STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1729

In the Matter of the Welfare of the Children of:
D. M. C. and T. T. W.,
Parents

Filed February 19, 2013
Affirmed
Chutich, Judge

Ramsey County District Court
File No. 62-JV-12-1284

Sophia Y. Vuelo, Rebecca Duren, St. Paul, Minnesota (for appellant T.T.W.)

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

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

Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and Smith, Judge.

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

CHUTICH, Judge

Appellant T.T.W. challenges the termination of his parental rights to his son, 5-year-old L.C, contending that the district court erred in finding that Ramsey County used reasonable efforts to reunify him with L.C. and abused its discretion in ruling that

termination of his parental rights was in L.C.'s best interests. Because the district court's findings are supported by clear and convincing evidence, we affirm.

FACTS

When D.M.C. gave birth to L.C. on June 16, 2007, T.T.W. was in prison, serving sentences for kidnapping, controlled-substance possession, and felon in possession of a firearm. T.T.W. had no contact with his son until his release from prison in February 2011, when L.C. was three and a half years old.

In May 2011, L.C. and his two half-brothers were placed in emergency protective care after St. Paul police received a report that their mother, who has a history of drug use and mental illness, did not adequately supervise the children, left them alone or in the care of improper caregivers, and did not provide them with adequate food. Ramsey County opened a child-protection case concerning the children, and the district court determined that they were children in need of protection or services. The county placed L.C. and his younger brother with foster parents L.B. and B.B., who are friends of their mother. The brothers remained with the foster parents throughout this proceeding, and they wish to adopt the boys.

After another stint in prison from early June until the end of August 2011 because of a parole violation, T.T.W. contacted the county caseworker assigned to L.C.'s child-protection case, Anthony McWell. McWell explained the situation and told T.T.W. that the county's focus was to return L.C. to his mother, who was then working on a case plan to get her children back. T.T.W. asked McWell what he needed to do to get custody of L.C., and McWell recommended supervised visits as a first step. T.T.W. began weekly

visits with L.C. at the human services office, and also had a number of outside visits with L.C. with the consent and supervision of the foster parents.

Although McWell often had difficulty reaching T.T.W., they met several times to talk about the child-protection case and the county's plan for L.C. McWell and T.T.W. met in November 2011 to discuss T.T.W.'s case plan. McWell told T.T.W. that he must keep up with the supervised visits, maintain contact with the foster parents, be involved with L.C.'s medical appointments, and complete parenting and psychological assessments.

McWell and T.T.W. next met in early February 2012, and T.T.W. told McWell that he did not feel stable and was unsure if he was ready to parent L.C. T.T.W. also stated that he was considering moving out of the state to find work. McWell did not have a copy of the case plan at that meeting, but testified that T.T.W. understood the plan and knew what the county expected of him.

In early April 2012, Ramsey County filed a petition to terminate the parental rights of T.T.W. and D.M.C. to L.C. Concerning T.T.W., the county alleged that he refused or neglected to comply with the duties imposed by the parent-child relationship; he was palpably unfit to parent; reasonable efforts to reunify him with L.C. had failed; and L.C. was neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2012).

McWell met with T.T.W. shortly after the petition was filed and told him of the county's recommendation that L.C. be adopted by his foster parents. McWell testified that T.T.W. "wasn't shocked by that," but told McWell that he did not want the foster

parents raising L.C. long term. T.T.W. again told McWell, however, that he was not in a stable position for L.C. to live with him. They again discussed the case plan and McWell reminded T.T.W. to complete the parenting assessment.[1] T.T.W. finally attended the first part of the parenting assessment on April 30, 2012. He was scheduled to return the next week for the interview portion of the assessment, but failed to show up.

A few days later, on May 2, St. Paul police arrested T.T.W. for being a felon in possession of a firearm, and he remained in custody during the ensuing termination proceedings. He pleaded guilty to the crime in July 2012 and was to be sentenced in September. The mandatory minimum sentence for the conviction, given T.T.W.'s criminal-history score, is 60 months in prison.

D.M.C. voluntarily consented to the adoption of L.C. and his younger brother. Thus, the two-day termination trial that followed concerned only T.T.W.'s parental rights.

