STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1098, A18-1115

In the Matter of the Welfare of the Children of: K.M. and T.R., Parents.

Filed February 4, 2019
Affirmed
Reilly, Judge

Kandiyohi County District Court
File Nos. 34-JV-18-57

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

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

REILLY, Judge

In these consolidated appeals, appellants, mother and father, challenge the district court's termination of their parental rights to their two minor children. Mother argues that the district court abused its discretion in concluding that the county proved both palpable unfitness and inability to comply with the duties imposed by the parent-child relationship by clear and convincing evidence. Mother also challenges the district court's determination

that the county's efforts to reunite the family were reasonable. Father challenges the admission of the guardian ad litem's opinion testimony and admission of father's prior criminal convictions. Father and mother both challenge the district court's conclusion that termination is in the children's best interests. We affirm.

D E C I S I O N

I. Standard of Review

We review the termination of parental rights in order to determine "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." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). First, we review the factual findings for clear error. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). 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 Welfare of Children of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012). We will not set aside factual findings unless review of the entire record leaves us with a "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). Second, we review the ultimate decision that there is a statutory basis for termination for an abuse of discretion. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 322 (Minn. App. 2015), *review denied* (Minn. July 20, 2015).

II. Duties Imposed by the Parent-Child Relationship

In March 2018, Kandiyohi County Health and Human Services (the county) filed a termination of parental rights (TPR) petition alleging that both mother and father were

palpably unfit to parent and were unable to comply with the duties imposed by the parent-child relationship. Following the May 2018 court trial, the district court issued an order terminating the parental rights of both parents to their two minor children (born in 2012 and 2013). Mother argues that the district court abused its discretion in concluding that the county proved her inability to comply with the duties imposed by the parent-child relationship by clear and convincing evidence.[1]

The county sought to terminate mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2), which allows a district court to terminate parental rights when:

> the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to 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, if the parent is physically and financially able, 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.

To terminate parental rights under this statutory basis the district court must find that "at the time of termination, the parent is not presently able and willing to assume [their] responsibilities and that the parent's neglect of these duties will continue for a prolonged, indeterminate period." *J.K.T.*, 814 N.W.2d at 90 (quotation omitted). We will affirm the district court's termination of parental rights when at least one statutory ground for

[1] Because father does not challenge the district court's termination of his parental rights on this basis, we limit our review to the district court's termination of mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2) (2018).

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. *S.E.P.*, 744 N.W.2d at 385.

Mother argues that the district court erred when it found that she substantially, continuously, or repeatedly failed to comply with the duties imposed upon her because the county did not show what duties she had as a parent. This argument is unavailing because the duties imposed by the parent-child relationship are clearly outlined in statute as: "providing the child[ren] with necessary food, clothing, shelter, education, and other care and control necessary for the child[ren]'s physical, mental, or emotional health and development, if the parent is physically and financially able." Minn. Stat. § 260C.301, subd. 1(b)(2).

The county became involved in this proceeding in July 2017 when law enforcement found a man, mother, and her two children camping in a tent in the backyard of a resident of Garvin County, Oklahoma. According to mother, she "barely knew" the man that she and her children were camping with before she travelled across the country with him.[2] Mother initially told a county case worker that she went to Texas to visit family, however, at trial she claimed that the man took her and her children against her will. Mother testified that she fell asleep in the Twin Cities metro area, thinking she was heading to her home in

[2] We note that the timing of mother's travel was during an open child-protection case regarding her eldest daughter, E.H. When the county case worker spoke to mother about her travel considering the open child-protection case, mother became irritated and abruptly ended the telephone conversation. Ultimately, mother voluntarily terminated her parental rights to E.H. in February 2018.

Minnesota, but when she awoke she was in "Kansas or another state." Law enforcement found methamphetamine and marijuana in mother's possession. The children were filthy, one was covered in urine, and both children had severe head lice. Law enforcement arrested mother, charged her with two counts of child neglect, and placed the children in foster care in Garvin County. In August 2017, a county case aide flew down to retrieve the children and bring them back to Minnesota. One of the children tested positive for drugs upon her return to Minnesota.

