STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0911

In the Matter of the Welfare of the Child of:
C. R. T. and P. B. B., Parents.

Filed December 17, 2018
Affirmed
Jesson, Judge

Wright County District Court
File No. 86-JV-17-5996

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Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Jesson, Judge.

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

JESSON, Judge

Appellant-father P.B.B. challenges the district court's termination of his parental rights to his child, V.L.B. The district court found the existence of multiple statutory bases for the involuntary termination of father's parental rights. *See* Minn. Stat. § 260C.301,

subd. 1(b) (2018) (listing statutory bases for the involuntary termination of parental rights). Father, however, does not challenge the existence of any of those bases for termination. Instead, father challenges the district court's determination that reasonable efforts were made to reunite him with his child. Father also argues that the district court abused its discretion by ruling that termination of his parental rights is in the child's best interests. Because the record supports the district court's findings, we affirm.

FACTS

Appellant is the biological father of three-year-old child V.L.B., who was around eighteen months old at the beginning of this case. Father and the child's mother had a volatile relationship, which father described as toxic. Although it appears that the child lived with both her mother and father during her early life, both parents have ongoing struggles with substance abuse. As a result of both parents' substance abuse issues, domestic disputes frequently occurred. The child's mother and father are no longer in a relationship.[1]

In April 2017, father crashed his car into a tree while the child was in the car with him, though it appears she was unharmed.[2] Father blew a 0.10 preliminary breath test over one hour after the crash was reported, and police observed numerous liquor bottles in the vehicle. Father was arrested for various charges related to the incident.

[1] The child's mother voluntarily consented to termination of her parental rights and is not involved in this appeal.

[2] The child's foster parents testified that initially the child seemed to get anxious and upset anytime she was in a car, but that she is doing fine now.

A little over one week later, Carver County Health and Human Services (Carver County) spoke with father, who started shouting "I can't take this!" and stated that he was having a mental breakdown. In order to ensure the child's safety and welfare, the district court granted temporary custody of the child to Carver County in an ex parte protective care order for custody. A few days later, a petition for child in need of protection services (CHIPS) was filed, and the district court determined that the child needed to be placed in a foster home with supervised visits for the family. Initially, the child was placed with her paternal grandmother, and father was permitted to visit the child on a fairly liberal basis. Additionally, the district court ordered father to complete a rule 25 chemical-use assessment, a physiological assessment with an anger component, to have no use or possession of alcohol or non-prescription drugs, and to submit to random drug testing.

An out-of-home placement plan signed by both parents was filed with and approved by the Carver County District Court. The case plan outlined the requirements for the child to be returned to her parents' custody. Much of the concern regarding father's ability to care for his child revolved around substance abuse issues related to his self-admitted alcoholism and potential mental-health concerns. Based on these areas of concern, many of the requirements in father's case plan focused on his need to demonstrate sobriety, stabilize his mental health, establish supportive services for himself, and demonstrate his ability to care for his child. The case plan also required father to complete a chemical-dependency assessment and follow the recommendations (including inpatient treatment) and to complete mental-health assessments and follow-up recommendations. In

addition to outlining the requirements to regain custody, the case plan offered several services to assist father in meeting these requirements.

Between May and November 2017, father cycled in and out of treatment programs, with each treatment program noting that he was at a substantial risk for relapse. Father was discharged from a treatment program in November 2017 for noncompliance, with his discharge paperwork noting two instances of substance usage during the treatment period as well as his failure to regularly attend group sessions. Father was not enrolled in any formal treatment programs from late November 2017 through March 2018.

While father was in and out of these treatment programs, the venue for the child protection case was transferred to Wright County.[3] Wright County sent an updated out-of-home case plan to the child's parents, but neither ever responded or signed it. The Wright County social worker also sent the case plan to father's mother with a letter requesting his signature and offering to discuss the plan in person or by phone. Father never responded. The case plan contained essentially the same requirements to regain custody of the child as the Carver County plan, but updated information about resource providers.

