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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-397

In the Matter of the Welfare
of the Children of: I. S., Parent.

Filed August 8, 2011
Affirmed
Klaphake, Judge

Hennepin County District Court
File No. 27-JV-10-9974

William Ward, Hennepin County Public Defender, Kellie M. Charles, Assistant Public Defender, Minneapolis, Minnesota (for appellant father I.S.)

Colin T. Nelson, Assistant Hennepin County Public Defender, Minneapolis, Minnesota (for respondent child J.S.)

John M. Jerabek, Niemi, Jerabek, & Kretchmer, P.A., Minneapolis, Minnesota (for respondent Guardian ad Litem Gina Amis)

Michael O. Freeman, Hennepin County Attorney, John J. March, Assistant County Attorney, Child Protection Division, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

Considered and decided by Kalitowski, Presiding Judge; Klaphake, Judge; and Stoneburner, Judge.

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

KLAPHAKE, Judge

This appeal concerns the termination of appellant I.S.'s parental rights to his two children, J.M.S., now 15 years old, and C.E.B., now 11 years old. The children's mother

died in 2005. Appellant, who during the pendency of the children's out-of-home placement was incarcerated for gross misdemeanor child neglect for conduct aimed at the children, claims that the district court clearly erred by terminating his parental rights on four statutory grounds: palpable unfitness, failure of reasonable county efforts to correct the conditions that led to the out-of-home placement, refusal or neglect to comply with parental duties, and children remaining neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)2, 4, 5, 8 (2010). Appellant also claims that the district court erred by not finding that his incarceration interfered with his ability to complete his case plan. We affirm because we conclude that the district court did not err by finding appellant palpably unfit to parent these children and that termination is in their best interests.

D E C I S I O N

This court reviews a termination of parental rights decision "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 will defer to the district court's termination decision if at least one statutory ground for termination is proved by clear and convincing evidence and if termination is in the children's best interests. *In re Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). We also "give considerable deference to the district court's decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *S.E.P.*, 744 N.W.2d at 385 (citation omitted).

Palpable Unfitness

Under Minn. Stat. § 260C.301, subd. 1(b)(4) (2010), a district court may terminate parental rights if the parent

> is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Further, a statutory presumption of parental unfitness applies "upon a showing that the parent's parental rights to one or more other children were involuntarily terminated." *Id.*

Here, the statutory presumption of unfitness to parent applies because appellant's rights to his other two children were terminated in 1997. *See In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 250 (Minn. App. 2003) (stating "it is [the parent's] burden to establish the existence of conditions that show [his] fitness to parent" once the statutory presumption of unfitness applies). J.M.S. and C.E.B. both have special needs: C.E.B.'s diagnoses include cerebral palsy and mental retardation, with very limited ability to communicate, and J.M.S.'s diagnoses include Asperger's Syndrome and adjustment disorder with anxiety. Appellant's history of parenting these children includes being absent for weeks at a time, having little food or heat in the home, subjecting J.M.S. to physical punishment with bats, crutches, or rackets, and forcing J.M.S. to maintain a push-up position. Appellant also admittedly has unresolved chemical dependency issues and has referred to himself as a "career addict." The 2010 incident precipitating the

children being found in need of protection and services and that resulted in appellant's incarceration for gross misdemeanor child neglect occurred when a neighbor alerted police to the fact that J.M.S. was being forced to stand outside in very cold January weather while wearing minimal clothing.

