STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0603

In the Matter of the Welfare of the Child of: T. W., Parent

Filed September 3, 2013
Affirmed
Toussaint, Judge[*]

Nicollet County District Court
File No. 52-JV-12-168

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Considered and decided by Worke, Presiding Judge; Johnson, Chief Judge; and Toussaint, Judge.

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

TOUSSAINT, Judge

Appellant, imprisoned until 2041 for the murder of his minor child's mother, challenges the termination of his parental rights, arguing that the district court (1) abused its discretion by concluding that he was a palpably unfit parent and (2) violated his

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

procedural due-process rights by terminating his parental rights on a ground not pleaded in the termination petition. We affirm.

D E C I S I O N

I.

T.W. contends that the district court abused its discretion by terminating his parental rights after determining that he was a palpably unfit parent. Parental rights may only be terminated "for grave and weighty reasons." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). A district court may involuntarily terminate parental rights when clear and convincing evidence supports a statutory basis for termination. Minn. R. Juv. Prot. P. 39.04, subd. 1; *see also* Minn. Stat. § 260C.301, subd. 1(b) (2012) (listing grounds for involuntary termination of parental rights). Only one statutory basis is required to support termination. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). The district court must make its decision based on evidence concerning the "conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period." *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001). Whether termination meets the child's best interests is the paramount consideration. Minn. Stat. § 260C.301, subd. 7 (2012). Finally, a district court cannot terminate parental rights unless it also finds that social-service agencies made reasonable efforts to reunify the parent and child. *Id.*, subd. 8(1) (2012).

On appeal, we examine whether the district court's findings address the statutory criteria for termination and determine whether the district court's findings are supported

by clear and convincing evidence. *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 663-65 (Minn. App. 2012). The district court's ultimate determination that the statutory requirements for termination were established by clear and convincing evidence is reviewed for an abuse of discretion. *See In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900-01, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

Respondent D.B. petitioned the district court to terminate appellant T.W.'s parental rights to E.W., his only minor child. It is undisputed that T.W. pleaded guilty to murdering E.W.'s mother and will remain imprisoned until at least 2041, when E.W. will be 32 years old. The district court, after hearing argument on D.B.'s petition and relying on the testimony of E.W.'s therapist, determined that T.W. was palpably unfit to parent E.W. and terminated T.W.'s parental rights, explaining:

> [T]he father is incarcerated until [E.W] will be 32 years of age, assuming he is even granted parole, and is completely unable to be a father to [E.W.]. [E.W.] does not know him. [E.W.] would gain nothing by the father's parental rights being maintained and in fact loses by maintenance of those rights, because it interferes with her adoption.

Palpable Unfitness

Termination of parental rights is appropriate when a parent is "palpably unfit to be a party to the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(4) (2012). Parental rights may be terminated due to a parent's palpable unfitness when clear and convincing evidence establishes:

> (1) a consistent pattern of specific conduct before the child or specific conditions, (2) directly relating to the parent and child relationship, (3) of a duration or nature that renders the

> parent unable to care appropriately for the needs of the child, (4) for the reasonably foreseeable future.

In re Welfare of Child of J.K.T., 814 N.W.2d 76, 91 (Minn. App. 2012) (quotation and citation omitted). It is clear that T.W. committed specific conduct before the child that impacts the parent and child relationship when he intentionally murdered E.W.'s mother while E.W. was in the home. *See id.* We have previously determined that "the nature and direct consequences of [murdering a child's parent] can suffice to establish specific conditions directly relating to the parent and child relationship." *In re Welfare of Children of A.I.*, 779 N.W.2d 886, 891 (Minn. App. 2010), *review denied* (Minn. Apr. 20, 2010) (quotation omitted). Such a conclusion is bolstered when the murdering parent is "necessarily accountable for willfully creating" a situation where the child "now face[s] daily life without either parent during the entire period of their minority." *Id.* at 892. T.W. fits this category. He admitted to intentionally murdering E.W.'s mother, while E.W. was in the home, and now remains incarcerated without the chance of supervised release until E.W. is 32 years old. It is apparent that T.W.'s actions constitute specific conditions impacting the parent-child relationship.

