STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0437
A21-0449

In the Matter of the Welfare of the Child of: V. R. R. and M. A. H., Parents.

Filed October 25, 2021
Affirmed
Klaphake, Judge[*]

Wadena County District Court
File No. 80-JV-19-977

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Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Klaphake, Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

In these consolidated appeals, appellants V.R.R. (mother) and M.A.H. (father) challenge the district court's decision terminating their parental rights to their minor child, J.J.R. (the child). The district court determined that clear and convincing evidence supported the termination of mother's and father's parental rights based on multiple statutory grounds, respondent Wadena County Human Services (the county) made reasonable efforts to reunify the parents with the child, and termination of parental rights was in the child's best interests. Because the district court made adequate findings and those findings are supported by clear and convincing evidence, we affirm.

DECISION

Parental rights are to be terminated only for "grave and weighty reasons." *In re Welfare of Children of B.M.*, 845 N.W.2d 558, 563 (Minn. App. 2014) (quotation omitted). When reviewing a termination-of-parental-rights (TPR) decision, we "give considerable deference to the district court's decision to terminate parental rights." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We determine "whether the district court's findings address the statutory criteria and whether those findings are supported by substantial evidence and are not clearly erroneous." *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005) (quotation omitted). 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 Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008)

(quotation omitted). And we "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *T.A.A.*, 702 N.W.2d at 708.

We will affirm a district court's TPR decision when (1) clear and convincing evidence supports at least one statutory ground for termination, (2) the county made reasonable efforts to reunite the parents with the child, and (3) termination is in the best interests of the child. *S.E.P.*, 744 N.W.2d at 385; Minn. Stat. § 260C.301, subds. 1(b), 7, 8 (2020). Mother and father challenge each of these aspects of the district court's decision. We address each argument in turn.

I. Statutory ground for termination—child neglected and in foster care

Mother and father argue that the district court erred by determining that a statutory ground for termination existed. To terminate parental rights, the district court must find that at least one statutory ground listed in Minn. Stat. § 260C.301, subd. 1(b), is present. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). Here, the district court found that clear and convincing evidence supported four statutory grounds for mother and two statutory grounds for father. Only one statutory ground is necessary for the district court to terminate parental rights. *Id.* We conclude that clear and convincing evidence supports the district court's findings on the statutory ground that the child is neglected and in foster care, Minn. Stat. § 260C.301, subd. 1(b)(8), with respect to both mother and father. We therefore need not address the district court's findings on the other statutory grounds.[1]

[1] In her brief, mother challenges only two of the four statutory grounds that the district court determined were bases to terminate her parental rights. The county argues that,

Under subdivision 1(b)(8), the district court may terminate parental rights if it determines that "the child is neglected and in foster care." Minn. Stat. § 260C.301, subd. 1(b)(8). The term "neglected and in foster care" is defined as a child:

> (1) who has been placed in foster care by court order; and
> (2) whose parents' circumstances, condition, or conduct are such that the child cannot be returned to them; and
> (3) whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child.

Minn. Stat. § 260C.007, subd. 24 (2020). Here, there is no dispute that the child has been placed in foster care. The district court determined that this statutory ground was satisfied with respect to mother because the child could not be returned to mother due to "her continued use of controlled substance[s] and failure to obtain appropriate mental health treatment," and mother failed to meet the reasonable expectations of visiting the child, missing approximately 45% of her visits, and none in the previous six months. The district court likewise determined that this statutory ground was met with respect to father because the child could not be returned to father "based on his continued involve[ment] in crimes connected to use of controlled substances," and father failed to meet the reasonable expectations of visiting the child by missing approximately 40% of visits, and none in the previous nine months.

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because mother did not raise any argument challenging the termination decision on the other two grounds, this court should deem any argument on those points forfeited. Because we affirm the TPR decision on a statutory ground that mother does challenge, we need not address the county's argument on this point.

In determining whether a child is neglected and in foster care, the district court must consider seven factors:

> (1) the length of time the child has been in foster care;
> (2) the effort the parent has made to adjust circumstances, conduct, or conditions that necessitates the removal of the child to make it in the child's best interest to be returned to the parent's home in the foreseeable future, including the use of rehabilitative services offered to the parent;
> (3) whether the parent has visited the child within the three months preceding the filing of the petition, unless extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevented the parent from visiting the child or it was not in the best interests of the child to be visited by the parent;
> (4) the maintenance of regular contact or communication with the agency or person temporarily responsible for the child;
> (5) the appropriateness and adequacy of services provided or offered to the parent to facilitate a reunion;
> (6) whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time, whether the services have been offered to the parent, or, if services were not offered, the reasons they were not offered; and
> (7) the nature of the efforts made by the responsible social services agency to rehabilitate and reunite the family and whether the efforts were reasonable.

Minn. Stat. § 260C.163, subd. 9 (2020). Mother and father argue that the district court failed to address these statutory factors. We disagree.

