STATE OF MINNESOTA
IN COURT OF APPEALS
A10-788

In the Matter of the Welfare of the Children of:
C. A. B. and J. R. S., Parents.

Filed October 19, 2010
Affirmed
Worke, Judge

Wright County District Court
File Nos. 86-JV-09-8170, 86-JV-09-1474, 86-JV-10-893

Jolanta M. Howard, Minneapolis, Minnesota (for appellant J.R.S.)

Thomas N. Kelly, Wright County Attorney, Anne L. Mohaupt, Assistant County Attorney, Thomera R. Karvel, Assistant County Attorney, Buffalo, Minnesota (for respondent Wright County Human Services)

Cathleen Gabriel, Annandale, Minnesota (for respondent C.A.B.)

Nicole Raske, Buffalo, Minnesota (guardian ad litem)

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

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

WORKE, Judge

Appellant-father challenges the termination of his parental rights (TPR), arguing that the record fails to show that (1) he failed to satisfy the duties of the parent-child

relationship; (2) he is a palpably unfit parent; (3) the county made reasonable efforts to assist the family; and (4) TPR is in the children's best interests. We affirm.

FACTS

J.S. was born a healthy baby boy. J.S.'s mother, respondent C.A.B.,[1] worked outside of the home; when she worked, J.S.'s father, appellant J.R.S.,[2] was responsible for caring for J.S. On February 24, 2009, when J.S. was two months old, C.A.B. fed him and left him sleeping on an air mattress when she left for work. When C.A.B. returned home that night appellant told her that J.S. was deceased. The medical examiner's report indicated that the baby suffocated and was undernourished. He was found on the air mattress with a sheet over his face and vomit on his face. He had been left unattended for approximately 15 hours.

On March 2, 2009, respondent Wright County Human Services filed a petition for children in need of protection or services (CHIPS) for J.S.'s siblings,[3] A.M.S., then three years old, and J.D.S., then one year old. The district court adjudicated the children as CHIPS and a case plan was created for appellant that required him to, among other things, complete a psychological evaluation, complete a parenting capacity assessment, cooperate with public health, human services and the guardian ad litem (GAL), and sign all necessary releases of information.

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[1] C.A.B. consented to the termination of her parental rights.

[2] Appellant is not listed on the birth certificate for J.S. and refused to sign a Recognition of Parentage.

[3] Appellant is not listed on the birth certificates for either child and has not signed a Recognition of Parentage for either child.

In July 2009, the GAL issued a report, indicating that appellant attended supervised visits with the children, completed his parenting assessment, and participated in individual therapy and parenting education. The GAL expressed concern, however, because appellant did not appear to have gained useful information from the parenting education. The assessment indicated that unless treatment and training were incorporated into appellant's life, he would maintain his "status quo" of what appeared to be a "mundane, cheerless, and estranged lifestyle," which placed the children in "peril."

In November 2009, the GAL issued a report, which included the parenting assessor's conclusions that appellant (1) does not have a "secure, attuned attachment relationship" with his children, (2) is focused on his own needs and feelings and does not appear to have the capacity to demonstrate empathy for others, (3) accepts no responsibility for the circumstances leading to the death of his son, (4) does not have a strong work history, (5) does not have a support system of family or friends, and (6) is a potentially dangerous caregiver because his thinking is extremely skewed and self-centered. The assessor indicated that while the children enjoyed visits with appellant, they became deregulated, over-stimulated, or withdrawn around him.

On December 16, 2009, the county petitioned to terminate appellant's parental rights. The district court held a hearing. C.A.B. testified that she and appellant had been in a ten-year relationship, but were no long together. During their relationship, C.A.B. was the sole financial provider, working outside of the home and leaving appellant to care for the children. When appellant was home with the children, he never prepared them meals, and he slept during the day and was awake at night, a cycle that the two

older children shared, but that was opposite from the baby's schedule. C.A.B. testified that it was in the children's best interests to terminate appellant's parental rights.

Dr. Angelique Quinn Strobl performed the autopsy on J.S. and testified that the cause of death was likely asphyxia. Dr. Strobl listed the manner of death as undetermined, and not accidental, due to the baby being unattended for many hours and undernourished—the baby was almost the same weight at death that he was at birth and his entire gastrointestinal tract was empty. She further testified that she found evidence of hyperglycemia, which she stated indicated stress; in this case, she believed stress due to "a response to starvation."

