STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0677

In re the Matter of the Welfare of the Children of:

B. R. and A. V., Parents.

Filed December 30, 2019
Affirmed
Jesson, Judge

Kandiyohi County District Court
File No. 34-JV-19-8

Shane D. Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent Kandiyohi County Health and Human Services)

John E. Mack, Joel A. Novak, New London Law, New London, Minnesota (for appellant A.V.)

Penny Johnson, Willmar, Minnesota (guardian ad litem)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Klaphake, Judge.*

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

JESSON, Judge

After attacking an observer on the first day of his termination-of-parental-rights trial and admitting to the termination petition on the second day, appellant father A.V. now

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

seeks to withdraw his admission and vacate the order terminating his parental rights. Because we conclude that the district court did not abuse its discretion by finding that his admission was sufficient to support termination and that allowing withdrawal of that admission was not required, we affirm.

FACTS

Mother and appellant father, A.V., had two children.[1] At the beginning of this case, the children were nine months and almost two years old, and mother was their primary caretaker. Mother was arrested for selling methamphetamine in January 2018. At the time, father was incarcerated and not caring for the children. After mother's arrest and because father was unavailable to parent, the children were taken into emergency protective care by Kandiyohi County Health and Human Services (the county).

The county filed a petition alleging that the children were in need of protection or services (CHIPS) based on the "instability and chaos" stemming from mother's methamphetamine use[2] and father's incarceration. The children were adjudicated CHIPS and remained in foster care throughout this case.

During the county's involvement with the family, father participated in parenting classes and other programming in prison and completed paperwork the county sent him.

[1] Because mother and father were not married when the children were born, mother had sole legal and physical custody of the children. Father was adjudicated as the father of the older child in February 2018. During the child protection case, father submitted to genetic testing, which suggested he was the younger child's father. But at the time of the trial, father's paternity was not yet adjudicated as to the younger child.

[2] The termination order also references father's methamphetamine use but there is little other evidence of his drug use in the record provided.

He also wrote letters to the children and drew pictures for them. He was released in September 2018. After release, he did not attend any visitation with his children. Nor did he cooperate with the county. He failed to show up to prescheduled meetings or respond to the county's phone calls, voicemails, and letters. Father was incarcerated again in late October 2018 and remained there through the rest of the case.[3]

After the children were in foster care for about a year, in January 2019, the county filed a petition seeking to terminate mother's and father's parental rights. In the petition, the county alleged five statutory grounds and corresponding facts to support termination. Father first appeared in court for an admit/deny hearing on the termination petition. Both parents denied the petition and, eventually, the district court held a two-day trial.

During the first day of trial, father assaulted a man observing the trial. Father later explained that he knew the man and was upset the man was at the trial. As a result of the assault, the district court found father in contempt of court and ordered him to serve 90 days in jail, in addition to any other criminal consequences stemming from the assault.

At the end of the second day of trial, father expressed his interest in admitting to the petition. The district court allowed the admission to proceed. In his admission, father testified to facts supporting termination of his rights. The district court summarized his testimony as follows:

> As a result of his impulsive decisions, he has been incarcerated for the vast majority of the children's lives. He has acknowledged that his extensive criminal history has impacted

[3] The record we have is imprecise as to the exact dates of father's incarceration. But this finding was included in the district court's order and father did not contest it nor provide the full trial record for us to confirm it.

> his ability to be physically present in order to parent his children. [Father] admits he had the opportunity to have supervised visits with his children during the period he was not incarcerated from early September to late October of 2018.

The district court found this to be a sufficient factual basis and accepted father's admission to the petition. And the court found father knowingly, intelligently, and voluntarily waived his rights to a determination on the evidence by the court. In addition, it determined that the county made reasonable efforts for reunification with father and that termination of father's parental rights was in the children's best interests. The district court's order then terminated father's parental rights.

Father later moved to withdraw his admission alleging that it was coerced or given under duress. At a hearing on the motion, he told the district court that he felt that his lawyer did not represent him "right." He appeared to argue that he felt that he was coerced into or under duress in making his admission because his attorney told him that, on the last day of trial, he was likely to lose his parental rights. Father also addressed the reasons he assaulted the man in court and explained his belief that he cooperated with child protection. The district court denied father's motion, finding that he "did not allege any facts that warrant relief pursuant to Minn. R. Juv. Prot. [P.] Rules 45.04 or 46.02."[4] Father appeals.

