STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1033

In the Matter of the Welfare of the Children of:
H. O. and C. S.,
Parents.

Filed December 22, 2009
Affirmed
Lansing, Judge

Rice County District Court
File Nos. 66-JV-08-4408,
66-JV-07-4293

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Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and Johnson, Judge.

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

LANSING, Judge

The district court terminated the parental rights of CS to his two children, finding clear and convincing evidence of four statutory grounds for termination. On appeal, CS

challenges each of the statutory grounds and the district court's conclusion that the termination of rights was in the children's best interest. Because the record supports the district court's decision that CS's prolonged chemical dependency, CS's avoidance of necessary and available services, and the children's best interests require the termination of CS's parental rights, we affirm.

F A C T S

CS is the father of two daughters: RNS, who was born in September 2002 and KLS who was born in July 2007. As a result of drug use and domestic abuse in the home, in July 2006, Waseca County Social Services filed a petition alleging that RNS was a child in need of protective services (CHIPS).

HO, who is the mother of both children, stipulated that, at the time of the petition, RNS was "without proper parental care because of the emotional or mental [] state of maturity of the child's parent." The court's order required both parents to abstain from all drugs including alcohol, to submit to periodic drug testing, and to undergo mental health and chemical-dependency assessments and follow the recommendations based on the assessments. In September 2006 the Waseca District Court transferred the case to Dakota County, where RNS and HO had moved.

The evaluator for CS's psychological assessment reported that HO was, at times, "afraid of [CS] and fear[ed] that he was a danger to her or their daughter's safety." CS admitted to "serious conflict in the relationship, including verbal arguments, physical violence and aggression." He also admitted to "a significant history of meth[amphetamine] use, alcohol abuse, and continued daily cannabis use." The

examiner was unable to obtain CS's cooperation in administering psychological tests. The examiner's report noted that CS "ha[d] not been compliant with previous requests, recommendations for treatment, court orders for no contact and random drug screening." The report's recommendations included individual counseling, completion of a domestic-violence program, and participation in a chemical-dependency evaluation and adherence to the evaluation's recommendations.

In late January 2007, Dakota County removed RNS from HO's custody because of safety considerations relating to HO's drug use. The couple's second daughter, KLS, was born in July 2007. Three months later, in October 2007, the district court returned custody of RNS to HO, subject to supervision by protective services, and added new conditions that applied to both parents. Both were required to refrain from "physical or verbal fighting" while caring for RNS and KLS. Both were required to complete the aftercare components of their in-patient, substance-abuse programs. HO was required to continue treatment relating to other mental-health issues. Both were required to comply with random drug tests, and the district court's order cautioned them that a refusal, cancellation, or failure to appear for the test would be recorded as a result of "positive for drug use." Because HO again changed residence, the case was transferred to Rice County District Court.

A Rice County social worker met with HO and CS in November 2007 and developed a case plan. The case plan described three goals for RNS: safety, permanence, and well-being. The plan set forth specific steps for HO and CS to achieve the goals.

Following a January 2008 review, RNS remained with her parents. But in May 2008, RNS and KLS were removed from the home on an emergency basis because of their parents' relapsed drug use. At this time, the CHIPS petition was amended to add KLS. An evaluation completed at the end of 2007 indicated that KLS was suffering developmental delays. The district court returned RNS and KLS to HO's custody several days later based on assurances that HO and CS would cooperate with court-ordered services.

In mid-June 2008 CS failed to participate in a required drug test and HO tested positive for methamphetamine. On June 19, the district court ordered out-of-home placement for both children. The social worker and the parents developed placement plans specific to each child, and the parents participated in a parenting assessment. At the next review, in July 2008, the district court noted that the tests showed no drug use, but continued out-of-home placement for the children because of the parents' lack of participation in substance-abuse, out-patient services, and meetings with the social worker.

