STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0283

In the Matter of the Welfare of the Children of: B. K. and R. K., Parents.

Filed August 20, 2012
Affirmed
Stauber, Judge

Kandiyohi County District Court
File No. 34JV11227

Jacob T. Erickson, Vermeulen Law Office, P.A., St. Cloud, Minnesota (for appellant father)

Theresa Jean Walton Patock, Jones & Patock, P.A., Willmar, Minnesota (for respondent mother)

Jennifer Fischer, Kandiyohi County Attorney, John L. Kallestad, Assistant County Attorney, Willmar, Minnesota (for respondents county and J.K.)

Thomas J. Nolan, Jr., Nolan Law Office, Minneapolis, Minnesota (for respondent guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Worke, Judge; and Stauber, Judge.

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

STAUBER, Judge

On appeal from the termination of his parental rights, appellant father argues that the record does not support (1) the district court's finding that a statutory ground for termination exists; (2) the district court's finding that the county made reasonable efforts

to reunite the family; or (3) the district court's finding that termination of appellant's parental rights was in the best interests of the children. Because the district court's findings are supported by clear-and-convincing evidence, we affirm.

FACTS

Appellant B.K. and respondent R.K. are the biological parents of seven children, all born between 2000 and 2008. Between the spring of 2001 and the summer of 2010, the family lived at various locations around the country. At three separate times in that period, the family lived in Eagle Bend in a home that required a generator to provide electricity and running water.

In March 2011, a shelter for domestic-violence victims received a call from R.K. indicating that she was in need of assistance. Shelter staff contacted the local police department and arranged to pick up R.K. and the children from where they were living with B.K. The shelter reported the matter to Kandiyohi County Family Services (KCFS), which in turn initiated a child-protection proceeding. The district court found that the children were victims of emotional maltreatment; were without proper parental care because of the immaturity of their parents; and were children whose behavior, condition, or environment was such as to be injurious or dangerous to them and others. As such, the district court found that the children were in need of protection or services, and we affirmed that determination on appeal. *In re Welfare of Children of R.K.*, 2011 WL 6141665, at *1 (Minn. App. Dec. 12, 2011).

In August 2011, KCFS petitioned for the termination of B.K.'s parental rights to the children. In January 2012, following a trial, the district court terminated B.K.'s

parental rights. B.K. moved for a new trial or amended findings, and the district court denied the motion. This appeal follows.

D E C I S I O N

An appellate court reviews a 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). While considerable deference is given to the district court's decision to terminate a party's parental rights, an appellate court closely enquires into the sufficiency of the evidence to determine whether it was clear and convincing. *Id.* A termination will be upheld on appeal "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, provided that the county has made reasonable efforts to reunite the family." *Id.* (citation omitted). Ultimately, however, whether a statutory ground exists for terminating parental rights is reviewed for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

I. Statutory grounds for termination

The district court may terminate a person's parental rights after finding that at least one of nine statutory conditions exists. Minn. Stat. § 260C.301, subd. 1(b) (2010). Here, the district court found that three such conditions existed: (1) substantial, continuous, or repeated refusal or neglect by B.K. to comply with the duties imposed on him by the parent-child relationship; (2) B.K.'s palpable unfitness to be a party to the

parent-child relationship; and (3) the children having experienced egregious harm while in B.K.'s care indicating a lack of regard for the children's well-being. B.K. challenges the district court's findings on each statutory ground, and we address each in turn.

A. Failure to comply with the duties imposed on the parent

A parent's parental rights may be terminated when the district court finds that 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." Minn. Stat. § 260C.301, subd. 1(b)(2). These duties include, but are 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." *Id.*

Here, the district court found that B.K. had one of the children sleep on the floor without a mattress and that B.K. "withheld food, water, and electricity from [R.K.] and the children as a form of punishment, manipulation, and control." As a result of these findings, the district court concluded that the county established this statutory basis for termination by clear-and-convincing evidence.

B.K. first challenges this conclusion asserting that the district court's findings are historical and "do not address current conditions." When terminating parental rights, "[t]he district court must make clear and specific findings conforming to the statutory requirements, and the evidence must address conditions that exist at the time of the hearing." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). "When considering termination of parental rights, the court relies not primarily on past history, but to a great

extent upon the projected permanency of the parent's inability to care for his or her child." *Id.* (quotations omitted).