[4] These citations to the Minnesota Rules of Juvenile Protection Procedure refer to the rules prior to the recent amendments, effective September 1, 2019. *Order Promulgating Amendments to the Rules of Juvenile Protection Procedure*, No. ADM10-8041 (Minn. May 13, 2019) (order). Under the previous Minnesota Rules of Juvenile Protection Procedure, rule 45.04 (now, rule 21.04) described the grounds for a new trial and rule 46.02 (now, rule 22.02) concerned the grounds for relief from a final order. This case was governed by the previous Minnesota Rules of Juvenile Protection Procedure but the citations in this opinion, except as explained above, refer to the current rules. But none of

D E C I S I O N

Father seeks to have the order terminating his parental rights vacated and this case remanded to the district court. Minnesota courts do not terminate parental rights "except for grave and weighty reasons." *In re Welfare of H.G.B.*, 306 N.W.2d 821, 825 (Minn. 1981). But a district court has discretion to order termination of parental rights. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). And we will affirm a termination of parental rights when (1) clear and convincing evidence supports at least one statutory ground for termination, (2) termination is in the best interests of the children,[5] and (3) the county has made reasonable efforts to reunite the family. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). This court reviews the district court's factual findings for clear error and the statutory basis for an abuse of discretion. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). With this standard of review in mind, we turn to father's arguments.

Father first argues that his admission was insufficient to terminate his parental rights. He then asserts that the district court should have allowed him to withdraw his admission. In addressing each of these arguments, we conclude that the district court did not abuse its discretion with respect to either issue.

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the rules cited in this opinion are substantively different following the recent amendments. The amendments merely renumbered the rules referenced in this opinion.

[5] In this appeal, father does not challenge the district court's determination that it is in the children's best interests to terminate his parental rights.

I. The district court did not abuse its discretion in determining that father's admission was sufficient to terminate his parental rights.

Father first contends that his admission was insufficient to terminate his parental rights. The Minnesota Rules of Juvenile Protection Procedure set out the requirements for an admission to a petition in a termination-of-parental-rights matter. An admission must be made under oath and include a factual basis for the admission. Minn. R. Juv. Prot. P. 56.03, subd. 1, 4. And a district court accepting an admission must determine whether the person admitting acknowledges an understanding of: (1) their trial rights, including the right to trial, to testify, and to subpoena witnesses; (2) the statutory grounds set forth in the petition; and (3) that the facts they are admitting establish the statutory grounds set forth in the petition. *Id.*, subd. 3. Finally, when a district court accepts an admission, it must find that the admitted statutory grounds were proven. *Id.*, subd. 6(a).

To assess father's admission, we first review his trial-rights waiver. We then turn to his factual admissions, and finally consider whether those facts support at least one statutory basis for termination.

Trial-Rights Waiver

We begin with a threshold question: whether father acknowledged an understanding of his trial rights in his admission. During his admission colloquy, father said that he wanted to move forward with his agreement to the petition, and that he knew he did not have to but that he thought it was best. When his attorney and the court explained the consequences of admitting to or agreeing with the petition, and the consequences of an

involuntary termination, he indicated that he understood. His attorney asked him if anyone was threatening him to make the agreement. Father responded, "no."

We also note that father expressed his wish to admit to the petition *after the close of the trial record*. This indicates that father had already enjoyed many of the benefits of his trial rights[6]—including his right to trial, to subpoena witnesses, and to testify on his own behalf—before deciding to waive them. And father's attorney explicitly asked him about his desire to waive one of his few remaining rights: "do you understand that the part that I said about then the [j]udge won't rule on whether they presented enough? She'll just accept your agreement." Father responded, "yes, I do." Because father acknowledged an understanding of his trial rights and what he was giving up by admitting to the petition, we conclude that the district court did not abuse its discretion in finding that this requirement of the admission framework was satisfied.

Factual Admissions

Next, we review father's factual admissions. Central to this case was father's repeated incarceration, which prevented him from being able to provide for or parent his children. Father was incarcerated for all but two months of this case and was, in his own words, "not present" for most of the CHIPS case. He admitted that he first met his older child when the child was six months old but that father was then incarcerated again until his younger child was born. According to father, he would sometimes "babysit" the

[6] We do not know which of these rights father chose to exercise because he did not provide a full trial transcript, which was his burden as the appellant. *Noltimier v. Noltimier*, 157 N.W.2d 530, 531 (Minn. 1968).

children for mother but said that it was "stressful" being alone with two children. And he agreed that, while he improved his parenting skills some during the case through programming in prison, he still needed to make more progress. Father acknowledged that he still "carr[ies] a little bit" of "impulsiveness" that has gotten him in trouble in the past and testified that: "I need my criminal things to be, ah, rehabilitated more, my criminal thinking. . . . Right now they're not at their hundred."

Father also admitted that he was possibly facing future incarceration because he assaulted a man in court during the trial. When the district court asked him if he was going to be able to care for his children in the reasonably foreseeable future, he responded, "that's the thing I don't know. . . . but I mean, if you go based on my history it might be that I probably won't. That's why I'm making this decision." Because father testified to the factual basis for his admission, the district court did not abuse its discretion in finding that this requirement was also satisfied.

