STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1347

In the Matter of the Welfare of the Child of:
M. W. and T. S., Parents.

Filed May 2, 2022
Affirmed
Bjorkman, Judge

Washington County District Court
File No. 82-JV-21-244

John Chitwood, Chitwood Law, PLLC, St. Paul, Minnesota (for appellant-father T.S.)

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Pete Orput, Washington County Attorney, Erin Johnson, Assistant County Attorney, Stillwater, Minnesota (for respondent Washington County Community Services)

Ann Flesher, Stillwater, Minnesota (guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Frisch, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant-father challenges the termination of his parental rights to one child. Because (1) clear and convincing evidence supports the district court's determination that

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

reasonable efforts have failed to correct the conditions leading to the child's out-of-home placement and (2) the district court did not abuse its discretion by determining that termination is in the child's best interests, we affirm.

FACTS

Appellant T.S. (father) and M.W. (mother)[1] are the parents of G.S. (the child), who was born in April 2019. On August 30 of that year, mother was hospitalized due to mental-health concerns. Oakdale police conducted a welfare check at the home the next day and observed father to be intoxicated. The child was removed from the home on an emergency basis and father was transported to the hospital due to his own health issues.

Respondent Washington County Community Services (the county) conducted a child-protection investigation, during which father reported that he had been using alcohol to manage tooth pain until he could see a dentist. He told investigators that he "took responsibility for his action and indicated he was regretful," but stated he did not "feel he has a drinking problem." The county filed a petition alleging the child needed protection or services (CHIPS). The district court adjudicated the child to be CHIPS the next month and continued the child's placement with the county.

The county assigned a case manager to work with the family. With father's input, the case manager developed case plans that outlined services the county would provide and father's responsibilities. These court-approved plans required father to abstain from alcohol and non-prescribed controlled substances, comply with random urinalysis testing

[1] The district court also terminated mother's parental rights to the child. Mother challenges that decision in a separate appeal, No. A21-1357.

(UAs), complete outpatient treatment, "engage in counseling/therapeutic services," and cooperate with the county. Father completed a chemical-health assessment, which recommended chemical-dependency programming, and a parenting assessment, which likewise recommended that father maintain sobriety and attend weekly therapy.

Father made progress through the end of 2019 and 2020. He successfully completed an outpatient chemical-dependency treatment program. And he provided a series of UAs that were mostly negative for non-prescribed controlled substances,[2] but positive for alcohol on several occasions, including in November 2019 and in August and December of 2020. In December 2019, a psychiatrist diagnosed father with alcohol-use disorder and noted his "present situation" suggests "at least some ongoing difficulties" with substance use.

Despite father's ongoing challenges related to alcohol, the county decided to return the child to father's care after he moved into stable housing in August 2020. The placement was conditioned on father's agreement to demonstrate his sobriety through increased UAs and drop-in visits from county personnel. Father tested positive for alcohol the night before the child was to be returned to his care. He admitted drinking; the case manager advised that the child would be removed again if he continued to do so. Father agreed to resume sobriety-support programming and "was adamant that he would not continue drinking." The county decided to move forward with the placement.

[2] Father consistently tested positive for the presence of "Cannabinoid" due to his prescribed use of medical marijuana.

In October, the county filed a permanency petition to transfer custody of the child to father. The petition noted that father had been consistent in providing care and meeting the child's needs and continued to engage in supportive services. Mother objected to the petition. The following month, the district court issued an order placing the child with father. The order, among other things, directed father to abstain from non-prescribed controlled substances, submit to UAs, and engage in therapeutic services.

On May 4, 2021, law enforcement observed father's vehicle drifting between traffic lanes on the highway and driving on the shoulder. Officers approached the vehicle when it stopped at a gas station; the child was inside. Father had bloodshot eyes and his speech was slurred. The officers smelled marijuana and "a moderate odor of alcohol." Father failed field sobriety tests, refused a breath test, and admitted to drinking alcohol earlier in the evening. Officers found an empty whiskey bottle and a bag containing a leafy substance in the vehicle. Father was arrested and charged with two counts of second-degree driving while impaired (DWI). He has prior DWI convictions from 2015 and 2016.

