled visit, obtaining safe and appropriate housing, and completing a parental-capacity assessment and following recommendations. Over the course of

[1] Father's paternity was also presumed from genetic testing at a later date.

[2] Father did not receive recommendations until June 2017 because paternity was not yet presumed when the initial out-of-home placement plan was implemented in December 2016.

discussing the case plan and an additional short-term agreement, father questioned and disagreed with several listed recommendations.

Father submitted urine tests in December 2016 and January 2017. He was initially unable to provide a sample on both dates. The sample that father eventually provided in January "did not appear to have a yellow hue/color" and the test showed abnormal creatinine results, which are consistent with a diluted sample.

Father began having supervised visits with R.K.U. at the end of December 2016. Between December 2016 and January 2018, he visited with R.K.U. on 14 occasions. Father failed to appear for four visits scheduled between January and September 2017.[3] A visit scheduled in February 2017 was canceled after it was discovered that he had an active warrant for failing to appear for a court proceeding. No visits took place in July and August 2017 because the agency was unable to contact father.

After father started visiting with R.K.U. on a more consistent basis in November 2017, R.K.U. became "clingy" with her foster-care providers and had issues with her balance. The district court noted that father's increased visits appeared to "have a negative impact on the child's development."

At trial, father identified four residences where R.K.U. could reside with him. But the district court noted that it was unclear where father actually resided. The district court noted that it was difficult "to assess [father]'s permanency for a residence when he merely

[3] Father testified that he missed several visits due to his own father passing away.

identifies locations without particularized established housing that the Agency is able to verify."

Father testified that he works for other people, doing "anything that they need done." The district court noted that it was unclear if father's employment required him to move to different locations "and how that will be stabilized if he obtained custody" of R.K.U.

Dr. Kathleen Schara, a psychologist at Lakeland Mental Health Center, completed father's parental-capacity assessment. Dr. Schara evaluated seventeen factors to determine father's parental capacities. Dr. Schara found father to be marginal on nine factors and impaired on seven factors. Father was adequate on the remaining factor. After testing, Dr. Schara diagnosed father with "an Other Unspecified Personality Disorder with features of paranoia and antisocial behavior" that she noted would be a complicating factor in treatment and remediation efforts. Dr. Schara opined that father was incapable of providing adequate care for R.K.U. and had significant areas of impairment which made reunification not in R.K.U.'s best interests. The district court evaluated Dr. Schara's methods and conclusions and found that her determinations and recommendations were credible.

The guardian ad litem observed R.K.U. monthly throughout the proceedings. The district court noted that the guardian ad litem expressed "concerns related to [father]'s ability to parent [R.K.U.] due to a lack of stability in his life to provide for his child." The guardian ad litem noted that father did not maintain frequent contact with R.K.U. in the form of visits and failed to maintain stable housing or employment. The guardian ad litem recommended father's parental rights be terminated, noting that R.K.U.'s interests in security and a bond with the foster parents outweighed the parent-child relationship with

father. The district court found that the guardian ad litem's concerns were related to R.K.U.'s safety and well-being.

The agency filed a petition to terminate mother's and father's parental rights on August 3, 2017. The agency cited two statutory grounds for termination: (1) under Minn. Stat. § 260C.301, subd. 1(b)(2) (2016), substantial refusal or neglect to comply with duties of a parent; and (2) under Minn. Stat. § 260C.301, subd. 1(b)(5) (2016), failure of reasonable efforts to correct conditions that led to out-of-home placement. At intermediate-disposition hearings in August and November 2017 and January 2018, the district court noted that both mother and father made minimal efforts toward alleviating or mitigating the causes for placement.

After a court trial in January 2018 at which the foregoing evidence and testimony was presented, the district court terminated mother's and father's parental rights. In its 52-page order,[4] the district court considered the recommendations of Dr. Schara, the guardian ad litem, and the agency employee who had worked closely with mother and father and who also recommended terminating father's parental rights. The district court also found that the agency had made reasonable efforts to reunify R.K.U. with her parents, but that father's failure to participate in the services provided frustrated reunification efforts. Father now appeals.

[4] In its order, the district court also discharged court-appointed counsel for mother and father. While not an issue in this appeal, we note that a district court should not discharge court-appointed counsel in an order without specifying when the discharge is effective. *See* Minn. R. Juv. Prot. P. 25.06(a) (representation continues until "all district court proceedings . . . have been completed, including filing and resolution of all post-trial motions.").

D E C I S I O N

District courts are vested with broad discretion in deciding child protection cases. *In re Booth*, 253 Minn. 395, 400, 91 N.W.2d 921, 924 (1958). On appeal from a district court's decision to terminate parental rights, "we will review the district court's findings of the underlying or basic facts for clear error, but we 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. 17, 2012).

In reviewing the district court's findings, "appellate courts are limited to determining whether the findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether they are clearly erroneous." *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997). A finding is clearly erroneous only if the appellate court is left with the "definite and firm conviction that a mistake has been made." *In re Welfare of D.T.J.*, 554 N.W.2d 104, 107 (Minn. App. 1996) (quoting *In re Estate of Beecham*, 378 N.W.2d 800, 802 (Minn. 1985)).

