STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2128

In the Matter of the Welfare of the Children of:
T. G. and K. F., and T. G. and A. G., Parents

Filed May 23, 2011
Affirmed
Minge, Judge

Becker County District Court
File Nos. 03-JV-10-1551, 03-JV-10-1553

Stuart J. Kitzmann, Kitzmann Law Office, Detroit Lakes, Minnesota (for appellant T.G.)

Michael D. Fritz, Becker County Attorney, Detroit Lakes, Minnesota (for respondent county)

Considered and decided by Peterson, Presiding Judge; Minge, Judge; and Muehlberg, Judge.*

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

MINGE, Judge

Appellant-father T.G. challenges the decision of the district court to terminate his parental rights to his four children. T.G. argues that there is insufficient evidence to support the district court's findings that: (1) he neglected to comply with the duties of the parent-child relationship and with key elements of his case plan; (2) the county made reasonable efforts towards reunification; and (3) the termination was in the best interests

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

of the children. Because the district court's findings are supported by clear and convincing evidence, we affirm.

FACTS

T.G. is the biological father of four minor children, the three oldest children were with mother A.G., the youngest with mother K.F. In December 2009, respondent Becker County received a child maltreatment report stating that one of the children had several bruises on her forehead and reported that K.F. hit her for biting her sister. A social worker and police officer went to the school and interviewed the reporting child and T.G.'s other school-aged child. The children repeated the story and reported that T.G. hit one of them with a belt the previous day. The child had a welt consistent with the report. The two school-age children also said that their parents fought, smoked "weed" in front of them, and that they did not feel safe at home and were scared of their parents.

The county then interviewed T.G. and K.F. When the social worker told them that the children were being removed from the home due to malicious punishment, T.G. became angry and belligerent. He threatened and threw his phone at the social worker, had to be restrained several times, drove his van through his yard, and was eventually arrested.[1]

The county then filed Child in Need of Protection or Services (CHIPS) petitions for the four children. At the time the petitions were filed the children were ages seven, five, two, and one. All four have been diagnosed with a variety of disorders, including reactive attachment, anxiety, adjustment, and deprivation.

[1] T.G. subsequently pleaded guilty to fifth-degree assault related to the incident.

In January 2010, T.G. and K.F. admitted that the children were in need of protection. The district court determined that removal of the children from the home was necessary and in their best interests, ordered out-of-home placement, and ordered T.G. to cooperate with the county in completing an out-of-home placement plan (case plan).

T.G.'s case plan was filed and approved by the district court in February 2010. In July 2010, the county filed a petition to terminate the parental rights (TPR) of T.G. with respect to all four children and a petition to terminate the parental rights of A.G. with respect to her three children. K.F.'s parental rights to the youngest child were not the subject of a TPR petition. A three-day trial was held in September and, on November 4, 2010, the district court granted the county's request for TPR as to T.G. and A.G. T.G. appeals the termination. A.G.'s parental rights are not part of this appeal.

D E C I S I O N

This court reviews "the termination of parental rights to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We give deference to the district court's decision, but we also closely examine the sufficiency of the evidence to determine whether it was clear and convincing. *Id.* We affirm when at least one statutory ground for termination is supported by clear and convincing evidence, the county has made reasonable efforts to reunite the family, and termination is in the best interests of the child. *Id.*; *see also In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004).

I. Sufficiency of the Evidence

The first issue is whether the district court had clear and convincing evidence to support termination under at least one statutory ground. The district court terminated T.G.'s parental rights on two grounds: (1) he failed to comply with the duties of the parent-child relationship; and (2) he did not comply with a reasonable case plan. Minn. Stat. § 260C.301, subd. 1(b)(2), (5) (2010).

A. Compliance with Duties of Parent-Child Relationship

Parental duties include "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." *Id.*, subd. 1(b)(2). The district court found that T.G. was physically and financially able to meet his parental duties, that he failed to comply with these duties, and that reasonable efforts by the county had failed to correct the conditions that formed the basis of the petition.

T.G. argues that there is not clear and convincing evidence to substantiate the district court's findings and that he did not adequately meet his parenting duties. At trial, mother K.F. agreed with T.G.'s assertion that he had "to the best of his ability attended to the children's needs" and stated the he provided clothes, food, and a roof for the children. She also testified that T.G. was aware of his children's special needs.[2]

[2] At trial, mother K.F. was conflicted on whether she supported the termination of T.G.'s parental rights. At the outset, K.F. admitted to the allegations against T.G. and agreed that his parental rights should be terminated. However, when she testified on the third day, she answered "no" when asked if she supported the TPR against T.G. When later asked by her own attorney if she stood by the admissions she entered on the first day of trial, she then answered "yes."

