This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0872

In the Matter of the Welfare of the Child of: L. H., Parent.

Filed December 20, 2021
Affirmed
Bryan, Judge

Ramsey County District Court
File No. 62-JV-21-122

Theresa R. Paulson, Thrive Legal Services, St. Paul, Minnesota (for appellant father L.H.)

John J. Choi, Ramsey County Attorney, Robert Hamilton, Assistant County Attorney, St. Paul, Minnesota (for respondent county)

Deborah Best, St. Paul, Minnesota (guardian ad litem)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this juvenile-protection appeal, appellant challenges the district court's decision terminating his parental rights. Appellant argues that the agency violated a specific statutory obligation and that the district court erred in denying the motion for a new trial on this basis. Because appellant failed to raise the alleged statutory violation prior to the motion for a new trial, we conclude that he has forfeited the argument. Appellant also argues that the district court abused its discretion when it determined that termination of

appellant's parental rights was in the child's best interests. Because the district court's analysis of the applicable best interests factors was consistent with logic and the facts, we conclude that the district court did not abuse its discretion.

FACTS

On February 18, 2021, respondent Ramsey County Social Services Department (the agency) filed a petition to terminate the parental rights of appellant L.H. (father) to his child, born in August 2020 (the child).[1] The child's mother (mother) was the sole custodian of the child. About two weeks after the child was born, the agency received a report concerning the father's threatening conduct. Mother had a no-contact order against father due to a domestic incident that occurred before the child was born. The agency investigated and completed a child-protection intake assessment. Mother told the agency worker that she was not having contact with father at the time, but mother and father both said that they wanted father to have a relationship with the child.

The case proceeded to trial. At the beginning of the trial, father's attorney acknowledged the statutory presumption that father was palpably unfit to be a party to the parent-child relationship because of the involuntary termination of his parental rights to his other three children, under Minnesota Statutes section 260C.301, subdivision 1(b)(4)

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[1] The district court previously terminated father's parental rights to three other children in 2018. When father failed to appear at the admit/deny hearing and failed to participate in the services offered by the agency, the district court involuntarily terminated father's parental rights to those three children, concluding that father had exposed the children to domestic violence in their home, failed to provide for their needs, and had not made any changes in his parenting. The district court also determined that termination of father's parental rights to those children was in the children's best interests.

(2020). The attorney told the district court that he did not have any evidence to rebut that presumption and that he wished for the trial to focus solely on the issue of whether termination was in the child's best interests. The district court heard testimony from father, mother, a social worker, and the guardian ad litem (GAL).

The district court admitted evidence showing father's criminal history, including incidents of domestic violence against mother. For instance, according to this evidence, in April 2020, father put mother in a chokehold to the point that she was unable to speak or breathe. Father knew that mother was five months pregnant with the child at the time. As a result of the domestic assault, the district court issued a domestic-abuse no-contact order prohibiting father from having any contact with mother. Father pleaded guilty to felony domestic assault relating to this incident in December 2020. In addition, on February 5, 2021, father allegedly came to mother's apartment and punched her in the face. Father was charged with felony domestic assault and violating an order for protection. Father was incarcerated pending a criminal trial on these charges at the time of the TPR trial.

The social worker and the GAL testified about father's history of domestic abuse against mother and against another individual. The social worker believed that, because the children in the previous TPR proceeding had witnessed domestic abuse and father had not made any efforts since then to change his behavior, the child was at risk of witnessing or experiencing abuse. Similarly, the GAL opined that termination of father's parental rights was in the child's best interests because of father's "very long, troubling history of domestic violence" and because he had not taken steps to address his chemical health, mental health, and domestic violence history.

Mother testified that she opposed the termination of father's parental rights. She told the district court that she was currently able to provide for the child by herself but that financial assistance from father would be helpful. Mother testified that, if father's parental rights were terminated, it would be difficult for her to support the child by herself.

After the trial, the district court issued an order terminating father's parental rights. The district court credited the GAL's testimony opining that termination was in the child's best interests, despite mother's desire for father to financially support the child. The district court found that father's behavior had not improved since the previous TPR proceeding and that father had continued his pattern of domestic abuse against his partners. The district court weighed the best interests factors and determined that father's interest in preserving the parent-child relationship was "outweighed by [the child's] competing interests to live in a home free of domestic violence [and] chemical abuse and have caregivers with stable mental health." The district court concluded that termination of father's parental rights was in the child's best interests.

