STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0595

In the Matter of the Welfare of the Children of:
A. L. H. and J. A. T., Parents.

Filed October 9, 2023
Affirmed
Cochran, Judge

Polk County District Court
File No. 60-JV-22-1484

Brian T. Hardwick, P.C., Grand Forks, North Dakota (for appellant J.A.T.)

Greg Widseth, Polk County Attorney, Scott A. Buhler, First Assistant County Attorney, Crookston, Minnesota (for respondent Polk County Human Services)

Jessica Borowicz, Grand Forks, North Dakota (guardian ad litem)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this appeal following remand, appellant-father challenges the termination of his parental rights. He argues that the district court abused its discretion by determining that further reunification efforts by respondent-county were not required. He also argues that one of six statutory grounds for termination found by the district court is not supported by

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

the record. Because the district court did not abuse its discretion in its determination regarding reunification efforts and at least one statutory ground not challenged by appellant supports termination, we affirm.

FACTS

Appellant J.A.T. (father) has two minor children who are the subject of this case: a child born in May 2014, and a second child born in February 2016. Father is 34 years old, born in September 1989. Between age 18 and 32, father was incarcerated for approximately 11 years, with short periods outside of incarceration. Father went to prison shortly after the older child was born and was in prison when the younger child was born; the children's biological mother was their custodial parent from the children's birth.

In March 2019, following a report that mother physically abused the older child, respondent Polk County Human Services petitioned to have the older child adjudicated as a child in need of protection or services. The child was placed out of the home and then, in April 2019, adjudicated as a child in need of protection or services. In October 2019, after the child returned home for a trial home visit, the county filed an amended petition alleging that both children were in need of protection or services based on mother's physical abuse. Both children were placed in foster care on September 30, 2019, and then adjudicated as children in need of protection or services in November 2019. The children have remained together, in the same foster care placement since at least October 2, 2019. Father did not appear at any of these child protection proceedings in 2019.

In August 2020, the county filed a petition to terminate mother's and father's parental rights. Father denied the petition, and mother agreed to voluntarily terminate her

rights if father's parental rights were terminated. Following a trial, the district court involuntarily terminated father's parental rights. In its order, the district court determined that the county proved six statutory grounds for termination, that the county made reasonable efforts to reunify father with the children and that further efforts to reunify father with the children would be futile, and that termination was in the children's best interests.

Father appealed the termination of his parental rights and we reversed, concluding that the district court erred by determining that the county made reasonable efforts to reunify father and the children. *In re Welfare of Child. of A.L.H.*, No. A21-0966, 2022 WL 519228 (Minn. App. Feb. 18, 2022). We concluded that the county failed to make reasonable reunification efforts because it did not develop a case plan for father and because the district court's posttrial finding that further reunification efforts would be futile was insufficient without a pretrial determination excusing the county from making reasonable efforts. *Id.* at *4-5. We remanded for further proceedings. *Id.* at *5.

On remand, the district court ordered the county to develop a case plan to reunify father with the children. In March 2022, the county social worker met with father to discuss the case plan, which included a parental capacity assessment, a chemical dependency assessment, a mental health diagnostic assessment, and parenting skill development. Father completed the three assessments and began working with a professional on a parenting curriculum.

Because of the limited contact between father and the children, the district court directed the county to enlist mental health professionals to "assess/assist" the children for

visitation with father. Both children completed evaluations with therapists. The therapists expressed concern about the effect of reintroducing father to the children and requested to wait for recommendations from the parental capacity assessment before moving forward.

In June 2022, the county filed a 12-page parental capacity assessment completed by a licensed professional. The assessment was based on an interview with father as well as testing and a record review. The assessment noted that father has spent little time with the children, "has had no experience raising his children," and "has spent 11 of his adult years incarcerated." The assessment also noted that father has problems with executive functioning abilities, which will be chronic and adversely impact his ability to adequately parent his children now as well as in the future, and that father's "cognitive limitations also significantly impact his ability to live and function independently." Based on a consideration of several factors affecting parenting ability, the assessment determined that "[father] is not currently capable nor will he ever be capable of ensuring the safety and welfare of his children." The assessment concluded that J.A.T. should not parent the children and that any visitation with the children would have to be approved by their therapists because it could cause traumatic harm to the children. After the parenting capacity assessment was filed, both children's therapists opined that even supervised visits between the children and father presented a high risk of destabilizing the children's mental health.