Trial Testimony

At trial, the county introduced evidence concerning a shooting that led to T.T.W.'s 2007 felon-in-possession conviction. Four months before L.C.'s birth, T.T.W. was showing his stepbrother a handgun when the gun accidentally discharged, hitting his stepbrother in the face. Because D.M.C.'s 10-month-old son, N.C., was present in the

[1] McWell testified that he did not refer T.T.W. for the required parenting assessment until March 21, 2012, and that the long delay was because D.M.C. was still following through on her case plan up to that point. McWell testified that he did not offer T.T.W. any services until D.M.C. failed to follow through. Because T.T.W. was never a custodial parent, the county's focus was admittedly on reunifying L.C. with his mother.

room during the shooting, Ramsey County Human Services found that T.T.W. neglected or endangered N.C.

T.T.W.

T.T.W. recounted his criminal history since 2006, his periods of incarceration, and his living situation when out of prison. He acknowledged that in the five years since L.C.'s birth, he has been out of prison for less than one year. T.T.W. spoke with McWell several times about what T.T.W. had to do to get custody of L.C., but stated that McWell "never called it a case plan." T.T.W. testified that McWell was ambiguous about T.T.W.'s ability to get custody of L.C., and that he did everything McWell asked him to do concerning L.C.

T.T.W. claimed that he had extensive unsupervised contact, including overnights, with L.C. from February 2011 until May 2011, when the county removed the children from their mother's home. Despite this claim, T.T.W. admitted that he was not aware that L.C.'s mother was neglecting the boys or leaving them with improper caregivers.

McWell

McWell testified extensively to his involvement with T.T.W. He drafted a written case plan for T.T.W. but admitted that he failed to give T.T.W. a copy of the plan. McWell further testified, however, that T.T.W. was aware of what the case plan required, he reviewed the plan with T.T.W. several times, and T.T.W. never expressed uncertainty about what he was supposed to be doing.

McWell ultimately recommended terminating T.T.W.'s parental rights because T.T.W. had not been involved in L.C.'s life and had not shown the ability to parent the

child at the time of trial or in the reasonably near future and because adoption by the foster parents was in L.C.'s best interests. Specifically, McWell pointed to the strong bond between L.C. and his younger brother and the opportunity for the boys to be raised together. He further emphasized the stability and consistency that L.C. would benefit from in their home, especially considering L.C.'s history of neglect by his mother and T.T.W.'s long and frequent incarcerations.

Guardian ad litem

Laura Johnson, the guardian ad litem appointed for L.C., also testified at trial. Her personal knowledge of T.T.W. was limited, but she had extensive involvement with L.C. Johnson opined that adoption by the foster parents was in L.C.'s best interests. She recounted how L.C. had benefitted from the stability, consistency, and routine at the foster home, and described his strong relationship with the foster parents. She also emphasized L.C.'s close relationship with his brother and believed that separating the boys would result in irreparable psychological damage to L.C.

Johnson expressed her concern for L.C.'s safety with T.T.W., given the 2007 accidental shooting and T.T.W.'s extensive criminal history. She stated that permanency for L.C. was her paramount concern and she did not believe that T.T.W. had the ability to parent L.C. in the reasonably near future.

Termination Order

The district court issued an order terminating T.T.W.'s parental rights to L.C. It found that Ramsey County made reasonable efforts to reunite T.T.W. with L.C. but that T.T.W. had not followed through with the county's requirements and that further county

efforts would be futile. The district court also found that terminating T.T.W.'s parental rights was in L.C.'s best interests. The court transferred custody of L.C. to the department of human services to begin adoption proceedings, and this appeal followed.

D E C I S I O N

Parental 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). In reviewing the district court's decision to terminate parental rights, we will affirm the decision "if at least one statutory ground for termination is supported by clear-and-convincing evidence and termination is in the [child's] best interests." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012); *see also* Minn. Stat. §§ 260C.301, subd. 7, 260C.317, subd. 1 (2012). Further, the county must have made reasonable efforts to reunite the child with the parent. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008); *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005).