But while the evidence must address current conditions, this does not equate to the proposition that a parent's past conduct is irrelevant. Indeed, some of the statutory grounds for termination *require* the district court to examine past conduct. *See* Minn. Stat. § 260C.301, subd. 1(b)(2) (directing court to consider whether the parent has "substantially, continuously, or repeatedly" failed to comply with parental duties). And in order for a district court to predict a parent's future ability to parent a child, the court must consider current conditions in the context of the history and patterns of the parent's conduct. *See S.Z.*, 547 N.W.2d at 893-94 (discussing parent's history of mental illness as it relates to the parent's current and future ability to parent). The district court therefore properly considered B.K.'s historical conduct when determining whether to terminate his parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2), for his failure to satisfy the duties of the parent-child relationship.

B.K. also challenges the district court's findings on this ground based on his assertion that the sleeping arrangements and lack of resources were not a form of punishment or control, but rather a result of the family's financial situation. *See* Minn. Stat. § 260C.301, subd. 1(b)(2) (providing for termination of parental rights when parent fails to provide food, clothing, shelter, education, and other care necessary for the child's physical, mental, or emotional health, if the parent is "physically and financially able" to do so). But contrary to B.K.'s assertion, the record contains evidence that his actions were in fact a form of punishment or control. For example, R.K. testified that B.K.

would allow the family electricity if she was "a good wife" and the family's access to water "depended basically on [B.K.'s] mood." And while B.K. argues that R.K.'s testimony was not credible, appellate courts defer to district court assessments of credibility. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). B.K.'s argument that the county failed to establish that the neglect was not a result of the family's financial situation is therefore without merit.

Finally, B.K. asserts that the district court's neglect findings are not supported by clear-and-convincing evidence. This argument is based on R.K.'s testimony that B.K. purposefully turned off the generator and the family's relocation to homes with city utilities. But B.K.'s reliance on isolated statements and incidents does not change the fact that ample evidence reveals that the family was at various times without heat, electricity, or water due to B.K.'s conduct.

Based on the above analysis, the district court's finding that a statutory ground to terminate B.K.'s parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2) exists is supported by clear-and-convincing evidence and is not clearly erroneous. Therefore, the district court did not abuse its discretion by invoking this basis to terminate B.K.'s parental rights.

B. Palpable unfitness

Parental rights may be terminated when the district court finds that 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." Minn. Stat. § 260C.301, subd. 1(b)(4). In order to

provide a basis for termination, the district court must determine that either the conduct or the conditions are "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." *Id.*

Here, the district court found that clear-and-convincing evidence established that B.K. was palpably unfit to be a party to the parent-child relationship. B.K. challenges this finding, arguing that the district court's findings amount to requiring him to admit to criminal acts of which he is accused, and that such a finding is barred by this court's opinion in *In re Welfare of J.G.W.*, 429 N.W.2d 284 (Minn. App. 1988), *aff'd* 433 N.W.2d 885 (Minn. 1989).

In *J.G.W.*, we considered the constitutionality of requiring a parent's admission of sexual abuse of a child who was the subject of the proceeding as a precondition of regaining visitation with his children. 429 N.W.2d at 286. We held that "the portion of the [district] court's order requiring the father to comply with the therapist's demand that he admit sexual abuse . . . must be stricken" and remanded the matter for such action. *Id.* The supreme court granted review and affirmed the decision. *J.G.W.*, 433 N.W.2d at 885. But in affirming our decision, the supreme court specifically noted that while directly requiring a parent to admit guilt as part of a court-ordered treatment plan violates a parent's Fifth Amendment privilege, "the privilege does *not* protect the parent from the consequences of any failure to succeed in a court-ordered treatment plan" as a result of that refusal. *Id.* at 886 (emphasis added); *see also In re Welfare of J.W.*, 415 N.W.2d 879, 884 (Minn. 1987) ("In the lexicon of the Fifth Amendment, the risk of losing the

children for failure to undergo meaningful therapy is neither a 'threat' nor a 'penalty' imposed by the state. It is simply a consequence of the reality that it is unsafe for children to be with parents who are abusive and violent.").

