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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1900**

In the Matter of the Welfare of the Children of: N. E. J. and M. D. H., Parents.

**Filed April 15, 2019
Affirmed
Schellhas, Judge**

Anoka County District Court
File No. 02-JV-18-600

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Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's order terminating his parental rights. Because the record supports the district court's findings that a statutory ground for termination exists and termination is in the children's best interests, we affirm.

FACTS

Appellant M.D.H. (father) and N.E.J. (mother) are the biological parents of two sons, R.J.H., born May 2011, and D.K.H., born July 2012. Father and mother never

married, and father was granted sole legal and sole physical custody of the two boys in May 2013.

In approximately May 2014, father began residing with K.M.B., who had twin daughters, born in January 2010. Father and K.M.B. had a daughter, K.B.H., born in April 2016. At the commencement of these proceedings, father, R.J.H., D.K.H., K.M.B., K.B.H., and K.M.B.'s twin daughters resided together.

On December 21, 2017, respondent Anoka County Social Services (county) filed a petition, alleging that R.J.H. and D.K.H. were in need of protection or services (CHIPS). On January 3, 2018, the county filed an amended CHIPS petition, alleging that the children were placed on a 72-hour police hold on December 18, 2017, following an incident in which K.M.B. stabbed father during an argument while the children were present. According to the amended CHIPS petition, three teenaged children, who were residing with father and K.M.B., stated that the couple "argued the previous evening" because father had been "using 'dope,'" and that the argument continued the next day, culminating in father's stabbing. The amended petition also alleged that father and K.M.B. have an extensive history of domestic violence and abuse of controlled substances, and that father and K.M.B. acknowledged that they had recently used methamphetamine.

Following an uncontested facts trial on January 18, 2018, the district court adjudicated R.J.H. and D.K.H. CHIPS and ordered father to comply with a case plan. Father's case plan required him to address chemical-dependency and psychological issues, attend parenting classes, refrain from using controlled substances, and submit at least two

UA's per week. The primary purposes of the case plan were for father to achieve sobriety and improve his mental health to enhance his understanding of his sons' needs.

On May 9, 2018, the county filed a petition to terminate father's and mother's parental rights (TPR) to R.J.H. and D.K.H. under Minn. Stat. § 260C.301, subd. 1(b) (2018).¹ The TPR petition alleged the following four statutory bases for termination: (1) the parents substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon them by the parent and child relationship; (2) the parents are palpably unfit to be a party to the parent and child relationship; (3) reasonable efforts under the direction of the district court, following the children's placement out of the home, have failed to correct the conditions leading to the out-of-home placement; and (4) the children are neglected and in foster care. After mother's voluntary termination of her parental rights to R.J.H. and D.K.H., the matter proceeded solely on the county's petition to terminate father's parental rights to R.J.H. and D.K.H.

At trial, the following witnesses testified for the county: social worker Krista Bean; guardian ad litem (GAL) Jena Schuler; psychologist Dr. Stephanie Bruss; parenting-assessment therapist Jennifer Itskovich; Maple Grove Police Officer Aaron Schonning; parenting educator Sue Haugen; chemical-treatment counselors Chasidy Chamberlin and Joshua Wedeneier; mental-health practitioners Kaitlin Martiny and Nate Vojtech; family therapist Claire Baumgartner; Joel Marquette, foster dad of R.J.H. and D.K.H.; and clinical

¹ Mother voluntarily terminated her parental rights and is not a party to this appeal. K.B.H., the child born to father and K.M.B., is not part of these proceedings.

psychologist Dr. Gabe Watson. Witnesses for father included father, his parents, K.M.B., K.M.B.'s mother, and Stephanie Boeckel, a mutual friend of father and K.M.B.

Based upon witness testimony, along with the exhibits entered into evidence, the district court concluded that the county proved by clear and convincing evidence all four statutory grounds for termination of father's parental rights. The court found that father "has demonstrated that he does not have the capacity to parent or to engage in exhaustive efforts to improve his ability to parent." The court also found that father had an "extensive history of chemical use, addiction, domestic violence between him and [K.M.B.], inability to follow Court orders, inability to remain sober, and arrests." The court further noted that father "has demonstrated a lack of concern or awareness of his children's" mental-health issues. Finally, the court determined that it "is in the best interest of [R.J.H.] and [D.K.H.] that the parental rights of [father] be terminated." The court therefore granted the county's petition to terminate father's parental rights to R.J.H. and D.K.H.