Statutory Basis Supported by Factual Admissions

Following our review of father's factual admissions, we consider whether they support at least one basis for termination of his parental rights. The district court found that five statutory grounds for termination were proven in this case.[7] Because only one statutory basis is necessary for us to affirm termination, *S.E.P.*, 744 N.W.2d at 385, we

[7] A person may admit to all of the statutory grounds or only some if there is a settlement agreement for a partial admission. Minn. R. Juv. Prot. P. 56.03, subd. 4. Here, there was no settlement agreement and no discussion of which statutory bases father was admitting to, in the case of a partial admission. Therefore, father's was a full admission under rule 56.03, subd. 4.

begin with Minnesota Statutes section 260C.301, subdivision 1(b)(2) (2018). Under this subdivision, the district court found that father "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). These 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.*

Father's admission established that he continuously neglected his duties as a parent. Father testified that he was incarcerated for most of the CHIPS case. And while a district court cannot terminate a parent's rights solely based on incarceration, it "may consider the fact of incarceration in conjunction with other evidence supporting the petition for termination." *In re Child of Simon*, 662 N.W.2d 155, 162 (Minn. App. 2003). In addition to incarceration, courts have also considered a parent's failure to provide any meaningful parenting to their children and the absence of evidence that a parent has the skills or knowledge necessary to parent their children. *See id.* at 163 (affirming termination of an incarcerated father's parental rights when his failure to comply with the duties of the parent-child relationship was demonstrated by evidence in addition to his incarceration).

Ultimately, father's absence prevented him from providing for his children. He testified that he sometimes babysat his children which suggests that he never cared for them fulltime, never scheduled their doctor appointments, and never tended to their educational needs. Generally, father's admission colloquy demonstrates that he has never meaningfully parented these children, that he felt doing so would be "stressful," and that he did not have the skills to parent them, even when not incarcerated. And he admitted he would likely not

be ready to parent his children in the reasonably foreseeable future.

Father also acknowledged that his admission to the facts above would result in termination of his parental rights, based on his inability to provide for their needs. Father's attorney inquired whether he understood that if he moved forward with the admission, his parental rights "will be terminated with regard to these children" and father replied that he understood. And the district court also asked him whether he thought that, while he made progress, it was not enough to stop his past behaviors that resulted in his incarceration. Father responded that he is still impulsive. And he agreed that his criminal activity and incarceration contributed to his inability to parent the children like they deserved and that he could have done better as a parent.

In sum, the district court's determination that father's admission was sufficient to demonstrate that he neglected to comply with his duties as a parent to these children is not an abuse of discretion. And because only one statutory basis for termination is required for us to affirm, we do not address the four remaining statutory bases.

Father's Arguments

Yet, father advances three central arguments as to why his admission was insufficient.[8] First, he contends that the district court did not take into account his

[8] Father also argues that this termination was *voluntary* and not *involuntary*, as the district court's order states. But in father's admission, his attorney asked, "[a]s I explained to you, it will be considered by law to be an involuntary termination. Do you understand that?" And father answered, "yes." And the attorney continued, "[a]nd that changes the rules for future children . . . they can use that in the future if you were to have children . . . a presumption." Father indicated that he understood. His acknowledgement here demonstrates that this was an involuntary termination.

circumstances at the time of termination but instead relied too heavily on his history. *See J.K.T.*, 814 N.W.2d at 90 (noting that the district court must find that, at the time of termination, a parent is not able and willing to assume parental responsibilities and this will likely continue in the foreseeable future). But at the time of termination, father was in jail so his argument here does not comport with reality as reflected in the record provided to us.

Relatedly, according to father, he was only serving 90 days in jail for attacking the man at trial so the district court erred in concluding that he will be unable to parent in the reasonably foreseeable future. But father acknowledged that he was not sure whether he was facing criminal charges or additional jail time from the attack. As a result, at the time of termination, father was unable to parent his children and would likely continue to be unavailable for the foreseeable future.