By focusing on our opinion in *J.G.W.*, to the exclusion of the supreme court's clarification, B.K. overstates the effect of our holding. There is no indication in the record that the district court directly required B.K. to admit to the alleged offenses. Rather, the district court's finding that B.K. is palpably unfit to parent the children appears to have been based on expert testimony that B.K.'s progress in therapy will be limited if he is not able to admit to what he has done. And as the supreme court noted—first in *J.W.*, 415 N.W.2d at 884, and then again in *J.G.W.*, 433 N.W.2d at 886—such a finding does not implicate B.K.'s Fifth Amendment privilege.

B.K. also challenges the district court's finding on this factor because it is based on past behavior rather than on the conditions that existed at the time of trial. *See S.Z.*, 547 N.W.2d at 893 (stating "the evidence must address conditions that exist at the time of the hearing"). But a parent's past pattern of conduct is relevant to a termination proceeding. *See* Minn. Stat. § 260C.301, subd. 1(b)(4) (directing court to consider duration and nature of pattern of conduct or conditions when determining whether parent is palpably unfit). The record of B.K.'s behavior, coupled with the lack of signs of improvement or cooperation, support the district court's finding of palpable unfitness, and the finding is not clearly erroneous. Therefore, the district court did not abuse its discretion by using B.K.'s palpable unfitness to be a party to the parent-child relationship as a basis to terminate his parental rights.

C. Egregious harm

Parental rights may be terminated when the district court finds 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 interests of . . . any child to be in the parent's care." Minn. Stat. § 260C.301, subd. 1(b)(6). 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." Minn. Stat. § 260C.007, subd. 14 (2010).

Here, the district court found that there was clear-and-convincing evidence that B.K. had subjected a child to egregious harm and there was therefore a basis to terminate his parental rights to the children. Specifically, the district court found that B.K. pointed a gun at one of his children, forced one of his sons to engage in sexual activity with various women at gunpoint, and sexually abused two of his daughters.

B.K. challenges these findings, arguing that they are not supported by clear-and-convincing evidence. His argument primarily focuses on the credibility of the witnesses. But the district court found the descriptions of B.K.'s behavior credible. And appellate courts must defer to the district court's assessments of witness credibility, as the district court is in a superior position to make such an assessment. *L.A.F.*, 554 N.W.2d at 396. B.K.'s challenges to the findings based on witness credibility are therefore unavailing.

The district court's finding of egregious harm suffered by the three children are therefore supported by clear-and-convincing evidence.[1] And Minnesota caselaw states that the parental rights to *any* child may be terminated if a child has experienced egregious harm while in the parent's care. *In re Welfare of A.L.F.*, 579 N.W.2d 152, 155-56 (Minn. App. 1998). Therefore, a finding of egregious harm with regard to the three children provides a statutory basis for termination of B.K.'s parental rights to all of his children, and the district court's termination of B.K.'s parental rights on this ground was not an abuse of discretion.

II. Best interests of the children

In a termination-of-parental-rights proceeding, "the best interests of the child[ren] must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2010). The district court must consider the children's best interests and address those interests in its findings of fact and conclusions of law. *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). The court must balance the children's interests in preserving the parent-and-child relationship, the parent's interest in preserving that relationship, and any competing interests of the children. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *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[ren's] preferences." *R.T.B.*, 492 N.W.2d at 4. "[D]etermination of a child's best interests 'is generally not susceptible to

[1] B.K. makes no argument on appeal that the behavior does not rise to the level of egregious harm, instead focusing his argument on challenging whether the behavior in fact occurred. We nonetheless note that the legislature explicitly included appellant's alleged behavior in its definition of egregious harm. Minn. Stat. § 260C.007, subd. 14.

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 *Tanghe*, 672 N.W.2d at 625).

Here, the district court considered the children's functioning and behaviors; the medical, educational, and developmental needs of the children; the children's history and past experience; the children's religious and cultural needs; the children's connection with a community, school, and faith community; the children's interests and talents; the children's relationships with current caretakers, parents, siblings, and relatives; and the reasonable preference of the children. Based on this analysis, the district court found: "It is in the best interests of the . . . children to terminate the parental rights of [B.K.]. He is not capable of appropriately caring for the minor children now or in the foreseeable future."

B.K. argues that these findings disregard the presumption that children's best interests are supported by not terminating a natural parent's parental rights and do not take the children's preferences into account. But contrary to his assertions, the district court noted that some of the children have requested to see B.K. and that one of the children has had supervised visits with B.K. The district court carefully weighed all of the evidence in concluding that the children's best interests were best served by terminating B.K.'s parental rights. On this record, such a finding is not clearly erroneous, and the district court's determination that termination should occur here is not an abuse of

discretion. *See J.R.B.*, 805 N.W.2d at 905 ("We review a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion.").