In September 2008 Rice County returned physical custody of both children to HO and CS for a trial home placement. The trial placement was unsuccessful because of HO's continued drug use, CS's refusal to take a drug test, and both HO's and CS's failure to comply with the recommendations of the parenting assessment and the requirements of the children's case plans. After the November 2008 review hearing, Rice County removed the children from the home, and began proceedings to terminate parental rights. At the hearing, the district court noted that Rice County Social Services and the guardian

ad litem expressed concern that "both parents are refusing services [and] not taking the situation seriously" and that CS "has not submitted to a [drug] test, as requested."

After a January 2009 review hearing, the district court ordered that the children remain in foster care. The court stated that CS "refuses to meet with his case worker, has not completed the aftercare sessions required by [his drug treatment program] [and] has failed to follow through with several recommendations of his psychological evaluation." Consistent with the conditions of a previous order, the district court considered that "[CS] tested positively for drug use, since he will not release the results of his privately administered [drug] test."

The district court held a hearing on the termination-of-parental-rights petition in March 2009. In the order granting the petition, the district court made extensive findings based on the testimony at the hearing and the documents filed with the petition, and also incorporated the findings from earlier orders. On this evidence the district court concluded that four independent bases for termination had been established by clear and convincing evidence and that termination of rights was in the best interests of the children. CS appeals from that determination.

D E C I S I O N

A district court may terminate parental rights only if it is proved by clear and convincing evidence that a statutory ground for termination exists and that the termination is in the child's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). On review we closely inquire into the sufficiency of the evidence, taking into account that the district court assesses the credibility of witnesses.

In re Welfare of L.A.F., 554 N.W.2d 393, 396 (Minn. 1996). Unless a court determines that one of several narrow exceptions applies, the county must demonstrate that it has made reasonable efforts to reunite the family. *In re Children of T.A.A.*, 702 N.W.2d 703, 709 (Minn. 2005).

In Minnesota, parental rights may be terminated on nine separate statutory grounds. Minn. Stat. § 260C.301, subd. 1(b)(1)-(9) (2008). The district court relied on four of these grounds in ordering the termination of CS's parental rights: refusal or neglect to comply with the duties imposed by the parent and child relationship, subd. 1(b)(2); palpable unfitness to parent, subd. 1(b)(4); reasonable efforts have failed to correct conditions leading to child's out-of-home placement, subd. 1(b)(5); and the child is neglected and in foster care, subd. 1(b)(8). Because the same evidence of CS's continuing substance abuse and noncompliance with assessment recommendations and court requirements provides the grounds under each of the subdivisions and because one statutory ground is sufficient to support a district court's order for termination of parental rights, we focus our review on subdivisions 1(b)(2) and 1(b)(5).

Under Minnesota Statutes section 260C.301, subdivision 1(b)(2), the district court may terminate parental rights if it finds that the parent "has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed . . . by the parent and child relationship . . . and [] reasonable efforts by the social services agency have failed to correct the conditions." So long as the parent is physically and financially able, "the duties imposed" 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." Minn. Stat. § 260C.301, subd. 1(b)(2). Failure to satisfy requirements of a court-ordered case plan is evidence of a parent's noncompliance with the duties and responsibilities under subdivision 1(b)(2). *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003).

The evidence establishes that CS consistently failed to address significant problems that directly related to his parental duties and responsibilities. His case plan stated that the children's safety required "a stable home environment that is free from domestic violence and drug use." CS failed to enroll in the domestic-violence program required by his psychological evaluation, failed to complete a drug-treatment program, consistently refused drug tests or provided fraudulent results, and admitted to continued drug use throughout the CHIPS proceeding. The case plan similarly stated that the goal of permanence for the children required CS's full participation in the county's Parent Aide program. The public-health nurse implementing the program indicated that the parents cancelled several appointments; that the program was scheduled for unsuccessful termination based on their cancellations; and that, even though they ultimately completed the twelve required sessions, they did not actively participate. CS's failure to comply with arranged programs continued after the children were in out-of-home placement. He ignored even the basic requirement of "visit[ing] with [his] social worker to review [his] progress on this plan." He ultimately admitted to the social worker that he was avoiding her because he was using drugs.