The county removed the child from father's care. Father denied drinking but admitted using non-medical marijuana and that he was under the influence at the time of his arrest. On May 26, the county filed a petition to terminate father's and mother's parental rights (TPR petition), alleging that the county's involvement with the family since 2019 and father's recent conduct demonstrated that the parents were not able to "consistently and safely parent" the child.

Trial on the TPR petition took place on August 17 and 18. Father testified that he did not drink the day the child was initially removed in 2019. And he denied having

multiple positive UAs for alcohol during the course of the child-protection proceedings and drinking on the day of his 2021 DWI arrest. But he later admitted on cross-examination to drinking once in November 2019 and again in August and December 2020, and that he was aware there were orders prohibiting him from drinking alcohol at the time. He also admitted to using non-prescribed marijuana despite orders proscribing the use of non-prescription mood-alerting substances. Father stated that he does not believe sobriety will be a problem in the future as he is now able to afford his medical marijuana prescription more consistently and that he only uses medical marijuana "to help [him] function" and not to manage his moods. And he expressed his belief that he was ready for the child to be returned to his care.

The case manager testified that the two years of services had not corrected the conditions that led to the child's out-of-home placement. She noted that both times the child had been removed from father's care—in August 2019 and May 2021—were due to father's alcohol use. And she described father's relapses, about which he was not honest until confronted. The case manager was particularly concerned because father's drinking persisted despite his consistent participation in services designed to maintain his sobriety. She also testified that termination was in the child's best interests as it would provide needed stability and permanency as to the child's care. The guardian ad litem (GAL) opined that termination was in the child's best interests as the child's need for "safety, security, stability and permanency" outweighed preserving a relationship with father or mother. And the GAL stated that she does not believe father was or would in the

foreseeable future be "able to safely care [for] and meet [the child]'s needs due to the number of positive drug screens."

After the trial, the district court issued detailed findings of fact and legal conclusions. The court found the testimony of the case manager and GAL credible, as well as father's testimony regarding his love for the child, desire to care for the child, and his physical- and mental-health struggles. But the district court found father's testimony was "not credible when describing his chemical health and whether there should be any concern regarding his ability to remain sober," citing his evasiveness about his use of alcohol and non-prescription marijuana use during the past two years, and the fact that his testimony about the 2021 DWI was "substantially in conflict" with that of the law-enforcement officers. The court further found that the county made reasonable efforts[3] to address the conditions that led to the child's placement, but father was still unable to maintain a safe environment for the child.

The district court concluded that clear and convincing evidence supports three statutory grounds for termination: (1) neglect of parental duties, (2) failure of reasonable efforts "to correct the conditions leading to the child's placement," and (3) the child's status as "neglected and in foster care." Minn. Stat. § 260C.301, subd. 1(b)(2), (5), (8) (2020). And the court determined that the child's best interests would be served by termination of father's parental rights. Father appeals.

[3] These efforts included transportation assistance, housing assistance, supervised visits, chemical-health assessments and treatment, drug screening, parenting assessments and education, and psychological screening and supports.

DECISION

I. Clear and convincing evidence supports the district court's determination that the county's reasonable efforts failed to correct the conditions that led to the child's out-of-home placement.

Parental rights may be terminated only for "grave and weighty reasons." *In re Child of E.V.*, 634 N.W.2d 443, 446 (Minn. App. 2001) (quotation omitted). We will affirm a district court's decision to terminate "when at least one statutory ground for termination is supported by clear and convincing evidence," when "termination is in the best interests of the child," and where "the county has made reasonable efforts to reunite the family." *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

In reviewing a termination decision, we conduct a two-step analysis. First, we "review the district court's findings of the underlying or basic facts for clear error." *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 17, 2012). Findings are clearly erroneous "when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted); *see also In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* in a TPR appeal), *rev. denied* (Minn. Dec. 6, 2021). Second, we review the ultimate determination "of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *J.R.B.*, 805 N.W.2d at 901.