This appeal follows.

D E C I S I O N

The decision to terminate parental rights is discretionary with the district court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136–37 (Minn. 2014). We review "the termination of parental rights 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). A factual finding is clearly erroneous "if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a

whole.” *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660–61 (Minn. 2008) (quotation omitted). This court will affirm the termination of parental rights if clear and convincing evidence supports at least one statutory ground for termination, termination is in the best interests of the child, and the county made reasonable efforts to reunite the family. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005).

I. Statutory bases for termination of father’s parental rights

The district court determined that clear and convincing evidence supported termination of father’s parental rights under four statutory grounds: (A) following the children’s placement out of the home, reasonable efforts, under the direction of the court have failed to correct the conditions leading to the placement, Minn. Stat. § 260C.301, subd. 1(b)(5); (B) neglecting to comply with the duties imposed upon him by the parent-child relationship, Minn. Stat. § 260C.301, subd. 1(b)(2); (C) that father is palpably unfit to be a party to the parent-child relationship, Minn. Stat. § 260C.301, subd. 1(b)(4); and (D) the children are neglected and in foster care, Minn. Stat. § 260C.301, subd. 1(b)(8). Father challenges the adequacy of the evidence and the court’s findings in support of the statutory grounds for terminating his parental rights.

A. Reasonable efforts, Minn. Stat. § 260C.301, subd. 1(b)(5)

Father argues that the district court erred by terminating his parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5). A district court may terminate parental rights under that section if clear and convincing evidence shows that reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child’s out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5). The law presumes 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.* Father disputes only element four.²

During a TPR proceeding, the district court must make specific findings that the county made reasonable efforts to reunify the family, including findings regarding the nature and extent of the efforts. Minn. Stat. § 260C.301, subd. 8(1) (2018). 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) (quotation omitted), *review denied* (Minn. Mar. 28, 2007). The services offered must be: “(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 effort given.” *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). What constitutes “reasonable efforts” depends on the facts of each case. *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996).

² Because Minn. Stat. § 260C.301, subd. 1(b)(5), requires a reasonable-efforts analysis as part of the statutory basis for termination of parental rights, we do not provide a separate analysis of the county’s reunification efforts.

Here, the district court determined that the county made reasonable efforts to reunify father with his children. To support this determination, the court found that the county's reunification efforts were premised on father's completion of a case plan dated January 18, 2018. The court found that the case plan required father to "undertake a psychological evaluation, attend and successfully complete individual therapy . . . , attend and successfully complete parenting education . . . , and undergo a parenting assessment and follow all recommendations." The court also found that the case plan required father to "undertake a chemical dependency evaluation, remain chemical free, take a least two UAs per week, and remain law abiding." The court determined that these services offered by the county satisfied the requirements of section 260.12(h), but that despite the services provided, "reunification is not a viable option because the conditions that lead to the out-of-home placement have not been adequately corrected."

Father argues that the county's reunification efforts were not reasonable under the circumstances because, although domestic violence was identified "as the proximate cause of both the children's trauma and their removal from the home," the county "intentionally and repeatedly refused to provide domestic-violence services." As the district court found, and we acknowledge, father and K.M.B.'s "history of domestic violence" was a "primary" reason for the removal of the children. But the court also found that father's methamphetamine use was the other "primary" reason for the children's removal from the home. In fact, the fight between father and K.M.B., which ultimately led to father's stabbing and the removal of the children from the home, started because K.M.B. was upset at father for being "out 'getting high.'" The court found that in light of father's chemical

dependency issues, “the primary purposes of the case plan” were for father to achieve sobriety and improve his mental health to enhance his understanding of the specialized needs of his sons. The court also found that a case plan addressing father’s chemical dependency “was designed to be the platform” for father and K.M.B. “to overcome their history of domestic violence.”

