STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2078

In the Matter of the Welfare of the Child of: J. M. G. and R. A. G., Parents

Filed May 16, 2011
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-JV-10-2721

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Considered and decided by Wright, Presiding Judge; Larkin, Judge; and Collins, Judge.*

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

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges the district court's order terminating his parental rights. Because a statutory ground for termination was established by clear and convincing evidence and termination is in the child's best interests, we affirm.

FACTS

This appeal concerns the welfare of M.G., a female child born on November 5, 2005, to mother R.A.G. and appellant-father J.M.G. Mother and father were married at the time of M.G.'s birth.

In September 2009, mother and father were living separately; M.G. was living with mother. On September 4, the Hennepin County Human Services and Public Health Department (department) removed M.G. from mother's care and placed her in foster care. The department considered placing M.G. with father instead of in foster care, but father stated that he could not care for her at that time. On September 10, the department filed a child-in-need-of-protection-or-services (CHIPS) petition. The CHIPS petition explained that M.G. was born at 35 weeks gestation and was diagnosed with Global Development Delay, Submucous Cleft, Failed Atoacoustic Admissions, Moderate Persistent Asthma, Congenital Hydrocephalus and Ventriculomegaly. The petition alleged that M.G.'s medical needs were not being met. According to the petition, mother stated that father had only seen M.G. on three occasions since her birth. In a telephone interview with the child protection investigator prior to the filing of the CHIPS petition, father stated that he had last seen M.G. in December and August 2008.

M.G. subsequently was adjudicated a child in need of protection or services based on mother's admissions that she has emotional, physical, and mental disabilities which negatively impact her ability to properly parent M.G. Mother also admitted that M.G. has special needs, including hearing impairment, which requires caregivers to communicate with her using sign language.

During the CHIPS proceeding, the district court ordered father to successfully complete a case plan. This case plan required father to attend to his own medical and mental-health needs; become knowledgeable of M.G.'s medical care and limitations; attend M.G.'s medical appointments; learn to communicate with M.G. in sign language; and attend visits with M.G.

Although father had little contact with M.G.'s service providers prior to her placement, he attended most appointments for M.G. once he was provided with a case plan. Father also had regular visitation with M.G. after she was placed in foster care. But the foster parent and assigned guardian ad litem (GAL) expressed concerns regarding father's interactions with M.G. At the termination trial, M.G.'s foster parent testified that although father regularly visited with M.G., he did not ask questions about M.G. when given the opportunity. The GAL testified that father sometimes did not change M.G.'s diapers during visits. The GAL also had concerns about father's lack of proper hand-washing, his failure to pay attention to M.G.'s hearing aids when they obviously needed adjustment, his inability to set appropriate limits for M.G., and his tendency to fail to guide M.G. to appropriate activities or objects.

On March 29, 2010, the department filed a petition seeking to terminate mother's and father's parental rights to M.G. The petition alleged that father did not understand the necessity of learning sign language to communicate with M.G.; that father had not documented that he had addressed his mental and physical health issues such that he was capable of caring for a young child with medical and physical needs; and that at the time of the petition's filing, father had not scheduled a parenting or psychological assessment. The petition further stated that M.G. "has special needs that her parents are unable and/or unwilling to address."

The district court held a trial on the termination petition on September 20-23. At the beginning of trial, mother voluntarily terminated her parental rights and requested that M.G.'s foster parents be allowed to adopt her. Father's case proceeded to trial. At trial, the district court allowed the department's attorney to question father about his two other non-marital children. Among other things, counsel asked about the children's birthdates, the spelling of their names, the spelling of their mothers' names, and details concerning father's relationship with those mothers. Father misspelled his eldest son's last name and provided an incorrect birth date. Father also gave an incorrect name for his youngest son and could not remember his birth date. Father testified that he did not seek visitation with either child, but he testified that he thought he had no legal right to visitation with his eldest son. Father acknowledges that he "became angry and emotionally overcome during both the department's examination and during redirect by his counsel, and was crying at two points during these examinations."

Following trial, the district court terminated father's parental rights to M.G. Father filed a motion for a new trial, which the district court denied. This appeal follows.

D E C I S I O N

I.