III. Reasonable efforts at reunification

Before parental rights may be terminated, reasonable efforts must be made to reunite the children with the parent. Minn. Stat. § 260C.301, subd. 8(1); *S.Z.*, 547 N.W.2d at 892. Even if statutory grounds for termination exist, the court must determine whether there is clear-and-convincing evidence that the county made reasonable efforts to reunite the family. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). B.K. argues that the county's efforts were not reasonable.

"Reasonable efforts" means "the exercise of due diligence by the [county] to use culturally appropriate and available services to meet the needs of the child[ren] and the child[ren]'s family." Minn. Stat. § 260.012(f) (2010). In determining whether reasonable efforts have been made, the district court must consider whether the services were "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Minn. Stat. § 260.012(h) (2010).

"Efforts to help parents generally are closely scrutinized, because public agencies may transform the assistance into a test to demonstrate parental failure." *In re Welfare of J.H.D.*, 416 N.W.2d 194, 198 (Minn. App. 1987), *review denied* (Minn. Feb. 12, 1988). Whether the county's services constitute "reasonable efforts" depends on the nature of the problem presented, the duration of the county's involvement, and the quality of the

county's effort. *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). The assistance must go beyond mere matters of form, such as the scheduling of appointments, so as to include real, genuine help. *Id.* Such help must focus on the parent's specific needs. *In re Welfare of M.A.*, 408 N.W.2d 227, 235-36 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987).

Here, the incident that resulted in the initiation of the CHIPS proceeding occurred in March 2011. The district court noted that an order was issued in the child-protection proceeding on June 28. The petition for termination of B.K.'s parental rights was filed with the district court on August 11, and the order terminating B.K.'s parental rights to the children was filed in late January 2012. We recognize that this timeline appears accelerated. But the county was required to file a termination of parental rights petition "within 30 days of the responsible social services agency determining that a child has been subjected to egregious harm." Minn. Stat. § 260C.301, subd. 3(a) (2010). As such, the timeframe, while accelerated, does not require the conclusion that the county did not provide reasonable efforts to reunify the family.

B.K.'s primary arguments regarding the alleged lack of reasonable efforts are that they did not provide genuine assistance, the county failed to provide services contemplated in the case plan, failed to provide services relative to their allegations, and failed to provide appropriate parenting time.[2] None of these arguments is availing. The

[2] B.K. also argues that the county failed to provide reasonable efforts at reunification because it "failed to protect the children from [R.K.]" But R.K.'s parental rights are not at issue here, and the county noted at oral argument that it had not excluded the possibility of a subsequent petition regarding her parental rights to the children. Because

record reflects that KCFS developed case plans in the course of working with the family, and that during the development of his case plan B.K. denied any wrongdoing. One of the experts that B.K. met with opined that "only an individual with very limited capacity for empathy and attachment" would appear as untroubled by the situation involving the children as B.K. The record indicates that KCFS attempted to locate a therapist that would work with B.K., but was unsuccessful. While B.K. was eventually able to locate his own therapist, the record indicates that it is unlikely that B.K. will be rehabilitated to parent during his children's minority, and all of the experts agreed that B.K.'s progress in therapy will be limited if he is not able to admit to his past behaviors and actions.

Based on these findings, the district court concluded that KCFS had made reasonable efforts to provide services such that future reunification would be possible, but the efforts had failed. On this record, the district court did not err by concluding that KCFS had fulfilled any duty it may have had to provide reasonable efforts to reunify the family.

Moreover, reasonable efforts are not required when a court determines that a parent has subjected a child to egregious harm. Minn. Stat. §§ 260.012(a)(1); 260C.307, subd. 8(2) (2010). As discussed above, the district court found that B.K. subjected three of the children to egregious harm. Under the plain language of the statute, a finding of reasonable efforts at reunification was not required. As such, even if the district court's

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R.K.'s parental rights and relationship with the children are irrelevant to the question of whether the county provided B.K. with reasonable efforts at reunification, we do not address B.K.'s argument on the issue further.

reasonable-efforts finding were clearly erroneous, any such error would have been harmless and not require reversal.

Affirmed.