At father's request, a second parental capacity assessment was conducted with a different assessor. Father and his attorney selected the professional who completed the second assessment. Like the first assessment, the second assessment determined that father

does not have the capacity to parent the children. The assessment stated that father "loves the idea of being a father but is not able to conceptualize or imagine in any sort of realistic way what that will require of him over time" and that "[w]hat [the children] want or need is less of a priority to him, compared to what he wants and needs." The assessment concluded that "[s]ervices to address his parenting deficits would have minimal impact," his compliance with his case plan "ha[d] not improved his capacity to parent," and "[t]he length of time it would take for any substantial progress he may make would far exceed any timelines for permanency, regardless of what services he chooses to utilize."

In September 2022, after the second parental capacity assessment was filed, the county social worker requested that the county be relieved of further reunification efforts and that the county be authorized to commence a new permanency proceeding. The district court granted both requests. The court also denied father visitation during the pendency of the proceedings. In a subsequent pretrial order, the district court confirmed that the county was relieved of its duty to provide reasonable efforts because of the results of the two parental capacity assessments and based on the correspondence from the children's therapists opining that even supervised visitation between the children and father "present[ed] high risk in terms of destabilizing" their "mental health functioning."

On September 16, 2022, the county filed a new petition to terminate father's and mother's parental rights.[1] The petition alleged four statutory grounds: (1) substantial,

[1] During the first permanency proceeding, mother agreed to voluntarily terminate her parental rights only if father's rights were terminated. After this court reversed the termination of father's parental rights, the county explored reunification between mother and the children before bringing the current petition. Mother ultimately consented to the

continuous, or repeated refusal or neglect to comply with parental duties; (2) palpable unfitness; (3) failure to correct the conditions leading to the children's placement; and (4) the children are neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2022). Father denied the petition.

The district court held a trial on father's parental rights on February 2-3, 2023. The district court admitted several exhibits and heard testimony from father, mother, the social worker, both parental capacity assessors, and the guardian ad litem.

The county called the social worker as its initial witness. The social worker first testified about the prior proceeding to terminate father's parental rights. He explained that the county informed father about the child protection proceeding on April 2, 2019, while father was incarcerated. Father did not participate in the child protection proceedings until August 2020, when the county petitioned to terminate his parental rights. The social worker testified that father did not assert his parental rights or ask about reunification efforts. The social worker testified that he was not aware of any contact between father and the children between April 2019 and August 2020. He also testified that, although father indicated he wanted to contact the children in December 2020, father did not contact the children before the May 2021 trial regarding the termination of father's parental rights.

The social worker then testified that, following the remand in March 2022, he immediately developed a case plan for father and made changes requested by father and his attorney. Father complied with the case plan but did not sign it. The social worker

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termination of her parental rights, and the district court terminated her rights December 2022. She is not involved in this appeal.

explained that he continued to work with father on his case plan following the first parental capacity assessment, but the county did not pursue in-person visitation between father and the children because of the possibility of traumatic harm based on the parental capacity assessment and the children's therapists' and guardian ad litem's concerns. The social worker also testified that father has not provided the children with monetary support and that father has contacted the children on only three occasions—once in March 2022, once in April 2022, and once in December 2022. Finally, the social worker testified that the children "have flourished" in foster care and it would be in the children's best interests to terminate father's parental rights.

The county introduced both parental capacity assessments, without objection, during the assessors' testimony. The first assessor testified, consistent with her assessment, that father does not have the capacity to provide for the children's needs and that she did not believe that capacity would be likely to change even with efforts by the county. She also testified that "the children should never be placed in [father's] care" and that father "would not be able to care for their basic needs, ensure their safety, and their welfare." The second assessor similarly testified that father "did not have the capacity to meet their needs and [she] did not picture that changing in the foreseeable future with or without services."

