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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1087**

In the Matter of the Welfare of the Children of: L. J. and D. J., Parents

**Filed December 24, 2012
Affirmed
Peterson, Judge**

St. Louis County District Court
File No. 69HI-JV-11-218

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Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Cleary, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from the termination of his parental rights, appellant-father argues that the record does not support the district court's determinations that (1) he is palpably unfit to be a party to the parent-child relationship, (2) termination is in the children's best interests; and (3) the children could not be placed with relatives. We affirm.

FACTS

Appellant-father D.J. and respondent-mother L.J. are the parents of three children: Tn.J., born April 1, 2003; Tr.J., born February 13, 2005; and Ta.J., born May 22, 2006. In 2008, after the Hibbing and Virginia Police Departments received reports of Tr.J. and Ta.J. walking alone across a very busy intersection to a gas station and Tr.J. crossing a highway while looking for his mother, the case was referred to St. Louis County Social Services. At that time, the children were in mother's care, and father was incarcerated.

Social worker Patty Chandler worked with the family from August 2008 until April 2011. During that time, the children were frequently placed in short-term foster care because mother was in and out of jail for probation violations, and father was incarcerated. From the time the children were placed in foster care, they displayed significant learning and behavior problems. Initially, Tn.J. was placed with a family near his school, and Tr.J. and Ta.J. were placed together with another family. Tn.J., who has learning difficulties, performed very poorly in school. Tr.J. acted out physically toward Ta.J, including grabbing and pulling out chunks of her hair. When Tn.J. came for a visit with his siblings, he and Tr.J. got into a violent confrontation, stabbing at each other with knives from a toy tea set. Tr.J. also demonstrated self-destructive behavior, engaging in head banging to the point where he nearly became unconscious.

In August 2010, all three children were placed with foster parent A.T., but A.T. was unable to keep the boys due to their behavior problems. She testified that Tn.J. was diagnosed as being emotionally and behaviorally disturbed and that he overreacted to minor incidents with explosive anger; she stated that Tn.J. and Tr. J. interacted with each

other in a negative manner and were very antagonistic toward each other. The boys could not be left alone with younger children because of their physical aggression. Tr.J. also used very bad language and displayed physical aggression toward Ta.J.

A petition alleging that the children were in need of protection and services was filed in October 2010. In April 2011, father was released from prison, and he and mother stated to Chandler and social worker Annie Krohn that they wanted the family to be reunited. The parents' case plan included court-ordered individual therapy and couples counseling. On June 18, 2011, father was arrested and charged with committing felony domestic assault by strangulation against mother. A jury found father guilty, and he was again incarcerated with a release date in about June 2013. Father admitted that he saw a therapist only once and did not participate in couples counseling because he was reincarcerated. Mother became noncompliant with the case plan by using alcohol and marijuana and refusing to attend mental-health therapy, and a petition to terminate the parental rights of both parents was filed in October 2011.

Licensed psychologist Mary Carpenter evaluated both boys and reviewed mental-health records for all three children. Carpenter diagnosed the boys as having reactive attachment disorder; she diagnosed Tn.J. as having "an unspecified disturbance of conduct." Carpenter testified that the boys need nurturing and a higher level of skilled parenting because of the limited time during which they could form attachments. She also explained that repairing reactive attachment disorder will require dedication and extensive daily work. Carpenter predicted that the likely outcome of the boys remaining in the foster-care system would be Tr.J.'s involvement in the correctional system and

Tn.J.'s suffering from depression and anxiety. Krohn's testimony indicated that Ta.J. also suffers from attachment issues.

Krohn opined that all three children need a stable home and a caregiver willing to address their attachment issues and ongoing needs and that neither mother nor father is capable of providing this. Krohn opined that both parents have "substantial issues" that impair their abilities to parent the children. She also noted that, due to multiple incarcerations during the preceding three or four years, father has spent only short periods with the children and that, during his last release period, it was less than two months before he reoffended and was reincarcerated.

Krohn testified that termination is in the children's best interests. She explained:

I believe there are a lot of facts over the past year of working with these parents. A lot of services offered, a lot of helping hands, a lot of information relayed to them that have, you know, I think as social workers we don't want to do more work than the client but we at the same time want to help them out. And I think over the past years there are many facts that are very concerning both with the parent's relationship and with the ongoing behaviors of the children and the high needs of the children.

The guardian ad litem (GAL) opined that it is in the children's best interests to be placed in a stable home where their needs could be met. The GAL opined that much time and commitment from a caregiver is needed to address the children's attachment issues. Based on mother's and father's histories, the GAL did not believe that they could meet the children's needs.

In July 2011, father identified his mother and an aunt as possible permanent placement options. Krohn had several discussions with the relatives and took steps

toward a transfer of custody to the relatives. But, after several months, the relatives advised Krohn that they could not take the children.

The district court terminated both parents' parental rights to all three children on statutory grounds of palpable unfitness, substantial and continuous failure to comply with parental duties, and failure of reasonable efforts to correct the conditions leading to the children's placement. This appeal by father followed.

D E C I S I O N

I.

An appellate court reviews a decision to terminate parental rights to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by clear and convincing evidence. *In re Welfare of T.P.*, 747 N.W.2d 356, 362 (Minn. 2008); *see In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005) (stating that evidence must be closely examined for sufficiency to determine whether it met clear and convincing evidentiary standard). This court defers to the district court's termination decision if at least one statutory ground for termination is proved by clear and convincing evidence and if termination is in the children's best interests. *In re Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008).

Palpable Unfitness

Under Minn. Stat. § 260C.301, subd. 1(b)(4) (2010), a district court may terminate parental rights if the parent

is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly

relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

The petitioner must prove “specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child.” *T.R.*, 750 N.W.2d at 661 (quotation omitted).

