STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1167

In the Matter of the Welfare of the Child of:
C. L. H. and K. S. M.

Filed December 17, 2018
Affirmed
Bjorkman, Judge

Grant County District Court
File No. 26-JV-18-78

Kent D. Marshall, Barrett, Minnesota (for respondent C.L.H.)

Matthew P. Franzese, Wheaton, Minnesota (for appellant K.S.M.)

Justin Anderson, Grant County Attorney, Heather L. Brandborg, Assistant County Attorney, Elbow Lake, Minnesota (for respondent Grant County Social Services)

Dawn Krump, Tintah, Minnesota (guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Worke, Judge; and Stauber, Judge.*

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

BJORKMAN, Judge

Appellant-father K.S.M. challenges the termination of his parental rights, arguing that the record does not support a statutory basis for termination and termination is not in

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

the best interests of the child. Because clear and convincing evidence shows that reasonable efforts by the county failed to correct the conditions leading to the child's out-of-home placement and termination is in the child's best interests, we affirm.

FACTS

R.S.H. was born in July 2014 to father and C.L.H., who never married. Mother was the custodial parent from the time of the child's birth until she voluntarily terminated her parental rights in May 2018. During that time period, the child was twice placed out of mother's home for a total of 415 days.

The child was first removed from mother's home in October 2015, after mother was arrested for driving while under the influence of methamphetamine. Police discovered that mother had left the child with acquaintances, telling them she would "be right back." Respondent Grant County Social Services obtained emergency protective custody of the child, and the district court later adjudicated him to be in need of protection or services (CHIPS). The county developed case plans requiring mother to complete in-patient drug treatment and father to participate in parenting time. Father neither sought nor received other services at that time. Although he attended some parenting-time sessions with the child, the county was unable to reach him on numerous occasions. The child was reunited with mother after 314 days in out-of-home placement.

On February 26, 2018, the county again became involved with the family when no one picked up the child from preschool. Law enforcement officers conducted a welfare check at mother's home, discovered she was under the influence of controlled substances, and were unable to reach father or anyone else who could care for the child. The county

initiated a second CHIPS proceeding. The petition cites mother's June 2017 report to the county that father "had been driving [the child] around in a vehicle without being buckled in a car seat," "without a driver's license," "was using drugs," "and . . . hit [the child]." Mother also reported "that she was concerned about unsupervised visits between [father] and the [c]hild" and "was concerned about [father's] sobriety, and reported that [father] had hit [the] [c]hild."

In March 2018, the district court adjudicated the child CHIPS. The district court appointed a guardian ad litem and directed father to comply with a case plan that required him to (1) "submit to observed, random [drug testing]"; (2) upon a positive drug test result, "complete a Rule 25 [drug] [a]ssessment and follow all recommendations"; (3) keep in "regular contact" with the county; and (4) "maintain regular contact/visits with [the child]." The district court expressly conditioned father's parenting time on drug testing. Soon after, the county petitioned to terminate both father's and mother's parental rights. The termination petition alleges that "following the child's placement out of the home, reasonable efforts . . . failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5) (2018).

The termination trial took place in June 2018. Evidence adduced at trial shows that between March and May 2018, father completed only one of 12 requested drug tests. The results of the single test "quick-tested positive for methamphetamine, amphetamine, and THC," but later analysis yielded concentration levels too low to qualify as positive. The district court rejected father's assertion that he did not receive voicemail testing requests from the county, stating that he "always had a telephone" and "returned certain calls but

not others." And the district court discounted the chemical assessor's opinion that treatment was unnecessary because father told the assessor he only used a controlled substance once and provided only one collateral reference—a 90-year-old neighbor with whom father had only occasional contact.

In addition, father did not maintain contact with either the county caseworker or the guardian ad litem. Father never responded to any of the guardian ad litem's efforts to reach him, and he scarcely communicated with his caseworker. Because of father's minimal case-plan compliance, the county was unable to offer services such as parenting education, additional parenting time, and family counseling. Father does not challenge the district court's finding that he has never had custody of the child.

At the conclusion of the trial, the district court found clear and convincing evidence that the child resided out of the home for more than six months, father failed to maintain regular contact with the child or comply with his case plan, the county's reunification efforts were reasonable, and father "failed to correct the conditions that led to [c]hild's out-of-home placement." The court further found that termination is in the child's best interests because father was unable to complete basic parenting tasks, had not proven himself to be a viable parenting option, the statutory permanency requirements had expired, and "the best interests demand[ed] [the] [c]hild be given a stable life elsewhere." Father appeals.

D E C I S I O N

An appellate court reviews an order that terminates parental rights "to determine whether the district court's findings (1) address the statutory criteria and (2) are supported by substantial evidence." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App.

2012). We defer to the district court's exercise of discretion but closely assess whether the evidence is clear and convincing. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). "We will affirm the district court's termination of parental rights when a statutory ground for termination is supported by clear and convincing evidence, termination is in the best interests of the child, and the county has made reasonable efforts to reunite the family." *In re Welfare of Children of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018).

I. The district court did not abuse its discretion by determining that reasonable efforts failed to correct the conditions that led to the child's out-of-home placement.

A district court may terminate parental rights if clear and convincing evidence shows that reasonable efforts have failed to correct the conditions leading to the child's out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5). It is presumed that reasonable efforts have failed upon a showing that (1) a child under age eight has resided outside the parental home for six months, (2) the court has approved an out-of-home placement plan, (3) the conditions leading to the child's out-of-home placement have not been corrected, and (4) the social services agency made reasonable efforts to rehabilitate and reunite the family. *Id*. It is also presumed that the conditions leading to out-of-home placement have not been corrected upon a showing that a parent has "not substantially complied with the court's orders and a reasonable case plan." *Id*., subd. 1(b)(5)(iii).

