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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1340**

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

**Filed March 1, 2011
Affirmed
Shumaker, Judge**

Olmsted County District Court
File Nos. 55-JV-10-465, 55-JV-09-5933

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Considered and decided by Shumaker, Presiding Judge; Halbrooks, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

Appellant-father, J.R., challenges the district court's termination of his parental
rights, contending that (1) the decision lacks sufficient factual support, (2) the county did
not make reasonable efforts to rehabilitate him and to reunite him with his children, and

(3) the county violated state law by not informing him that it was concurrently trying to reunify him with his children as well as find his children an adoptive family. We affirm.

FACTS

J.R. is the father of two boys, O.R., born December 20, 2004, and C.R., born March 28, 2007.¹ Since moving to Rochester in 2004, J.R. has struggled with unemployment, housing instability, homelessness, and significant chemical dependency. O.R. and C.R. were placed in foster care after an incident in March 2009, when they were playing with matches while unsupervised and accidentally burned down J.R.'s apartment. By the time of J.R.'s termination of parental rights (TPR) trial in April 2010, the children had resided in foster care continuously for 13 months.

After the children's placement in foster care in March 2009, Olmsted County Community Services (OCCS) identified the child-protection concerns as J.R.'s financial instability, exacerbated by chronic unemployment, his housing instability, and his chemical dependency. OCCS provided services to J.R. in an effort to reunify him with O.R. and C.R., but he struggled with unemployment. J.R. was periodically employed with three separate employers for a total of nine months during the 19 months prior to the TPR trial, but he was unemployed the rest of the time, including the four months prior to

¹ J.R. was never adjudicated the legal father of O.R. and C.R. The district court made the assumption that he was the father, even though he was not married to C.A. when the children were born and never signed a recognition of parentage. Neither the court nor the county ever required J.R. to establish his paternity, but the county did provide "assistance pursuing paternity." Despite the court's knowledge that J.R. was only an alleged father, the court found that "[t]he family consists of [J.R.] and his two sons." There is no legal presumption that J.R. is the boys' father, and the court's finding is erroneous. *See* Minn. Stat. § 257.55, subd. 1 (2010). But it does not affect the disposition of the case.

trial. At the time of trial, J.R. was financially dependent on his girlfriend, K.S., with whom he was living, along with three of her children, in a two-bedroom apartment.

J.R. also had continual problems with housing. After O.R. and C.R. accidentally burned down J.R.'s apartment, J.R. lived in a homeless shelter and then in a hotel with roommates, one of whom was described as a "street person." He also lived in a series of apartments where drug and alcohol use was prolific and where chemicals were abused in front of the children. J.R. testified that one of his roommates left crushed Xanax tablets on a communal table. In January 2010, J.R. and K.S. moved into an apartment with K.S.'s three children, but the apartment had no beds. They moved into a two-bedroom apartment two months later, but J.R.'s name was not on the lease at the time of trial. They planned on moving again if O.R. and C.R. were to live with them.

J.R. also had difficulty maintaining sobriety. In April 2009, his drug screens indicated heavy marijuana and alcohol use. During the year prior to trial, J.R. had twice been scheduled to participate in an outpatient chemical-dependency program but failed to do so. In one week in July 2009, he was arrested twice for driving while impaired (DWI) and disorderly conduct. He was ordered to complete a chemical-dependency evaluation for the first DWI, but he waited six months to do so. He was diagnosed with cannabis and alcohol dependence. One month prior to trial, he told the children's guardian ad litem and his social worker that he did not intend to stop using alcohol and he had blacked out at home after a drinking binge, during which he grabbed K.S. and pushed one of her children. The police were called. J.R. then stopped drinking, and K.S. testified that if he were to start drinking again, she would kick him out.

During its work with J.R., OCCS provided numerous services to J.R. in an attempt to rehabilitate him and to reunify him with O.R. and C.R., including high-risk child protective services, parent support and outreach program services, chemical-dependency assessment and treatment options, case-planning conferences, work force development center services, urine analysis tests, respite care, foster care, transportation, and financial assistance. OCCS filed a petition alleging that O.R. and C.R. were children in need of protection or services (CHIPS) in August 2009. OCCS alleges that by November 2009 J.R. stopped visiting O.R. and C.R. in foster care and failed to comply with his case plan in any significant way, so OCCS filed a TPR petition in January 2010.

Following a four-day trial, the district court ordered the termination of J.R.'s parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5) (2010). The court concluded that (1) OCCS had shown by clear and convincing evidence that termination of J.R.'s parental rights was in the best interests of O.R. and C.R. and (2) OCCS had made reasonable efforts to reunify the family and rehabilitate J.R. This appeal followed.