T.W.'s is also unable to care for E.W.'s needs for the foreseeable future. T.W. has destroyed "the mother-child relationship and the mother's caretaking resources" combined with the "devastation of the father-child relationship by [father's] culpability in murdering the children's mother." *Id.* at 892. T.W.'s resulting incarceration is for the duration of E.W's minority. It is undeniable that T.W.'s actions "permanently and intentionally denie[d] his [child] parental care." *Id.* T.W. "not only decreased his own

capacity to parent, [but] also destroyed the other primary resource that could have helped compensate for his absence. [T.W] has eliminated parenting critical to the well-being of his [child], and this in and of itself reflects an inability to understand or meet the [child's] needs." *Id.*

T.W. acknowledged before this court that *A.I.* is, in many ways, directly on point with his factual circumstances. However, T.W. contended that *A.I.* is distinguishable because the murderous parent in *A.I.* never demonstrated remorse. T.W. overemphasizes our focus on remorse and his attempt to distinguish *A.I.* fails. It was only after relating our conclusion that a murderous parent has irrevocably impacted the parent-child relationship and that their lengthy incarceration mitigates their ability to parent that we mentioned remorse. We instead explained that "[our] conclusion is *further supported* by the district court's finding that appellant has failed to show remorse for [this] crime." *Id.* at 892-93 (emphasis added). The genesis of our holding in *A.I.* was appellant's murderous act against the children's mother and the consequences that flowed from that action. The failure to show remorse only supported our conclusion. Although we do not doubt the remorse that T.W. displays for his actions, it will forever be true that T.W.'s murderous action "created [the] long-term absence of both parents." *Id.* at 892. No amount of remorse can reverse the reality of the situation T.W. created for himself and his child.

T.W. also argues that the district court erred by terminating his parental rights because his "incarceration alone" is an insufficient rationale to terminate parental rights. It is well established that "[i]ncarceration alone does not necessarily preclude a person

from acting in a parental role." *Id.* However, as we explained in *A.I.*, "the district court reasonably struggled with whether appellant's act of murdering [the other parent], and its consequences, was sufficient to support termination of his rights. Murder of one parent by the other presents unique challenges in application of the statutory provision at issue." *Id.* at 891. In this case, the district court did not rely *solely* on his incarceration. Rather, the district court considered the combination of T.W.'s brutal conduct in murdering E.W.'s mother and T.W.'s resulting inevitable absence from E.W.'s life until at least 2041. This accords with our interpretation of the so-called "incarceration rule" because the termination of T.W.'s parental rights did not "rest solely on the fact that he is in prison but [upon] the combination of the facts that he killed the other parent and the term of his sentence." *Id.* at 894. T.W.'s argument that the district court's rationale stemmed solely from his incarceration is unavailing.

T.W.'s culpability in the murder of E.W.'s mother, and the length of his incarceration, is undisputed. T.W.'s act of murdering E.W.'s mother directly relates to E.W.'s physical, mental, and emotional needs. The district court did not abuse its discretion by determining that T.W. meets the elements of a palpably unfit parent.

Best Interests of the Child

The "paramount consideration" in all termination proceedings is the best interests of the child. Minn. Stat. § 260C.301, subd. 7. A child's best interests may preclude termination even if a statutory ground for termination exists. *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009). Analyzing the best interests of the child requires balancing 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.

T.W. contends that it is in E.W.'s best interests to maintain contact with a biological parent who strongly desires to foster a parental bond. However, such a contention contradicts the evidence in the record. The district court, prior to determining that termination of T.W.'s parental rights served E.W.'s best interests, received a detailed letter from E.W.'s counselor. This counselor also testified at the termination hearing. The counselor deemed T.W.'s action of murdering E.W.'s mother as a "highly traumatic event" that placed E.W. at a high risk for "complex trauma." This complex trauma could cause E.W. to "ultimately [fail to meet] fundamental social and emotional developmental milestones." The counselor then made a recommendation, with this risk of complex trauma in mind, that:

> [E.W.] desperately needs the highly consistent caregiving environment, with the support, warmth, and responsiveness that [D.B.] provides. It is essential that the court-system support [the] stable care-giving environment that [D.B.] is trying to provide for [E.W.]. The adoption, I believe, is necessary in this process.

T.W. attempted to clarify the counselor's testimony by suggesting that maintaining E.W.'s connection to a biological parent would further her best interests. T.W. relied upon the fact that D.B. testified that, prior to the murder of E.W.'s mother, both parents

had maintained a loving relationship with E.W. However, the counselor testified that T.W. had not had any contact with E.W. for two years and that the termination of T.W.'s parental rights would not presently impact E.W.'s life. The counselor related that even reconciliation in the future would be harmful because, "it's going to be very stressful, distressing to [E.W.], because [the entire situation] carries with it, not only what the relationship is now, but what has happened, in the past, which is something that, over time, [E.W.'s] going to have to come to understand."