Under the statute, the parent-child relationship includes more than just providing for the children's physical needs. T.G. must also provide for the children's mental and emotional health and development. *See id.* All four of his children have special needs, which increase the responsibility of the parent in the relationship. At trial, several witnesses testified to T.G.'s inadequate parenting skills in general and his inability to meet the increased challenges of children with special needs in particular.

As part of his case plan, T.G. and K.F. visited the children three times a week. Jill Esser, the child-protection case worker assigned to the children, testified about her observations. During the visits, K.F. did most of the parenting while T.G. often ignored the children's requests to do things and read by himself. During one visit T.G. spent over an hour by himself playing with playdough. He would not acknowledge the children when he arrived or when he left and he gave much more attention to one child than the others. Esser also noted that during one visit, T.G. threatened physical punishment by lifting up his shirt and saying words to the effect, "I've got my belt on and I'm not afraid to use it." She concluded that T.G. "lacks the desire, willingness and capacity to meet these kids' emotional needs, and these are emotional needs that they have developed because they were raised in a neglectful and abusive environment." Esser stated that the TPR was in the best interests of the children.

Another part of T.G.'s case plan was to participate in a capacity-to-parent evaluation. Dr. Kathleen Schara evaluated T.G., diagnosed him with an antisocial-personality disorder, and found him deficient with respect to nine of sixteen parenting factors and adequate in only two. Dr. Schara recommended that T.G. not be reunified

with his children and that his parenting rights be terminated, noting that he "would have difficulty meeting the emotional needs of normal children, and when you have multiple children with . . . serious emotional problems, that would be difficult for any parent and probably impossible for [T.G.] to meet at this time."

T.G. argues that the capacity-to-parent evaluation by Dr. Schara was invalid for at least three reasons: (1) the list of parenting factors was read to T.G. instead of T.G. being allowed to read them himself; (2) Dr. Schara received erroneous anger-management information from Esser (the child-protection worker); and (3) several of the tests administered to T.G. produced invalid results. First, we note that Dr. Schara was aware that reading the parenting factors to T.G. is not the preferred method of conducting the parenting-factor evaluation and could have a negative effect if the person reading the questions is aware of the answers and can influence those answers. But Dr. Schara testified that because the reader was not aware of T.G.'s answers, it was unlikely that method of giving the test compromised the results. Also, although Esser erroneously told Dr. Schara that T.G. had completed an anger-management assessment and that he was not amenable to treatment, the record indicates that Dr. Schara became aware of this inaccuracy when she contacted the doctor who started the anger-management assessment and learned that the assessment had been deferred until after Dr. Schara's evaluation. Here, Dr. Schara had accurate information at the time she completed her report. This is confirmed by her recommendation that T.G. complete an anger-management assessment. Finally, Dr. Schara testified that even if some of the test results are invalid, due to the variety and number of tests given, she could find patterns of T.G.'s parental inadequacies.

We conclude that the evidence supports the district court's decision to consider the results of the capacity-to-parent evaluation and Dr. Schara's conclusions in determining T.G.'s inability to meet the requirements of the parent-child relationship.

T.G.'s in-home therapist testified that T.G. was not emotionally available to the children and was unable to provide consistency and structure, which were even more important for children with special needs. The therapist testified that T.G. had not reached the point where he could adequately care for his children.

We also note that the district court found that T.G. was withdrawn during a majority of his parenting visits, did not have the desire, willingness, or capacity to meet his children's emotional needs, and did not significantly improve his parenting skills despite substantial one-on-one therapy. We conclude that the record contains substantial clear and convincing evidence to support the district court's finding that T.G. failed and neglected to comply with the duties imposed on him by the parent-child relationship.

B. Compliance with Case Plan

Although the district court only needed to find one statutory ground for termination, it determined that there was also clear and convincing evidence that T.G. did not substantially comply with his case plan, another basis for TPR. *See* Minn. Stat. § 260C.301, subd. 1(b)(5).

