STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0877

In the Matter of the Welfare of the Child of: R. S., Parent.

Filed February 22, 2022
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-JV-17-4447

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Considered and decided by Jesson, Presiding Judge; Larkin, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this post-remand appeal, appellant-father challenges the termination of his parental rights, arguing that the district court failed to follow this court's remand instructions and failed to comply with the requirements of Minn. Stat. § 260C.312(b) (2020). Father also assigns error to the district court's finding that the county made reasonable reunification efforts and its determination that there was a statutory basis for termination. We affirm.

FACTS

Appellant R.S. is the father of the child who is the subject of this juvenile-protection matter. The child was born in 2015 and has been in court-ordered out-of-home placement since September 2017. The child has a neurodevelopmental disorder and receives special education services, including speech and occupational therapy, to address behavioral and cognitive issues. The child's cognitive skills are below average, and he needs more adult support than his same-aged peers to meet his daily needs. The child's mother has an extensive history of child-protection involvement, and her parental rights to several other children have been involuntarily terminated.

In March 2015, respondent Hennepin County Human Services and Public Health Department (the county) filed a child-in-need-of-protection-or-services (CHIPS) petition regarding the child, based primarily on mother's history. Because the parents and child traveled between Illinois and Minnesota, the child was not located until September 2017. Authorities took the child into protective custody when they found his parents panhandling in Minnesota. The county then petitioned to terminate mother's and father's parental rights.[1]

Unlike mother, father did not have a history of child-protection involvement. The county offered father services and developed a case plan, which required him to establish paternity, to complete psychological and parenting assessments and follow any ensuing

[1] The district court terminated mother's parental rights to the child in 2018. Mother is not a party to this appeal.

recommendations, to engage in individual therapy, to obtain safe housing, to participate in parenting education and apply the skills learned, to refrain from engaging in a relationship with mother, to attend visitation, and to generally work to meet the child's needs. Because father has cognitive deficiencies, the services were intended to assess whether he had the ability to improve his parenting skills and meet the child's needs. Father signed his case plan and began working on its goals.

In August 2018, the district court held a trial on the petition to terminate father's parental rights. In October 2018, the district court terminated father's rights based on three statutory grounds. In doing so, the district court reasoned that father's cognitive deficits rendered him unable to parent. Father moved for a new trial. The district court denied the motion but made additional findings regarding its termination of parental rights (TPR) order. Father appealed.

In May 2019, this court reversed the termination, concluding that the evidence was insufficient to sustain the district court's finding of a statutory basis for termination, and remanded the case to the district court "for any further proceedings to address custody and the child's need for protection or services in light of current circumstances and [father's] continued parental rights." *In re Welfare of Child of S.D.T.*, No. A18-1781, 2019 WL 2079831, at *4 (Minn. App. May 13, 2019).

The same district court judge presided over father's case on remand. At a hearing in July 2019, the county asked to proceed with its original petition to terminate father's parental rights. Father asked for reunification or that the matter revert to a CHIPS proceeding. The district court ordered that the matter would remain a TPR proceeding and

that it would reopen the record to permit additional evidence regarding the original termination petition. In August 2019, the district court ordered that there would be no visitation between father and the child because the court wanted "more information regarding father's ability to engage in visits."

In December 2019, the county filed a new case plan for father, describing the services and reunification efforts that it had offered. The case plan noted that father had established his paternity of the child and had completed psychological and parenting assessments. Those assessments recommended therapy, parenting education, and an Adult Rehabilitative Mental Health Services (ARMHS) worker. The plan noted that father had engaged in parenting education but could not progress further. The plan directed father to participate in individual therapy, to work with his providers to establish ARMHS services, to maintain safe housing, to demonstrate that he was not in a relationship with mother, and to meet the needs of the child.

In February 2020, the county filed an amended TPR petition and added an additional statutory ground for termination.

In April 2020, the district court authorized supervised visitation between father and the child, but visitation did not begin until June 2020. Father indicates that he had 30 supervised visits with the child between June 2020 and May 2021.

On several dates between August 2020 and April 2021, the district court held a trial on the county's amended petition to terminate father's parental rights. The district court heard the testimony of seven witnesses and received approximately 200 exhibits, many concerning father's current circumstances and the child's special needs. Following the

trial, the district court terminated father's parental rights based on three statutory grounds: failure to meet parental duties, palpable unfitness, and failure to correct the conditions that led to the child's out-of-home placement. The district court found that father had "demonstrated an inability to ensure the daily needs of his child are met" due to his parenting and cognitive deficiencies.

