STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0954
A19-0991

In re the Matter of the Welfare of the Children of:
D. L. T. and J. A. P., Parents.

Filed December 23, 2019
Affirmed
Klaphake, Judge[*]

Kandiyohi County District Court
File No. 34-JV-19-51

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

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

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

KLAPHAKE, Judge

The juvenile court terminated D.L.T. and J.A.P.'s parental rights to their two infant daughters after it determined that the children suffered egregious harm from child abuse, that the parents failed to comply with their parental duties, that both parents were palpably unfit to parent the children, and that termination was in the children's best interests. On appeal, both parents challenge the juvenile court's statutory-basis determinations, and D.L.T. argues that social services failed to make reasonable reunification efforts. Because clear and convincing evidence supports the juvenile court's determination of egregious harm, and because reasonable reunification efforts were not required, we affirm.

D E C I S I O N

D.L.T. (mother) and J.A.P. (father) argue that the juvenile court abused its discretion by ordering the termination of their parental rights to infant twins G.N.P. and I.R.P. The decision to terminate parental rights is discretionary with the juvenile court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). The juvenile court may order the involuntary termination of parental rights only if: (1) at least one statutory ground for termination exists; (2) termination is in the children's best interests; and (3) reasonable efforts toward reunification were either made or not required. Minn. Stat. § 260C.301, subds. 1(b), 7, 8 (2018). Mother and father both challenge the juvenile court's determination of the existence of statutory grounds supporting termination. Mother also argues that respondent Kandiyohi County Health and Human Services (the county) failed

to make reasonable efforts toward reunification. Because neither parent challenges the juvenile court's best-interests determination, we do not address it.

I

Mother and father challenge the juvenile court's determination that three statutory bases supported termination of parental rights. "We review the determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of K.L.W.*, 924 N.W.2d 649, 653 (Minn. App. 2019) (quotation omitted), *review denied* (Minn. Mar. 8, 2019). We review a juvenile court's factual findings for clear error, considering whether they are supported by substantial evidence and whether they address the appropriate statutory criteria. *In re Welfare of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018). Because we conclude that the juvenile court properly determined the existence of egregious harm, we decline to address its palpable-unfitness and parental-duties determinations. *See In re Welfare of P.R.L.*, 622 N.W.2d 538, 545 (Minn. 2001) (noting that one statutory ground is sufficient).

Minnesota Statutes section 260C.301, subdivision 1(b)(6), permits the termination of parental rights if the juvenile court finds:

> that a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care.

"'Egregious harm' means the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care." Minn. Stat. § 260C.007, subd. 14 (2018). Mother argues that: (A) there is insufficient

evidence to conclude that the children suffered egregious harm as a result of child abuse; and father argues that (B) there is insufficient evidence to conclude that he knew or should have known of the egregious harm. Both arguments fail.

A. Clear and convincing evidence supports the juvenile court's determination that child abuse caused the children's injuries.

G.N.P. suffered several rib fractures, facial bruising, and a subdural hematoma (brain bleeding), while I.R.P. suffered several rib fractures. The juvenile court found that these injuries were egregious harm resulting from child abuse. Mother argues that the juvenile court erred by determining that abusive trauma caused the children's injuries because the county failed to investigate an alternative cause—*osteogenesis imperfecta* (O.I.)—a genetic disorder commonly known as brittle bone disease. Her argument fails.

First, clear and convincing evidence supports the juvenile court's finding that G.N.P. and I.R.P. "do not suffer from the genetic disorder [O.I.]." Child-abuse pediatrician Dr. Mark Hudson testified that the children exhibited no signs of the disorder; there was no family history of O.I., the children lacked extra bones in their heads, and their bones showed no decreased mineral density. Dr. Marcelo Vargas, a genetics-specialist physician, also observed no O.I. symptoms; there was no indicated family history, the children did not exhibit short fingers, short toes, or unusual birth marks, and his examination of G.N.P.'s eyes revealed no blue-grey discoloration indicative of the disorder.

