STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2425

In the Matter of the Welfare of the Child of:
B.T.N. and A.V.D., Parents.

Filed August 19, 2008
Remanded
Johnson, Judge

Stearns County District Court
File No. JV-07-2726

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Considered and decided by Johnson, Presiding Judge; Kalitowski, Judge; and Shumaker, Judge.

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

JOHNSON, Judge

B.T.N. and A.V.D. challenge the district court's termination of their parental rights to their second child, D.D., based on a finding that their first child, A.D., suffered egregious harm while in their care, which resulted in his death. We conclude that, in

light of intervening caselaw, the matter should be remanded to the district court for additional findings of fact.

FACTS

B.T.N. and A.V.D. were married in 1993. In April 2000, B.T.N. gave birth to a son, A.D. According to friends and acquaintances who testified at trial, B.T.N. and A.V.D. were excellent parents to A.D. But A.D.'s life ended tragically in January 2001, and his death was the premise of the county's petition and the focus of a 10-day trial.

B.T.N. and A.V.D. testified that, at approximately 11:00 p.m. on the evening of January 11, 2001, they were sitting at opposite ends of a couch in the living room of their home. They testified that A.D., who then was approximately nine months old, was standing on the floor between them, holding onto the couch with his hands. They testified that, unexpectedly, A.D. arched his back and fell backwards, hitting his head on the carpeted floor. According to his parents, A.D. was pale and limp. B.T.N. and A.V.D. testified that they tried to revive him before calling 911.

When the police and paramedics arrived, A.D. was unresponsive. He was taken by ambulance to St. Cloud Hospital. At the hospital, a CT scan showed an intracranial hemorrhage. A.D. was rushed to surgery, which was performed by Dr. Anthony Bottini, a neurosurgeon, who found a skull fracture. During surgery, A.D. lost blood pressure and died.

B.T.N. and A.V.D. were questioned by police officers while A.D. was in surgery and again four days later. Each time they were questioned, they stated that A.D. was standing in front of the couch when he fell backward and hit his head on the carpeted

floor. Police investigators took a sample of the carpet from the family's home. The carpet was described as a low shag with a typical pad underneath, which together was approximately one to one-and-one-half inches thick. B.T.N. and A.V.D. have not been charged with criminal offenses, although the case remains open as a pending investigation.

Six years after A.D.'s death, on February 6, 2007, B.T.N. gave birth to D.D. at St. Cloud Hospital. A police investigator who had investigated A.D.'s death saw a routine birth announcement in the local newspaper. She reported the birth to the county's human services department. D.D. was removed from his parents on February 8, 2007, and placed in foster care. A CHIPS petition was filed on February 13, 2007, after which time the parents were allowed three supervised visits each week. The parents attended all scheduled visits. On the basis of A.D.'s death, the county filed a petition to terminate B.T.N.'s and A.V.D.'s parental rights to D.D. on April 12, 2007.

The case was tried in August and October of 2007. The county's evidence consisted primarily of medical professionals whose testimony collectively tended to prove that A.D. could not possibly have died from falling backward onto the carpeted floor of the family's living room. Dr. Bottini testified that, during the surgery, he observed the contact point over the left frontal region. He stated that the skull fracture was "absolutely inconsistent with a child who falls backwards and strikes their head." Dr. Michael McGee, who performed an autopsy at the request of the Stearns County Medical Examiner, testified that the cause of death was a subdural hematoma and skull fracture due to blunt-force trauma. Dr. McGee's findings were corroborated by Dr.

Robert Folberg, an ophthalmic pathologist at the University of Illinois at Chicago. He examined A.D.'s eyes and testified that they revealed intraocular hemorrhages, which were "consistent with non-accidental trauma."

In response, B.T.N. and A.V.D. attempted to prove that A.D.'s death was caused by complications arising from injuries sustained in a car accident that occurred approximately one month earlier, which, they testified, made him fussy and nauseous in the weeks following the accident. The county contradicted that evidence with the testimony of A.D.'s pediatrician, Dr. Douglas Brew, who testified that A.D. was healthy at a check-up six days before A.D.'s death and that his parents never mentioned the car accident.