There is strong support in the record for the district court's finding that appellant did not rebut the statutory presumption of parental unfitness. *See In re P.T.*, 657 N.W.2d 577, 584 (Minn. App. 2003) (noting that when statutory presumption of palpable unfitness applies, legislature substantially changed the county's "reasonable efforts" requirement), *review denied* (Minn. Apr. 15, 2003). The county developed an appropriate case plan with appellant that addressed his needs with regard to parenting, anger management, chemical dependency, and related areas. The county's efforts in the CHIPS case were coordinated with the state's efforts on appellant's criminal sentence, and a condition of appellant's probation was that he complete his CHIPS case plan. During the pendency of the children's out-of-home placement, appellant's social worker suspected that he was using the family's only source of income to purchase drugs; appellant entered residential chemical dependency treatment in February 2010, but he absconded and was discharged; after being released from the Hennepin County Workhouse, appellant was supposed to reside at Recovery Resource Center, but he left after he became upset with the curfew policy, lied to his probation officer, and was ultimately discharged after testing positive for cocaine; appellant participated in assessments for parenting and mental health, but he failed to follow through on recommendations for either, including treatment recommendations. After he absconded a

second time from a residential treatment program and failed to maintain contact with either his probation officer or his county social worker, appellant's probation was ultimately revoked, and his 365-day workhouse sentence was executed, with the possibility of furlough for treatment. Appellant opted not to seek furlough and remained in the workhouse to finish his sentence. Appellant and the children had no visitation during the pendency of the CHIPs case, because J.S.M. refused contact with his father and because appellant did not want to miss workhouse programming.

On these facts, the district court found that appellant "failed to take any meaningful steps to address" his chemical dependency and domestic violence issues and held that this continued to render him unable to care for his children. Based on appellant's pattern of conduct, we conclude that the district court did not err by finding appellant palpably unfit to parent J.M.S. and C.E.B. *See in re Welfare of S.Z.*, 547 N.W.2d 886, 893-94 (Minn. 1996) (requiring court to consider pattern of conduct or conditions in termination of parental rights). Because this statutory ground supports termination of appellant's parental rights, we need not address the other statutory factors relied upon by the district court. *See* Minn. Stat. § 260C.301, subd. 1(b) (requiring "one" statutory basis for termination of parental rights); *In re L.A.F.*, 554 N.W.2d 393, 396-97 (Minn. 1996) (same).

Effect of Appellant's Incarceration

Appellant claims that his failure to complete his case plan was largely due to his incarceration during the CHIPS proceedings. "Although a parent's incarceration alone is not enough to warrant termination of parental rights, the district court may consider the

fact of incarceration in conjunction with other evidence supporting the petition for termination." *In re Child of Simon*, 662 N.W.2d 155, 162 (Minn. App. 2003). The county has no duty to provide services to an incarcerated father who has shown minimal interest in his children. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004) (in the context of the statutory abandonment factor).

Appellant was not incarcerated and was able to work on his case plan from February 4, 2010, when the plan was formed, until July 5, 2010 when he first reported to the workhouse. He was also not incarcerated from July 31, 2010 until September 12, 2010. Before the termination hearing, appellant was free approximately six-and-a-half months and was incarcerated approximately four months. As outlined above, even when appellant was not incarcerated, he failed to complete several different treatment programs, did not follow through on parenting and psychological assessments, and continued to use controlled substances. While appellant would like to ignore this conduct, the record shows that he failed to make meaningful progress on his case plan when he had the opportunity to do so. Thus, his failure to complete his case plan was not due to his incarceration.

Children's Best Interests

Appellant also argues that terminating his parental rights is not in the children's best interests. Even if a statutory ground for termination exists, "a child's best interests may preclude terminating parental rights." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009) (quotation omitted). Analyzing the best interests of the child requires balancing the three factors of the child's interest in preserving a parent-child

relationship, the parent's interest in preserving that relationship, and 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.* "Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7 (2010). Safety of the child and permanency of the home are factors to be considered in a termination proceeding. Minn. Stat. § 260C.001, subd. 3 (2010).

While appellant wishes to preserve his relationship with his children and testified that he loves them, J.M.S. testified that he does not wish to continue to reside with appellant, citing his father's failure to meet his needs. Even though C.E.B. is unable to communicate, his current placement provides better support for his special needs. Both children have made dramatic improvements in every area of their lives since their placement in foster care. The children's interests in stability, permanency, health considerations, and J.M.S.'s expressed preference all favor termination. Therefore, the record supports the district court's determination that termination is in the best interests of the children.

Affirmed.