Father moved for a new trial or amended findings. The district court denied that motion, and father appealed to this court.

DECISION

I.

Father contends that the district court erred by failing follow this court's remand instructions. Specifically, he argues that the district court abused its discretion by allowing the county to pursue relief under its original termination petition, as amended, and to supplement the record in support of termination.

A district court must adhere to a reviewing court's remand instructions, and if no specific instructions are provided, the district court must proceed in a manner consistent with the remand order. *Halverson v. Village of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982); *Bauerly v. Bauerly*, 765 N.W.2d 108, 110-11 (Minn. App. 2009); *Duffey v. Duffey*, 432 N.W.2d 473, 476 (Minn. App. 1988). We review a district court's compliance with remand instructions under a deferential abuse-of-discretion standard. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005).

After reversing the termination in the first appeal of this matter, this court remanded the case to the district court "for any further proceedings to address custody and the child's

need for protection or services in light of current circumstances and [father's] continued parental rights." *S.D.T.*, 2019 WL 2079831, at *4. In allowing the county to pursue the original termination petition, the district court reasoned that this court did not mandate dismissal or reunification and did not direct that the matter be converted to a CHIPS proceeding.

This court's remand instruction was broadly stated. It did not address whether the district court could reopen the record on the county's original termination petition. But that approach has been approved in other cases. For example, in *In re Welfare of Forrest*, the supreme court remanded the district court's denial of termination "for the purpose of taking further evidence." 246 N.W.2d 854, 854 (Minn. 1976). And in *In re Child of E.V.*, this court reversed a termination and remanded the case to the district court stating, "[u]pon remand, it remains within the [district] court's discretion whether to open the record for the presentation of additional evidence." 634 N.W.2d 443, 450 (Minn. App. 2001).

In addition, in *In re Welfare of Chosa*, the supreme court reversed a termination based on insufficient evidence and stated that "proper authorities" should "carefully monitor the situation and promptly seek termination of [the mother's] parental rights again if she is unable to meet the challenge of parenthood." 290 N.W.2d 766, 769 (Minn. 1980). Similarly, in *In re Welfare of Child. of S.R.K.*, the supreme court determined that the county had failed to prove a TPR petition and remanded the case to the district court to dismiss the petition without prejudice, but the supreme court noted that the county remained "free to bring a new petition at any time." 911 N.W.2d 821, 832 (Minn. 2018).

In sum, caselaw indicates that a district court is not prohibited from reopening the record and allowing continued efforts to terminate parental rights on remand after reversal of a termination order. Given that caselaw and this court's broadly worded remand instruction, which authorized "any further proceedings . . . in light of current circumstances," the district court did not abuse its discretion by allowing the county to pursue its original termination petition and to present additional evidence regarding father's current circumstances.

II.

Father contends that the district court erred by failing to comply with the requirements of Minn. Stat. § 260C.312(b). We review the application of a statute to undisputed facts de novo. *Weston v. McWilliams & Assocs.*, 716 N.W.2d 634, 638 (Minn. 2006).

Minnesota Statutes section 260C.312 (2020) provides:

> (a) If, after a hearing, the court does not terminate parental rights but determines that the child is in need of protection or services, or that the child is neglected and in foster care, the court may find the child is in need of protection or services or neglected and in foster care and may enter an order in accordance with the provisions of section 260C.201.
>
> (b) When a child has been in placement 15 of the last 22 months after a trial on a termination of parental rights petition, if the court finds that the petition is not proven or that termination of parental rights is not in the child's best interests, the court must order the child returned to the care of the parent unless the court approves the responsible social services agency's determination of compelling reasons why the child should remain out of the care of the parent. If the court orders the child returned to the care of the parent, the court may order

> a trial home visit, protective supervision, or monitoring under section 260C.201.

Minnesota Statutes section 260C.201 (2020), as referenced in section 260C.312, governs dispositional orders stemming from a district court's determination that a child is in need of protection or services or is neglected and in foster care.

Father notes that the first TPR order was issued in October 2018. He therefore argues that on remand, section 260C.312 required the district court to "approve the agency's compelling reasons not to move forward with termination on or before February 1, 2020."