Mother contends that the county should have sought conclusive genetic testing, and that it was unreasonable for the doctors to rely upon an absence of a family history of O.I.

where mother and father each came from "severely broken homes." But the experts' testimony concerning a lack of physical O.I. symptoms is clear and convincing enough to support the juvenile court's finding that O.I. did not cause the injuries. Mother's O.I. theory is also inconsistent with evidence showing that, *after* the children were removed from the parents' care, they suffered no further fractures.

Second, and most importantly, clear and convincing evidence supports the juvenile court's conclusion that "[t]he injuries to the girls were inflicted child abuse." Dr. Hudson testified that the nature of the injuries and the children's age-specific circumstances led him to conclude the injuries were inflicted abuse: five-month-old children were not active enough to accidentally self-inflict the injuries; G.N.P.'s bruising was consistent with being struck, not falling; infant rib fracturing is "very specific for abusive injury in infants" and results most often from forceful squeezing; and the stages of healing in G.N.P.'s ribs indicated abuse inflicted over a range of time. The juvenile court made findings consistent with Dr. Hudson's testimony, and the record contains clear and convincing evidence to support the juvenile court's conclusion that child abuse caused egregious harm.

B. Clear and convincing evidence supports the juvenile court's determination that one or both parents abused the children, and that they therefore knew or should have known of the egregious harm.

Unlike mother, father concedes that "[t]here is substantial evidence that the children . . . were seriously abused by someone," but argues that there "is no conclusion, and less than satisfactory evidence, concerning who abused them." We first clarify that, contrary to father's repeated insistence, the juvenile court *did* find "[t]he injuries to the girls were inflicted child abuse by [father] or [mother] or both." But we acknowledge that the juvenile

court did not find *which* parent (if not *both* mother and father) committed the child abuse. As the juvenile court specifically acknowledged, "It is not possible to determine whether it was [mother] or [father] who harmed [I.R.P] and [G.N.P], or both. Only [they] know this information. . . . [Mother] and [father] are capable of relating the information, but they have not been forthright."

Where a parent has not personally inflicted egregious harm upon a child, "a court must find that the parent either knew or should have known that the child had experienced egregious harm." *In re Welfare of T.P.*, 747 N.W.2d 356, 362 (Minn. 2008). We first address whether clear and convincing evidence supports the juvenile court's finding that one or both parents abused the children, because it remains relevant to whether the parents either knew or should have known about the egregious harm. The juvenile court knew that both girls' rib fractures were consistent with forceful squeezing and, in G.N.P.'s case, that her brain bleed was likely caused by a strike rather than a fall. The juvenile court knew that father characterized G.N.P.'s bruising as a mere "sleep mark," that father admitted to having anger issues, and that parental-capacity evaluator Dr. Peter Marston believed father had difficulty with self-control and self-regulation. The juvenile court also knew that the healing of G.N.P.'s ribs indicated the injuries did not occur at once, but rather were spread over time. Father and mother also testified that they delayed in taking G.N.P. to the doctor despite her vomiting. And it noted that father gave "evasive" testimony, and failed to unequivocally deny inflicting the children's injuries. We recognize that the juvenile court was in a superior position to assess father's credibility. *See In re Welfare of Children of*

B.M., 845 N.W.2d 558, 563 (Minn. App. 2014). The juvenile court's finding that one or both parents abused the children was not clearly erroneous.

Father implies that the lack of criminal charges against him or mother indicates that neither he nor mother committed the child abuse. We are unpersuaded by that argument. Termination proceedings are separate from criminal prosecutions. The elements required for an egregious-harm-based termination are different than those required for a successful prosecution of assault, criminal sexual conduct, or malicious punishment of a child, all of which constitute child abuse. *See* Minn. Stat. § 260C.007, subd. 5 (2018).