DECISION

Standard of Review

This court reviews the 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). Clearly erroneous means “manifestly contrary to the weight of the evidence or not reasonably supported by

the evidence as a whole.” *Northern States Power Co. v. Lyon Food Prod., Inc.*, 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

Appellate courts “give considerable deference to the district court’s decision to terminate parental rights” and “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. “[W]hen at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child,” this court affirms the district court’s termination of parental rights if the county has made reasonable efforts to reunite the family. *Id.*; Minn. Stat. § 260C.301, subs. 1(b), 7, 8 (2010).

Reasonable Efforts to Rehabilitate J.R.

Pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5), the district court concluded that, after the children’s placement out of the home, the reasonable efforts of OCCS failed to correct the conditions leading to the children’s placement. J.R. contends that OCCS did not make reasonable efforts to rehabilitate him; specifically, that OCCS did not require him to participate in a chemical-dependency treatment program.

In August 2009, when OCCS filed the CHIPS petition, an out-of-home placement plan was created that listed J.R.’s obligations, including “[J.R.] will address his chemical health needs and this will include participating in outpatient treatment.” J.R.’s case plan also mandated that he undergo three random and scheduled urine-analysis tests each week. One of J.R.’s social workers even accompanied J.R. to a treatment center for an assessment with a caseworker. Further, in September 2009, J.R. was sentenced for his first DWI and was required

to undergo a chemical-dependency assessment. He failed to undergo this assessment until March 2010, one month prior to trial. In the month prior to trial, he stated his intent to continue drinking to the guardian ad litem and to his social worker, and he became involved in an incident in K.S.'s apartment in which he grabbed K.S. and pushed one of her children during a drinking binge and then had a blackout. For the month prior to trial, J.R. stopped drinking.

The district court found that OCCS had made reasonable efforts to rehabilitate J.R. and supported its conclusion with detailed factual findings and testimony from three of J.R.'s social workers, the guardian ad litem, and the children's first foster mother. It is clear that the conditions leading to the TPR will not be corrected within a reasonable, foreseeable time. J.R. did not complete the goals outlined in his case plan, as his future sobriety was uncertain and short-lived at the time of the trial; did not maintain contact with O.R. and C.R., except during the month prior to trial; and had attained neither employment nor reasonable financial stability. "Failure to cooperate with the rehabilitation plan supports the conclusion that the present conditions will continue for a prolonged, indeterminate period." *In re Welfare of J.S.*, 470 N.W.2d 697, 703 (Minn. App. 1991), *review denied* (Minn. July 24, 1991). The district court's determination that OCCS made reasonable efforts to rehabilitate J.R. is supported by clear and convincing evidence, and the district court's findings are not clearly erroneous.

Reasonable Efforts to Reunite the Family

J.R. contends that OCCS did not provide reasonable efforts to reunify him with O.R. and C.R. and that his failure to maintain contact with his children was

largely attributed to two distinct time periods (cumulatively totaling nearly 3 months), where [J.R.'s social worker] did not let [J.R.] know how or where to go to see his sons.

During the time [he] was the social worker on [J.R.'s] case (from March, 2009, through trial in May, 2010), [the social worker] was not available nor accessible, and the quality of his effort was extremely poor.

Minn. Stat. § 260C.301, subd. 1(b)(5)(iv), states that it may be presumed that reasonable efforts have failed if, among other things: “reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.” “Reasonable efforts” are defined as “the exercise of due diligence by the responsible social services agency” to use 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) (2010); *see In re Welfare of M.A.*, 408 N.W.2d 227, 235-36 (Minn. App. 1987), *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); Minn. Stat. § 260.012(h) (2010) (listing considerations).

There is evidence that J.R.’s first social worker was ineffectual in assisting J.R. and that communication with him was often very difficult. The social worker was not easily accessible to the guardian ad litem and J.R. expressed frustration over not being able to reach the social worker, who told J.R. that it was J.R.’s responsibility to set up

times to see his children, not the social worker's responsibility. A county's "[s]ervices must go beyond mere matters of form so as to include real, genuine assistance." *H.K.*, 455 N.W.2d at 532.