We begin with father's claim that the district court abused its discretion by admitting evidence regarding his two other children. Father argues that this testimony was irrelevant, more prejudicial than probative, confusing, obtained in a harassing manner, and only offered to "goad [him] into an outburst on the stand."

"The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). "On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *In re Welfare of D.D.R.*, 713 N.W.2d 891, 904 (Minn. App. 2006) (quotation omitted). "If there is a reasonable possibility that the verdict might have been more favorable to the defendant if the evidence had not been admitted, then the error in admitting the evidence was prejudicial error." *Id.* (quotation omitted).

Father argues that the evidence regarding his older children was irrelevant and therefore inadmissible. *See* Minn. R. Evid. 402 ("Evidence which is not relevant is not admissible."). "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401.

The district court concluded that "[t]he evidence introduced regarding [father's] prior children was relevant and probative related to a number of issues in the proceeding to determine permanency for [M.G.] including but not limited to, [father's] experience with children and ability to parent, opportunity to parent, ability to understand legal proceedings, and [his] credibility." We agree. A predominant issue at trial was whether father can meet the needs of a special-needs child. His lack of involvement and parenting experience with his other two children reasonably factors into that determination.

Father further argues that the evidence was more prejudicial than probative and therefore should have been excluded. *See* Minn. R. Evid. 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.") The district court found that "[t]he probative value of the evidence was not substantially outweighed by the danger of unfair prejudice." It explained:

> Any arguable prejudice from the evidence admitted or from [father's] outbursts, whether attributable to the introduction of that relevant evidence or attributable to some other emotional issue, did not outweigh the probative value of the evidence regarding [father's] other children, particularly in the context of a contested permanency proceeding wherein [father's] parenting was a central issue.

To the extent that there was prejudice, it was outweighed by the evidence's probative value, especially in the context of a bench trial. *See State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009) (stating that, in a bench trial, "[t]he risk of unfair prejudice to [the defendant] is reduced because there is comparatively less risk that the

district court judge, as compared to a jury of laypersons, would use the evidence for an improper purpose or have his sense of reason overcome by emotion").

Father also argues that the evidence should not have been admitted because it was confusing, contending that "[t]he issue was not termination of [his] parental rights to [his other children]; the issue was termination of his rights to [M.G.]." *See* Minn. R. Evid. 403. The district court found that "[t]he probative value of the evidence was not substantially outweighed by . . . confusion of the issues." We agree. This was a bench trial. The district court undoubtedly understood the issue presented. There is simply nothing in the record indicating that the district court was confused by this evidence.

Lastly, father argues that the department's questions regarding his two other children "amounted to harassment, particularly those which suggested that [father] was lying about his testimony concerning visitation." Harassment is defined as "[w]ords, conduct, or action (usually repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose." *Black's Law Dictionary* 784 (9th ed. 2009). The district court should not allow witnesses to be harassed, *see* Minn. R. Evid. 611.01(a) ("The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to . . . protect witnesses from harassment or undue embarrassment."), but the department's questioning did not constitute harassment. Throughout father's testimony, the department pointed out inconsistencies in an attempt to demonstrate that he understood the proper procedure for obtaining visitation with his children but never sought visitation because he had no interest in seeing them. This was

a valid line of questioning in a proceeding that concerned father's parenting abilities. Although we recognize that the questioning understandably was uncomfortable, it served a legitimate purpose.

In summary, the district court did not abuse its discretion by admitting evidence regarding father's two other children.

II.

"An order terminating parental rights is reviewed to 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). "Termination of parental rights will be affirmed as long as at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). On review, "[c]onsiderable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). This court will review the record in the light most favorable to the district court's factual findings, which will be set aside only if a review of the entire record leaves the "definite and firm conviction that a mistake has been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotations omitted).

In terminating father's parental rights, the district court determined that father failed to meet the parental duties imposed by the parent-child relationship, *see* Minn. Stat. § 260C.301, subd. 1(b)(2) (2010); that he failed to correct the conditions requiring

placement, *see* Minn. Stat. § 260C.301, subd. 1(b)(5) (2010); that he was palpably unfit to parent M.G., *see* Minn. Stat. § 260C.301, subd. 1(b)(4) (2010); and that M.G. was neglected and in foster care, *see* Minn. Stat. § 260C.301, subd. 1(b)(8) (2010). The district court also determined that termination of father's parental rights is in M.G.'s best interests. Father argues that the evidence does not support these determinations.[1]

Minn. Stat. § 260C.301, subd. 1(b)(2) provides that the district court may terminate parental rights if

> the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, 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.