Father's argument assumes that "court," as used in Minn. Stat. § 260C.312, refers to, or includes, this court. That assumption is inconsistent with statutory definitions that apply to the terms used in chapter 260C and provide that, with an exception not relevant here, "'court' means juvenile court." Minn. Stat. § 260C.007, subds. 1, 9 (2020). We need not resolve that issue, however, because father fails to allege prejudice arising from the district court's failure to make the determination mentioned in section 260C.312(b).

Absent an allegation of prejudice arising from an error allegedly committed by the district court, there is no basis to reverse the district court. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) (stating that, to obtain relief on appeal, an appellant must show both error by the district court and prejudice to the appellant arising from that error); *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 171 (Minn. App. 2005) (applying *Midway* in a TPR appeal), *rev. dismissed* (Minn. May 3, 2005); *In re Welfare of D.J.N.*, 568 N.W.2d 170, 175-76 (Minn. App. 1997) (stating that, while "[i]t was a mistake

for the [district] court . . . to take judicial notice of the entire [previous juvenile-protection] files," because appellants failed to show prejudice, there was no reversible error).

Father does not allege that lack of a "compelling reasons" determination prejudiced him. In fact, he states that the "exact remedies available to [him] . . . are unclear." To the extent that father suggests he was prejudiced because section 260C.312(b) precludes further termination proceedings, we are not persuaded. Section 260C.312(b) contemplates two scenarios: an order for reunification or a determination that there are "compelling reasons" why the child should remain in out-of-home placement. Section 260C.312(b) does not foreclose the possibility of subsequent termination proceedings. Indeed, shielding parents from further permanency proceedings after denial of a termination petition—regardless of the parents' circumstances after denial—would be inconsistent with the paramount consideration in every child-protection proceeding, which is "the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2(a) (2020).

In sum, section 260C.312(b) did not prohibit the county from proceeding with its initial petition to terminate father's parental rights on remand from this court. And even if the district court erred by failing to approve a determination of "compelling reasons" to continue the child's out-of-home placement, father does not articulate any resulting prejudice. Thus, the alleged error, if any, does not provide a basis to reverse.

III.

Father contends that the district court erred by finding that the county made reasonable reunification efforts. Generally, the county must make reasonable efforts to rehabilitate and reunify the family and eliminate the need for a child's out-of-home

placement. Minn. Stat. § 260.012(a) (2020). "Reasonable efforts at rehabilitation are services that go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of Child. of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotations omitted), *rev. denied* (Minn. Mar. 28, 2007). We review a district court's findings as to the county's reasonable efforts for clear error. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012).

In determining whether reasonable efforts have been made, the district court must consider whether services offered to the family 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). The district court must consider "the length of the 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), *rev. denied* (Minn. July 6, 1990). The county's efforts must be aimed at alleviating the conditions that predicated the out-of-home placement, and the efforts must conform to the problems presented. *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996); *H.K.*, 455 N.W.2d at 532.

The district court made extensive findings regarding the county's efforts to reunify the family and address father's cognitive deficiencies. Those services included written case plans; monthly meetings and case management; referrals for psychological, diagnostic, neuropsychological, and parenting assessments; therapy; ARMHS services; parenting education; travel vouchers; and supervised visitation.

Father argues that the services directed at his mental-health and cognitive issues "were not relevant" because those issues did not cause the child's out-of-home placement. Although mother's history of involuntary terminations may have been the impetus for the county's concern regarding the child, the district court identified the child's "unstable environment," "risk of harm," and the parents' behavioral and mental-health issues as its reasons for initially placing the child out of the home. Thus, father's mental-health and cognitive issues were relevant, and the services offered to father were intended to facilitate reunification in light of those issues. Moreover, caselaw recognizes that additional circumstances contributing to a child's need for protection may be addressed as a juvenile-protection matter progresses. *See In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 316 (Minn. App. 2015) (stating that it is possible that "a child cannot safely return home even though the factual bases for the conditions preventing the child's return home are not identical to the factual bases for the conditions that led to the child's out-of-home placement"), *rev. denied* (Minn. July 20, 2015).

Father also argues that the county damaged his parent-child bond by denying him visitation and that the county's services were intended to build a case against him instead of reunifying him with the child. Father rightly complains that he did not receive visitation or parenting education for more than a year on remand.