Dr. George Petrangelo assessed appellant's parental fitness and testified that appellant's testing profiles were "relatively flat" because appellant was "highly defensive" and not willing to share information or admit to common faults. Dr. Petrangelo described appellant as paranoid, rigid, lacking insight, controlling, gregarious, and liking to be the center of attention. Dr. Petrangelo stated that appellant lacks parental understanding, sensitivity, and responsibility, and puts his needs before his children's needs. Dr. Petrangelo stated that appellant did not think that he needed therapy or parenting education. But Dr. Petrangelo noted that while appellant interacted with the children, he was distracting, interfering, and "artificial." Dr. Petrangelo opined that if the children were returned to appellant without any measurable change, there is a risk of neglect and appellant not meeting the children's needs.

Family therapist Deena McMahon testified that following a parenting assessment, she concluded that appellant is not a safe parent. McMahon testified that appellant lacks

the fundamental characteristics of a safe and reasonable parent, such as "attunement," meaning that he can "ignore the child, . . . harm the child, . . . walk away from the child or create physical harm to the child without it costing [him] anything." She testified that appellant "has the capacity . . . to do as he pleases without any emotional repercussion to his own person or his conscience," which puts the children at high risk. McMahon also testified that appellant values independence and was proud of his children for being able to "fend for themselves . . . if he slept all day." McMahon testified that the services offered to appellant were appropriate, but failed because appellant does not believe that there is anything to correct; for example, he participated in parenting classes, but did not make progress because he believed that "he has a high level of skill as a parent." McMahon opined that appellant's conduct endangers his children and that the children should not be raised by appellant.

Social worker Janelle Stach testified that she worked with appellant to enhance parenting skills, and, although she spent many hours with the family, she believed that appellant did not internalize what she taught him. Appellant did not believe that he needed to learn parenting skills, and he refused to learn how to prepare meals for the children, failed to set up a routine, failed to set boundaries or learn discipline techniques, and was not able to learn how to play with the children.

Child protection worker Michelle Beard testified that she was often unsuccessful in meeting with appellant because he claimed that it was "against his religion" to speak with her and that she is "evil." Beard requested several documents from appellant, including tribal-affiliation documents because he claimed that his birth parents are Native

American.[4] Appellant failed to provide any of the requested information. Beard testified that appellant participated in individual therapy, couples therapy, ongoing case management, two psychological assessments, two parenting assessments, parenting-skills lessons, weekly visitation, and a family group decision-making conference, but failed to make any changes. Beard expressed concern for the children's safety if returned to appellant, and opined that it is in the children's best interests to terminate appellant's parental rights.

GAL Nicole Raske testified that she believed that the services offered to appellant were appropriate. She testified that while appellant participated in the services offered, he did not internalize any skills. She stated that appellant is unable to demonstrate that he is able to meet the children's needs and to keep them safe. Raske stated that the children have an "unsecure attachment" to appellant, and opined that it is in the children's best interests to terminate appellant's parental rights.

Appellant testified that he did not do anything wrong on the day that J.S. passed away, claiming that it was important that he slept because a parent needs "eight hours of sleep a day or else it's like being a drunk person raising a kid." Appellant then explained that he has "security clearance" with the Navy, has a Harvard degree "for being a leader for leadership," was hand-picked by President Bush to fight the front lines, and is one of few with security clearance to complete unsafe missions, such as rescuing captured soldiers. Appellant claimed that because of his military career his children are entitled to

[4] Beard contacted the Bureau of Indian Affairs Midwest Region Office and several individual tribes. Currently, neither appellant nor the children are enrolled members in a tribe.

medical insurance, $1 million in life insurance upon his death, a $75,000 scholarship, and a free college education. He asserted that if his rights are terminated the children will not be entitled to these benefits.