When issuing a TPR order, the district court must make "clear and specific findings which conform to the statutory requirements." *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980). But the district court need not specifically reference each factor in Minn. Stat. § 260C.163, subd. 9, as long as the district court's findings "demonstrate the existence of many of the factors outlined in the statute and provide clear and convincing

evidence of the standard for termination" under Minn. Stat. § 260C.301, subd. 1(b)(8). *In re Welfare of A.D.*, 535 N.W.2d 643, 648-49 (Minn. 1995).

While the district court's order did not specifically reference the seven statutory factors, it made detailed findings that appropriately addressed the factors. The district court considered mother's history of using methamphetamine—which was what caused the county to remove the child from her care in the first place—and found that she had not adequately shown that she could attain sobriety. The district court likewise examined father's history of using controlled substances and noted his prior convictions of, and pending charges for, offenses relating to controlled substances. The district court made extensive findings about both parents' increasingly infrequent visitation and their inability to remain in contact with county social workers. The district court also considered the various efforts that the county made to help mother and father with their case plans, and it determined that the county's efforts were reasonable. We are satisfied that the district court's findings on these matters adequately addressed the necessary factors in Minn. Stat. § 260C.163, subd. 9.

We also reject father's contention that the district court failed to consider the third statutory factor, whether the parent visited the child during the three months before the TPR petition was filed. Minn. Stat. § 260C.163, subd. 9(3). The district court's findings examined mother's and father's visitation throughout the course of the proceedings, including during the three months prior to the filing of the petition in October 2019. The district court found that father "started off good with visitation" and noted that he missed only two visits in September 2019. The district court also found that father's back surgery

in July 2019 "put a damper on his visitation time," but recognized that he was able to reach a solution by having his girlfriend assist during visitation. Ultimately, however, the district court focused primarily on mother's and father's substantial decrease in attending visitation starting in June 2020, which was several months after the petition was filed. We see no abuse of discretion in the district court's analysis. Father cites no authority, and we are aware of none, precluding the district court from also considering parents' visitation during other relevant times. The district court evaluated mother's and father's visitation during the months before the petition was filed, but it put more weight on their decline in attending visitation in the summer of 2020. Because the district court "considered" the parents' visitation during the three months preceding the petition, it made appropriate findings on that factor.

Having determined that the district court made adequate findings on the statutory factors, we next consider whether there was clear and convincing evidence that the child was neglected and in foster care. We conclude that there was. In *A.D.*, the supreme court determined that there was sufficient evidence to support that the child was neglected and in foster care when the mother displayed an "inability or unwillingness to establish a consistent visitation record with her daughter" and the evidence showed that the child could not be reunited with her in the foreseeable future. 535 N.W.2d at 649-50. Similarly, this court in *In re Welfare of J.J.L.B.* affirmed the district court's determination that the children were neglected and in foster care, when the mother visited the children only occasionally, did not spend much time with the children when she did visit, and refused most of the

rehabilitative services offered to her. 394 N.W.2d 858, 862-63 (Minn. App. 1986), *rev. denied* (Minn. Dec. 17, 1986).

Here, the record shows that, similar to the parents in *A.D.* and *J.J.L.B.*, both mother and father had sporadic visitation with the child, coupled with issues that prevented the child from being returned to them. The district court heard testimony that mother missed almost half the scheduled visits with the child and that father missed about 40% of his visits. Visitation dropped significantly for both parents starting in June 2020; father attended just two out of twelve visits in June 2020, and mother canceled seven out of nine visits scheduled from August to October 2020. Mother's and father's infrequent visitation caused the county to alter the visitation schedule to allow them to call ahead of time to set up visits during the week. Even under that arrangement, mother and father failed to attend most scheduled visits.

In addition to their sporadic visitation, the district court heard evidence about mother's and father's drug-related issues. A social worker testified that mother had attended multiple treatment programs to address her use of methamphetamine. But mother left one treatment program against medical advice and relapsed while she was in treatment another time. The social worker also explained that mother was required to submit to drug testing, often through urinalysis testing. Mother sometimes tested positive for methamphetamine or alcohol, and she frequently was unable to produce a sufficient sample for testing, which was treated as a positive test. Regarding father, the district court heard evidence that he had pending charges for drug possession and violation of a harassment restraining order against a former girlfriend. A social worker also testified that father had

submitted few drug tests, mainly because of his lack of contact with the county. The evidence clearly and convincingly supported the district court's determinations that mother continued to use methamphetamine and had not attained sobriety, and that father was involved in crimes related to controlled substances. In sum, despite more than two years to work on their case plans, mother and father failed to regularly attend visitation and were not yet in a position where the children could be returned to them.

We conclude that the evidence presented supports the district court's determination that the child was neglected and in foster care. The district court did not abuse its discretion by finding that this statutory ground for termination was present with respect to mother and father.

