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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1872**

In the Matter of the Welfare of the Children of: J. R., Parent.

**Filed April 7, 2014
Affirmed
Schellhas, Judge**

Ramsey County District Court
File No. 62-JV-12-4094

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Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the termination of his parental rights, arguing that the district court abused its discretion by concluding that termination of his parental rights was in the best interests of the children. We affirm.

FACTS

In August 2011, respondent Ramsey County Community Human Services Department (RCCHSD) made a finding of sexual-abuse maltreatment by appellant J.R. of seven-year-old A.I., who is the daughter of J.R.'s girlfriend, J.V. A.I. is the half-sister of the following children of J.R. who are the subject of this proceeding: J. Jr., born April 27, 2008; R.R., born June 19, 2009; M.R., born December 27, 2010; and J.F.R., born September 14, 2012. RCCHSD made the maltreatment finding based on A.I.'s report in Tennessee that J.R. repeatedly told A.I. to "suck him"; at least once, J.R. placed his penis in A.I.'s mouth; and J.R. threatened to whip A.I. if she told her mother, J.V. After A.I. reported the sexual abuse to J.V. in Minnesota, J.V. sent A.I. to live with her grandparents in Tennessee, even though J.V. did not completely believe A.I.

In January 2012, A.I. returned to Minnesota because she missed her family. Upon her return to Minnesota, A.I. disclosed to school personnel that she was afraid to go home because she feared that J.R. might come to the house. Midwest Children's Resource Center interviewed A.I., and her repeated report of sexual abuse was detailed and consistent with her disclosure in Tennessee. In February, RCCHSD petitioned the district court to adjudicate A.I., J. Jr., R.R., and M.R. children in need of protection or services (CHIPS). On February 16, the district court adjudicated the children CHIPS, allowed them to remain in the custody of J.V., and granted RCCHSD protective supervision of the children. J.R. failed to sign the case plan prepared by RCCHSD and failed to complete a psychosexual evaluation.

In December 2012, RCCHSD petitioned the district court to terminate the parental rights (TPR) of J.R. to J. Jr., R.R., M.R., and J.F.R., alleging that a child experienced egregious harm while in J.R.'s care under Minn. Stat. § 260C.301, subd. 1(b)(6) (2012), and that J.R. was palpably unfit to be a party to the parent-and-child relationship under Minn. Stat. § 260C.301, subd. 1(b)(4) (2012). In March 2013, the court found that the petition stated a prima facie case that J.R. subjected a child in his care to egregious harm and therefore relieved RCCHSD of its obligation to engage in reasonable efforts to rehabilitate or reunite J.R. with his children.

Meanwhile, the State of Minnesota charged J.R. with first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(h)(iii) (2010). A jury found J.R. guilty of the charged offense and, in May 2013, the district court sentenced J.R. to 190 months' imprisonment. J.R.'s appeal of his conviction is pending before this court.

The district court conducted a trial on the TPR petition in August 2013. Four witnesses testified. The court-appointed guardian ad litem (GAL) and Ramsey County Child-Protection Worker testified in support of the TPR petition. The GAL acknowledged that J.R. had a good relationship with his children but testified that TPR was in the children's best interests because J.R. had not admitted to his sexual abuse so he could not correct his behavior; allowing J.R.'s children to visit him would send a message to A.I. that "her mother didn't believe her, the courts didn't believe her, [the sexual abuse] maybe never happened"; and visits between J.R. and his children would lead to harmful intrafamily division.

The child-protection worker testified that she had concerns about J.R.'s parenting skills because his children never asked about him. She also expressed concerns about J.R.'s ability to successfully complete sex-offender treatment because he refused to admit that he had sexually abused A.I. and about J.R.'s ability to parent his children in the foreseeable future. She testified that immediate TPR was in the children's best interests because it would provide permanency to the children by avoiding "10 years of limbo" while J.R. served his sentence.

J.R. testified that he would use prison treatment programs "if it mean[t] at least being able to contact [his] children and be with them." But J.R. also testified that he had not undergone a psychosexual evaluation and was not aware that, to successfully complete sex-offender treatment, he would be required to admit that he sexually abused A.I. In fact, J.R. maintained that he did not sexually abuse A.I. J.R. also testified that he was earning 25 cents an hour working in prison, would get a 50-cent raise every 60 days up to a maximum of \$4 to \$5 per hour, and would be unable to voluntarily pay child support if his parental rights were terminated. He testified that he had eight children: four with J.V., one living with the child's mother in Indiana, and three living with their mother in Tennessee. He was in arrears in his child-support obligation to his child in Indiana, and Tennessee was attempting to establish a child-support obligation for his children in Tennessee. As to J.R.'s children with J.V., J.R. was subject to a child-support order for J. Jr., and Minnesota had suspended J.R.'s driver's license for failure to pay support.