Beyond concluding that one or both parents abused the children, the juvenile court concluded that mother and father *actually knew* of the abuse. It found that father and mother knew "whether it was [mother] or [father] who harmed" the children, that mother and father were capable of relating the information, but that they were not "forthright." The juvenile court also found that mother and father were more interested in protecting one another rather than their children. It based its determination, in part, on Dr. Marston's testimony concerning the parents' co-dependency issues.[1] The juvenile court was free to evaluate mother and father's testimony and to conclude that they were not being forthright, choosing instead to conceal facts to protect one another.

[1] Father challenges the admissibility of Dr. Marston's parental-capacity evaluations and testimony for the first time on appeal. Because he made no objection before the juvenile court and failed to preserve the evidentiary issue in a motion for a new trial, we deem the argument forfeited and decline to address it further. *See In re Welfare of T.D.*, 731 N.W.2d 548, 553 (Minn. App. 2007), *review denied* (Minn. July 17, 2007); *In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. App. 1994), *review denied* (Minn. Nov. 29, 1994).

Father also questions whether he knew or should have known that the children actually suffered egregious harm, in this instance focusing on whether he should have known the degree of harm itself rather than how the harm was inflicted. Father questions how apparent the injuries were, emphasizing that other medical professionals had not identified rib fractures prior to Dr. Hudson's examination, and that "one would think that the children would be exhibiting extreme [p]ain behavior."

Father fails to consider the circumstances of G.N.P.'s bruising and subdural hematoma. Trial testimony established, and the juvenile court found, that a day after father discovered the "sleep mark" on G.N.P., she began crying more than usual (a sign seemingly sufficient to satisfy father's threshold for pain behavior) and began throwing up a large amount. Father testified that G.N.P. "was just off," describing the abnormal behavior. Father told mother G.N.P. was fussy and "acting funny." The mark on G.N.P.'s face was concerning enough that a home-visiting nurse reported the mark to child-protection services. G.N.P.'s soft spot grew hard. The parents did not take G.N.P. to the doctor until several days later. We have held that the definition of egregious harm is broad enough to encompass situations in which a parent knows or should have known of harm but "neglects to obtain appropriate medical care." *In re Welfare of M.A.H.*, 839 N.W.2d 730, 742 (Minn. App. 2013) (addressing malnourishment and failure to seek medical care).

There is clear and convincing evidence that, at a minimum, father knew or should have known that G.N.P. had suffered harm of an egregious nature. Although the juvenile court concluded that "the *children*" experienced egregious harm, it is sufficient to conclude that the juvenile court's findings were not clearly erroneous with respect to G.N.P., which

supports termination of parental rights regarding both children. *See In re Welfare of A.L.F.*, 579 N.W.2d 152, 156 (Minn. App. 1998) (holding egregious harm to child in parent's care sufficient to support termination of rights to different child in parent's care).

Father's arguments do not lead us to reverse. Clear and convincing evidence supports the juvenile court's findings, and it did not abuse its discretion in determining the existence of egregious harm as a statutory basis supporting termination.

II

Mother argues that the county failed to make "reasonable efforts to finalize the permanency plan to reunify the child and the parent" as required by Minnesota Statutes section 260C.301, subdivision 8(1). But the juvenile court may also find "that reasonable efforts for reunification are not required as provided under section 260.012." Minn. Stat. § 260C.301, subd. 8(2). Under Minnesota Statutes section 260.012(a)(1) (2018), the juvenile court may relieve the social services agency of its duty to make reasonable reunification efforts "upon a determination . . . that a petition has been filed stating a prima facie case that . . . the parent has subjected a child to egregious harm . . . ." Here, the juvenile court determined that the county stated a prima facie case of egregious harm under section 260.012 and excused the county from making reasonable efforts toward reunification. Because reasonable efforts were not required, the juvenile court did not err in ordering the termination of parental rights.

Affirmed.