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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1364**

In the Matter of the Welfare of the Child of: J.D., Parent

**Filed January 17, 2012
Affirmed
Wright, Judge**

Ramsey County District Court
File No. 62-JV-10-1280

John J. Choi, Ramsey County Attorney, Kathryn Eilers, Assistant Ramsey County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

James I. Laurence, St. Paul, Minnesota (for guardian ad litem)

Patrick D. McGee, St. Paul, Minnesota (for appellant father J.D.)

Considered and decided by Bjorkman, Presiding Judge; Wright, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

In this appeal from the termination of his parental rights, appellant argues that the district court clearly erred by finding that (1) while in his care, a child suffered egregious harm of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it is contrary to the best interests of any child to be in his care; and (2) termination of appellant's parental rights is in the best interests of his child. We affirm.

FACTS

On March 15, 2010, appellant J.D. (father) spent the day caring for L.D., his six-week-old son,¹ while L.D.'s mother was at work. Father called 911 at 6:42 p.m., seeking medical attention for L.D. Paramedics transported L.D. to the hospital in an ambulance. During the medical examination that followed, hospital staff discovered that L.D. had a severe post-traumatic brain injury, with bleeding and swelling on his brain, as well as multiple leg fractures, respiratory failure, visual impairment, and post-traumatic seizure disorder. Physicians later determined that L.D. also had fractures in three of his ribs.² L.D. was released into his mother's care on March 26, 2010.

It is undisputed that father caused L.D.'s March 15 injuries. Father's explanation for the injuries, however, has varied. On the date of the incident, father told hospital staff that he was playing with L.D. by tossing him into the air and catching him. In this version, father stated that during a toss, at approximately 2:00 p.m., L.D.'s forehead hit father's forehead or eyebrow. L.D. cried immediately. And for the next several hours, L.D. was fussier, refused to take a bottle, and spit up once.

Later that day, father told investigating police officers that, at approximately 1:30 p.m., L.D. was crying. Father began "playing" with him in an attempt to calm him down. In this version, father was holding L.D. by his torso, lifting him into the air above his head and bringing him back down for a kiss on L.D.'s forehead. During one lift, father reported, L.D.'s head tilted backwards. As L.D. came down, his head came forward and

¹ L.D.'s birth was approximately four weeks premature.

² L.D.'s medical records indicate that rib fractures typically are not seen on x-rays until they begin to heal, approximately two weeks after the injury.

collided with father's right cheek bone. Father said that L.D. instantly started screaming and crying. Almost immediately, father observed a bruise on L.D.'s head. Father indicated that he kept L.D. awake for approximately one hour to watch for signs of a concussion.

Father was arrested on March 16. Two officers conducted a custodial interview the next day. In response to questioning, father again admitted that L.D.'s head came into contact with father's face. Father stated that L.D.'s behavior following this incident scared him "to death," but father did not seek medical attention. After the police officers presented father with medical evidence and opinions regarding the nature of L.D.'s injuries, father admitted that, in addition to the head collision, he shook L.D. According to the police report:

[Father] said he was holding [L.D.] in his hands upright and looking into [L.D.'s] eyes; [L.D.] was right in front of [father's] face. [Father] demonstrated how he was holding [L.D.] which led [the interviewing officer] to believe his hands were under [L.D.'s] armpits.

[Father] said he was so frustrated that his hands were trembling. [Father] demonstrated his trembling for [the interviewing officer]. [Father] said [L.D.'s] head was bobbing around on top of his shoulders. [Father] demonstrated how [L.D.'s] head was bobbing to the front, rear and both sides. [Father] agreed that [L.D.'s] head was moving around like [a] bobble head doll. [Father] said he did not think he was shaking [L.D.] hard enough to hurt him. When [Father] was asked [i]f he shook [L.D.] too hard he nodded his head in acknowledgment and cried.

Father subsequently pleaded guilty to the charge of felony malicious punishment of a child.³ At this hearing, father admitted under oath that he did not use reasonable care with his infant son and that L.D.'s head collided with his head in a violent manner. Father also admitted that he shook L.D. excessively, with unreasonable force, and that his actions caused L.D. great bodily harm, including permanent brain damage. Father specifically conceded that he may have shaken L.D. for up to 10 or 15 seconds. Father explained that L.D. was injured sometime between 10:00 a.m. and noon, he noticed L.D. breathing irregularly following the incident, and he did not seek medical assistance for several hours.

On April 8, 2010, Ramsey County Community Human Services Department filed a termination-of-parental-rights (TPR) petition to terminate father's parental rights to L.D. on the ground that a child experienced egregious harm in father's care. In its July 20, 2010 order, the district court found, based on the evidence presented, that the county's TPR petition established a prima facie case that father caused L.D. to suffer egregious harm. Therefore, the county was not required to make reasonable efforts to reunite father and L.D. *See* Minn. Stat. § 260.012(a)(1) (2010).