Father argues that his incarceration for a period of about one year after trial is insufficient to show that he is unable to appropriately care for the children for the reasonably foreseeable future. Incarceration alone is an insufficient basis for termination. *See In re Welfare of Staat*, 287 Minn. 501, 505, 178 N.W.2d 709, 712-13 (1970) (prohibiting termination for abandonment when incarcerated parent maintained parental role while incarcerated). But incarceration may be considered along with other factors when deciding whether termination is warranted. *In re Welfare of A.Y.-J.*, 558 N.W.2d 757, 761 (Minn. App. 1997), *review denied* (Minn. Apr. 15, 1997).

The district court found:

The children have developed serious behavioral issues as they have remained in foster care placement, leading to each of them having their own special needs that are becoming increasingly difficult to address; the two older boys have not bonded with each other, but each of them [has] developed behavioral issues that make them a danger to youngsters; the youngest child [Ta.J.] has developed boundary issues that make her vulnerable to abuse by others.

... [E]xpert testimony from psychologists indicates that the children have developed such psychological issues as “Reactive Attachment Disorder,” and have developed special needs for parenting; that it is unlikely that either [mother or

father] will ever be able to meet such needs; that to reestablish attachment to either parent would be a most difficult full time job and would take extensive work on a daily basis to reestablish such attachment.

These findings identify the children's serious behavioral and psychological problems and father's parenting deficiencies. The district court did not find that father is a palpably-unfit parent due to his incarceration. Rather, the court found that father lacks necessary skills to address the children's behavioral and psychological problems and is unlikely to obtain those skills in the reasonably foreseeable future. To the extent that father's ongoing pattern of incarcerations has contributed to his lack of skills, for example, by resulting in noncompliance with case-plan counseling and therapy requirements, it is a relevant factor to consider.

The district court's finding that father is palpably unfit to be a party to the parent-child relationship is supported by clear and convincing evidence. Because a single statutory ground is sufficient to support a termination of parental rights, we need not address the additional statutory grounds for termination found by the district court. *See T.R.*, 750 N.W.2d at 661.

II.

When a statutory ground for termination exists, "a child's best interests may preclude terminating parental rights." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009 (quotation omitted); *see* Minn. Stat. § 260C.301, subd. 7 (2010) ("[T]he best interests of the child" are "paramount" in termination proceedings). A best-interests analysis requires consideration and balancing of three factors: the child's interest

in preserving a parent-child relationship, the parents' 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); see *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003) (“An order terminating parental rights must explain the district court’s rationale for concluding why the termination is in the best interests of the children.”). Determination of a child’s best interests generally is not susceptible to an appellate court’s global review of the record because the determination requires credibility assessments and balancing statutory criteria, which are matters committed to the district court’s discretion. *Id.* A best-interests determination is subject to abuse-of-discretion review. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011). To facilitate effective appellate review, the findings must provide insight as to the facts or opinions most persuasive of the ultimate decision and to show the district court’s comprehensive consideration of the statutory criteria. *Tanghe*, 672 N.W. 2d at 626.

Although the district court did not expressly balance the statutory criteria, its findings are sufficient to meet the *Tanghe* standard. The district court’s findings, which specifically address father’s failure to make “any significant progress in remedying issues that led to the [children’s] placement” and the children’s serious behavioral and psychological problems, show that the district court found that the children’s need for a permanent placement with a caregiver capable and willing to address their special needs is of paramount importance.

Father argues that the evidence does not support the finding that termination is in the children’s best interests because the record contains evidence that father is a good

parent able to meet the children's needs when he is not incarcerated and not residing with mother. But the record includes considerable evidence to the contrary. Krohn opined that termination is in the best interests of all three children because they need a stable home and a caregiver willing to address their attachment issues and ongoing needs and that father is incapable of providing such an environment. Krohn testified that, despite the numerous services offered to the parents, significant concerns remained regarding their ability to address the children's ongoing behaviors and high needs. The GAL also opined that it is in the children's best interests to be placed in a stable home where their needs could be met, stating that much time and commitment from the caregiver is needed to address the children's attachment issues. Based on father's history, the GAL did not believe that father could meet the children's needs.

The district court's findings show that it found Krohn's and the GAL's testimony credible. This court defers to the district court's assessment of witness credibility. *In re Welfare of Child of J.L.L.*, 801 N.W.2d 405, 413 (Minn. App. 2011), *review denied* (Minn. June 27, 2011). We will not disturb the district court's finding that termination is in the children's best interests.

III.

Finally, father challenges the district court's conclusion that there is no available relative who could serve as a permanent placement option. Father contends that the children could be placed with his mother. There is a strong preference for placement of a child with a relative if the parents are unable or unwilling to care for the child. *In re Welfare*

of M.M., 452 N.W.2d 236, 238 (Minn. 1990). The pertinent statute sets forth the social service agency's duties with regard to conducting a relative search:

The responsible social services agency shall exercise due diligence to identify and notify adult relatives prior to placement or within 30 days after the child's removal from the parent. The county agency shall consider placement with a relative under subdivision 2 without delay. The relative search required by this section shall be reasonable and comprehensive in scope and may last up to six months or until a fit and willing relative is identified. The relative search required by this section shall include both maternal relatives of the child and paternal relatives of the child, if paternity is adjudicated.

Minn. Stat. § 260C.212, subd. 5(a) (2010).

Father testified that a few days before trial his mother expressed interest in providing a home for the children. However, when the county contacted the paternal grandmother, she told the county that she could not be a placement option, and there is no evidence that she indicated to the county before trial that she had changed her mind. Because the county complied with Minn. Stat. § 260C.212, subd. 5(a), and did not identify a relative with whom the children could be placed, the district court did not err by concluding that there is no available relative who could serve as a permanent placement option.

Affirmed.