Appellate courts "affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted). Appellate courts review a district court's determination of whether termination of parental rights is in the child's best interests for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 900. "Among other ways, a district court

abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law." *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (quotations and citations omitted).

I. Clear and convincing evidence supports the district court's order terminating father's parental rights.

Father contends that the evidence does not support the district court's termination of his parental rights. We disagree.

A. Neglect of Parental Duties

The district court first found that father "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon [him] by the parent and child relationship" under Minn. Stat. § 260C.301, subd. 1(b)(2).

So long as a parent is physically and financially able, "the duties imposed" include "providing the child with 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). Failure to satisfy requirements of a court-ordered case plan is evidence of a parent's noncompliance with the duties and responsibilities under subdivision 1(b)(2). *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003).

The district court concluded that father "engaged in some aspects of the case plan" but had "substantially neglected his parental duties imposed by the parent-child relationship." The district court cited the following as proof that father had neglected his parental duties: (1) his failure to "adequately engage in supervised visits" where he was

"absent for substantial periods of time . . . with no justifiable excuse;"[5] (2) his failure to ensure his sobriety because he did not agree to random drug testing; (3) his failure to participate in therapy to respond to psychological concerns raised by the parental-capacity assessment; (4) his failure to secure "established housing, employment, and consistency in his living situation such that [R.K.U.] could be returned to his care;" and (5) the conclusions from the parental-capacity assessment identifying that father was "not in a position to adequately care for [R.K.U.] with significant areas of impairment."

The district court concluded that father's "absence and lack of follow-through with the case plan is evidence of the expected trajectory that he will follow into the future with [R.K.U.]." Agency documentation and testimony from Dr. Schara, the guardian ad litem, and the agency employee all support these findings. This statutory basis for termination is supported by clear and convincing evidence.

B. Failure to Correct Conditions

The district court next concluded that termination was warranted under Minn. Stat. § 260C.301, subd. 1(b)(5) and found that the agency "made reasonable efforts to reunify with [father] but [father] created the situation where much of the efforts were frustrated." The district court cited the following regarding the agency's reunification efforts: (1) father "did not maintain contact with the Agency on a consistent basis;" and (2) father

[5] The district court credited father's explanation for his longest absence after his own father's death, but noted that "it is necessary for a parent to continue to act in furtherance of their parental duties even in the light of substantial tragedies."

"never provided an address where he could be found," so it was "unclear where he actually reside[d] for any extended period of time."

The district court concluded that father "appeared unwilling to engage in services" and that his suspicious beliefs about the intentions of the agency and the overall child protection system did not allow him "to fully engage in services." Like the first statutory basis, the district court's findings regarding father's lack of participation in the agency's services are supported by the record through agency documentation and testimony from Dr. Schara, the guardian ad litem, and the agency employee. This statutory basis for termination is also supported by clear and convincing evidence.

II. The district court did not abuse its discretion in determining that termination was in R.K.U.'s best interests.

Father next argues that the district court abused its discretion in determining that termination was in R.K.U.'s best interests and contends that no evidence presented at trial supports any of the best-interests factors. We disagree.

In every termination proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2016). Even if a statutory ground for termination exists, the district court must still find that termination is in the child's best interests. *In re Children of T.A.A.*, 702 N.W.2d 703, 709 (Minn. 2005). In doing so, the district court must balance three factors: (1) the child's interests in preserving the parent-child relationship; (2) the parent's interests in preserving the parent and child relationship; and (3) any competing interests of the child. *J.R.B.*, 805 N.W.2d at 905.

"Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7.

In its analysis of R.K.U.'s best interests, the district court noted: father's substantial absences from R.K.U.'s life which prevented him from establishing a bond with R.K.U.; father's inability to respond to R.K.U.'s needs (noting that it did not appear that father's behavior would change in the future); the distress R.K.U. was in after visiting with father; and father's lack of follow-through with the case plan. The district court found Dr. Schara's, the guardian ad litem's, and the agency employee's observations and recommendations on the foregoing to be credible. The district court's findings and conclusions are supported by the clear and convincing evidence of the observations and recommendations in the record. The district court did not abuse its discretion in determining that termination was in R.K.U.'s best interests.

III. The district court did not abuse its discretion in finding that the agency's reunification efforts were reasonable.

Finally, father argues that the district court abused its discretion in finding that the agency's reunification efforts were reasonable because no evidence presented showed that he failed to comply with the case plan. The district court found that the agency attempted to work with mother and father throughout the proceedings but that father did not comply with the case plan "in a manner that would resolve concerns indicated by providers."

In a termination proceeding, the district court "shall make findings and conclusions as to the provision of reasonable efforts." Minn. Stat. § 260.012(h) (2016). Specifically, the district court must consider whether a county's reunification efforts 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." *Id.* (h)(1)-(6). Additionally, the district court must make specific findings "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." Minn. Stat. § 260C.301, subd. 8(1) (2016). Finally, the district court must consider "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 made specific findings regarding the agency's efforts, concluding that the services it attempted to provide, had father complied with the case plan, would have ensured "a system of stability and permanency that the minor child could return to that could allow for her development." The district court's findings are supported by documentation in the record of father's inconsistent and missed visits, missed appointments, lack of communication, and lack of stable housing and employment. The district court did not abuse its discretion in finding that the agency's reunification efforts were reasonable.

Affirmed.