Mother pleaded guilty to two counts of felony-level child neglect and remained in custody in Oklahoma until her release on January 3, 2018. Mother arrived back in Minnesota by bus on January 6, and spent the day with father; neither of them called the county to schedule a visit with the children. On January 9, mother called the case worker to schedule a meeting to discuss the case plan. The county worker scheduled the meeting with mother as soon as possible because the county worker "knew how crucial it was for [mother] to get going on this case plan because she ha[d] been in Oklahoma since July 27." However, mother called to cancel the meeting 45 minutes after it was set to begin. Mother was taken into custody on January 16. Though she had not seen her children since July 2017—approximately five months—she did not attempt to schedule a visit during the ten days that she was not in custody and available.

In its order the district court reasoned that:

> [Mother] has had many opportunities to accept services and to learn how to be a safe parent. [Mother] has demonstrated that her primary concern is her own short-term happiness. [Mother] refused to comply with minimal case plan requirements of demonstrating sobriety and regularly visiting

> her daughter, [E.H.]. [Mother] was willing to walk away from those obligations and her daughter, [E.H.], when she left Minnesota on a drug-induced whim with [the man]. [Mother] put [the children] at grave risk of harm when she took so many drugs while the children were in her care that they ended up in another state with a stranger. [Mother] gave little thought to the safety and welfare of [the children] when she kept them in a tent on a stranger's yard, urine-soaked and full of filth and head lice.
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> The most telling evidence to the Court, however, is that [mother] had innumerable opportunities from at least January 6, 2018 until her revocation hearing on January 16, 2018 to see [the children]. By finding time to spend a day with [father] on January 6, but cancelling her visit . . . on January 10, [mother] has vividly demonstrated that her priority is to herself and what she wants in any given moment.

"Considerable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of Children of B.M.*, 845 N.W.2d 558, 563 (Minn. App. 2014). It is clear that the district court considered mother's ability to provide the children with a stable, drug-free, and safe home. It is logical to conclude, based upon all of the evidence in the record, that mother's long-standing substance abuse issues have adversely affected the children. Mother's substance-abuse issues led to the children being driven across the country with a strange man, ending up in a tent in the hot summer, and left in filth, urine-soaked clothes, and with head lice. Moreover, "[f]ailure to satisfy requirements of a court-ordered case plan provides evidence of a parent's noncompliance with the duties and responsibilities under section 260C.301, subdivision 1(b)(2)." *K.S.F.*, 823 N.W.2d at 666. The trial testimony indicates that mother did not comply with her case plan requirements in this proceeding or in her prior TPR proceeding with her eldest daughter, E.H. Therefore, after careful review of the record, we

determine that the district court did not abuse its discretion in its finding that mother "has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(2).

Because the district court must also find that either reasonable efforts by the county have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile in order to terminate parental rights under this statutory basis, we next turn to mother's challenge that the district court abused its discretion in determining that the county made reasonable efforts in this case. *See* Minn. Stat. § 260C.301, subd. 1(b)(2).

III. Reasonable Efforts

During a termination of parental rights proceeding, the district court must determine whether a county made reasonable efforts to reunite the parent with their children. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008). 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. Minn. Stat. § 260.012(h) (2018). "Whether the county has met its duty of reasonable efforts requires consideration of the length of time

the county was involved and the quality of the 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 numerous findings on its view of the "reasonable efforts" in this case, writing:

> [The county] began providing reasonable efforts to reunify the girls with [mother] immediately upon learning of her incarceration in Oklahoma. [The county case worker] called [mother] as soon as [the children] returned to Kandiyohi County. Thereafter, [a county worker] had weekly contact with [mother] even attempting to set up video-conferencing so [mother] could visit with the children. [The county] also provided [mother] with paper so that she could draw pictures and write letters to the girls. [Mother] was fairly consistent in writing letters and drawing pictures for the girls while she has been incarcerated. [The county] kept [mother] updated on the girls' activities weekly throughout the 5+ months she was incarcerated in Garvin County.
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> [The county] made reasonable efforts to finalize the permanency plan for the children and to reunify with the parents. These services have been reasonable, appropriate, and relevant to the safety and protection of the children, adequate to meet the needs of the children and the family, culturally appropriate, and realistic under the circumstances, as required by Minn. Stat. § 206.012. The following services were considered, offered, or provided: child protection investigations and assessments, communication with [mother], foster care, respite, sibling visits, grandparent visits, referral for play and trauma therapy, giving tree donations, communication with social services in Garvin County, Oklahoma to assess services available to [mother] in jail, communication with [mother] in Kandiyohi jail, letters from [mother] and [father] held for the children and when content was appropriate were received by the children, and monthly visits with the children.