In determining whether clear-and-convincing evidence exists to support termination, we review the district court's factual findings for clear error. *In re Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008). "A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* at 660–61 (quotation omitted).

T.T.W. does not challenge the district court's finding that clear-and-convincing evidence supports two statutory grounds for termination. He therefore does not challenge the findings that he is "palpably unfit to be a party to the parent and child relationship," and that L.C. is "neglected and in foster care." Minn. Stat. § 260C.301, subd. 1(b)(4),

(8). T.T.W. instead contends that the termination is unsupported because clear-and-convincing evidence does not show that the county made reasonable efforts to reunify him with L.C. or that termination is in L.C.'s best interests.

I. Reasonable Efforts

In child-protection cases, the county has the duty to make reasonable efforts to prevent placement, eliminate the need for removal, reunify the child with the parent, and finalize an alternative placement plan if necessary. Minn. Stat. § 260.012(a) (2012); *see also S.E.P.*, 744 N.W.2d at 385. In terminating a parent's rights, the district court must make specific findings that "reasonable efforts to prevent the placement and to reunify the child and the parent were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family." Minn. Stat. § 260C.301, subd. 8(1) (2012); *see also T.R.*, 750 N.W.2d at 664 (stating that "the provision of reasonable efforts must be evaluated by the court in every case" (quotation omitted)). Reasonable efforts must be shown by clear-and-convincing evidence. *T.A.A.*, 702 N.W.2d at 708.

Reasonable efforts require the social services agency to exercise due diligence "to use culturally appropriate and available services to meet the needs of the child and the child's family." Minn. Stat. § 260.012(f) (2012). In making findings and conclusions concerning reasonable efforts, the district court must consider whether the services 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." *Id.* (h) (2012). For a

noncustodial parent, the social services agency must perform due diligence to "assess [the parent's] ability to provide day-to-day care for the child and, where appropriate, provide services necessary to enable the noncustodial parent to safely provide the care." *Id.* (e)(2) (2012).

Reasonable efforts are required until the district court determines that "the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances." *Id.* (a)(5) (2012). We assess whether efforts were reasonable on a case-by-case basis. *See T.R.*, 750 N.W.2d at 664; *In re Children of Wildey*, 669 N.W.2d 408, 413 (Minn. App. 2003), *aff'd as modified sub nom. In re Welfare of Children of R.W.*, 678 N.W.2d 49 (Minn. 2004).

The district court recounted T.T.W.'s involvement with the county and concluded that

> the agency has made reasonable efforts to reunite the child with [T.T.W]. These services were relevant, adequate, culturally appropriate, available, accessible, consistent, timely and realistic, but they were frustrated by [T.T.W.'s] own criminal behavior and his resulting incarceration. [T.T.W.] was not proactive in communicating with the agency or fulfilling the requirements of his case plan.

The court also concluded that the provision of further efforts would be futile. The district court thus made the required findings under Minn. Stat. § 260C.301, subd. 8.

On this record, the district court's factual findings concerning the county's efforts are not clearly erroneous. T.T.W. was incarcerated for most of L.C.'s life, so the county was faced with attempting to establish, rather than preserve, a relationship between father

and son.[2] The county reasonably began by setting up supervised visits between T.T.W. and L.C. McWell met with T.T.W. several times to assess his situation and to determine whether he was fit and ready to parent L.C. Once it became clear that the county was not going to be able to reunite L.C. with his mother, the county began making active efforts to determine if T.T.W. was a suitable parent for L.C., including referring T.T.W. for a parenting assessment. T.T.W.'s subsequent incarceration, however, made the provision of further services difficult.

The county's efforts were also reasonable given T.T.W.'s ambivalence and uncertainty about his ability and willingness to parent L.C. McWell testified that as late as April 10, 2012, T.T.W. told him that he did not think he could provide a stable home for L.C. and, at one point, even told McWell that he was considering moving out of the state.