Father argues, third, that the county failed to make reasonable efforts for his reunification with his children. Before terminating parental rights, a district court must make a finding that the county made reasonable efforts to reunify the children with their parents. Minn. Stat. §§ 260.012(h), 260C.001, subd. 3(1) (2018). And district courts

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Moreover, voluntary terminations are governed by Minnesota Statutes section 260C.301, subd. 1(a) (2018), which requires "written consent" of the parent and a showing of why "good cause" supports the termination. Here, there was no written consent and no discussion of good cause. And the county's termination petition was not amended to reflect the voluntary statutory ground above instead of the five involuntary grounds. Therefore, this termination is indeed *involuntary*. *See In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 712 (Minn. App. 2004) ("The caselaw makes it clear that circumstances that justify involuntary termination do not necessarily justify voluntary termination. . . . we cannot apply a blanket rule that an admission to an involuntary termination petition converts the petition into a voluntary termination.").

should consider, among other things, whether the efforts were relevant and adequate to meet the needs of the child and family, available and accessible, and realistic under the circumstances. Minn. Stat. § 260.012(h). Here, the district court found that the county made reasonable efforts for reunification with father.[9]

The district court's finding is well-founded. Father testified that he was "not present" for most of the CHIPS case. And although he was released in September 2018, he did not show up to prescheduled meetings or respond to the county's phone calls, voicemails, and letters. In short, the county made reasonable efforts to reach father and schedule visitation and other services. But father did not follow through. And he was incarcerated again in late October 2018 through the rest of the case.

In sum, we conclude that the district court did not abuse its discretion by determining that father's admission was sufficient to support termination of his parental rights. And because the admission supports at least one statutory basis and the county's reasonable efforts for reunification, we affirm.

II. The district court did not abuse its discretion in denying father's request to withdraw his admission.

Next, we consider father's argument that the district court should have permitted him to withdraw his admission. We review a district court's denial of a party's motion to withdraw their admission under the Minnesota Rules of Juvenile Protection Procedure for

[9] We acknowledge that the district court's written order only included a finding that reasonable efforts for reunification were made as to the parent from whom the children were removed, which we discern to be mother. However, the district court made an oral finding that, with regard to father, the county "provided reasonable efforts to reunify or otherwise finalize permanence."

an abuse of discretion. *In re Welfare of Children of M.L.A.*, 730 N.W.2d 54, 60 (Minn. App. 2007). A district court may permit a party to withdraw their admission at any time if the party demonstrates that "withdrawal is necessary to correct a manifest injustice." Minn. R. Juv. Prot. P. 56.03, subd. 5(b).

"Manifest injustice" is not defined in the Minnesota Rules of Juvenile Protection Procedure, but we considered the same issue in a previous case, *In re Welfare of M.K.*, 805 N.W.2d 856, 862 (Minn. App. 2011). There, we relied on the legal dictionary definition for the phrase: "[a] direct, obvious and observable error in a trial court, such as a defendant's guilty plea that is involuntary or is based on a plea agreement that the prosecution has rescinded." *M.K.*, 805 N.W.2d at 862 (citing *Black's Law Dictionary* 1048 (9th ed. 2009) (defining manifest injustice)). And we concluded that when the county conditioned its provision of services on the parents admitting to a CHIPS petition, it was a manifest injustice. *M.K.*, 805 N.W.2d at 862. And, in another case, we determined that it was a manifest injustice when the county threatened to place children against their best interests if their parent did not admit to a termination petition. *See M.L.A.*, 730 N.W.2d at 61.

None of these instances are present here. In this appeal, father does not argue that he was threatened or coerced into admitting the petition. In fact, in his admission, he specifically stated that no one was threatening him. And he acknowledged that he did not have to admit but thought it was his best option. He understood that his options were to have the district court decide the case based on the evidence presented at trial or admit to the petition, stating that he would "get the same effect of the termination" in either case.

Instead, father argues that he did not understand that he was admitting, that he thought he was just having a conversation with the judge. But his attorney explained the gravity of the decision: that if he went forward with the admission, it would be very difficult to withdraw it in the future. And then father was put under oath and the district court questioned him for roughly 12 pages of transcript. In short, father did not prove that withdrawal was necessary to correct a manifest injustice.[10]

In conclusion, father's arguments here do not rise to the level of a manifest injustice. Thus, we discern no abuse of discretion in the district court's denial of his request to withdraw his admission. And because his admission was sufficient to terminate his parental rights, we affirm.[11]

Affirmed.

[10] We note that the district court concluded that withdrawal of father's admission was not necessary under different rules than the one we examine here. But we affirm when a district court arrives at the correct decision "regardless of the theory upon which it is based." *Brecht v. Schramm*, 266 N.W.2d 514, 520 (Minn. 1978).

[11] Father also raised two new issues in his reply brief that were not argued in his principal brief. Because the purpose of a reply brief is *not* to raise new issues, these arguments are outside the scope of this appeal, and we do not consider them. *See* Minn. R. Civ. App. P. 128.02, subd. 4 (noting that a reply brief is intended to respond to arguments the respondent raises in their brief and not to raise new issues); *Wood v. Diamonds Sports Bar & Grill, Inc.*, 654 N.W.2d 704, 707 (Minn. App. 2002) (describing how this court may strike an argument from a reply brief when appellant raises a new argument that was not raised in their main brief because the new argument is not properly before this court), *review denied* (Minn. Feb. 26, 2003).