The district court’s findings are supported by the record. Social worker Bean testified that the county recognized the domestic-abuse issues in the relationship between father and K.M.B. but stated that “we really felt it was important that they address their individual [mental-health] needs before they try to work together.” Bean testified that although father and K.M.B. did a “couple of sessions of couples counseling . . . it wasn’t something that was court ordered” because she “wanted [father] to be drug free and then work on his mental health, get those two things established before he worked on his relationship with [K.M.B.]” Indeed, the record reflects that father’s history of using chemicals is extensive, which is demonstrated in his psychological evaluation during which he reported that he began using marijuana at the age of eight. He also reported “recently” using methamphetamine, and a “history of using alcohol, marijuana, synthetic marijuana, cocaine, methamphetamine, ecstasy, ‘acid,’ hallucinogenic mushrooms, inhalants, cough medicine, and abusing prescription pain medications.” Thus, as the court found, it was “appropriate” for the county to focus the case plan on father’s chemical dependency “given [father’s] history of chemical use and the familial history with his children and [mother].”

Moreover, the case plan specifically required father to communicate with K.M.B. “respectfully and free from verbal and physical violence.” The case plan also required

father to “[e]ngage in family therapy services” and work on his “family skills” with Haugen, who provides “parent education and skills work with families” for the county. These services were aimed, either directly or indirectly, at addressing the domestic-violence issues in the home. The family-therapy and chemical-dependency services were relevant and consistent with the needs of the family. And the services addressing father’s chemical usage were directly aimed at correcting the conditions which led to the out-of-home placement. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (stating that reasonable efforts must be aimed at correcting conditions which led to out-of-home placement). The district court therefore did not err by determining that the county made reasonable efforts to reunify the family. Because the county made reasonable efforts to reunify the family, we conclude that father is unable to demonstrate that the court abused its discretion by terminating his parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5).

B. Duties imposed by the parent-child relationship, Minn. Stat. § 260C.301, subd. 1(b)(2)

An individual’s parental rights may be terminated if he or she has “substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed . . . by the parent and child relationship.” Minn. Stat. § 260C.301, subd. 1(b)(2). Those duties include providing “food, clothing, shelter, education, and other care and control necessary for the child’s physical, mental, or emotional health and development.” *Id.* The district court must find that, at the time of termination, the parent is not presently able and willing to assume his or her responsibilities and that the parent’s neglect of these duties will likely continue in the future. *J.K.T.*, 814 N.W.2d at 90. A parent’s “[f]ailure to satisfy

requirements of a court-ordered case plan provides evidence of a parent's noncompliance with the duties and responsibilities under" Minn. Stat. § 260C.301, subd. 1(b)(2). *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 666 (Minn. App. 2012).

Father argues that the district court clearly erred by terminating his parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2), because the "county presented no evidence that [his] substance abuse or mental-health problems precluded him from providing for the children's needs." We disagree. As the court found, the county presented evidence that both R.J.H. and D.K.H. have "serious mental health issues that require specialized attention." For example, the record reflects that both children have engaged in emotional outbursts, acts of violence, and destruction of items. In addition, R.J.H. was diagnosed with reactive-attachment disorder and attention-deficient-hyperactivity disorder, and exhibits "rocking behavior" as a self-soothing behavior. Similarly, the record reflects that D.K.H. "presents with difficulty regulating his emotions, shutting down, avoidance, and sleep disturbance," due to multiple traumatic experiences including "prenatal exposure to drugs, being removed from his biological mother, substantiated physical abuse from his father, witnessing his stepmother stab his father, multiple removals from his father and stepmother, and presumably witnessing his parents' drug use."

The district court determined that despite their mental-health needs, father "has demonstrated a lack of concern or awareness of his children's" needs. The court's determination is supported by ample record evidence. Parenting therapist Itskovich testified that she found it "significant" that during her sessions with father, he did not mention the boys' mental-health concerns. Moreover, social worker Bean testified that

“shortly after the case opened,” she learned that father had “picked up” R.J.H.’s Adderall prescriptions, but failed to deliver them to the child. Bean testified that this was concerning because father “was not on Adderall when he was going through treatment” and that “Adderall to a meth addict is like four or five beers to an alcoholic.” The record also reflects that father admittedly used chemicals several times throughout the pendency of this matter. In fact, the parenting-assessment report notes that father admitted “that he has occasionally attended visitations with the children while high,” but has also “occasionally skip[ped] visits if he felt he was too high.” And the record reflects that father was arrested for first-degree controlled-substance crime in Morrison County in May 2018, and in Hennepin County in July 2018. The evidence presented by the county demonstrates that father’s substance abuse adversely affects his ability to parent his children.