For example, one key aspect of T.G.'s case plan was to complete an in-patient-treatment program for cannabis addiction and abuse of alcohol. This requirement was included in the case plan because of the results of the chemical-dependency assessment and capacity-to-parent evaluation. Twenty days into a 28-day program, T.G. quit against

staff advice after social worker Esser informed him that the county was not going to recommend reunification with his children and that K.F. had to move out of the house to retain custody of her child. The discharge report stated that "[T.G.] did the bare minimum to get by in treatment and did not ever appear to take any personal responsibility for this addiction and the resulting consequences from his using behavior." The report concluded that his "prognosis for extended recovery would appear grave based on his lack of investment in treatment, minimal disclosure, and leaving treatment against staff advice." T.G. also failed the requirement to maintain sobriety by twice testing positive for high levels of alcohol.

The record contains clear and convincing evidence supporting the district court's finding that T.G. did not complete critical aspects of his case plan.

II. Reasonable Efforts

The second issue is whether the county made reasonable efforts to reunite the family. In TPR proceedings the court shall make specific findings on the nature and extent of efforts to rehabilitate the parent and reunite the family. Minn. Stat. § 260C.301, subd. 8 (2010). Reasonable efforts do not require perfection. *See In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990) (finding that reasonable efforts were made despite failure to inform parent of chemical-dependency treatment facility closer to home), *review denied* (Minn. July 6, 1990). At a minimum, reasonable efforts require that the appropriate agency provide services that would assist in alleviating the conditions leading to the determination of a child in need of protection. *In re Welfare of M.A.*, 408 N.W.2d 227, 235-36 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987). The state

has the burden of proving reasonable efforts by clear and convincing evidence. *Id.* at 231.

T.G. argues that vital services were never offered, offered too late, or interrupted. He states that the county goaded him into leaving inpatient treatment early and that neither an anger-management assessment nor a parenting class was ever offered.

The record discredits T.G.'s claims. It indicates that T.G. had already nearly been terminated from the inpatient-treatment program for lack of participation and that while he was there "[i]t did not appear that [T.G.] made gains from the treatment program and was here solely for compliance with child protection." Before he left the program, staff advised T.G. to stay and complete his treatment. The evidence supports the conclusions that he was not participating in the in-patient treatment program, that he affirmatively chose to leave, and that the program would have had minimal affect even if he had stayed the full duration.

T.G. also received significant rehabilitation services, including an anger-management assessment. The assessment was deferred until after the capacity-to-parent evaluation. After a meeting and reviewing the evaluation, the doctor concluded that anger-management treatment was inadvisable at that time and that "it will be important for [T.G.] to desire change in his emotional processing before treatment is likely to be helpful."

T.G. also testified that he was not offered parenting classes until the termination petition was filed. However, T.G. had over 100 hours of in-home counseling to address his parenting skills with a family worker and with an intensive in-home therapist. The

county also provided supervised visits with his children, assisted him in obtaining transportation by furnishing gas vouchers and volunteer drivers, assisted him in obtaining food for the children by providing food-pantry vouchers, and helped him arrange the inpatient-treatment program. The record contains clear and convincing evidence supporting the district court's finding of reasonable efforts to rehabilitate T.G. and reunite the family.

III. Best Interests of the Children

The third issue is whether termination of T.G.'s parental rights was in the best interests of the children. In a TPR proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2010). "[D]etermination of a child's best interests 'is generally not susceptible to an appellate court's global review of a record,' and . . . 'an appellate court's combing through the record to determine best interests is inappropriate because it involves credibility determinations.'" *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quoting *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003)). "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." *W.L.P.*, 678 N.W.2d at 711 (quotation and citation omitted).

The court-appointed guardian ad litem testified that based on personal observations and reviewing the visitation notes, T.G. had "significant difficulties in parenting his children" and had "difficulty connecting emotionally with his children."

She testified that the TPR was in the best interests of the children. The other social workers who testified also supported the TPR. All four children have special needs derived from growing up in T.G.'s care. Dr. Schara specifically stated parenting multiple children with serious emotional problems "would be difficult for any parent and probably impossible for [T.G.]." The children also frequently exhibited fear of T.G. and on numerous occasions asked if they could leave his parenting visits early. The record indicates that the children's hygiene improved considerably after they were removed from T.G.'s home.

T.G. received rehabilitation services for ten months with little to no progress or engagement on his part. Based on the record and on our deference to the district court's credibility findings, we conclude that there is clear and convincing evidence to support the district court's determination that termination of T.G.'s parental rights was in the best interests of the children.

Affirmed.

Dated: