STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1745

In the Matter of the Welfare of the Children of: P.A.M., Parent

Filed March 9, 2010
Affirmed
Peterson, Judge

Anoka County District Court
File No. 02-JV-09-563

Sheridan K. Hawley, Coon Rapids, MN (for appellant)

Daniel J. Sadowski, Anoka, MN; and

Robert M.A. Johnson, Anoka County Attorney, Marcy S. Crain, Assistant County Attorney, Anoka, MN (for respondent Anoka County Social Services)

Judi Albrecht, Eagan, MN (guardian ad litem)

Considered and decided by Peterson, Presiding Judge; Shumaker, Judge; and Collins, Judge.*

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

PETERSON, Judge

In this appeal from an order terminating appellant-father's parental rights, appellant argues that the record does not support the district court's determinations that (1) he failed to comply with the duties imposed by the parent-child relationship; (2) the

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

county made reasonable efforts to reunite the family; and (3) termination of his parental rights is in the children's best interests. We affirm.

FACTS

Appellant P.A.M. is the father of two sons, C.G.M., age 13, and M.T.M., age two. In August 2007, when C.G.M. and M.T.M. were living with their mother, Anoka County filed a Child in Need of Protection or Services (CHIPS) petition. Mother told appellant, who at the time was in prison, about the CHIPS petition. Following a hearing, the district court adjudicated C.G.M. and M.T.M. as CHIPS, and they were placed in foster care.

In 1999, appellant was convicted of second-degree criminal sexual conduct for having sexual relations with a minor. Appellant is on probation for that offense until 2011 and supervised release until 2015. Following appellant's release from prison, his probation was revoked twice. Following the second probation revocation, appellant was released from prison in December 2007. At the time of trial, appellant had a misdemeanor theft charge pending against him, which is a probation violation and could result in additional prison time of 90 to 120 days.

In October 2008, the county filed a petition to terminate mother's parental rights. On November 4, 2008, appellant contacted Courtney Craig, the Anoka County social worker assigned to this case, and told her that he wanted to "step up to the plate" for C.G.M. and M.T.M. and talked about finding relatives with whom the children could be placed. Craig talked to appellant about him becoming a party to the CHIPS action and developing a case plan for him, which she explained to appellant was a list of services that he would need to complete to prove his fitness to parent C.G.M. and M.T.M. At the

time, there were concerns about appellant's chemical-dependency issues, his incarceration, and a no-contact-with-minors order that included his own children. Appellant became a party to the CHIPS proceeding on November 26, 2008.

A case plan was developed, and Craig discussed it with appellant on November 26, 2008. The case plan required appellant to provide the county with his most recent chemical-dependency assessment and proof of completed treatment and recommendations; submit to random UA testing; complete a hair-follicle test if requested; abstain from all mood-altering, nonprescribed chemicals, including alcohol; provide the county with his most recent psychological evaluation; complete an updated psychological evaluation and follow all recommendations; and participate in and complete individual therapy.

Appellant submitted to a hair-follicle test in February 2009. The test result "was not only positive, but over sixty-three times the threshold level for the detection of cocaine use." Appellant's request for visitation with M.T.M. was denied due to the test result. Between April 16 and July 2009, appellant was called to submit to a UA 17 times. On ten of those dates, he failed to provide a UA sample. On five of the dates when appellant submitted to UA testing, test results were positive for benzodiazepines,[1] and on two dates, the results were negative.

[1] Benzodiazepines are found in prescription medications. Craig testified that appellant had foot surgery and was prescribed Benzodiazepine but that UA test results were positive for benzodiazepines before the foot surgery. The district court found that Craig's testimony was credible and that appellant's testimony about the UA test record was not credible, but it did not make a specific credibility determination regarding the Benzodiazepine prescription.

Based on the hair-follicle test result and UA test record, Craig was not convinced that appellant was maintaining sobriety, so she requested an updated chemical-dependency assessment. Appellant completed neither the updated chemical-dependency assessment nor the psychological assessment required by the case plan.

