STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2067

In the Matter of the Welfare of the Child of: E. M., Parent

Filed April 5, 2011
Affirmed
Toussaint, Judge

Ramsey County District Court
File No. 62-JV-09-2712

Patrick D. McGee, St. Paul, Minnesota (for appellant E.M.)

John J. Choi, Ramsey County Attorney, Kathryn M. Eilers, Rebecca J. Reinhart, Assistant County Attorneys, St. Paul, Minnesota (for respondent Ramsey County)

James I. Laurence, St. Paul, Minnesota (for guardian ad litem Ruby Payne)

Considered and decided by Hudson, 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 E.M. challenges a district court order terminating his parental rights, arguing that the record does not support the district court's findings that (1) respondent Ramsey County made reasonable efforts to reunify him with the child and (2) termination was in the child's best interests. Because the record supports these findings, we affirm.

D E C I S I O N

Appellate courts review 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). Clearly erroneous means "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *N. States Power Co. v. Lyon Food Prods., 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," the district court's termination of parental rights should be affirmed, so long as the county has made reasonable efforts to reunite the family.[1] *Id.*; Minn. Stat. § 260C.301, subds. 1(b), 7, 8 (2010).

I.

Appellant argues that the district court's finding that respondent "made all reasonable efforts to rehabilitate and reunite [appellant and the child]" was clearly erroneous. We disagree.

[1] Whether the evidence supports a finding that a specific criterion of the termination statute has been met is not at issue in this appeal.

Before terminating parental rights, the responsible social services agency must make reasonable efforts at reunification or demonstrate that such efforts are not required under the circumstances. Minn. Stat. § 260.012(a) (2010); *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). In the case of noncustodial parents, reasonable efforts at reunification require a social services agency to exercise due diligence in "assess[ing] a noncustodial parent's ability to provide day-to-day care for the child and, where appropriate, provid[ing] services necessary to enable the noncustodial parent to safely provide the care." Minn. Stat. § 260.012(e)(2), (4) (2010).

To determine whether reasonable efforts have been made, the district court must consider "whether services to the child and family 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). Whether the services provided in a particular case constitute reasonable efforts depends on the duration of the county's involvement, the nature of the problem, 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). Services must "go beyond mere matters of form so as to include real, genuine assistance" that could, if successful, enable the parent to overcome the conditions that led to the child's out-of-home placement. *Id*. But services need not be provided if rehabilitation is not realistic or if to do so would be futile. *S.Z.*, 547 N.W.2d at 892.

Appellant's argument relies on the supreme court's holding in *In re Welfare of Children of T.R.*, 750 N.W.2d 656 (Minn. 2008). In *T.R.*, the supreme court reversed a termination of a noncustodial father's parental rights, stating that the county's mere testing of the father for chemical use, "without more, is not realistic under the circumstances to rehabilitate a parent who, that testing shows, suffers from chemical dependency issues." 750 N.W.2d at 665. The supreme court noted that "no services were offered to address [the father's] lack of verbal skills and acknowledged difficulty in understanding the proceedings." *Id.* at 666. The court concluded that the district court erred by finding that the county had made reasonable efforts to rehabilitate the father and reunify the family, reversed the termination of the father's parental rights, and remanded the matter for further proceedings. *Id.*

The case plans in *T.R.* required the father "to complete chemical dependency, psychological, and parenting assessments, abstain from alcohol and chemical use and undergo random urinary analysis testing." *Id.* at 659. He was also required to "provide UAs on demand, complete a chemical dependency evaluation using social services as a collateral source, and abstain from using mood-altering substances, including alcohol." *Id.* The parent was not provided any additional services to achieve abstinence from drugs or alcohol. *Id.* at 660. Contrary to appellant's assertion that he is similarly situated as the parent in *T.R.*, respondent provided appellant with services beyond simple urinary analysis testing. Appellant's case plans required, among other provisions, that he participate in a methadone program in an attempt to abstain from drug use. Appellant also offers no evidence that he had any difficulty understanding the proceedings, unlike

the parent in *T.R.* His reliance on *T.R.* is therefore misplaced.

When viewing the entirety of the record, we conclude that the district court's finding that respondent made reasonable efforts to rehabilitate appellant and reunify him with the child was not clearly erroneous.

II.

Appellant also argues that the district court's finding that termination was in the best interests of the child was clearly erroneous. We disagree.

In a termination-of-parental-rights 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 her relationship with the parent, the parent's interest in preserving his relationship with the 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) (quotations omitted).

Appellant's argument that the district court erred by finding that termination of his parental rights was in the child's best interests is centered on his assertion of a "competing interest of the child . . . in having her birth father be given every chance to be an effective parent to her." But this is simply a rephrasing of appellant's argument that the district court erroneously found that respondent had made the statutorily required reasonable efforts at reunification. As we have said, this argument is without merit. Similarly, appellant's attempt to challenge the district court's best-interests finding by way of the reasonable-efforts argument is unavailing.

Appellant also briefly asserts that the district court erred because the "child's behavior with appellant clearly shows that she wants to continue the parent-child relationship with appellant." But this assertion presents no argument that the district court clearly erred by determining that the child's best interests—when viewed in total—supported termination of appellant's parental rights. Furthermore, while indicating that the child may benefit from having some form of relationship with appellant, the fact that the child "has trouble ending visits with [appellant] because she does not want to leave" does not speak to her interest in preserving a *parent-child* relationship with appellant. *See In re Child of P.T.*, 657 N.W.2d 577, 583 (Minn. App. 2003) (stating that the right of parentage "is in the nature of a trust and is subject to parents' correlative duty to protect and care for the child" (quotation omitted)), *review denied* (Minn. Apr. 15, 2003).

When viewed in its entirety, the record contains evidence indicating a significant number of competing interests of the child, from the need for a safe, stable home to the child's need for a parent that is able to adequately meet her special needs. The record also supports the district court's finding that it is difficult for appellant to obtain suitable housing, that he continues to use drugs despite his involvement with the treatment program, that he has stopped taking medication for his mental illness, and that he does not believe that the child has special needs. On this record, the district court's finding that the best interests of the child supported termination of appellant's parental rights is not clearly erroneous.

Affirmed.