The county also called mother to testify. Mother stated that, except for a short period of time before she learned she was pregnant with the younger child, father never resided with mother and the children. Mother also testified that father did not engage in regular visitation with either child even when offered by mother. And, according to

mother, father was never involved with fulfilling the children's daily needs, such as medical care, food, or clothing.

Father testified on his own behalf at trial. He acknowledged that he has spent most of his life in county jail or prison, that he had limited contact with the children since their birth, and that he had not had a court order for visitation with the children. During the initial child protection proceedings in spring 2019, he was arrested for driving while impaired. While on furlough prior to going to prison, he failed to return to custody and was "on the run" when the children were removed from mother's home in fall 2019. On cross-examination, father stated that he was aware of mother's physical abuse of the children and the child protection proceedings but explained that he did not return to help the children at that point because the county already had placed the children in foster care, and he would be "in custody regardless."

Father further testified that, following remand, he complied with the case plan by completing two parental capacity assessments, a mental health diagnostic assessment, a chemical use assessment and that he followed the recommendations from the chemical use assessment. He also testified that he completed the parenting curriculum required by his case plan. When questioned by the guardian ad litem, father testified that he had gained a lot from the parenting curriculum but was unable to provide any examples about how he would use the techniques to parent the children.

Finally, the guardian ad litem testified that termination was in the children's best interests because father "has never been a consistent part of their lives" and "does not have a bond to them." She also testified that she "do[es] not believe that he has the capability

to parent the children safely" and that father "has not shown that he is able to put the children's interests above his own."

On March 28, 2023, the district court filed its order terminating father's parental rights to the two children. In the order, the district court noted that the parental capacity assessors' testimony was credible and consistent with their assessments. The district court determined that the county had made reasonable and active efforts to reunify the children with father and that "further services for the purpose of reunification is futile and therefore unreasonable under the circumstances"; that clear and convincing evidence supported each of the four statutory grounds alleged in the petition; and that termination of father's parental rights was in the children's best interests. The district court also determined that the county proved two other grounds not alleged in the petition: abandonment, Minn. Stat. § 260C.301, subd. 1(b)(1) (2022), and failure to provide support for the minor children without good cause, Minn. Stat. § 260C.301, subd. 1(b)(3) (2022).

Father appeals.

DECISION

Parental rights should be terminated only "for grave and weighty reasons." *In re Welfare of Child. of B.M.*, 845 N.W.2d 558, 563 (Minn. App. 2014) (quotation omitted). A district court may involuntarily terminate parental rights when (1) at least one statutory ground for termination is supported by clear and convincing evidence, (2) the county has made reasonable efforts to reunite the parent and children or such efforts were not statutorily required, and (3) termination is in the children's best interests. Minn.

Stat. §§ 260C.301, subds. 1(b), 7, 8, .317, subd. 1 (2022); *see also In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

When reviewing a district court's decision to terminate parental rights, we review the district court's factual findings for clear error, and we "review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). "We give considerable deference to the district court's decision to terminate parental rights." *S.E.P.*, 744 N.W.2d at 385. "But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *Id.*

Father challenges the termination of his parental rights to the children on two grounds. First, he argues that the district court abused its discretion by relying on the parental capacity assessments to determine that further reunification efforts were not required. Second, he argues that the record does not contain clear and convincing evidence supporting the termination of his parental rights under Minnesota Statutes section 260C.301, subdivision 1(b)(1). Father does not challenge the district court's determination that five other statutory grounds for termination are supported by clear and convincing evidence or its determination that termination of his parental rights is in the children's best interests. We address each argument in turn.

I. The district court did not abuse its discretion by determining that further efforts to reunite father and children were futile.