In addition to his abuse of chemicals, the county presented evidence that Dr. Bruss diagnosed father with antisocial-personality disorder. Dr. Bruss explained that an “Antisocial Personality Disorder is characterized by a pattern of disregard for or the violations of the rights of others,” but that there is no medication for the disorder and that it tends to “be more difficult to treat” because of its “chronic nature.” Dr. Bruss stated that although some “individual therapy has been known to be effective,” she opined that given father’s “oppositional tendencies,” his prognosis is “poor.” Moreover, family-therapist Vojtech testified that father’s primary symptom was anger, and the county presented evidence that father continues to struggle to control his anger, which was reflected in a video admitted by the county. In the video, which was taken after the children had left a visitation session with father and K.M.B., father became enraged at K.M.B. and appeared

to grab a table as if he was going to throw it (although he did not) during a conversation with her that involved her alleged infidelity. And the county presented evidence that father's inability to control his anger led to the domestic dispute between father and K.M.B., which prompted the children's out-of-home placement.

Father's mental-health and chemical-abuse issues continue to affect his ability to comply with the parental duties imposed by the parent and child relationship, and father even admitted at trial that he was "not ready to get [the children] back today" because he was not yet "in the position to do so." The district court therefore did not clearly err by concluding that clear and convincing evidence supported the termination of father's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2). And because clear and convincing evidence supports two of the four statutory grounds on which father's parental rights were terminated, we need not address the other two statutory grounds for termination found by the court. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 & n.2 (Minn. 2004) (stating that only one statutory ground needs to be proven to support termination of parental rights, and noting that it was "not necessary" to address a fourth ground for termination where "termination of parental rights was supported by three statutory grounds").

II. Best interests

Father also challenges the district court's determination that termination of his parental rights was in the children's best interests. This court reviews a best-interests determination for an abuse of discretion. *In re Welfare of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

A termination of parental rights requires that termination be in the child's best interests. Minn. Stat. § 260C.301, subd. 7 (2018). If there is a conflict between the parent's interests and the child's interests, then "the interests of the child are paramount." *J.R.B.*, 805 N.W.2d at 905 (quotation omitted). A best-interests analysis involves balancing 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 of the child." *Id.* (quotation omitted). But a "determination 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).

Father argues that the "district court's finding that termination of [his] parental rights was in the children's best interests was not supported by clear and convincing evidence." We disagree.

A GAL has a duty to "advocate for best interests of the child." Minn. R. Gen. Prac. 905.01(b). Here, in representing the interests of R.J.H. and D.K.H., the GAL opined that father's parental rights should be terminated because father (1) has "not been able to demonstrate sustained sobriety outside of residential treatment"; (2) has "not begun to work on domestic violence or shown an understanding of his pattern of unhealthy relationships"; and (3) "has not shown that he's able to provide a safe or stable home environment for the boys." The GAL also testified that the "children are stable now and they've made progress with their mental health behaviors." The GAL's testimony was echoed by Marquette, the

boys' foster father, who testified that the boys' behavior has improved since being in his care. Marquette also testified that he considered father to be a "friend," and that he has "given [father] every chance to prove himself a good father and he has failed me in that." Marquette further testified that "for the boys to be successful, they would be better at our home."

In addition to the testimony of Marquette and the GAL, Bean testified that she has "worked closely with the therapists and caregivers in this case," and that R.J.H. and D.K.H. "have made incredible progress with the consistency and predictability that the [foster parents] are providing for them." Bean also testified that since 2012, the boys "have been marinated in chaos and trauma and I think it's time that we are able to provide them some stability. They need that in order to thrive and I believe that's in the children's best interests." Finally, parenting-educator Haugen testified that her prognosis of father's ability to parent the children was "poor" because "his life and his choices and decisions keep putting everybody that cares about him at risk." The district court specifically found Haugen and the GAL's testimony to be credible and implicitly found Bean and Marquette's testimony to be credible. And although father's witnesses testified that the children's best interests are served by remaining with father, the court found these witnesses' testimony to be not credible. We defer to the district court's credibility determinations. *See In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) ("Considerable deference is due to the district court's [TPR] decision because a district court is in a superior position to assess the credibility of witnesses."). The testimony that the court found credible supports its determination that termination of father's parental rights is in the children's best interests.

We conclude that the district court did not abuse its discretion by terminating father's parental rights to R.J.H. and D.K.H.

Affirmed.