II. Reasonable efforts to reunify the parents and child

Mother and father also challenge the district court's determination that the county made reasonable efforts to reunite them with the child. They argue that the district court did not make the requisite findings on reasonable efforts and that the county's reunification efforts were insufficient.

In a TPR proceeding, the district court must make "specific findings" that reasonable efforts were made to reunify the parents and child. Minn. Stat. § 260C.301, subd. 8. This requires the district court to make "individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family." *Id.* Factors that the district court is to consider in determining whether reasonable efforts were made include whether the services 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) (2020).

We reject mother's and father's assertion that the district court failed to evaluate the reasonable-efforts factors. The district court extensively discussed the county's efforts and dedicated six pages of its order to the subject. As with the statutory factors required for finding that a child is neglected and in foster care, the district court did not specifically mention the six reasonable-efforts factors. But the district court's findings appropriately addressed the factors. And the record supports the district court's determination that the county made reasonable efforts to reunify mother and father with the child.

The county offered a variety of services as part of mother's case plan, including a list of local landlords to help her search for housing, a referral to a family-based service provider to help her learn parenting skills, and a referral for a chemical-health assessment. Workers for the county assisted mother with her visitation by providing transportation for her visits and by bringing the child to mother for visitation when mother was in chemical-dependency treatment. Social workers arranged for mother to participate in chemical-dependency treatment on three occasions. The chemical-dependency treatment was especially relevant to mother's case plan because mother's use of methamphetamine was the reason for the child's removal from mother's care. Despite these services aimed at helping mother attain sobriety and ensure a safe environment for the child, mother was unable to address her chemical-dependency problems. The district court did not abuse its discretion by determining that these services constituted reasonable efforts by the county to reunite mother with the child.

As part of father's case plan, the county offered father individual counseling to address mental-health concerns, a referral for therapy services, and a chemical-dependency assessment. When father was in jail during the fall of 2019, a social worker at the jail worked with him. The county also offered to help father with his visitation. At one point, visitation was moved to father's girlfriend's home for a few months. At another point, after father complained that the temperature in the visitation room was too hot, the county proposed alternative locations, such as a park or community center, although father and the county were unable to come to an agreement. The record supports the district court's findings that the county offered to help father with his case plan, but father mostly chose not to take advantage of those services. Moreover, the county took steps to help accommodate father with attending visitation. The district court did not err by concluding that the county made reasonable efforts to reunify father with the child.

We add that the district court acknowledged the difficulties that mother and father experienced with receiving services and attending visitation during the COVID-19 pandemic. The district court stated that it did not hold mother and father responsible for any lapses in their case plans that occurred during the first three months of the pandemic, when "[a]ll aspects of life were effectively frozen." We agree with the district court's consideration of the effects of the pandemic on mother's and father's ability to receive services from the county and to work on their case plans. The district court did not err by determining that the county made reasonable efforts to reunite mother and father with the child.

III. Best interests of the child

Finally, mother and father challenge the district court's determination that termination of parental rights was in the best interests of the child. We review a district court's best-interests determination for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012).

The best interests of the child is the "paramount consideration" in determining whether to terminate parental rights. Minn. Stat. § 260C.301, subd. 7; *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). When the interests of the parents and the interests of the child conflict, the child's interests prevail. Minn. Stat. § 260C.301, subd. 7. In determining whether termination of parental rights is in the child's best interests, the district court is to balance 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." *In re Welfare of K.L.W.*, 924 N.W.2d 649, 656 (Minn. App. 2019), *rev. denied* (Minn. Mar. 8, 2019); *see also* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) (stating that the district court must consider these factors when addressing the best interests of a child who is the subject of a petition to terminate parental rights). Competing interests of the child include things such as a stable environment and health considerations. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992).

Mother and father argue that the district court failed to evaluate the best-interests factors. We disagree. Again, the district court did not expressly discuss the best-interests factors. But its findings and conclusions demonstrate that it properly considered all the factors. The district court noted that the child was placed with mother's mother, who

intended to adopt the child, and found that the child was "doing well" in his foster parents' care. The district court further found that the child had a "warm relationship" with his half-sibling, who was also in the care of his foster parents. The district court's findings on these points addressed the competing interests of the child.

The district court also considered the parents' and the child's respective interests in preserving the parent-child relationship, as shown by its findings that mother's visits with the child were "positive" and father's visits were "extremely warm and positive." The district court acknowledged that, because of the "warm relationship" between the child and mother and father, a contact agreement between mother and father and the child would be in the child's best interests. The district court ultimately concluded that, despite mother's and father's positive interactions with the child, it was not in the child's best interests to be returned to either parent's care, based on both parent's inability to maintain regular contact with the child through visitation, mother's continued chemical dependency and mental-health issues, and father's involvement in controlled-substance-related crimes. We conclude that the district court did not abuse its discretion by determining that termination of parental rights was in the child's best interests.

Affirmed.