After the updated case plan was sent to father, he missed seven random drug tests. In mid-January 2018, father was admitted to the hospital for depression, anxiety, and

[3] The district court transferred venue to Wright County because of a domestic violence history involving the child in Wright County, the car crash in April 2017 occurred there, and because mother said she still lived in Wright County. No one objected to the change in venue.

alcohol use and was placed on a 72-hour hold. The hospital recommended that he attend a mental illness/chemical dependency inpatient treatment program, but he did not attend.

Later in January, the court approved placement of the child with a non-relative foster home, where she currently resides. Once the child was placed with her foster parents, father's visits with the child were scheduled and supervised. Of the four visits that were scheduled, father missed two. When father did attend the visits, the child would hug him and appear to show some attachment to him, and at the end of at least one visit, the child began crying and asking for her daddy, though she stopped crying when she was returned to her foster parents.

Given father's failure to maintain sobriety and demonstrate an ability to care for his child, a petition to terminate his parental rights (TPR) was filed in February 2018. A few weeks before the March TPR trial, father was arrested due to an active warrant but was released to a treatment program. At the time of his admission to this treatment program, father admitted that he was under the influence of the prescription drug Suboxone, for which he did not have a prescription.

At trial, the state presented the testimony of several witnesses, including father, father's mother, social workers from Wright and Carver counties, and the child's current foster parents. Much of the testimony focused on father's sobriety and mental health, and efforts that the social workers made to help father meet the requirements to regain custody of the child.

The child's current foster parents, who had been caring for the child for about two months at the time of trial, testified that the child was adapting to her routine well and that

she had shown improvement in the time she had been living with them. Both foster parents testified that they loved the child and are open to adopting her.

At the end of testimony, the district court continued the trial for about one month at father's request. When the trial resumed, the district court heard testimony from the guardian ad litem, father, and father's mother that, during the continuance, father discharged himself from his current treatment center without staff approval.

After taking the matter under advisement, the district court granted the petition to terminate father's parental rights. The district court found that four statutory grounds for termination of parental rights were established by clear and convincing evidence: failure to comply with parental duties, palpable unfitness, reasonable efforts have failed to correct conditions leading to out-of-home placement, and the child is neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8). One ground—palpable unfitness—does not explicitly reference a requirement that the county make reasonable efforts to reunite the parent with their child. Minn. Stat. § 260C.301, subd. 1(b)(4). Additionally, the district court concluded that it was in the child's best interests to not be reunited with her father. Father moved for a new trial, but the district court denied that motion. Father appeals.

D E C I S I O N

Father first argues that the district court erred by concluding that reasonable efforts were made to reunite him with his child. Before we address father's argument, we note that two circumstances relevant to father's case raise reoccurring questions regarding reasonable efforts in appeals from a district court's involuntary termination of parental

rights.[4] First, some, but not all, of the statutory bases for termination of parental rights explicitly refer to "reasonable efforts" by the social services agency to assist the family of the child who is the subject of a petition to terminate parental rights.[5] *Compare* Minn. Stat. § 260C.301, subd. 1(b)(2) (stating that the district court "may" involuntarily terminate parental rights if a parent failed to satisfy the duties of the parent-child relationship "and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable") *and* Minn. Stat. § 260C.301, subd. 1(b)(5) (stating that the district court "may" involuntarily terminate parental rights if "following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the

[4] Because these issues were not originally briefed, we requested and received supplemental briefing from the parties. Additionally, we invited amicus briefs and received one from the Minnesota County Attorneys Association.

[5] Although a district court may invoke more than one of the statutory bases to terminate parental rights listed in Minn. Stat. § 260C.301, subd. 1(b), if an appellate court affirms the existence of one of those grounds, it need not address the other grounds invoked by the district court. *E.g.*, *In re Welfare of P.R.L.*, 622 N.W.2d 538, 545 (Minn. 2001); *In re Welfare of A.D.*, 535 N.W.2d 643, 650 (Minn. 1995). Because any one unchallenged ground is a sufficient statutory basis to support termination of parental rights, this court need not address *any* statutory ground if *all* of the statutory grounds for termination are not challenged on appeal. Although in his supplemental brief father suggests that this court should adopt the plain-error standard of review used in criminal cases for cases where the appellant does not challenge each statutory basis for terminating parental rights, his request goes beyond the current state of the law. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (noting that the function of this court is limited to identifying and correcting errors); *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) (stating that extending laws is the province of the supreme court or the legislature, but not this court), *review denied* (Minn. Dec. 18, 1987). In cases where every statutory ground for termination is not challenged, this court may, in the interest of justice, review whether a statutory ground is supported by clear and convincing evidence, but it is not required to do so.