J.V. opposed the TPR petition, testifying that J.R. was a “great father” and that she did not believe that he had sexually abused A.I. J.V. felt that J.R. should have a relationship with his children and help support his children financially.

In September 2013, the district court found that J.R. had caused egregious harm to a child in his care, concluded that TPR was in the best interests of the children, and terminated J.R.’s parental rights. The court found that the children’s need for permanency outweighed J.R.’s desire for future contact with the children and J.V.’s future need for financial support from J.R.

This appeal follows.

D E C I S I O N

“[I]f at least one statutory ground alleged in the petition is supported by clear and convincing evidence and termination of parental rights is in the child’s best interests, [appellate courts] will affirm.” *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). Egregious harm of a child is a ground for termination of parental rights under Minn. Stat. § 260C.301, subd. 1(b)(6). Sexual abuse of a child constitutes egregious harm. Minn. Stat. § 260C.007, subd. 14(10) (2012).¹ J.R. states in his brief that “[f]or the purposes of this appeal, [J.R.] concedes a child suffered egregious harm in his care, thus the only remaining argument is the best interests of the children.” J.R. argues

¹ We cite the most recent version of the statutes because they have not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, “appellate courts apply the law as it exists at the time they rule on a case”).

that the district court clearly erred by concluding that termination of his parental rights was in the children's best interests.

The child's best interests are the paramount consideration in every termination case. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990); see Minn. Stat. § 260C.301, subd. 7 (2012) ("In any proceeding under this section, the best interests of the child must be the paramount consideration.").

Before ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze:

- (i) the child's interests in preserving the parent-child relationship;
- (ii) the parent's interests in preserving the parent-child relationship; and
- (iii) any competing interests of the child.

Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). The district court therefore "must balance the preservation of the parent-child relationship against any competing interests of the child." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 668 (Minn. App. 2012). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *Id.* (quotation omitted). "Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7; see *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 902 (Minn. App. 2011) (noting that conflicts between the rights of the child and the rights of the parent are resolved in favor of the child), *review denied* (Minn. Jan. 6, 2012).

"Considerable deference is due to the district court's decision [to terminate parental rights] because a district court is in a superior position to assess the credibility of

witnesses.” *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). “We review a district court’s ultimate determination that termination is in a child’s best interest for an abuse of discretion.” *J.R.B.*, 805 N.W.2d at 905.

Here, in regard to the children’s best interests, the district court stated the following:

It is in the other children’s best interests to terminate the parental rights of [J.R.]. The children’s need for a safe and stable home, free of violence and sexual abuse, outweighs any interest the children or [J.R.] may have in preserving the parent child relationship. The children need permanency. This finding is based on the following facts:

- a. The children’s safety and well-being are the paramount considerations.
- b. [J.R.] perpetrated an egregious act of sexual abuse against an 8-year old child he helped raise.²
- c. The egregious harm perpetrated by [J.R.] demonstrates palpable unfitness and his inability to provide minimally adequate parental care.
- d. It is clear from the sexual abuse inflicted upon [A.I.] that [J.R.] has no capacity to safely care for a child. The fact that [J.R.] continues to deny any responsibility for the sexual abuse of [A.I.] demonstrates this complete lack of parental capacity to safely care for any child.
- e. The children’s safety would be jeopardized if any future contact with [J.R.] were allowed.
- f. [J.R.] cannot provide a safe and stable home for the children now or in the reasonably foreseeable future.
- g. The children need a safe, stable home and appropriate parental care from a caregiver who can meet their needs. [J.R.] cannot provide this for the children now or in the reasonably foreseeable future.

² The child was seven years old when J.R. sexually abused her.

J.R. argues that none of his children suffered any significant harm at his hands and that, due to his incarceration, the children are unlikely to suffer any additional harm from his actions. But J.R. maintains that he did not sexually abuse A.I. despite the jury's verdict finding J.R. guilty of committing first-degree criminal sexual conduct against A.I. We conclude that the district court's findings that "[i]t is clear from the sexual abuse inflicted upon [A.I.] that [J.R.] has no capacity to safely care for a child" and "[t]he fact that [J.R.] continues to deny any responsibility for the sexual abuse of [A.I.] demonstrates this complete lack of parental capacity to safely care for any child" are supported by clear and convincing evidence in the record.

J.R. next argues that termination will not improve permanency for the children. To the contrary, the guardian ad litem's and child-protection worker's testimony supports the district court's findings that the children need permanency and that terminating J.R.'s parental rights will provide the children the permanency that they need.

J.R. also argues that termination is not in the best interests of the children because termination will deny them a possibly substantial source of financial support. But the district court found that "[a]ny future prison earnings are speculative at best and therefore will not be taken into consideration." Sufficient record evidence supports the district court's finding.

We conclude that the district court did not abuse its discretion by concluding that the children's best interests are served by terminating the parental rights of J.R.

Affirmed.