The district court determined that it is in the children's best interests to terminate appellant's parental rights, concluding that appellant refused or neglected to comply with the duties of the parent-child relationship and is a palpably unfit parent. The court found that appellant failed to provide financial and housing stability; failed to provide adequate nourishment, parental supervision, and healthy sleep patterns; failed to recognize and attend to the children's emotional cues; and exhibited concerning behaviors that prevent him from meeting the children's needs. The court found that appellant's controlling and narcissistic behavior and grandiose and rigid thinking were harmful to the physical and emotional well-being of the children. The court also found that appellant repeatedly exhibited his inability to adapt or learn from his mistakes and that he lacks the minimal skills required to safely parent. The district court did not find appellant's testimony to be credible. The court concluded that the county provided reasonable efforts to reunite the family, but that appellant consistently and substantially refused to comply with the case-plan requirements, exhibited by his inadequate efforts to participate and inability to internalize. This appeal follows.

D E C I S I O N

"[P]arental rights may be terminated only 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 terminate parental rights if there is clear and convincing evidence establishing at

least one of the grounds for TPR set forth in Minn. Stat. § 260C.301, subd. 1(b) (2008), and if TPR is in the child's best interests. Minn. Stat. § 260C.301, subd. 7 (2008); *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

This court reviews TPR decisions to determine "whether the [district court's] 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). We "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing," but give "[c]onsiderable deference . . . to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998); *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). A finding is clearly erroneous when it is "manifestly contrary to the weight of the evidence or [it is] not reasonably supported by the evidence." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted).

Duties of Parent-Child Relationship

Appellant challenges the district court's conclusion that he failed to comply with the duties of the parent-child relationship. A district court may terminate the parental rights of a parent who "has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship," but only if "reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable." Minn. Stat. § 260C.301, subd. 1(b)(2). Noncompliance with

parental duties includes, but is not limited to, failure to provide a child with "necessary food, clothing, shelter, education, [or] other care and control necessary for the child's physical, mental, or emotional health and development." *Id.*

The district court concluded that appellant failed to comply with the duties of the parent-child relationship after finding that he failed to provide financial and housing stability, failed to provide necessary nourishment and supervision, failed to recognize the children's emotional needs, and exhibited concerning behaviors that prevented him from meeting the children's needs. The evidence supports the district court's findings. C.A.B. testified that she was the sole financial provider for the family, leaving appellant to care for the children when she worked outside of the home, but she stated that he never prepared meals for the children and slept during the day. Dr. Strobl testified that she listed the manner of the baby's death as undetermined because he had been unattended for many hours and was undernourished. The family therapist testified that appellant was proud of his children when they were able to fend for themselves while he slept during the day, but these children were one and three years old. And the GAL testified that appellant is unable to demonstrate that he is able to meet the children's needs and to keep them safe. The evidence supports the district court's findings and conclusion that appellant has failed to comply with the duties of the parent-child relationship.

Palpably Unfit

Appellant challenges the district court's conclusion that he is a palpably unfit parent. A district court also may terminate the parental rights of a parent who is "palpably unfit to be a party to the parent and child relationship." *Id.*, subd. 1(b)(4). A

parent is palpably unfit if "a consistent pattern of specific conduct before the child" or "specific conditions directly relating to the parent and child relationship" are of such a duration or nature that they render the parent "unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child." *Id.* A parent's mental illness may support a determination of palpable unfitness if it contributes to the parent's present and foreseeable inability to care appropriately for the child. *T.R.*, 750 N.W.2d at 661-62; *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996).

The district court concluded that appellant is a palpably unfit parent based on the findings that showed that appellant failed to comply with the duties of the parent-child relationship, and because appellant exhibited controlling and narcissistic behaviors, grandiose and rigid thinking, an inability to adapt or learn from his mistakes, and lacked the minimal skills required to safely parent. The evidence supports the district court's findings. The family therapist testified that appellant is not a safe parent and lacks the fundamental characteristics of a reasonable parent. McMahon testified that appellant lacks "attunement," which puts the children at high risk because appellant can ignore the children or harm the children without it "costing [him] anything" or "without any emotional repercussion to his own person or his conscience." The social worker testified that she worked with appellant to enhance his parenting skills but that he failed to internalize anything because he did not believe that he needed to learn anything. Stach testified that appellant refused to learn how to prepare meals, to set up a routine, to establish boundaries or learn discipline techniques, or learn how to play with the children.

Finally, appellant's testimony regarding prioritizing his need for sleep over the children's need for a healthy sleep schedule and his self-proclaimed educational and military status demonstrate his narcissism and grandiose thinking that could be harmful to the children. The evidence supports the district court's findings and conclusion that appellant is a palpably unfit parent.