conditions leading to the child's placement") *with* Minn. Stat. § 260C.301, subd. 1(b)(1) (stating that the district court "may" involuntarily terminate parental rights if "the parent has abandoned the child") *and* Minn. Stat. § 260C.301, subd. 1(b)(3) (stating that the district court "may" involuntarily terminate parental rights if a parent is "ordered to contribute to the support of the child or financially aid in the child's birth and has continuously failed to do so without good cause").

Second, some caselaw recites a three-prong analysis for reviewing a district court's decision to involuntarily terminate parental rights. That three-prong analysis requires review of whether the social services agency made reasonable efforts to reunite the family:

> In reviewing a decision to terminate parental rights, the appellate court determines [1] whether there is clear and convincing evidence to support at least one statutory ground for termination and, if so, [2] whether termination is in the best interests of the child. If statutory grounds for termination exist and termination is in the best interests of the child, the appellate court then determines [3] whether there is clear and convincing evidence that the county made reasonable efforts to reunite the family.

In re Children of T.A.A., 702 N.W.2d 703, 708 (Minn. 2005) (citations omitted); *see, e.g.*, *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008); *In re Welfare of Children of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018). Other caselaw, however, recites a two-prong analysis for reviewing a district court's decision to involuntarily terminate parental rights. And this two-prong analysis could be read to not require review of the reasonableness of the efforts of the social services agency. *See, e.g.*, *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004) (stating that an involuntarily termination of parental rights can be affirmed if (1) at least one statutory ground alleged in

the petition is supported by clear and convincing evidence and (2) termination of parental rights is in the child's best interests); *In re Welfare of M.A.H.*, 839 N.W.2d 730, 740 (Minn. App. 2013); *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 94 (Minn. App. 2008).

In light of the different articulations of the relevant standard, reoccurring questions have arisen regarding when an appellate court must address an appealing parent's challenge to the reasonableness of the efforts of the social services agency. This is especially the case when—as here—(a) the district court invoked at least one statutory basis for termination which does not explicitly refer to reasonable efforts by the social services agency and (b) father challenges none of the statutory bases for termination but does challenge the reasonableness of the efforts made by the social services agency.

As a preliminary matter, we reiterate that Minnesota law clearly answers that question. By statute,

> [o]nce a child alleged to be in need of protection or services is under the court's jurisdiction, *the court shall ensure that reasonable efforts . . . are made* to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time. . . . Reasonable efforts to prevent placement and for rehabilitation and reunification *are always required except upon a determination by the court that [certain conditions exist]*.

Minn. Stat. § 260.012(a) (2018) (emphasis added). Thus, while some of the statutory bases for involuntarily terminating parental rights listed in Minn. Stat. § 260C.301, subd. 1(b), explicitly refer to reasonable efforts by the social services agency, a separate, independent statute requires the social services agency to make reasonable efforts or to obtain an order from the district court excusing the agency from making those efforts. Because those efforts are required to be made or excused in all cases in which a child alleged to be in need

of protection or services is under the court's jurisdiction, a parent's otherwise properly raised challenge to the district court's ruling(s) on those matters generally needs to be addressed, even in appeals in which no challenge is made to a statutory basis for termination that does not explicitly refer to reasonable efforts by the social services agency.[6]

With this understanding, we proceed to address the reasonable efforts in this case as well as the district court's analysis regarding the best interests of the child.

I. Reasonable efforts were made to reunite father with his child.

Father contends that the district court erred by concluding that Wright County Human Services Agency (Wright County) provided reasonable efforts for reunification because Wright County failed to provide him with an out-of-home case plan that met the statutory requirements. We review the district court's factual findings, including whether reasonable efforts were made, for clear error. *In Re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012).