On November 29, 2007, the district court issued a 62-page order terminating B.T.N.'s and A.V.D.'s parental rights. The parents moved for a new trial or amended findings on December 10, 2007. The district court issued an order on December 27, 2007, amending one paragraph of the November 29 order but otherwise denying the motion. B.T.N. and A.V.D. appeal.

D E C I S I O N

B.T.N. and A.V.D. argue that the evidence was insufficient to support the district court's determination that their parental rights should be terminated. B.T.N. and A.V.D. also argue that the district court's findings are insufficiently detailed and that the matter should be remanded for additional fact-finding. Because we find merit in the second argument, we do not consider the first argument.

A person's parental rights may be terminated when

> a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care.

Minn. Stat. § 260C.301, subd. 1(b)(6) (2006). "Egregious harm" is defined as "the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care." Minn. Stat. § 260C.007, subd. 14 (2006). The statute also includes a nonexclusive list of specific conduct that constitutes egregious harm. *Id*.

In *In re Welfare of the Child of T.P.*, 747 N.W.2d 356 (Minn. 2008), the supreme court recently held that a district court considering a petition based on section 260C.301, subdivision 1(b)(6), "must find that the parent either knew or should have known that the child had experienced egregious harm." *Id*. at 362. As the supreme court explained:

> [W]here a parent who has not inflicted egregious harm but who either knew or should have known that a child experienced egregious harm, the "nature, duration, or chronicity" of the egregious harm may not necessarily "indicate[] a lack of regard for the child's well-being." Minn. Stat. § 260C.301, subd. 1(b)(6). That such a parent either knew or should have known that a child experienced egregious harm is necessary, but not sufficient, to satisfy that statutory requirement. Other factors will be relevant to whether that requirement is met in a given case.

Id. at 362 n.4. The supreme court accepted the district court's determination that the child had suffered egregious harm but reversed the termination of the mother's parental rights and remanded to the district court to "address whether there is clear and convincing

evidence that [she] knew or should have known that" the child sustained injuries "as a result of some conduct satisfying the 'egregious harm' definition." *Id.* at 363.

In this case, the district court found that the harm suffered by A.D. was of the type necessary to satisfy the statute. But the district court's detailed order, which was issued before *T.P.* was decided by the supreme court, does not specifically and unambiguously address the essential criteria identified by *T.P.*, namely, each parent's knowledge of and responsibility for the conduct that caused egregious harm to A.D.

For example, in its conclusions of law, the district court stated, "There is clear and convincing evidence that [A.D.] suffered a blunt force trauma to the front of his head on January 11, 2001, and this injury was non-accidental. At the very least, neither [B.T.N.] nor [A.V.D.] has insight that their child needed protection from whomever nonaccidentally inflicted [A.D.'s] injuries." In addition, the district court stated, "Neither [B.T.N.] nor [A.V.D.] prevented [A.D.] from being injured; neither currently have insight into the fact that [A.D.] was indeed intentionally injured by someone, or have had such insight at any time in the past." In its order denying the parents' motion for a new trial and amended findings, the district court amended one portion of its decision to say, "[B.T.N.] either caused [A.D.'s] severe injuries or allowed someone to inflict severe injuries on [A.D.] while he was in her care. Likewise, [A.V.D.] either caused [A.D.'s] severe injuries or allowed someone to inflict severe injuries on [A.D.] while he was in his care." These statements, considered as a whole, do not adequately address the legal standard articulated in *T.P.* We naturally do not fault the district court for not anticipating the outcome and reasoning of the supreme court's opinion in *T.P.*

Thus, we remand to the district court for additional findings of fact in light of *T.P.* On remand, the district court retains the discretion to reopen the record if appropriate.

Remanded.