M.T.M. was removed from his mother's home when he was four months old and has been in foster care since then. Appellant has never cared for M.T.M. on a continuous, daily basis and has not had visitation with him since the CHIPS proceeding was initiated.

C.G.M. was placed in foster care in September 2007 and, except for four weeks in May 2008 when he lived with his mother under protective custody, has been in out-of-home placement since that time. C.G.M.'s misbehavior at home prompted a May 30, 2008, placement of C.G.M. at the Lino Lakes Juvenile Center. C.G.M. was ultimately placed at the Northwoods Residential Treatment Center and was successfully discharged in May 2009 and placed back into foster care. C.G.M. was diagnosed with reactive attachment disorder; oppositional defiant disorder; depressive disorder NOS, with posttraumatic-stress features; and attention-deficit/hyperactivity disorder. Appellant failed to make efforts to learn about C.G.M.'s diagnoses.

On March 30, 2009, the county filed a petition to terminate appellant's parental rights. At the time of trial on the petition, C.G.M. was 12 years old. Craig testified that C.G.M. was "extremely opinionated" about not wanting to be with appellant and that C.G.M. had "reported several times his anger about [appellant] never being there, about his choices and not wanting to have contact."

Craig opined that it was not in the children's best interests to be returned to appellant for the following reasons: appellant is not able to parent the children and will not be able to do so in the foreseeable future, appellant has not had a relationship with the children for at least two years, and both children require a lot of energy and specific parenting skills that appellant cannot provide. The guardian ad litem opined that appellant is not able to parent the children based on his failure to comply with the case plan and lack of understanding of C.G.M.'s needs.

The district court terminated appellant's parental rights based on abandonment, refusal to comply with the duties of the parent-child relationship, palpable unfitness, and the children being neglected and in foster care. This appeal followed.

D E C I S I O N

"[P]arental rights may be terminated only for grave and weighty reasons." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). Accordingly, an appellate court "exercises great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996).

When reviewing whether the record supports an order terminating parental rights, we "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998). But, "while we carefully review the record, we will not overturn the [district] court's findings of fact unless those findings are clearly erroneous." *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995).

I.

The district court may terminate parental rights when one or more statutory conditions exist. Minn. Stat. § 260C.301, subd. 1(b) (2008); *see also In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) (stating that district court must find at least one of the statutory conditions for termination). If one statutory condition supports termination, this court need not address any other conditions that the district court may have found to exist. *See In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005) (declining to address additional statutory bases for termination when district court did not err by finding parent palpably unfit).

Duties of the Parent-Child Relationship

The district court may terminate parental rights if it finds

> that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able . . . .

Minn. Stat. § 260C.301, subd. 1(b)(2) (2008).

The case plan included the requirements that appellant (1) provide the county with his most recent chemical-dependency assessment and proof that he completed treatment; (2) show sobriety by submitting to random UAs; (3) submit to a hair-follicle test; (4) abstain from mood-altering chemicals, including alcohol; and (5) complete an updated psychological evaluation.

Due to concerns about appellant's sobriety, Craig requested an updated chemical-dependency assessment, but appellant failed to provide it. Appellant also failed to complete a psychological evaluation, and the district court found that his testimony about why he failed to complete the evaluation was not credible. This court defers to the district court's findings "because a district court is in a superior position to assess the credibility of witnesses." *L.A.F.*, 554 N.W.2d at 396.

Appellant argues that he gave numerous UAs and a hair-follicle sample in an effort to obtain visitation with his children. But the result of a February 2009 hair-follicle test "was not only positive, but over sixty-three times the threshold level for the detection of cocaine use." Between April 16 and July 2009, appellant was called to submit to a UA 17 times. On ten of those dates, he failed to submit to a UA. On five dates, the test results were positive for benzodiazepines, and on two dates, the results were negative. The district court found that "Craig testified credibly, on the basis of [appellant's] hair follicle drug test and UA test record, that she is not convinced that [appellant] is currently sober."

Appellant's failure to comply with these case-plan requirements supports the determination of lack of compliance with the duties and responsibilities of the parent-child relationship. *See In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003) (stating that parent's "failure to satisfy key elements of the court-ordered case plan provides ample evidence of [the parent's] lack of compliance with the duties and responsibilities of the parent-child relationship.").