M.G. has serious and significant medical needs. According to her primary physician, M.G. has congenital hydrocephalus with aqueductal stenosis; status post VP shunt placement; mixed hearing loss, severe; moderate to high myopia, amblyopia, short stature, and hyperextensibility; C2-C3 spinal vertebral anomalies; submucous cleft palate; developmental delay; behavioral concerns; probable genetic syndrome; and persistent asthma. M.G.'s daily care involves extensive routines and help with basic tasks such as

[1] Father also raised two new arguments in support of reversal for the first time at oral argument. Because these arguments were not briefed, we do not consider them. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating that issues not briefed on appeal are waived).

oral hygiene and diapering. At the time of trial, M.G.'s care involved 14 medical specialists. M.G. has severe hearing loss, necessitating a caregiver who can communicate with sign language. In addition, M.G. may lose her sight, which creates a heightened need for her to learn sign language at this time.

The district court found that father's "own challenges seriously impact his ability to understand and care appropriately for the child's many special needs," and that he "lacks an appreciation of his significant mental health issues." Father is diagnosed with Psychotic Disorder Not Otherwise Specified, which is currently asymptomatic. The district court found that father's behavior indicates that he suffers from paranoia. Father told the GAL that she was on a "search and destroy mission" when she inquired about coming to visit his home as part of her duties. For significant periods of time, father refused the GAL access to his home and even told her that he would call the police if she came to his home. Father similarly discouraged the child protection social worker from visiting his home, indicating that he did not understand the need for a visit to evaluate his home for potential placement. Father admitted being concerned that the GAL or some other party sent cars to watch him during his visits with M.G. The district court found that this concern was unreasonable and unfounded, and that father's contrary explanations or rationalizations of those incidents were not reasonable or credible.

Once father allowed the GAL into his home, he showed her a "panic room," which was a walled space, similar to a safe or vault, featuring a secure door that locked from the inside. He was proud of the quality of the room's ability to keep others out once a person got inside. Father indicated that M.G. could seek safety in the room from some

unspecified threat. As stated by the district court: "[father's] creation of the 'panic room' demonstrates an elevated level of fixation on unfounded fears, and further indicates his lack of understanding of the safety needs of the child." Furthermore, "[p]lacement of this child, given her limited ability to communicate as well as her physical challenges, in a home with access to a secure room with a door that locks from the inside introduces a serious physical safety concern."

The district court also found that father's behavior indicates that he suffers from delusions. Father claimed that he "aced" a neuropsychological assessment, but the assessment report indicates that his results were "mildly abnormal" and that his performance was impaired on most tests of attention and concentration. The assessor drew specific attention to father's "suboptimal hygiene, poor concentration, and tendency to make bizarre comments." The report further indicates that father's assessment was complicated by his "apparently deliberate attempt to portray himself as virtuous and without problems." The assessor indicated that father was not fully forthcoming, compromising the accuracy of the assessment.

In addition, father claims that he has "special abilities" and "special talents" and that M.G. shares those talents. Father has represented himself to others, particularly the child protection social worker and the GAL, as a genius and a Mensa member. He told the child protection social worker that Mensa members did not need to undergo neuropsychological evaluations. However, testing indicates that his IQ is in the average range of intellect. The district court noted that father's representations indicate that he attempts to portray himself and his abilities in a false and delusional way.

The district court also found that father's "testimony introduced concerns about his ability to regulate his emotions in a predictable manner." The district court noted that over the course of trial, father "demonstrated extreme and sometimes unexpected episodes of severe emotions, including distress and anger. These episodes included yelling at counsel, hyperventilation, bouts of crying and visible shaking." Father reacted in this manner on cross examination, as well as during redirect examination by his own attorney. The district court concluded that father's "emotional volatility at trial raises concerns about his ability to cope on a day-to-day basis with the severe and ever-evolving needs of a special-needs child with communication deficits."