As to visitation, this court remanded the case in May 2019, and supervised visitation did not begin until June 2020. That delay is highly concerning and undoubtedly affected the bond between father and the child. The record indicates that the county did not initially recommend visitation because it intended to promptly supplement the record on remand in

pursuit of a new termination order. And the district court was understandably cautious about initiating visitation given the length of time that had passed with no contact between father and the child. The district court wanted input from the child's therapist regarding the best way to initiate visitation following the remand. Ultimately, the decision whether and when to begin visitation on remand was for the district court. On balance, we cannot say that the district court's cautious approach to visitation rendered the county's reunification efforts unreasonable.

We recognize that the lack of contact between father and the child no doubt damaged their parent-child bond and made visitation more difficult for each of them. But as described in section IV of this opinion, the district court's termination order was not based on an inadequate parent-child bond. It was based on father's limited cognitive abilities and his resulting inability to adequately meet the particular needs of the child. And despite the visitation delay, father reports that he had 30 visits with the child between June 2020 and May 2021. He therefore had an opportunity to develop and demonstrate his parenting skills in a supervised-visitation setting following this court's remand. We are not aware of any authority suggesting that a parent must be given an opportunity for unsupervised parenting time before a district court may terminate parental rights. Such an approach could be inconsistent with the paramount concern in any juvenile-protection matter, which is "the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2(a).

As to parenting education, the county did not initially ask father to complete additional parenting education because it was determined that he had made "as much progress as possible." Instead, the county recommended parenting support. But the county

ultimately provided parenting education through "Reach for Resources" during father's supervised visits. Father took advantage of that service but declined to engage in other services offered by the county, such as mental-health therapy. As found by the district court, father "completed less than a dozen therapy sessions over five years, although his assessors consistently and unanimously recommended therapy."

In sum, although the prolonged delay in visitation on remand is concerning, the district court did not clearly err by finding that the county made reasonable reunification efforts.

IV.

Father contends that the district court abused its discretion in determining that the county proved a statutory basis for termination. Minnesota courts will terminate parental rights only for "grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). A petitioner bears "the burden of producing clear and convincing evidence that [a] statutory termination ground[] exists." *In re Welfare of C.K.*, 426 N.W.2d 842, 847 (Minn. 1988). A district court's decision in a TPR proceeding must be based on evidence concerning the conditions that exist at the time of the termination. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007), *rev. denied* (Minn. July 17, 2007). Termination of a parent's rights is intended for those situations in which it appears "that the present conditions of neglect will continue for a prolonged, indeterminate period." *Chosa*, 290 N.W.2d at 769.

There are nine statutory grounds for involuntarily terminating parental rights. *See* Minn. Stat. § 260C.301, subd. 1(b) (2020). In a TPR appeal, an appellate court examines

the record to determine whether the district court applied the appropriate statutory criteria. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 249 (Minn. App. 2003). In reviewing a termination order, we review the underlying findings of fact for clear error and the determination of whether a statutory ground for termination exists, as well as the court's ultimate decision to terminate parental rights, for an abuse of discretion. *In re Welfare of Child of J.H.*, ___ N.W.2d ___, ___, 2021 WL 5045274, at *3 (Minn. App. Nov. 1, 2021), *rev. denied* (Minn. Dec. 6, 2021). We will affirm a district court's TPR decision if at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, *In re Welfare of Child. of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004), so long as the county made reasonable efforts to reunite the family if reasonable efforts were required, *In re Child. of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005).

On remand in this case, the district court terminated father's rights based on three statutory grounds. One ground was that father failed to correct the conditions leading to out-of-home placement. A district court may terminate a parent's rights to a child if "following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). A district court presumes that reasonable efforts have failed if certain circumstances exist. *Id.*

The district court relied on the statutory presumption and ruled that father "failed to substantially comply with and benefit from the case plan." We need not address the propriety of the district court's reliance on the statutory presumption because parental rights may be terminated under section 260C.301, subdivision 1(b)(5), even in the absence

of that presumption. *See, e.g.*, *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 386 (Minn. 2008) ("[A]lthough the statutory presumption does not strictly apply, it may still inform our consideration of whether subdivision 1(b)(5) has been met."). When addressing whether to terminate parental rights because a parent failed to correct the conditions leading to a child's out-of-home placement, "[t]he critical issue is not whether the parent formally complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child." *J.K.T.*, 814 N.W.2d at 89.