We address both mother and father's arguments regarding reasonable efforts in turn.

a. Mother

Mother argues that the efforts provided in this case were minimal and were not aimed at alleviating the conditions that led to the removal of the children. Mother contends that the county could have and should have done more to help this family, including trying to obtain a chemical-use assessment to see if there are underlying chemical use issues or attempting to get a diagnostic assessment to see if there are underlying mental health issues. During the pendency of this case mother was incarcerated, which limited the amount and types of services that could be offered. Though incarceration does not relieve the county of the duty to make reasonable efforts, it "might change what qualifies as 'reasonable' under the county's duty to make 'reasonable efforts.'" *In re the Welfare of A.R.B.*, 906 N.W.2d 894, 899 (Minn. App. 2018).

The county asserts that due to the incarceration of mother the court must look to her efforts in her previous TPR case regarding her eldest daughter, E.H. In that termination of parental rights case, mother tested clean for drugs on only one occasion, failed to test on four occasions, and tested positive for drugs on two occasions. Mother could have had visits up to two times a week with E.H., but because mother would not submit to drug testing, she had just three visits with her daughter out of approximately 44 opportunities. Additionally, it was during the open child protection case regarding E.H. that mother left Minnesota on her drug-induced cross-country trip with a strange man and her two other children.

Ultimately, the district court did not abuse its discretion when it found that the county provided reasonable efforts to mother in this case. We therefore determine that the district court did not abuse its discretion in finding that mother repeatedly refused or neglected to comply with the duties imposed upon her by the parent-child relationship. Because this statutory ground for termination is supported by clear and convincing evidence, we need not consider the palpable unfitness basis in this appeal. *See S.E.P.*, 744 N.W.2d at 385 (citation omitted) (providing that appellate courts affirm the district courts determination on a TPR when "at least one statutory ground for termination is supported by clear and convincing evidence").

b. Father

Father argues that the county should have addressed his mental illness and chemical dependency, which we construe as an argument that the county did not provide father with reasonable efforts regarding these matters. We are unpersuaded by this argument and agree with the district court's determination that the efforts regarding father were reasonable in light of the circumstances in this case.

In July 2017, after his children were returned to Minnesota from Oklahoma, father left Minnesota to go to Alaska to be with his girlfriend and her children. Father testified that he did not consider his children when he left for Alaska because "they were already caught." Additionally, father had numerous open criminal cases, which resulted in warrants for his arrest based upon nonappearances. The district court found that:

> [Father] has no concept that he should have stayed to be a parent for [the children] upon their return from Oklahoma. [Father] utterly failed to recognize his duty to stay and work

> with [the county's] case plan and provide a home for [the children].

When father returned to Minnesota, he was incarcerated and the county facilitated letters between him and the children. At first, father wrote letters containing appropriate content, however, eventually he included inappropriate content in his letters including promises to the children that he could not keep. The county worker returned father's letters to him and gave father the opportunity to rewrite the letters. Father became angry with the county worker and thereafter refused any and all cooperation with the county. The county worker attempted to meet with father and he said "I never want to see you again" and "I don't f--king care anymore." The county case worker attempted a final visit with father, and he told her to "get." Based upon the father's incarceration and his unwillingness to work with the county, we determine that the district court did not abuse its discretion when it found that the county provided reasonable efforts to father in this case.