On this record, it is clear that the district court did not abuse its discretion by determining that terminating T.W.'s parental rights was in E.W.'s best interests. The murder of E.W.'s mother will remain a traumatic event throughout her lifetime and poses particular developmental concerns even at this juncture of her life. E.W.'s counselor was clear in her statements that a reunification between T.W. and E.W. would be confusing and distressing and would only exacerbate E.W.'s developmental concerns. E.W. is already suffering from post-traumatic stress disorder as a result of T.W.'s actions. The counselor's main recommendation to the court was that it must aid and further E.W.'s need for a stable environment by permanently and formally recognizing the strong bond that now exists between E.W. and D.B. Fostering this stable environment required terminating T.W.'s parental rights in order to allow D.B. to formally adopt E.W. It was reasonable for the district court to prefer a solution that bolsters E.W.'s long-term stability over T.W.'s assertions that, as a biological parent, his relationship with E.W. should be favored. *See* Minn. Stat. § 260C.301, subd. 7 (stating that a conflict between the best-interests considerations of the parent and child must be resolved in favor of the

child). The best-interests factors directly relate to E.W.'s mental and development health considerations and her need for a stable environment. *See R.T.B.*, 492 N.W.2d at 4. The district court did not abuse its discretion by determining that the termination of T.W.'s parental rights favors E.W.'s best interests.

Although raised by neither party, a district court is required to determine that reasonable efforts have been made to reunify a parent and child prior to terminating a parent's parental rights. *See* Minn. Stat. § 260C.301, subd. (8)(1). It is unclear whether the district court's general reference to the conditions leading to E.W.'s out-of-home placement constitute consideration of the reunification requirement. However, the district court did relate that T.W.'s murderous action and subsequent incarceration directly precipitated the need for E.W.'s out-of-home placement. Also, T.W. conceded before this court that reunification efforts were futile given his lengthy incarceration. We agree. *See In re Children of Vasquez*, 658 N.W.2d 249, 255 (Minn. App. 2003) (concluding that "where the futility of reunification efforts is irrefutable, a case plan is unnecessary"). The district court did not err by failing to make specific findings related to the reunification requirement.

II.

T.W. argues that the district court violated his right to procedural due process when it, *sua sponte*, determined that terminating his parental rights was supported by a ground that D.B. did not plead in her termination petition. The district court concluded that termination was appropriate pursuant to Minn. Stat. § 260C.301, subd. 1(b)(9) (2012) due to T.W.'s first-degree murder conviction. *See* Minn. Stat. § 260.012(g)(1) (2012)

(listing first-degree murder as a qualifying offense). It is undisputed that D.B.'s termination petition did not plead subdivision 1(b)(9) as a ground for termination.

When ruling on a termination petition, a district court must "determine whether the statutory grounds set forth in the petition are or are not proved." Minn. R. Juv. Prot. P. 39.01 (2012). Only when "the court finds that one or more statutory grounds set forth in the . . . petition are proved . . . may [it] terminate parental rights." *Id.* at 39.05, subd. 3 (2012). "[T]ermination of parental rights cannot be based on a statutory ground that was not included in a petition to terminate parental rights." *In re B.J.M.*, 744 N.W.2d 669, 673 (Minn. 2008). A district court offends a defendant's due process rights when it terminates parental rights on a ground not pleaded in the termination petition. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 98 (Minn. App. 2008).

In order to terminate a parent's parental rights, Minnesota law requires only that *one* statutory ground for termination be established by clear and convincing evidence. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We have previously determined that "[b]ecause at least one statutory ground supports termination . . . the error [of the district court utilizing a ground not pleaded in the termination petition] does not affect our decision to affirm the termination." *In re Welfare of T.D.*, 731 N.W.2d 548, 556 (Minn. App. 2007). In fact, T.W. admitted before this court that he would have to prevail on his palpably unfit challenge to compel us to reach his due-process claim. Although the district court's conclusion that a ground not pleaded in D.B.'s termination petition supported the termination of T.W.'s parental was error, we

conclude that such error was harmless given T.W.'s palpable unfitness to serve as E.W.'s parent.

Affirmed.