Father challenges the district court's determination regarding reunification efforts. In a proceeding to terminate parental rights, the district court must make a specific finding either that (1) the agency made reasonable efforts to "rehabilitate the parent and reunite the family" or (2) "reasonable efforts for reunification are not required as provided under section 260.012." Minn. Stat. § 260C.301, subd. 8. In turn, Minnesota Statutes section 260.012 (2022) provides that "the [district] court may determine that the provision of services or further services for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances." Minn. Stat. § 260.012(h); *see also id.* (a)(7) ("Reasonable efforts to prevent placement and for rehabilitation and reunification are always required except upon a determination by the court that a petition has been filed stating a prima facie case that . . . the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances.").

"[J]ust as the agency must establish the reasonableness of its efforts by clear and convincing evidence, it also must establish the unreasonableness or futility of reunification efforts by clear and convincing evidence." *In re Welfare of Child. of A.D.B.*, 970 N.W.2d 725, 730 (Minn. App. 2022). "We review the determination that reunification efforts would be futile for an abuse of discretion." *Id.*

Father challenges the district court's reliance on the parental capacity assessments when relieving the county of its reunification efforts. He argues that he fully complied

with his case plan and thus the district court abused its discretion when it determined that he was unable to parent his children. We are unpersuaded.

When reviewing the termination of parental rights, "[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." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012). The district court did not abuse its discretion by relying on the parenting assessments in making this determination. The record reflects that the original parenting assessment opined that father was not able to parent his children at the time of the assessment nor would he be capable of ensuring the safety and welfare of the children in the future. Similarly, the second assessment—completed by an assessor chosen by father—determined that father did not have the capacity to parent his children and that "[s]ervices to address his parenting deficits would have minimal impact." The second assessment also specifically found that father's compliance with his case plan "ha[d] not improved his capacity to parent," and that "[t]he length of time it would take for any substantial progress he may make would far exceed any timelines for permanency, regardless of what services he chooses to utilize." Moreover, father did not object when both assessments were admitted at trial, and he did not challenge the assessors' qualifications or their conclusions. Nor did he offer any evidence from any qualified professional disputing the findings of the two assessments. Accordingly, we discern no abuse of discretion in the district court's consideration of the parental capacity assessments.

The record also supports the district court's determination that further reunification efforts were not required. Generally, the county must make an affirmative request to be relieved of further efforts based on futility before the district court may relieve the county of reasonable efforts. *See A.D.B.*, 970 N.W.2d at 733. Here, in contrast to the first proceeding to terminate father's parental rights, the county developed a case plan and only requested to be relieved from further efforts after working with father on his case plan for several months. The county made the request after the children's therapists opined that even supervised visits with father presented a high risk of destabilizing the children's mental health and the second parental capacity assessment concluded that father's compliance with his case plan had not improved his capacity to parent and that further services would have minimal effect. On this record, we cannot conclude that the district court abused its discretion when it relieved the county of further reunification efforts.

To the extent that father argues we should reweigh the parental capacity assessments and his compliance with the case plan, we may not do so. Our role is to review the record to confirm that evidence exists to support the factual findings made by the district court. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 223 (Minn. 2021). At trial, both parental capacity assessments were admitted without objection, and the district court determined that both parental capacity assessors testified credibly and consistently with their assessments. Both assessments and the assessors' testimony support the district court's finding that the provision of further services to rehabilitate father would be futile. Accordingly, we conclude that the district court did not abuse its discretion by determining that further efforts for reunification were not required.

II. The district court did not abuse its discretion by determining that clear and convincing evidence supports at least one statutory ground for termination of father's parental rights.

Father also argues that one of the six statutory grounds for termination of parental rights found by the district court—abandonment—is not supported by the record. Father does not challenge the district court's determination that clear and convincing evidence in the record supports termination based on the other five statutory grounds.