However, "reasonable efforts," by definition, does not include efforts that would be futile." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004). The social worker asserted that he felt his personal efforts on behalf of J.R. were, in effect, futile because of J.R.'s lack of involvement. The social worker testified to providing numerous services to J.R., including having multiple conversations with J.R., visiting various apartments in which J.R. lived to determine whether they were safe for the children, discussing how J.R.'s alcohol and drug abuse affected his ability to be a father, accompanying J.R. to schedule a substance-use evaluation, and meeting with him twice a month during case-planning conferences to help him find work and get help for substance abuse. Further, OCCS provided the following services to J.R. throughout their work with him: high-risk child protective services, parent support and outreach program services, after-hours child welfare checks, chemical-dependency assessment and treatment options, case-planning conferences, work force development center services, urine-analysis tests, respite care, foster care, visitation, transportation, and financial assistance. Even if the social worker's efforts were deficient, J.M. alleges that they covered only three months out of the 13 months the children were in foster care.

The guardian ad litem testified that J.R.'s final social worker was much more effective in working with J.R. when she took over J.R.'s case in December 2009 and started working with him in February 2010. The guardian ad litem concluded that:

. . . [in] most [meetings with J.R., J.R.] was very angry. He would become explosive. He really was defensive that, you know, we're just stealing his kids, taking them away, not giving him the chance he deserved Once [the final social worker] came on . . . [v]isits were set up, there was consistency, the goals were clear. And so at that point [J.R.] was very aware of what needed to happen and there was plenty of time for him to get it done before we had permanency.

The record reflects that the final social worker set clear goals for J.R. and communicated clearly and positively with him for more than two months prior to trial in order to try to reunite J.R. with O.R. and C.R. She offered J.R. rides to visit the boys at their foster home and created a visitation schedule based upon J.R.'s availability. She scheduled nine visits during the month of March 2010. J.R. was to meet at a county office at 8:30 a.m. to be transported to visit his children for as long as he wished. J.R. missed all nine appointments in the month of March.

J.R. was provided many services, but they proved to be futile because, although he participated in some of the services, J.R. failed to make any lasting corrective changes. The evidence supports the district court's finding and conclusion that OCCS made reasonable efforts to reunite J.R. with O.R. and C.R.

OCCS's Alleged Violation of Minn. Stat. § 260C.012(k)

J.R. contends that OCCS did not inform him or the court that it was concurrently attempting to reunify J.R. with his children as well as find O.R. and C.R. a permanent placement away from J.R. Section 260.012(k) states that:

Reasonable efforts to place a child for adoption or in another permanent placement may be made concurrently with reasonable efforts to prevent placement or to reunify

the child with the parent or guardian from whom the child was removed. When the responsible social services agency decides to concurrently make reasonable efforts for both reunification and permanent placement away from the parent under paragraph (a), the agency shall disclose its decision and both plans for concurrent reasonable efforts to all parties and the court.

The district court did not make a finding on this issue, as it was not raised there. Generally this court will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). This, however, is not an “ironclad rule.” *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002); *see* Minn. R. Civ. App. P. 103.04 (noting that appellate courts may address issues as justice requires).

It is uncontested that J.R. received notice of the county’s efforts when OCCS filed a TPR petition. Further, the out-of-home placement plans submitted to the court, which J.R. signed, indicate that case-planning conferences and family group conferences were offered to J.R. to “help develop a back-up permanency plan if reunification with [J.R.] is not possible.” Further, in OCCS’s TPR petition, OCCS states that “[C.R.] and [O.R.] were moved to a confidential pre-adoptive home.” And J.R. was informed during the January 12, 2010, CHIPS review hearing that O.R. and C.R. were being placed in a concurrent-planning, pre-adoptive foster home and that OCCS was initiating permanency proceedings and planned to file a TPR petition because of J.R.’s failure to comply with his case plan. J.R. received adequate notice of OCCS’s concurrent efforts, in satisfaction of Minn. Stat. § 260C.012(k).

Best Interests

The district court determined that it was in the best interests of O.R. and C.R. that J.R.'s parental rights be terminated. 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 his relationship with his parent, the parent's interest in preserving his relationship with his child, and any competing interests 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.

"[D]etermination of a child's best interests is generally not susceptible to 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).

The district court specifically noted J.R.'s history of alcohol abuse and his uncertain future sobriety, and J.R.'s lack of visitation with O.R. and C.R. The court also noted J.R.'s failure to comply with his case plan and to correct the conditions leading to his children's placement outside the home, despite OCCS's reasonable efforts to rehabilitate J.R. and to reunify the family. The district court balanced the three factors of *R.T.B.* and based its findings and conclusions on substantial

evidence, including extensive testimony from professionals involved in the case, all of whom recommended termination of J.R.'s parental rights. The record supports the district court's findings and conclusions that the termination of J.R.'s parental rights is in the best interests of O.R. and C.R.

Affirmed.