STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0725

In the Matter of the Welfare of the Children of:
R. H. and C. L. M., Parents.

Filed October 29, 2018
Affirmed
Ross, Judge

Crow Wing County District Court
File No. 18-JV-16-4803

John P. Chitwood, Chitwood Law, PLLC, St. Paul, Minnesota (for appellant C.L.M.)

Donald F. Ryan, Crow Wing County Attorney, Angela J. Frie, Assistant County Attorney, Brainerd, Minnesota (for respondent Crow Wing County Social Services)

Tina Jay, Baxter, Minnesota (guardian ad litem)

Considered and decided by Florey, Presiding Judge; Ross, Judge; and Reyes, Judge.

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

ROSS, Judge

Crow Wing County took custody of three of C.L.M.'s children after reports from a doctor that the youngest child, an infant, was not gaining adequate weight and had a severe skin condition on her scalp. The county designed a case plan for C.L.M. to facilitate reunification, including supervised visits with his children, therapy, parenting education, and living-skills training. C.L.M. participated in some of his case plan, but he failed to attend visits, therapy sessions, and education sessions. He refused to participate in

domestic-violence programming and gave up on therapy and living-skills training. The district court found that the children were neglected and in foster care and that their best interests required termination of C.L.M.'s parental rights. C.L.M. appeals, arguing that he corrected the conditions that led to out-of-home placement, he substantially complied with his case plan, and the conditions were such that his children should have been returned to him. Because clear and convincing evidence supports the district court's findings, we affirm.

FACTS

C.L.M. and R.L.H. (referred to in the caption as R.H.) are the parents of three children whose relationship with C.L.M. is the subject of this appeal: C.A.M., S.A.M., and A.D.M.M. The parents were never married but raised the children together. They are also the parents of E.V.M., who is the subject of a different child-protection case, and in 2014, they lost a child, D.M, because of complications from a genetic condition. Due to D.M.'s health needs, and continuing after his death, the family received services through multiple social-service agencies. The county first became involved in December 2015 after receiving a report that a service provider saw that infant A.D.M.M. had a thick blanket over her head, dried milk in the creases of her neck and in her ears, and severe cradle cap. The county social worker recommended the family participate in ongoing child protective services.

A month into these services, A.D.M.M.'s pediatrician wrote the county expressing concern that A.D.M.M. was not gaining weight and continued to have cradle cap. The

county petitioned for a finding that all three children needed protection or services. The county removed the children from the home in January 2016.

The next month, the county assigned a new social worker to the family. At their first meeting, the parents requested that the two older children be returned home. After reviewing the family's prior history with other child-protection agencies, the social worker drafted out-of-home case plans for all three children. Although each case plan states that the social worker "met with [C.L.M.] to jointly make this plan," she did not meet with C.L.M. before submitting the plans with the district court. In May 2016, the district court adjudicated the children in need of protection or services and implemented the social worker's case plans. The district court ordered C.L.M. to abstain from mood-altering chemicals, submit to random drug tests, complete a psychological evaluation, continue in individual therapy, attend visits with his children, maintain clean and safe housing, and participate in parenting education.

C.L.M. participated in a psychological evaluation. The evaluator recommended additional requirements for C.L.M.'s case plan, including training to address his anger, training to improve his interpersonal skills, training to improve his infant-specific parenting skills, maintaining stable housing and employment, meeting with a living-skills worker, and completing a domestic-violence assessment.

C.L.M. questioned his need for a domestic-violence assessment but he completed it anyway. The evaluator recommended that he complete 18 to 24 sessions with a domestic-violence program offered by the evaluator, and the district court ordered this as part of his case plan. C.L.M. refused to participate.

Beginning in January 2016, C.L.M. had weekly scheduled visits with his children. He attended the first twenty visits through April, but then he missed two visits in May, one in June, three in July, and three in August. C.L.M.'s visits starting in September were scheduled to take place at a new facility, where he argued with staff about various policies. He became progressively louder. The center canceled his first visit because staff suspected that he planned to intercept the children when they arrived with their foster family. C.L.M. left an angry voice message with the center. The center informed the county that it would not facilitate visits with the family because of C.L.M.'s "aggressive actions and behavior."

Around that time, R.L.H. delivered another child. While C.L.M. was present with R.L.H. at the hospital after delivery, the county served him with a petition seeking an order finding the newborn to be in need of protection or services. Enraged, C.L.M. threatened to take the baby. Police officers escorted him out of the hospital and prevented his return. The district court ordered C.L.M. to complete at least six sessions of domestic-violence programming before it would reinstate his visits. C.L.M.'s last visit with his children was on September 1, 2016.

In November, the county petitioned to terminate his and R.L.H.'s parental rights. R.L.H. consented. After an 11-day trial in early 2018, the district court terminated C.L.M.'s parental rights. This appeal follows.

D E C I S I O N

C.L.M. challenges the district court's order terminating his parental rights. We afford the district court's termination decision considerable deference. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). The district court may terminate

parental rights if clear and convincing evidence establishes that at least one statutory ground for termination exists and termination is in the child's best interests. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). We review the district court's findings of fact for clear error and its determination of whether a particular statutory basis for termination is present for 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). Our review of termination proceedings is informed by the understanding that courts may terminate parental rights only for "grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). We first address the statutory bases for termination found by the district court before turning to its best-interests analysis.