During the June 20, 2011 hearing on the TPR petition, father testified that he lied to the district court at his guilty-plea hearing in order to take advantage of the plea agreement. At the TPR hearing, father's testimony included another version of events. In this version, on March 15, father was playing with L.D. by raising him above his head

³ Father was subsequently convicted of this offense and sentenced to 57 months' imprisonment.

and bringing him down to kiss his forehead; on the last lift, L.D.'s head was back and when father brought him down, their heads collided. Father testified that, after this incident, L.D. screamed and cried extremely loudly and father trembled with fear for L.D.'s safety; consequently, L.D. shook "minorly." Father testified that L.D.'s injuries were a "complete accident" and he has no remorse for causing L.D.'s injuries. He is only remorseful because he can no longer parent L.D.

The injuries that father inflicted on March 15 will have significant and, most likely, permanent consequences on L.D.'s health and development. In a statement read at father's sentencing hearing on April 1, 2011, and admitted in evidence at the TPR proceeding, L.D.'s mother described her son as "a hollow shell of what he was supposed to be." She explained:

My baby boy will have to take medication three times a day for the rest of his life to prevent seizures And even with the medication he still has seizures He has visual impairment as well. My son can't even see me. He just stares. If I try to show him a pretty picture or a colorful toy, he can only smile at my voice. He can never see it. My son can't roll over. He can't even put pressure on his legs. Sometimes I wonder if he'll ever walk or talk. [L.D.] cannot hold his own bottle or self feed, even though he's a year old now. For the most part, [L.D.] doesn't do much of anything. He's about as developed as a three-month old, besides his size.

An Early Childhood Special Educator's assessment of L.D., conducted in May 2011, indicated that, at nearly 16 months of age, L.D.'s motor skills were at the level of a four to seven month old, his communication and social emotional skills were at the level of a six to ten month old, his cognitive skills were at the level of a four to seven month old,

and his adaptive skills were at the level of a six to eight month old. At a June 2011 checkup performed at Gillette Children's Hospital, L.D. was diagnosed with global developmental delay, epilepsy, seizures, a cranial dent, cortical visual impairment, and an inability to bear weight on his lower extremities.

In its July 13, 2011 order, the district court found that father's testimony at the TPR hearing lacked credibility and terminated father's parental rights to L.D. on the grounds that, in father's care, L.D. experienced egregious harm of a nature, duration, or chronicity that indicates a lack of regard for L.D.'s well-being, such that a reasonable person would believe it is contrary to the best interests of any child to be in father's care. The district court also found that termination of father's parental rights is in the best interests of L.D. This appeal followed.

D E C I S I O N

When reviewing an order terminating parental rights, we will affirm the district court's decision if clear and convincing evidence establishes at least one statutory ground for termination of parental rights and termination of parental rights is in the child's best interests. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). Our review of the order is "limited to determining whether the findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether they are clearly erroneous." *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997). Because the district court is in a superior position to observe the witnesses during trial, its assessment of witness credibility is accorded deference on appeal. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). But we "closely inquire into the sufficiency

of the evidence to determine whether it was clear and convincing.” *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998).

I.

Minnesota law permits involuntary termination of a parent’s rights to a child if there is clear and convincing evidence that

a child has experienced egregious harm in the parent’s care which is of a nature, duration, or chronicity that indicates a lack of regard for the child’s well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent’s care.

Minn. Stat. § 260C.301, subd. 1(b)(6) (2010); *see R.W.*, 678 N.W.2d at 55 (standard of proof). Under Minnesota law, egregious harm is defined as “the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care,” including “conduct towards a child that constitutes felony malicious punishment of a child.” Minn. Stat. § 260C.007, subd. 14(3) (2010).

A.

We first address father’s assignment of error to the district court’s conclusion that his parental rights may be terminated under section 260C.301, subdivision 1(b)(6) (egregious harm), because his conduct toward L.D. constitutes felony malicious punishment of a child. *See id.* (defining egregious harm).

Father argues that the district court erred by concluding that L.D. experienced egregious harm while in his care. Despite his admissions, guilty plea, and conviction of felony malicious punishment of a child, father argues that he never engaged in conduct that constitutes felony malicious punishment of a child. In support of his argument,

father relies on his testimony at the TPR hearing, when he claimed to have lied under oath in the criminal proceeding. Although the district court found father's "entire testimony [at the TPR hearing] not credible," father invites us to disregard the express credibility determination of the district court and accept his testimony that L.D.'s injuries were in fact a "complete accident" about which he lied during his guilty plea in order to take advantage of the plea agreement. We decline father's invitation.