[6] Moreover, we note that many of the cases reciting the two-prong standard for review of an involuntary termination of parental rights did not involve a challenge to the reasonableness of the efforts of the social services agency. *See R.W.*, 678 N.W.2d at 55; *M.A.H.*, 839 N.W.2d at 740. Therefore, we cannot say that those cases would necessarily govern appeals in which a challenge to the reasonableness of the agency's efforts was properly made. *See In re Rollins*, 738 N.W.2d 798, 802 (Minn. App. 2007) (stating that "[o]pinions must be read in light of the issue presented for decision. And assumptions underlying an opinion that are not the subject of a court's analysis are not precedential on the point that is assumed" (citing *Skelly Oil Co. v. Comm'r of Taxation*, 131 N.W.2d 632, 645 (Minn. 1964); *Chapman v. Dorsey*, 41 N.W.2d 438, 443 (Minn. 1950)); *see Peterson v. Holiday Recreational Indus., Inc.*, 726 N.W.2d 499, 504 n.1 (Minn. App. 2007), *review denied* (Minn. Feb. 28, 2007).

Reasonable efforts 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). In order to determine if efforts were reasonable, the district court must determine whether the services offered 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.[7] Minn. Stat. § 260.012(h) (2018). To assess whether the services offered met these criteria and were reasonable, courts first turn to the written case plan.

As part of the county's reasonable efforts to reunite the parent with their child, when a child is placed in foster care by a court order, the responsible social services agency must prepare an out-of-home case plan. *A.R.B.*, 906 N.W.2d at 897. The case plan must explain the specific reasons why the child was placed in foster care, the changes a parent must make in order for their child to return home, and note services that are available to help achieve these requirements and reunify the family. Minn. Stat. § 260C.212, subd. 1(c)(2), (3) (2018). Further, the out-of-home case plan must be a written document that is prepared jointly with the parents, signed by them, approved by the court, and explained to all involved parties. *A.R.B.*, 906 N.W.2d at 897.

Here, father argues that the county failed to make reasonable efforts because Wright County failed to prepare and provide him with an out-of-home case plan according to the statutory requirements. But the district court correctly determined that reasonable efforts

[7] Father appeared to acknowledge at trial that the services offered to him met these criteria.

at reunification were made because father received a written, complete, thorough case plan from Carver County. The Carver County case plan was signed, approved by the court, and contained all of the requisite substantive information. Additionally, once the case was transferred to Wright County, the Wright County social worker updated the plan to provide new names of resource providers and more specific steps for father to meet his requirements for reunification, but the plan remained substantially the same. The Wright County social worker mailed the updated plan to father and his mother and indicated her availability to discuss the plan in person or over the phone.

Further, as the district court found, father was provided with ample resources and opportunities to reunite with his child. Between Carver and Wright counties, father was offered services including but not limited to: out-of-home placement planning; risk assessments; identification of support network to assist with vehicles, housing, and employment; chemical-dependency assessments; inpatient and outpatient chemical-dependency treatment opportunities; anger assessments; mental-health assessments; therapy referrals; and supervised and unsupervised visits with the child. These resources were specifically tailored to the areas identified as requirements for father's reunification with the child—chemical-dependency and mental-health issues. Father never requested any service that was not provided to him. Rather, father did not avail himself of the resources presented to him. Based on the evidence in the record, the district court reasonably concluded that reunification efforts failed not because of a lack of effort from the county, but because father demonstrated a lack of commitment to his case

plan. These conclusions are supported by the case plans in the record and the testimony of the social workers, the guardian ad litem, and father himself.

But father argues that once the venue of the case was transferred, Wright County was obligated to provide him with a case plan that met all of the statutory requirements, despite the fact that he had a case plan already. This argument lacks a basis in the statutory scheme or caselaw.

While an out-of-home placement plan is statutorily required, nowhere in the statute does it say that any time venue is transferred in a child protection case, each county must prepare its own separate case plan. *See* Minn. Stat. § 260C.212 (2018). Although under the statutory scheme governing child protection individual counties are the administrators of the law, the law applies on a state-wide basis. Carver County provided father with the statutorily required case plan, and the Wright County social worker updated the case plan with new information about resource providers and made reasonable efforts to provide father with the updated case plan. Father's argument that the statute requires more is not persuasive.