The district court further found that father "lacks an ability to comprehend the extent and severity of the child's needs" and "to anticipate and take appropriate precautions to physically protect the child, particularly given the child's special challenges." In addition, father "lacks an ability to interpret the child's behaviors and developmental markers accurately." The district court provided the following examples to support its conclusions. First, the record evidence indicates the necessity of communicating with M.G. by sign language. But until less than a year before trial, father had not yet begun to learn sign language and did not acknowledge its importance. At the time of the district court's order, father's demonstrated knowledge of sign language was materially less than what would be necessary to adequately parent a special-needs child who must use sign language as her main form of communication. Second, father told the GAL that M.G. shares his "special abilities" and could perform complicated tasks such as programming his GPS or using a camera phone. The district court appropriately found

that this shows that father "does not understand the developmental stages or limitations that are this child's reality." Third, father has interpreted innocuous behavior by M.G., such as pointing or making verbal exclamations, to indicate that she can communicate at a level beyond her developmental stage or understand complex concepts beyond her demonstrated ability.

Finally, the district court found that because father does not understand the necessity of service provider expertise and guidance to address M.G.'s special and evolving needs, he lacks an ability to ask questions of M.G.'s service providers and to advocate on her behalf. In fact, father has demonstrated outright animosity towards service providers, as well as reluctance to cooperate with them. Father's "inability to ask questions, cooperate with service providers, and acknowledge or address his own mental health needs indicates that he is unable to put the child's needs first."

The district court concluded that the department "provided reasonable and appropriate case plan services to [father] to assist him in addressing the issues necessitating out-of-home placement" and "numerous meaningful opportunities to address the relevant barriers to adequate parenting." These opportunities included, but were not limited to, a psychological evaluation; individual therapy; resources for father to address his own physical and mental health needs; visits with M.G. to learn about her needs; a parenting assessment and recommendations; a parenting program; home visits by the child protection social worker and the guardian ad litem to assist in making the home suitable; access to M.G.'s service providers; and opportunities to engage and learn about M.G.'s treatment, needs, and challenges. The district court determined that, despite

the provision of these efforts, father did not correct the conditions necessitating M.G.'s out-of-home placement and that father is not equipped to address M.G.'s needs.

Father argues that the department failed to provide him with reasonable rehabilitative services. Reasonable efforts "must go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). Father asserts that "[a]lthough the department social worker *specified* a lot of required services here, it did not offer [him] a lot of services which were reasonably accessible to him, since he was forced to repeatedly drive to the twin cities from his home in Stearns County." We disagree. First, father did not request services at or near his home. In addition, father testified that he would move to the Twin Cities if necessary. And he attended M.G.'s appointments, his appointments, and had access to M.G.'s service providers, even though he now claims that the services were not reasonably accessible. The location of the services does not provide a basis for reversal.

Father also argues that

> [t]ermination proceedings are forward looking. The evidence must address conditions as they exist at the time of trial. . . . This means that, although [M.G.] was not being properly cared for by her mother in 2009, in light of [father's] compliance with everything asked of him, the court should have looked forward to his ability to parent in light of all the case planning.

But the district court did just that, finding that "[t]he evidence demonstrates that [father] has serious and untreated mental health challenges which will impede, for the reasonably foreseeable future, his ability to care appropriately for the ongoing physical, mental, and

emotional needs of [M.G.]." The district court also found that "[father] does not now, nor will he in the reasonably foreseeable future, have the ability to understand or appropriately address [M.G.'s] needs to assure her safety."

Father further argues that "[t]he conditions which caused the placement to begin with were the conditions in *the mother's* home, not [father's]." The CHIPS petition designated father as the presumptive father and stated that M.G. was in need of protection or services because her medical needs were not being met. Although M.G. may have been residing with mother when she was first placed in foster care, father had rights and obligations as the presumptive father. *See Mund v. Mund*, 252 Minn. 442, 445, 90 N.W.2d 309, 312 (1958) (noting that a parent's support obligation is derived from a parent's "legal and natural duty as members of society to take care of [their children] until they are old enough to take care of themselves"); *cf.* Minn. Stat. § 257.541, subd. 1 (2010) ("The biological mother of a child born to a mother who was not married to the child's father when the child was born and was not married to the child's father when the child was conceived has sole custody of the child until paternity has been established . . . or until custody is determined . . . ."). Yet father was not involved in M.G.'s care prior to her placement. As the presumptive father, he had a duty to provide for M.G.'s needs, and there is no evidence that mother prevented him from doing so. *See Higgins on Behalf of Higgins v. J.C. Penney Cas. Ins. Co.*, 388 N.W.2d 429, 430 (Minn. App. 1986) ("Under the common law, parents have a legal obligation to support and care for their minor children."), *review denied* (Minn. Aug. 13, 1986). In fact, the department asked father if he could take M.G. into his home and care for her at the time of the initial placement, but