As noted above, the district court determined that clear and convincing evidence established three statutory grounds for termination, including the failure of reasonable efforts under the direction of the county to correct the conditions leading to the child's out-

of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5). Father does not challenge the reasonableness of the county's efforts. Nor does he contend that the district court's termination decision reflects abuse of discretion. Rather, father argues that the county did not prove this statutory termination ground by clear and convincing evidence.

Father contends that the county failed to meet its burden because the evidence shows that he "meaningfully and substantially complied" with his case plans and the county's efforts corrected the conditions that led to the child's out-of-home placement. The record defeats both contentions.

There is "no . . . presumption that completion of [a] case plan amounts to a correction" of the conditions that led to a child's out-of-home placement. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012). The "critical issue" is not whether a parent technically complied with their case plan, but "whether the parent is presently able to assume the responsibilities of caring for the child." *Id.* The district court noted the numerous services and programming the county made available to father and his consistent participation. But the court found that "despite efforts and services to address his chemical health," father continues to use chemicals. More importantly, the district court found that father's ongoing use creates an unsafe environment for the child. The record amply supports these findings.

The safety concerns that led to the child's out-of-home placement in 2019 are the same safety concerns that led to the child's out-of-home placement in 2021—father's intoxication while caring for the child. The almost two years of chemical-health, parenting, and psychological supports the county provided did not prevent father from abusing

chemicals while caring for the child. In both 2019 and 2021, father initially denied and ultimately minimized the extent and impact of his chemical use. The district court found father's "lack of truthfulness, disclosure and minimization" about his chemical use "deeply concerning . . . in the greater context of [father]'s chemical use and his ability to safely and effectively parent [the child]." The record supports the district court's expressed concern about father's ongoing chemical use. The chemical-health professional who assessed father after the 2021 DWI reported that father has "poor recognition and understanding of relapse issues" and described his risk for future substance use as "moderately high."

In sum, the record demonstrates that the same conditions that led to the child's out-of-home placement—father's chemical use that created an unsafe environment—remained present and uncorrected, despite the county's reasonable efforts, at the time of trial. Accordingly, we discern no abuse of discretion by the district court in terminating father's parental rights on this basis.[4]

II. The district court did not abuse its discretion in determining termination of father's parental rights is in the child's best interests.

In any termination proceeding, the best interests of the child are the "paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2020). In assessing the best interests of the child, the district court must make specific findings that analyze "the child's interests

[4] Because we conclude sufficient evidence supports this basis for termination, we need not consider the other two statutory termination grounds. *See* Minn. Stat. § 260C.317, subd. 1 (2020) (stating a district court "may terminate parental rights" if it finds "by clear and convincing evidence that one or more of the conditions" for termination exist); *S.E.P.*, 744 N.W.2d at 385 ("We affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence . . . .").

in preserving the parent-child relationship," "the parent's interests in preserving the parent-child relationship," as well as "any competing interests of the child." Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). Where the interests of the child and a parent conflict, the child's interests take precedence. Minn. Stat. § 260C.301, subd. 7. We review a best-interests determination for an abuse of discretion. *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 669 (Minn. App. 2020). But such a determination is "generally not susceptible" to a "global review of a record," as such review "involves credibility determinations." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quotation omitted).

The record shows that the district court carefully considered the child's interests and balanced them against father's interests in maintaining the parent-child relationship. The district court found that although "[i]t is undisputed" that father loves his child and has an interest in "maintaining the parent-child relationship," father nevertheless has been "unable to comply with the case plan and maintain sobriety." And because the child's interest in having "a caregiver who is stable and sober and has the ability to maintain a safe, stable environment" is paramount, this interest outweighs father's interest in preserving the relationship. The record supports the district court's findings. We decline the invitation to disturb the district court's deliberate and careful exercise of its discretion in deciding that termination of father's parental rights is in the child's best interests.

Affirmed.