On appeal, CS does not directly contest his failure to complete the requirements of his plans and evaluations. He argues instead that many of the children's basic needs were

met. He points to evidence in the record that indicates the children had adequate food, clothing, and shelter. The statute's definition of parental duties, however, is explicitly "not limited only to" the more rudimentary needs of the children. Minn. Stat. § 260C.301, subd. 1(b)(2). CS attempts to diminish the significance of his own admission that the children's care suffered because of his drug use and that he was unable to meet RNS's emotional needs while he was continuing to use drugs. The statute plainly includes among parental duties the "care and control necessary for the child's . . . emotional health and development." *Id.* Although CS could, at times, show positive parenting skills, the record is replete with evidence of his consistent unwillingness to address shortcomings that were detrimental to the children's well-being. The evidence clearly and convincingly supports the district court's conclusion that CS "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed . . . by the parent and child relationship" that are required under subdivision 1(b)(2).

The record similarly supports the district court's finding that CS's parental rights should be terminated under subdivision 1(b)(5) because "reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child[ren]'s placement." Minn. Stat. § 260C.301, subd. 1(b)(5). After CS's children were placed out of the home, the county continued to offer the same services to address the issues that prevented CS from parenting his children, but he refused to participate in the programs or to maintain even minimal contact with the supervising social-service agency.

CS concedes in his brief that "[t]he record contains many references about the services that were provided by Rice County Social Services to the parents." He does not directly dispute that these extensive programs and services constituted reasonable efforts by the county to rehabilitate the parents and reunite the family. Instead, he contends that two statements in the record could support a contrary conclusion: first, a prior court's finding that HO had not been provided an attorney and, second, testimony by a doctor that the mental-health services the county provided for HO were insufficiently intensive. Neither of these contentions provides a basis for concluding that the county failed to make reasonable efforts to rehabilitate and reunite CS with his children. Furthermore, the district court addressed the issue of HO's representation and found that HO "was never without counsel during the CHIPS proceeding." And the doctor's testimony acknowledged that the county had made "extreme efforts," but did not require an extensive period of locked treatment, which the doctor believed was required to constitute "reasonable efforts." None of the other doctors who worked with HO, including two of her medical witnesses at the hearing, believed that HO needed locked treatment to address her mental-health issues. But these allegations are unavailing in any case because they pertain to HO, not to CS.

The district court's conclusions relating to CS are supported by clear and convincing evidence that the county made reasonable efforts to provide programs and assistance. The district court's memorandum lists seventeen services that Rice County made available to CS and Waseca and Dakota Counties provided additional services. We agree with the district court that the "evidence is overwhelming" that neither parent took

advantage of the programs, classes, and services extended by Rice County's social services. Consequently, the county's reasonable efforts failed to correct the conditions leading to out-of-home placement.

Finally, we address the district court's conclusion that termination of CS's parental rights was in the best interests of the children. In every termination proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2008). Even if a statutory ground for termination exists, the district court must still find that termination is in the best interests of the child. *Children of T.A.A.*, 702 N.W.2d at 708. In considering the child's best interests, the district court must balance the preservation of the parent-child relationship against any competing interests of the child. *In re Welfare of M.G.*, 407 N.W.2d 118, 121 (Minn. App. 1987).

The district court stated that "it is in the children's best interest to be in a home that can meet their needs" and provide stability for the future. The district court concluded that CS could not at that time or in the reasonably foreseeable future meet the children's needs or provide stability because "the use of methamphetamine, marijuana, and alcohol dominates [CS's] life . . . to the exclusion of the best interests of [his] children." In assessing the children's best interests, the district court took into consideration that RNS had been placed out of the home more than nineteen of the past twenty-five months and KLS, who was not yet two years old, had been in out-of-home placement for nine of the past twelve months. Both the children's guardian ad litem and the Rice County social worker for the family testified that it was in the children's best interests for CS's parental rights to be terminated to allow the children permanency in a

stable home where their needs can be met. The record clearly and convincingly supports the district court's conclusion that it is in RLS's and KLS's best interests to terminate CS's parental rights.

Affirmed.