Here, in terminating father's parental rights on remand, the district court once again reasoned that father's cognitive deficiencies rendered him unable to meet the child's special needs and concluded that there were sufficient grounds for termination under subdivision 1(b)(5). That decision was based, in part, on evidence regarding the additional assessments and services that the county provided on remand to address father's cognitive deficits and to improve his ability to parent his special-needs child. Those additional assessments included a diagnostic evaluation, a second psychological and adaptive functioning evaluation, and a neuropsychological evaluation.

In the district court's second order terminating father's parental rights, the district court found that father's "cognitive abilities, including his memory, which are in the second percentile for his age group, do not allow him to engage in higher-level reasoning—such as following medication labels' instructions, signing school permission slips, or following up on the child's IEP and special education needs at home." Evidence showed that father needed assistance in reading, writing, and understanding "formal verbal information." Evidence also showed that father may not know how to respond to a child's illness and

may struggle in the day-to-day requirements of raising a child. For example, testimony showed that father did not appreciate the child's developmental issues and was hesitant to interact with service providers.

Evidence also showed that father would need long-term assistance from a social worker to provide for the child's needs. For example, the doctor who conducted father's neuropsychological testing testified that if the child were placed in father's custody, father would need significant, long-term parenting assistance to provide a safe home, structure, and resources, and that such supportive services would likely be necessary until the child turns 18. That doctor testified that an assisted-living setting, in which 24/7 care and support is available, would be ideal. There was no evidence that such assistance was available to father; in fact, the evidence showed that he had a limited social network. And despite an assessor's determination that an ARMHS worker might be the most beneficial resource for father, he did not cooperate with the county's attempt to obtain an ARMHS worker.

The district court found that despite the county's provision of services to improve father's parenting deficits, which stemmed from his limited cognitive abilities, father did not make adequate improvements. For example, during a supervised visit in December 2020, father sprayed Lysol on the child's hands to clean them. Father also did not timely sign paperwork necessary for the child's therapy. In fact, father denied that the child needed services. The district court found that father demonstrated an inability to ensure that the child's daily needs would be met in his care. The district court also found that although father "has been able to make it through short, routine visits with his child while under professional supervision, he does not have the parenting skills and cognitive ability

to respond to even slight deviations from routine interactions without assistance." The record provides clear and convincing support for those findings.

Father argues that the current termination order is based on the same evidence that this court rejected as sufficient to support a termination in the first appeal. That argument ignores the district court's consideration of the additional assessments and services that were utilized on remand and its consideration of father's current circumstances. The district court noted that "[f]rom the time of the first trial to the second, the [c]ourt has had the benefit of additional psychological assessments of [father], which allow for a greater understanding and appreciation of his cognitive skills and adaptive functioning."

Although the circumstances supporting the district court's first and second termination orders are similar, our careful review of the record satisfies us that information resulting from father's participation in the additional post-remand assessments and services provided clear and convincing support for the district court's conclusion that father's cognitive limitations render him unable to meet his child's particular needs.

Father also argues that the conditions leading to the child's placement related only to mother's child-protection history and that his parental rights cannot be terminated based on a failure to correct those conditions. Once again, the district court identified father's instability, as well as his behavioral and mental-health issues, as reasons supporting the child's out-of-home placement. And a district court "may find that a child cannot safely return home even though the factual bases for the conditions preventing the child's return home are not identical to the factual bases for the conditions that led to the child's out-of-home placement." *D.L.D.*, 865 N.W.2d at 316.

In sum, the record establishes that father loves his child and has a strong desire to parent the child. But our review of the record satisfies us that the post-remand proceedings clearly and convincingly establish that father lacks the capacity to meet the child's unique needs as a result of his cognitive limitations, despite his cooperation with the county's reasonable reunification efforts. And our review of the district court's findings satisfies us that father's circumstances will continue for a prolonged, indeterminate period. Thus, the district court did not abuse its discretion by terminating father's parental rights on the ground that "reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). We affirm on that ground, without reviewing the other statutory grounds on which the district court relied or the district court's best-interests determination, which father does not challenge on appeal.

Affirmed.