Father challenges the district court's determinations as to the third and fourth factors—that the conditions leading to the out-of-home placement have not been corrected and the county made reasonable efforts to reunite him with the child. The essence of

father's argument is that (1) his case plan was not reasonable because the district court had no basis to require him to submit to drug testing and (2) the county's reasons for removing the child related to mother's drug use and resulting neglect of the child rather than anything related to him. We are not persuaded.

First, the record reveals a consistent thread of evidence supporting the district court's concerns about father's drug use. Indeed, father did not challenge the district court's finding that he initially agreed to drug testing as part of his case plan. In 2016, mother told a county worker that she used methamphetamine with father. Following this, the county asked father to demonstrate his sobriety by submitting to random drug tests; he completed only two tests a week apart in early July 2016. Mother told the county in June 2017 that father was "driving [the child] around in a vehicle without being buckled in a car seat and without a driver's license," "was using drugs," and hit the child. On March 24, 2018, mother called the sheriff's office while under the influence of methamphetamines, stating that she used with father the previous day.

At trial, mother recalled father telling her that he would not pass one of the requested drug tests because it would be "dirty." He also told her that he purchased synthetic urine to facilitate a clean test so he could visit the child. To the extent that the district court found mother's testimony credible, we defer to that determination. *See In re Welfare of Children of D.F.*, 752 N.W.2d 88, 94 (Minn. App. 2008) ("Because the district court is in a superior position to observe the witnesses during trial, its assessment of witness credibility is accorded deference on appeal."). And father's May 2018 recorded conversation with mother suggests continued drug use. During the conversation, father noted that mother

was being released from jail the next day, and he told her he would "pick something up," and then pick her up.

On this record, we discern no error in the district court's assessment that father's "sobriety was critical to [the] [c]hild's safety and protection." And the district court was within its discretion to weigh against father his consistent avoidant behavior, including father's defiance of the court's directive to remain in the courthouse to complete a drug test following a hearing. Father's failure to demonstrate his sobriety thwarted the county's ability to evaluate his need for and provide him with appropriate services. The record amply supports the district court's determination that father "made no effort to parent the [c]hild," essentially abandoning the child, and that the lack of further services being offered to father was due to father and not the county's "inadequacy."

Second, the fact the child was initially removed from mother's—not father's—home does not defeat termination based on failure to correct conditions. The conditions that led to the child's out-of-home placement were neglect and danger occasioned by a custodial parent's chemical use. These conditions have not changed. Father's chemical use continues, and he did nothing to demonstrate to the county and district court that he is a safe, reliable custodial option. Given the child's young age, mother's inability to care for him, and the duration of the out-of-home placement, father knew he needed to promptly engage with his case plan. His decision to rebuff the county's repeated attempts to facilitate his first step—demonstrating his sobriety—undermined the county's reasonable efforts to correct the child's lack of a sober and safe home. *See In re Welfare of Children of J.B.*, 698 N.W.2d 160, 170 (Minn. App. 2005) (rejecting parent's request for more time to work

on a case plan and confirming that "active efforts" were provided even though the parent refused to accept them).[1]

In sum, father's case-plan requirements were reasonable. His failure to minimally comply with them implicated the statutory presumption that conditions had not been corrected. The record demonstrates that father did not rebut the presumption.

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

The primary factors in determining a child's best interests are "the child's interest in maintaining the parent-child relationship, the parents' interest in maintaining the parent-child relationship, and any competing interest of the child." *In re Welfare of Children of M.A.H.*, 839 N.W.2d 730, 744 (Minn. App. 2013). "Finality is one factor to be considered in determining a child's best interests." *In re Welfare of Children of B.J.B.*, 747 N.W.2d 605, 610 (Minn. App. 2008). We review a district court's best-interests determination for abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

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[1] Father cites *In re Children of T.R.*, where our supreme court distinguished between noncompliance with a case plan for purposes of establishing a parent's failure to correct conditions under Minn. Stat. § 260C.301, subd. 1(b)(5), and for establishing palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4) (2018). 750 N.W.2d 656, 663 (Minn. 2008). The supreme court ruled that only subdivision 1(b)(5) allows consideration of the parent's noncompliance with a case plan. *Id*. In a footnote, the supreme court questioned whether a parent's rights may be terminated for failure to correct conditions when the parent's substance abuse and inability to understand the child's special needs did not prompt the child's removal from the home. *Id*. at 663 n.5. This comment does not control our analysis. *See League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 681-82 (Minn. 2012) (labelling as dicta and "not controlling for the present case" a gratuitous comment unnecessary to the decision).

The district court thoroughly evaluated the best-interests factors in its detailed findings of fact and its memorandum. The district court found that it

> is in [the child's] best interests that he be given the opportunity to thrive and progress in a household that is dedicated to his well-being. There is no evidence before this court that [the child] has developed a [f]ather-[c]hild relationship with [father]. To the contrary, it is apparent that [the child] has not missed having [father] in his life.

While noting that father's parental rights "cannot be taken lightly," the district court determined father "has not evidenced any intention to parent." The record amply supports these findings. Father's expressed interest in parenting the child is belied by his actions and inactions. Based on our careful review of the record, we discern no abuse of discretion in the district court's determination that termination of father's parental rights is in the child's best interests.

Affirmed.