I

C.L.M. challenges the district court's decision on all three statutory grounds the court relied on to terminate his parental rights. The district court concluded that C.L.M. failed to comply with the duties imposed by the parent-child relationship under Minnesota Statutes, section 260C.301, subdivision 1(b)(2) (2016); reasonable efforts failed to correct the conditions leading to the out-of-home placement under subdivision 1(b)(5); and the children were neglected and in foster care under subdivision 1(b)(8). We may affirm even if only one statutory ground is supported. *See R.W.*, 678 N.W.2d at 55. We find it necessary to focus only on the district court's decision that the children were neglected and in foster care.

We are satisfied that the district court had an adequate basis to terminate C.L.M.'s parental rights based on his neglect of the children in foster care. Termination is appropriate

under subdivision 1(b)(8) if the children are in court-ordered foster care; the parent's circumstances or conduct preclude returning the children to him; and the parent, despite available rehabilitative services, failed to make reasonable efforts to adjust his situation or willfully failed to meet reasonable expectations to visit the children. *See R.W.*, 678 N.W.2d at 57 (listing these among other bases for termination). The statute requires the district court to consider, among other things, the length of time the children are in foster care along with the parent's commitment to visiting and the regularity of his contact and communication with the agency responsible for the child. Minn. Stat. § 260C.163, subd. 9. Our review of the record supports termination under this standard.

Among other things that support termination under the neglect-in-foster-care provision, C.L.M.'s visits with the children had become infrequent even before his visits were suspended because of his behavior. And after the suspension, he did not see the children for over a year, all the way through the time of the termination trial. The record indicates that his choices controlled whether he would be allowed to visit the children. Despite knowing his visits would be suspended until he completed six domestic-violence or anger-management sessions, C.L.M. refused to engage because he did not see the need. His willingness to maintain communication with the county service providers was as lacking as his willingness to engage sufficiently to lift the suspension. The record indicates that he refused to answer calls, refused to return calls, and refused to answer letters. In this context, he willingly failed to make reasonable efforts to visit the children. His unwillingness to cooperate when he knew that his lack of cooperation prevented his children from spending any time with him whatsoever and when he knew that it was putting

his relationship with them permanently at stake supports the district court's finding of his neglect. This is so even if C.L.M. saw the offered services as inconvenient or unnecessary.

C.L.M. argues that he substantially complied with his case plan and that he corrected the original conditions that led to out-of-home placement. The record supports a different finding. It supports the finding that the children could not be returned to him, not only due to the issues he refused to address but due to his failure to cooperate with even basic remedial services offered to him. The district court also found that the children could not be returned to him for several other reasons, including his failure to secure and maintain stable housing and employment. C.L.M. testified that he did not have a lease agreement and that he would be losing his housing. The district court found that "[h]e had no plans for a new residence, and no stable home for the children." After quitting two jobs, he testified that he was unemployed and survived by exchanging services for gas and food in his community. The district court found that, by the time the trial ended in March 2018, C.L.M. had not worked since spring 2016 when he quit a fast-food job he held only briefly. C.L.M. fails to demonstrate that any of the critical findings are clearly erroneous.

We understand C.L.M. to argue that the conditions that originally led to the children's out-of-home placement, specifically the infant's health, were corrected. It is true that A.D.M.M. gained weight and no longer suffered from cradle cap at the time of the trial, but that consideration does not complete the analysis. The district court must also consider the factors listed in section 260C.163, subdivision 9, including the factors we have discussed. Those factors support the district court's decision. And we conclude that the district court's decision is supported by clear and convincing evidence that the children

were neglected and in foster care. Because one statutory basis is established, we decline to analyze the others. We turn to the best-interests determination.

II

C.L.M. challenges the district court's finding that termination of his parental rights is in the children's best interests—a finding necessary for termination. *See* Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). The best interests of the children is the paramount consideration after a statutory basis for termination is established. Minn. Stat. § 260C.301, subd. 7. We review a district court's finding that termination is in the children's best interests for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 906 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012).

C.L.M. argues only that "[n]one of the . . . statutory bases cited in the trial court's order were prove[d] by clear and convincing evidence." This argument is not persuasive. When analyzing the children's best interests, the court must balance three factors: the children's interests in preserving the parent-child relationship, the parent's interest in preserving the parent-child relationship, and any competing interest of the children. *Id.* at 905. The district court identified various circumstances supporting its conclusion that termination of parental rights is in the children's best interests. It found that C.L.M. failed to address his aggressive and angry behavior and was unwilling to cooperate with service providers "even if it mean[t] helping his children." This finding has ample support in the trial evidence. The district court found that the children have significant needs that require their attendance at appointments with providers. The district court found that C.L.M. failed to show he was capable of meeting these needs, and the record supports the finding. The

evidence shows that the children have been diagnosed with varying serious mental-health disorders, and witnesses providing services testified that C.L.M.'s failure to address his own mental-health issues made it difficult for him to address theirs. It found that the children's need for safety, stability, and permanency outweighs the need to preserve the parent-child relationship. It found their opportunity for potential adoption into a secure environment with their needs consistently met is in their best interests and that they would not have this opportunity in C.L.M.'s care. C.L.M. has not adequately challenged these findings.

The record leaves little doubt that C.L.M. wants to remain a father to the children. But it also supports the district court's findings that, despite this strong desire, C.L.M. neglected the children after they were placed in foster care and termination of parental rights is in their best interests.

Affirmed.