father declined. When foster care could not be avoided, the department "offered services that were timely, available, relevant and culturally appropriate for the child and [father] to remedy the circumstances requiring the foster care placement and permit reunification." But the condition that led to placement—failure to meet M.G.'s special needs—has not changed despite father's cooperation with services.

Father disputes this conclusion. He contends that "the record contains clear and convincing evidence that the conditions *have been corrected*." Father asserts that he did everything that was asked of him:

> he had a psychological assessment; he had a parenting assessment . . .; he had a neuropsychological assessment; he attended most of [M.G.'s] medical appointments; he visited [M.G.] as often as he was permitted under whatever conditions were specified; he learned sign language; he engaged the services of a local social-services worker who guided him in creating a safe portion of his home/workshop for [M.G.]; he cooperated with the department social worker and with the Guardian; and he drove more than 100 miles round trip for each of these appointments.

Father asserts that because he complied with the case plan, his parental rights may not be terminated. But mere compliance is insufficient: the statute requires actual correction of the conditions that formed the basis for the child-protection petition. *See* Minn. Stat. § 260C.301, subd. 1(b)(2).

We recognize that father cooperated with his case-plan services and made a sincere attempt to demonstrate an ability to parent M.G. He is to be commended for his efforts, which undoubtedly stem from his love for his daughter. But a statutory ground for termination was established by clear and convincing evidence: father simply is

incapable of providing for M.G.'s extensive special needs, and reasonable efforts by the department failed to correct this condition.

On this record, we cannot say that the district court clearly erred in its findings. Moreover, the statutory basis for termination under section 260C.301, subd. 1(b)(2), is supported by clear and convincing evidence. Because only one statutory ground must be established to support termination of parental rights, we do not review the other grounds relied on by the district court. *See In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) ("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 and termination is in the best interests of the child . . . .").

III.

In a termination of parental rights proceeding, a child's best interests are paramount so long as a statutory ground for termination is met. Minn. Stat. § 260C.301, subd. 7 (2010). "In analyzing the best interests of the child, the court must 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 R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *Id.*

The district court concluded that it was in M.G.'s best interests to terminate father's parental rights. In so concluding, the court focused on M.G.'s significant special needs, as well as father's inability to appreciate and meet her needs. The district court

acknowledged and considered father's love for M.G., but ultimately found that father does not "have the ability to understand or appropriately address her needs to assure [M.G.'s] safety."

Father argues that he "has worked hard to learn what he needs to know about [M.G.'s] health problems and how to care for them. . . . The best interests requirement is not shown merely because the agency has a foster family which it likes better and which is willing to adopt [M.G.]" There is no dispute that father has satisfied many of the requirements of his case plan. But as discussed above, his progress does not demonstrate his ability to care for a child with extreme special needs, currently or in the future. *See In re Welfare of D.D.K.*, 376 N.W.2d 717, 721 (Minn. App. 1985) (stating that because the child had special needs "demanding exceptional parenting skills . . . there was clear evidence that her mother's inability to provide adequate care would continue in the future"). Moreover, nothing in the district court's order indicates that its findings were swayed by the presence of a prospective adoptive family. The district court correctly determined that M.G.'s interests are paramount. *See* Minn. Stat. § 260C.301, subd. 7 (2010) ("Where the interests of parent and child conflict, the interests of the child are paramount.").

Because a statutory ground for termination was established by clear and

convincing evidence, and because it is in M.G.'s best interests to terminate father's parental rights, we affirm.

Affirmed.

Dated:

Judge Michelle A. Larkin