To terminate parental rights, the district court must find "that one or more" of the statutory grounds for termination specified in Minnesota Statutes section 260C.301, subdivision 1(b) exist. Minn. Stat. § 260C.301, subd. 1(b)(1)-(9) (2022). "In reviewing a decision to terminate parental rights, the appellate court determines whether there is clear and convincing evidence to support at least one statutory ground for termination." *In re Child. of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). If clear and convincing evidence supports at least one of the statutory grounds found by the district court, we need not address whether the other statutory grounds are supported by the record. *See id.* ("Only one [statutory] ground must be proven for termination to be ordered.").

Here, the district court determined that termination of father's parental rights was supported by clear and convincing evidence for all four statutory grounds identified in the petition: (1) substantial, continuous, or repeated refusal or neglect to comply with parental duties; (2) palpable unfitness; (3) failure to correct the conditions leading to the children's placement; and (4) the children are neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8). The district court also found that termination was supported by two additional grounds not alleged in the petition—abandonment, *see*

id., subd. 1(b)(1), and failure to provide support for the minor children without good cause, *see id.*, subd. 1(b)(3).

We conclude that the district court's findings support termination of father's parental rights based on the first ground set forth in the county's petition—failure to comply with parental duties. Under this provision, a district court may involuntarily terminate parental rights if the court finds "that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed" by the parent-child relationship and "either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable." Minn. Stat. § 260C.301, subd. 1(b)(2). In particular, "[t]he court must find that at the time of termination, the parent is not presently able and willing to assume his responsibilities and that the parent's neglect of these duties will continue for a prolonged, indeterminate period." *J.K.T.*, 814 N.W.2d at 90 (quotation omitted).

In its order, the district court determined that the county proved, by clear and convincing evidence, that father refused or neglected to comply with the duties imposed by the parent-child relationship. To support this determination, the district court found that father failed to develop a relationship with the children and that he did not have consistent contact with the children. The district court was particularly troubled by father's decision to not engage with the child protection proceedings while on warrant status from July 2019 to June 2020, even though the children allegedly had been physically abused by mother. The district court also found that father had not exercised his parenting duties in other

ways—he had not contributed to the children's health or educational development and did not give the children gifts until March 2022. And the district court noted that father "is unable to say with certainty the birthdates of [the children] and their grade in school." The district court determined that father "places his own wants and needs over the needs of his own [c]hildren" and "[n]o reasonable efforts [by the county] would resolve this situation." As a result, the district court concluded that his "life choices render him unable to comply with the duties imposed upon the father by the parent and child relationship."

Father does not dispute the district court's findings, which are supported by the record. Father's own testimony established that he had limited contact with the children since they were born. Father also testified that he was aware of mother's physical abuse and the child protection proceedings but did not appear because he was "on the run" and would be placed in custody. And as discussed above, the record supports the district court's finding that further reunification efforts by the county would be futile and therefore unreasonable. As a result, we discern no abuse of discretion in the district court's determination that clear and convincing evidence supports termination based on father's failure to comply with his parental duties. *See* Minn. Stat. § 260C.301, subd. 1(b)(2). And, because the record supports the district court's determination based on this statutory ground, we decline to reach father's argument regarding the district court's finding that termination is also supported on the basis of abandonment.[2] *See* Minn. Stat. § 260C.301, subd. 1(b)(1).

[2] The county argues that this court need not address the district court's finding of abandonment because it was not alleged in the petition and thus could not be a basis for

In sum, the district court did not abuse its discretion by determining that further reunification efforts were not required and that at least one statutory ground for termination was supported by clear and convincing evidence. And, as noted above, father does not contest the district court's determination that termination is in the best interests of the children. Therefore, we affirm the district court's termination of father's parental rights to the two children.

Affirmed.

terminating father's parental rights. We agree that the termination of parental rights must be based on a ground alleged in the petition. *See* Minn. R. Juv. Prot. P. 58.04(c)(1) ("If the court finds that one or more statutory grounds set forth in the termination of parental rights petition are proved, the court may terminate parental rights."). We also note that we are affirming the district court's termination of parental rights based on Minnesota Statutes section 260C.301, subd. 1(b)(2), one of the statutory grounds alleged in the petition.