Reasonable Efforts

Appellant also challenges the district court's conclusion that the county provided reasonable efforts to reunite the family. Before terminating parental rights, the district court must find that the responsible social services agency made reasonable efforts to reunify the child and the parent. Minn. Stat. § 260C.301, subd. 8 (2008); *S.Z.*, 547 N.W.2d at 892. "Reasonable efforts" are defined as "the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services" to meet the specific needs of the child and the child's family in order to reunify the family. Minn. Stat. § 260.012(f) (2008); *see In re Welfare of M.A.*, 408 N.W.2d 227, 235-36 (Minn. App. 1987) (describing minimum reasonable-efforts requirements), *review denied* (Minn. Sept. 18, 1987). Whether services constitute "reasonable efforts" depends on the nature of the problem, 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); *see also* Minn. Stat. § 260.012(h) (2008) (listing considerations). "Services must go beyond mere matters of form so as to include real, genuine assistance." *H.K.*, 455 N.W.2d at 532. But reasonable efforts do not include efforts that would be futile. *S.Z.*, 547 N.W.2d at 892. A parent's minimal improvement

is not enough to overcome the conclusion that the parent's past problems make his future performance as a parent uncertain. *See In re Welfare of Maas*, 355 N.W.2d 480, 483 (Minn. App. 1984).

The district court concluded that the county used reasonable efforts to reunify the family but that appellant refused to comply with the case-plan requirements and failed to make any changes. The record supports the district court's conclusion. In March 2009, the county created a case plan for appellant that required him to, among other things, complete a psychological evaluation, complete a parenting capacity assessment, cooperate with public health, human services and the GAL, and sign all necessary releases of information. By July 2009, appellant had supervised visits with the children, completed his parenting assessment, and participated in individual therapy and parenting education. But the GAL was concerned because appellant did not appear to have gained useful information from the parenting education, and the assessment indicated that without treatment and training, appellant's lifestyle would continue to place the children in peril. In November 2009, the parenting assessor concluded that appellant still did not have an attuned relationship with his children, was focused on his own needs, accepted no responsibility for the circumstances leading to the death of his son, and did not have a strong work history or support system.

During the hearing, the social worker testified that she worked with appellant for many hours to enhance his parenting skills, but he refused to learn or internalize what she taught him. The child protection worker testified that appellant would not meet with her because he claimed that it was "against his religion" and that she is "evil." She requested

several documents from appellant, which he failed to provide to her. The child protection worker stated that appellant participated in individual therapy, couples therapy, ongoing case management, two psychological assessments, two parenting assessments, parenting skills, weekly visitation, and a family group decision-making conference, but failed to make any changes. The GAL testified that the services offered to appellant were appropriate, but that appellant did not internalize any skills. The family therapist testified that the services offered to appellant were appropriate, but failed because appellant does not believe that there is anything to correct; for example, he did not make progress in parenting classes because he believed that "he has a high level of skill as a parent." Thus, appellant was offered many services, but they proved to be futile because appellant, although participating in some of the offered services, failed to make corrective changes. The evidence supports the district court's findings and conclusion that the county offered services to reunify the family.

Best Interests

Finally, appellant challenges the district court's conclusion that TPR is in the children's best interests. In a TPR proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7. The best-interests analysis requires the district court to balance the child's interest in preserving the parent-child relationship, the parent's interest in preserving the relationship, and any competing interests of the child. 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's preferences." *R.T.B.*, 492

N.W.2d at 4. When "the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7.

Appellant claims that the children's best interests are served with him because he has a close bond with the children. The evidence shows that a parenting assessment indicated that unless appellant changed, he would place his children in peril. The family therapist testified that appellant's behavior endangered the children and that the children should not be raised by appellant. The child protection worker testified that appellant failed to make any changes, and expressed concern for the children's safety if returned to appellant. The GAL testified that appellant failed to show that he can meet his children's needs and keep them safe. The professionals involved in this matter testified that it is in the children's best interests to terminate appellant's parental rights. Appellant asserts that if his rights are terminated, the children will no longer be entitled to receive his military-service benefits. But the district court did not find appellant to be credible. And even if the children are entitled to many benefits, that alone is not reason for appellant to raise the children when he is lacking even minimal parenting skills. The record supports the district court's findings and conclusion that it is in the children's best interests to terminate appellant's parental rights.

Affirmed.