The district court's assessment of witness credibility is entitled to great deference in light of the district court's superior position to observe the witnesses during trial. *L.A.F.*, 554 N.W.2d at 396. The district court was free to discern that father's testimony at the TPR hearing was as opportunistic as he claimed it to be at the guilty-plea hearing and, therefore, was unworthy of reliance in such a grave and weighty matter as the well-being of a child. Conduct toward a child that constitutes felony malicious punishment of a child is defined as egregious harm. Minn. Stat. § 260C.007, subd. 14(3). Father pleaded guilty to and was convicted of this crime, and the district court found that father's exculpatory testimony at the TPR hearing lacked credibility. Accordingly, the district court's conclusion that L.D. experienced egregious harm while in father's care, based on the conduct underlying father's conviction of felony malicious punishment of a child, is supported by substantial evidence and, therefore, is not clearly erroneous.

B.

Father next argues that even if L.D. experienced egregious harm while in his care, there is no statutory basis for terminating his parental rights because the egregious harm experienced by L.D. was not of a nature, duration, or chronicity that indicates a lack of

regard for L.D.'s well-being, such that a reasonable person would believe it is contrary to L.D.'s best interests to be in father's care, as required by Minn. Stat. § 260C.301, subd.

1(b)(6). The district court found:

The blunt force trauma, and violent, aggressive and excessive shaking [father] subjected [L.D.] to [on March 15, 2010] was of a nature that demonstrated a grossly inadequate ability to provide minimally adequate parental care. As a direct result, [L.D.] has suffered severe and life altering injuries, injuries that substantially affect [L.D.'s] ability to have a normal life, now and in the future.

Without any legal authority to support his theory, father claims that, because a first-degree-assault charge was dismissed as part of his plea agreement and he inflicted the injuries within a relatively short period of time, L.D.'s injuries are neither serious enough nor of a sufficient duration or chronicity to terminate his parental rights. This argument is without merit. A single incident may constitute egregious harm that is of a nature, duration, or chronicity to support a termination of parental rights. *See In re Welfare of A.L.F.*, 579 N.W.2d 152, 154, 156 (Minn. App. 1998) (upholding a finding that Minn. Stat. § 260.221, subd. 1(6) (Supp. 1997), the predecessor to Minn. Stat. § 260C.301, subd. 1(b)(6) (2010), was satisfied when, in a single incident, parent caused a child severe brain trauma, a skull fracture, and multiple bruises in the chest area, and, despite symptoms of injury, parent did not seek medical care for the child for nearly five hours).

The uncontroverted evidence establishes that father subjected L.D. to extensive and life-threatening injuries and caused L.D. to suffer a permanent brain injury, resulting in global developmental delay, epilepsy, seizures, and cortical visual impairment. In

addition, it is undisputed that father waited several hours to seek medical assistance for L.D. despite L.D.'s screaming, crying, bruising, irregular breathing, and refusal to take a bottle, which in totality allegedly scared father "to death." On this record, the district court's conclusion that the egregious harm that L.D. experienced while in father's care is of a nature, duration, or chronicity that permits the termination of parental rights is amply supported by substantial evidence and, therefore, is not clearly erroneous.

II.

Father next challenges the district court's conclusion that termination of his parental rights is in L.D.'s best interests. In any TPR proceeding, the paramount consideration is the best interests of the child, and these interests are balanced against parental rights. Minn. Stat. § 260C.301, subd. 7 (2010); *In re Welfare of M.D.O.*, 462 N.W.2d 370, 378 (Minn. 1990).

Father asserts that L.D.'s best interests require the continuation of his parental rights, but father provides us with no support for this assertion. Rather, father repeats his arguments that we rejected in part I, *supra*. We decline to repeat our analysis and consider instead whether the district court's best-interests analysis comports with the legal standard.

The district court must consider the following three factors when determining whether termination of parental rights is in the best interests of the child: "(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 health

considerations, a stable environment, and the child's preferences. *Id.* Here, there is no parent-child relationship to preserve. Father has not seen L.D., who is now almost two years old, since the date father inflicted the injuries. L.D. was approximately six weeks old at that time. L.D. has an interest in being in a safe, stable environment, in which his medical needs are met. The egregious harm that father inflicted on L.D. continues to negatively affect L.D.'s health and development. As a result, L.D. is a very irritable child who has complex medical needs.⁴ Despite these challenges, the record establishes that mother consistently provides for L.D.'s needs in a nurturing, patient, and loving manner. Evidence that L.D. would be at risk of suffering additional injuries if returned to father's care supports the district court's best-interests determination. Father grew frustrated and harmed L.D. before L.D. was plagued with special needs associated with his condition. The district court's determination that termination of father's parental rights is in the best interests of L.D. is well founded.

Affirmed.

⁴ L.D.'s mother currently manages up to 15 medical and therapeutic appointments for L.D. each month.