Father attempts to analogize his case to another recent case in which this court found that reasonable efforts require a written case plan and that that obligation is not excused by a father's brief opposition to participating in developing a case plan. *See A.R.B.*, 906 N.W.2d at 894. But this case is factually distinguishable. In *A.R.B.*, no written case plan was ever prepared, even after the incarcerated father requested one. *Id.* Furthermore, the county in *A.R.B.* made no effort to provide the father with assistance that could help him achieve reunification with his child. *Id.* Here, father received two written case plans and

was provided with a variety of resources. Because of the factual differences between this case and *A.R.B.*, father's analogy is not persuasive.

Because the statute does not require a new case plan in every county, and because the district court's findings that reasonable efforts were made to reunify father are supported by evidence in the record, the district court did not clearly err by concluding that reasonable efforts were made to reunite father with his child.

II. The district court did not abuse its discretion by determining that terminating father's parental rights was in the best interests of the child.

Father also contends that the district court erred in finding that termination of his parental rights was in the best interests of the child. Specifically, father argues that the district court abused its discretion by discounting evidence that the child was comfortable with her father and would respond to him, that the child's paternal grandmother's home was a safe and positive environment, that visits between father and the child were positive, and that there was an attachment between the child and her father. Deciding whether termination of parental rights is in a child's best interests is a decision that rests within the district court's discretion. *D.F.*, 752 N.W.2d at 95. Accordingly, we review the decision to terminate parental rights based on the child's best interests for an abuse of discretion. *In re Welfare of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011).

When determining the best interests of the child, the district court must analyze and 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[s] of the child." *In Re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). If

the interests of the parent and the child conflict, the interests of the child are paramount. Minn. R. Juv. Prot. P. 39.05, subd. 3(5).

Here, the district court found that the child had a small interest in maintaining the parent-child relationship because of her young age, and that while the child did interact well with her father, she had a strong interest in obtaining permanency and was adjusting well to her foster home. In contrast, the district court found that while father had a strong interest in maintaining the parent-child relationship, his failure to make progress on his case plan, his lack of communication with social workers, and his continued substance usage demonstrated a lack of true commitment to maintaining the parent-child relationship.

Because the interests of the parent and child conflicted, the child's interests are paramount. The district court found that while there is no doubt that father loves his child, his alcoholism interfered with his ability to provide a stable home or meet the child's needs. The court ultimately determined:

> Father has known for 12 months that his behavior would determine whether V.L.B. would be returned to him, yet he has failed to make any tangible progress on his case plan. His continued failure to complete treatment, utilize the services [provided to him by] Carver and Wright count[ies], keep in contact with his social workers, [and] consistently attend supervised visits with V.L.B. all suggest a persistent, continuing problem that make[s] it untenable to reunite V.L.B. with him.

The district court also found that any further delay would negatively impact the child by preventing her forming an attachment to her caregivers. In addition, the guardian ad litem, who the court found to be credible, testified that he believed it was in the child's best interests to remain in the custody of her foster parents because father was unable to provide

her with a safe and stable home free from chemical use. Accordingly, the district court found that father was not a suitable caregiver for the child, would not be for the foreseeable future, and determined that termination of father's parental rights was in the best interests of the child.

Without question, the child and father shared a strong bond. We note the evidence of attachment between father and child, particularly during the supervised visits. But there also was a significant amount of testimony and evidence supporting the district court's conclusion that termination of father's parental rights was in the child's best interests. The district court found testimony from the social workers, the guardian ad litem, and father's mother to be credible. Each of these witnesses noted concerns about father's struggles with sobriety. Testimony from the Wright County social worker indicated that father was often difficult to communicate with, and evidence from various treatment programs documented father's struggles with participating in and completing treatment.

The district court is in the best position to assess the credibility of witnesses, and we give great deference to the district court's determination. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). The district court's determination that termination of father's parental rights was in the best interests of the child was supported by evidence in the record and accordingly was not an abuse of discretion.

Accordingly, because the district court did not err by determining that reasonable efforts were made to reunite father with his child and because the district court did not

abuse its discretion by finding that termination of father's parental rights was in the child's best interests, we affirm the district court's termination of father's parental rights to V.L.B.

Affirmed.