IV. Evidentiary Issues

Father challenges both the district court's admission of the guardian ad litem's (GAL) testimony and the admission of father's prior criminal convictions. Father, however, did not move for a new trial. It is a well-established rule of law in Minnesota that objections to evidentiary rulings, both in adult and juvenile proceedings, "are subject to appellate review only if there has been a motion for a new trial in which such matters have been assigned as error." *In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. App. 1994) (declining to review evidentiary issues in a juvenile protection proceeding where appellant failed to bring a motion for new trial) (quoting *Sauter v. Wasemiller*, 389 N.W.2d 200, 201

(Minn. 1986)), *review denied* (Minn. Nov. 29, 1994). This rule applies even if appellant raises timely objections at trial. *Id.* Therefore father is precluded from raising his evidentiary challenges on appeal because he failed to allow the district court to correct its alleged errors. Even if this court were to consider father's arguments on their merits, he would not prevail.

a. Guardian Ad Litem's Testimony

Father argues that the GAL could neither testify as either a lay witness under Minnesota Rule of Evidence 701 nor as an expert witness under rule 702. The district court has broad discretion in its decision on admitting evidence, and this court will not disturb that ruling unless it is based on an erroneous view of the law or constitutes an abuse of discretion. *J.K.T.*, 814 N.W.2d at 93. For three reasons, we reject father's argument.

First, father argues that the GAL's testimony is subject to the Minnesota Rules of Evidence governing the admission of lay and expert opinion testimony. The Minnesota Rules of Juvenile Protection Procedure, however, state that "[e]xcept as otherwise provided by statute or these rules, in a juvenile protection matter the court shall only admit evidence that would be admissible in a civil trial pursuant to the Minnesota Rules of Evidence." Minn. R. Juv. Prot. P. 3.02, subd. 1. The juvenile protection statutes are clear that a district court "may consider any report or recommendation made by the responsible social services agency . . . [or] guardian ad litem" before terminating parental rights. Minn. Stat. § 260C.193, subd. 2 (2018). Because juvenile protection rule 3.02 requires evidence to be admissible under the rules of evidence "except as otherwise provided by statute," and because Minn. Stat. § 260C.193, subd. 2 allows a district court to consider "any report or

recommendation" by a GAL in a termination proceeding, the assumption underlying father's argument is suspect.

Second, even if Minnesota Rules of Evidence apply to the GAL's testimony, father's argument fails. Specifically, father first argues that if the GAL is considered as a lay witness, the GAL offered an opinion, not a fact, and therefore the GAL's testimony is not helpful to the determination of a fact issue. We note that it is for the district court to assess whether admitting evidence will be helpful to the district court in making its decision, and that the decision to admit evidence is discretionary with the district court. *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 172 (Minn. App. 2005). Moreover, opining on whether or not maintaining a parental relationship is in a child's best interest is precisely the information needed by the court to address a child's best interest and, in a permanency matter, it is precisely the role of the GAL to provide this information. Father next argues that if the GAL is deemed to be an expert witness, proper foundation was not laid. Father lists out dozens of questions regarding the GAL's experience that were not asked by trial counsel during the trial. Father's counsel had the opportunity to cross-examine the GAL at trial and, in fact, did so but did not challenge the GAL's qualifications in establishing a foundation for opining on whether father's parental rights should be terminated. Therefore, it is not clear that the GAL's competency to testify is properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate court generally address only those questions previously presented to and considered by the district court); *In re Welfare of D.D.G.*, 558 N.W.2d 481, 485 (Minn. 1997) (applying this aspect of *Thiele* in a juvenile protection appeal). The record

establishes that the GAL has been employed through the guardian ad litem program for three and a half years and receives ongoing training every year. Thus, even if father's argument is properly before this court, the limited record on this point does not support father's argument.