Also, M.T.M. has been placed outside the home since August 2007 and previously lived with his mother; appellant has never cared for M.T.M. on a continuous, daily basis and has not had visitation with M.T.M. since the CHIPS proceeding began in September 2007; and appellant does not have a personal relationship with M.T.M.

C.G.M. was placed in foster care in September 2007 and, except for four weeks in May 2008 when he lived with his mother under protective custody, has been in out-of-home placement since that time. C.G.M. has been diagnosed with reactive attachment disorder; oppositional defiant disorder; depressive disorder NOS, with posttraumatic stress features; and attention-deficit/hyperactivity disorder. The district court found that appellant did not make efforts to learn about C.G.M.'s diagnoses and instead expected information to be provided to him without putting forth effort himself.

Appellant's lack of contact with the children and inability to provide the specific parenting skills that they need also support the determination of lack of compliance with the duties and responsibilities of the parent-child relationship. *See id.* (listing failure to provide meaningful parenting to child and lack of evidence that father possessed skills and knowledge needed to effectively parent child as factors supporting termination for failure to comply with duties and responsibilities of parent-child relationship).[2]

II.

Before terminating parental rights, the district court must ensure that the social service agency has made reasonable efforts to reunite the children with the children's

[2] Because termination of parental rights will be affirmed if one statutory ground is proved by clear and convincing evidence, we will not address the other statutory grounds that the district court relied on to terminate appellant's parental rights.

parents in a safe and permanent home. Minn. Stat. § 260C.001, subd. 3(1) (2008). The district court must determine whether reasonable efforts were provided regardless of the statutory basis for termination. *S.Z.*, 547 N.W.2d at 892.

The district court found:

> Anoka County Social Services met its burden to show that it made reasonable efforts to rehabilitate [appellant] and reunify him with the children. The Case Plan developed by Anoka County Social Services and approved by this Court gave [appellant] the opportunity to demonstrate his sobriety in order to get visitation with his children. The Case Plan also gave him the opportunity [to] prove he could be a permanent parent for both children. [Appellant], however, delayed in completing many of the tasks in the Case Plan and did not perform others at all. The Court does not find that [appellant's] reasons for delay and excuses for failure to complete tasks are reasonable. [Appellant] never objected to any of the conditions in the Case Plan originally discussed with Ms. Craig in November 2008.

The case plan required appellant to obtain assessments before additional services could be provided, and appellant failed to obtain the assessments. Appellant does not identify services that he needed in order to obtain the assessments, and his own testimony indicates that he was able to arrange for the assessments but failed to do so in a timely manner. The district court did not clearly err in finding that Anoka County Social Services made reasonable efforts to reunite the children with appellant.

Appellant argues that the case-plan requirements were unreasonable because he never demonstrated any behavior that would be harmful to his children. But appellant was convicted of committing criminal sexual conduct against a minor, and there was a

no-contact order prohibiting him from having contact with minors, including his own children. Also, there were concerns about appellant's chemical-dependency problem.

III.

The best-interests analysis in proceedings to terminate parental rights requires the district court to balance the child's interest in preserving the parent-child relationship, the parent's interest in preserving the parent-child relationship, 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.

The district court concluded:

> [I]t is in the children's best interests to terminate [appellant's] parental rights. In making this finding, the Court weighed [appellant's] interest in remaining a parent and the children's interest in having him as a parent with the following needs of the children:
>
> - Both children's need for a drug-free home.
> - Both children's need for a stable home environment free of disruption.
> - [Appellant's] inability to demonstrate through completion of his Case Plan that he was committed to sobriety and [] that he could provide stability and structure for both children.
> - CGM's desire not to see or live with [appellant].
> - [Appellant's] lack of knowledge about CGM's emotional and behavioral needs.
> - [Appellant's] lack of any type of personal relationship with MTM.

The children's competing interests listed by the district court support its conclusion that termination is in the children's best interests.

The district court did not err in terminating appellant's parental rights.

Affirmed.