After the TPR decision, father filed a motion for a new trial. He challenged the district court's determination that termination was in the child's best interests, highlighting the child's interest in receiving financial support from father. Father also raised a new argument. He argued that the county attorney violated Minnesota Statutes, section 260C.503, subdivision 2 (2020), because although the agency performed an initial intake interview in August 2020, the county attorney did not file the TPR petition until February 2021. The district court denied father's motion for a new trial, reasoning that it had appropriately balanced the best interests factors and noting that father presented no

evidence showing that he had attempted to provide financial support for the child. The district court also declined to grant a new trial based on the lapse in time from August 2020 through February 2021. Specifically, the district court determined that the statute did not obligate the county attorney to file the termination petition prior to February 2021, so no statutory violation had occurred. In addition, the district court observed that father failed to raise the argument at trial and concluded that father made no showing that the proceeding would have been different if the county attorney had filed the petition prior to February 2021. Father appeals.

DECISION

I. Timing of Filing TPR Petition

Father first argues that the county attorney violated a specific obligation to file the termination petition in August 2020 and because the county attorney failed to do so, the district court erred when it denied the motion for a new trial. Because father failed to raise this argument prior to his posttrial motion, we deem the argument forfeited.

Minnesota Statutes section 260C.503 provides that "[t]he responsible social services agency must ask the county attorney to immediately file a termination of parental rights petition when," among other reasons, "the child's parent has lost parental rights to another child through an order involuntarily terminating the parent's rights." Minn. Stat. § 260C.503, subd. 2(a)(4). The statute further provides, "The county attorney shall file a termination of parental rights petition unless the conditions of paragraph (d) are met." *Id.*, subd. 2(a). Father contends that the county attorney did not comply with the statute because it did not "immediately" file a TPR petition after the child was born in August

2020, but instead filed the petition in February 2021. The district court acknowledged that the statute requires the agency to request that the county attorney immediately file a termination petition, but the district court concluded the statute did not place any obligation on the county attorney to immediately file the petition or to file the petition within any specific time frame.

We need not reach the merits of father's argument because he did not raise it until his posttrial motion. *See Antonson v. Ekvall*, 186 N.W.2d 187, 189 (Minn. 1971) (determining that a claim was raised "too late" when it was first suggested in a motion for a new trial); *Allen v. Cent. Motors, Inc.*, 283 N.W. 490, 492 (Minn. 1939) (determining that a factual argument was "too late" when first raised in a motion for amended findings); *Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002) ("[A] issue first raised in a post-trial motion is not raised in a timely fashion"). Although father could have moved to dismiss the petition or for some other remedy prior to the trial, father chose not to raise the argument until after the district court terminated his parental rights. Because the argument regarding the agency's statutory obligation was raised "too late," we deem it forfeited.

II. Balancing of the Best Interests Factors

Father also challenges the district court's determination that termination of his parental rights was in the child's best interests. We conclude that the district court did not abuse its discretion in weighing the best interests factors.

To terminate parental rights, the district court must determine, among other things, that termination is in the child's best interests. *In re Welfare of Child. of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). The best interests of the child are the "paramount consideration" in

a TPR proceeding. Minn. Stat. § 260C.301, subd. 7 (2020); *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 Child 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) (instructing district courts to make specific findings on the three factors).

We give "considerable deference to the district court's decision to terminate parental rights." *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). Similarly, we will not reverse a district court's best interests determination absent an abuse of discretion. *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). A district court abuses its discretion when its decision is against logic or the district court's uncontested factual findings. *In re Welfare of A.M.C.*, 920 N.W.2d 648, 660 (Minn. App. 2018).

Father argues that termination was not in the child's best interests because the child had an interest in receiving financial support from father and terminating his parental rights would cut off the child's access to support. He relies on *In re Welfare of Alle*, 230 N.W.2d 574 (Minn. 1975), for the proposition that children have an interest in receiving financial support from their parents and that termination of parental rights is contrary to the child's

best interests when it results in the child being dependent on just one parent for financial support. We are not convinced for two reasons.

First, contrary to father's argument, *Alle* does not compel reversal. That case involved an adoptive father who wished to *voluntarily* terminate his parental rights. 230 N.W.2d at 576-77. The supreme court determined that the father did not have a good reason for wanting to terminate his parental rights and that it was not in the children's best interests to no longer receive financial support from the father. *Id.* *Alle*'s reasoning is not persuasive in the context of an involuntary TPR proceeding in which the child has competing interests weighing in favor of termination.

Second, the district court's decision is not against logic or the facts in the record. The district court considered the child's interests in having a safe and stable environment and living free from domestic violence and chemical abuse. The district court noted father's history of domestic abuse and found that he had not changed his behavior since his parental rights to his other three children had been terminated. It credited the testimony of the social worker, who expressed a concern that the child was at risk of witnessing or experiencing domestic abuse. The district court's reasoning is neither against logic nor contrary to the facts. The district court appropriately weighed the competing factors and concluded that any financial interests in maintaining the parent-child relationship were outweighed by the child's need for a safe and stable environment. We discern no abuse of discretion in the district court's weighing of the best interests factors.

Affirmed.