Third, even if the district court erred by admitting the GAL's opinion, father has not shown any resulting prejudice. "A new trial may be granted on the basis of an improper evidentiary ruling only if the [complaining party] demonstrates prejudicial error," and "[a]n evidentiary error is not prejudicial if the record contains other evidence that is sufficient to support the findings." *J.K.T.*, 814 N.W.2d at 93. Here, the district court only briefly references the GAL's opinion in its order when it states, "[t]he [GAL] believes it is in [the children]'s best interest . . . to remain with their concurrent placement permanently." Because this record contains sufficient evidence to support the termination of father's rights even without the opinion of the GAL as to the ultimate issue, we cannot say that father has shown any prejudice arising from any erroneous admission of the GAL's testimony. Therefore, we affirm the district court on this issue.

b. Criminal History

Father argues that evidence of his criminal history was improperly admitted in this TPR case. During trial, father's trial counsel indicated that he did not object to the admission of any certified convictions, but, when the county attempted to admit certified copies of complaints, father's counsel objected on hearsay and relevance grounds. The district court sustained the objection on relevance grounds because "the prejudicial value far outweigh[s] any probative value since they . . . are unproven accusations." However,

the district court included father's criminal history in its order, listing out the unresolved charges, an active warrant, and convictions. The county argues (1) that the evidence is relevant to show the frequency of the criminal behavior that father has subjected his children to and that he would likely in the future subject the children to additional periods of time where he is unavailable due to incarceration and (2) even if a portion of father's open criminal status as of the time of the permanency trial was admitted erroneously by the court, it was harmless error.

This court has previously held that the district court has discretion to consider a party's criminal history when determining whether it is in the best interests of a child to be cared for by that party. *See J.B.*, 698 N.W.2d at 172–73 (concluding that, in termination-of-parental-rights case, the district court did not err by admitting evidence of father's "criminal convictions dating back to 1983" because, "coupled with his recent convictions," the evidence was probative to show that father "has a long-standing problem remaining law-abiding"). Trial testimony revealed that, at the time of trial, father had been incarcerated for over half of his children's lives. Moreover, Minnesota Rules provide that "in addition to the judicial notice permitted under the Rules of Evidence," the court may take judicial notice of the findings of fact and court orders "in any other proceedings in any other court file involving the child or the child's parent." Minn. R. Juv. Prot. P. 3.02, subd. 3. Ultimately, it appears that the only time the district court used father's criminal history in its analysis is when it wrote that "[father] and [mother] have continuously throughout [the children]'s lives made poor decisions, placed the children in danger, have habitually been incarcerated or facing criminal charges, and repeatedly used drugs in front of the

children and have caused the children to be exposed to harmful chemicals and harmful situations." It is clear that the district court did not terminate father's parental rights because of his criminal record, but because he is often unavailable and thereby unable to comply with the parental duties imposed upon him.

Because it does not appear that the district court abused its discretion, and even if it did, any error would be harmless, we affirm the district court on this issue.

V. Best Interests of the Children

In a termination case, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2018). This is true even when the interests of the parent and child conflict. *Id.* Analyzing the best interests of a child requires a balancing of the child's interest in preserving a parent-child relationship, the parent's interest in preserving that relationship, and any competing interest of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *R.T.B.*, 492 N.W.2d at 4. We review the district court's determination that termination is in the best interests of the child for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "[D]etermination of a child's best interests is generally not susceptible to an appellate court's global review of a record, and … an appellate court's combing through the record to determine best interests is inappropriate because it involves credibility determinations." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quotations omitted).

The district court "must consider a child's best interests and explain its rationale in its findings and conclusions." *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). Here, the district court stated:

> [The children] loved when they received letters from [father]. They knew they were from their father. Every time [the county worker] visited with the girls, they asked if there were letters from [father].
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> The [GAL] believes it is in [the children's] best interest to remain with the concurrent placement permanently. [The GAL] believes it would be in the best interest of the children to terminate the parental rights of both [mother] and [father]. The children are doing exceptionally well in their concurrent foster home.

The children's best interests were discussed during trial. The county elicited testimony from the county case manager that the children have an interest in preserving the parent-child relationships with father and mother because "they want a parent" and are "looking for that loving . . . relationship with an adult." The district court balanced the children's love for their parents against their need for a safe, stable, drug-free home and determined that termination is in the children's best interest. The district court's conclusions need not "go into great detail." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004). We determine the district court did not abuse its discretion in finding that termination of appellants' parental rights is in the children's best interests.

Because substantial evidence in the record supports the district court's findings, and because the district court properly applied the law to those findings, the district court did

not abuse its discretion when it terminated both appellants' parental rights to their two children.

Affirmed.