T.T.W. argues that the county's efforts cannot be considered reasonable because he never signed or received a written case plan. While Minnesota law generally requires a written case plan, *see* Minn. Stat. § 260C.201, subd. 6 (2012), we apply a harmless-error analysis when the parent failed to receive a written plan. *See In re Welfare of R.M.M.*, 316 N.W.2d 538, 542 (Minn. 1982). We conclude that any error was harmless because this record shows that T.T.W. was well aware of what was required of him under the case plan and the county's failure to give T.T.W. an actual copy of the plan did not

[2] T.T.W. testified that he had almost daily contact with L.C. from February through May 2011. The district court found this testimony not credible, however, because it was inconsistent with McWell's testimony. In a termination case, we must defer to the district court's credibility determinations. *In re Welfare of the Child of J.K.T.*, 814 N.W.2d 76, 90 (Minn. App. 2012).

prejudice him in any material way. *See In re Welfare of J.J.L.B.*, 394 N.W.2d 858, 863 (Minn. App. 1986) (concluding that the lack of a written case plan was not reversible error because the parent clearly knew what was required of her under the plan), *review denied* (Minn. Dec. 17, 1986). Moreover, T.T.W.'s failure to follow through on the county's requirements was not because he lacked a copy of his case plan, but because he expressed ambivalence about parenting and was arrested and incarcerated.

T.T.W. also contends that the county failed to use reasonable efforts because it could not offer him services while in prison. T.T.W. cites *In re Children of Wildey*, 669 N.W.2d 408 (Minn. App. 2003), for the proposition that an incarcerated parent cannot have his or her rights terminated when no case plan was offered. *Wildey* involved a different statutory basis for termination, however, and on review the supreme court clarified the reasonable-efforts requirement. The supreme court stated that

> nothing in state law required the county to facilitate contact between appellant and the children to assist appellant in *establishing* a relationship with the children. The purpose of the child-protection laws is not to create relationships between children and their biological parents where none previously existed but rather to preserve existing relationships where reunification in the foreseeable future is possible and such relationships are in the children's best interests.

R.W., 678 N.W.2d at 56.

T.T.W. has been out of prison for less than one year of L.C.'s short life. Because of this long absence, the county was trying to establish a relationship between father and son, rather than to preserve an existing relationship. And even if services were available for T.T.W. in prison, we conclude that it is unreasonable to require the county to expend

resources to further establish a relationship between father and son where reunification is not possible in the foreseeable future. For these reasons, the district court's finding that further reasonable efforts would be futile is not clearly erroneous.

We therefore conclude that clear-and-convincing evidence supports the district court's finding that Ramsey County made reasonable efforts to establish a relationship between T.T.W. and L.C. in light of T.T.W.'s long absence from L.C.'s life, his lack of communication with the county, his ambivalence about being a parent, and his subsequent and ongoing incarceration.

II. Best Interests

We defer to the district court's findings and review for an abuse of discretion the conclusion that termination is in the child's best interests. *J.K.T.*, 814 N.W.2d at 92; *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "In analyzing the best interests of the child, the court must balance three factors: (1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). If the interests of the parent and child conflict, "the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7.

The district court made detailed findings about L.C., his relationship with his younger brother, and his need for permanency. The court ultimately found that "[L.C.] does not have an interest in preserving the parent-child relationship with [T.T.W.]" and that "[a]ny interest [T.T.W.] may have in preserving the parent-child relationship with

[L.C.] is outweighed by [the child's] competing interests." The court went on to find that L.C.'s best interests lay in finding a safe, stable home and that T.T.W., because of his incarceration, "cannot provide this for [L.C.] now or in the reasonably foreseeable future."

The district court did not abuse its discretion in concluding that termination was in L.C.'s best interests. For a variety of reasons, including his ambivalence about parenting, his criminal history, and his repeated incarcerations, T.T.W. has not played any substantial role in L.C.'s life. While T.T.W., like any parent, may have an interest in the parent-child relationship, L.C.'s interests in finding a safe, stable, and healthy home far outweigh any interest of his largely-absent father. Mindful of the strong interest in permanency for children, the district court properly found that L.C.'s interests would be best served by remaining with L.B. and B.B., who can provide a long-term, stable home.

The district court also correctly noted that T.T.W. was due to be incarcerated again for a 60-month sentence, further supporting the finding that termination of his parental rights was in L.C.'s best interests. *See In re Child of Simon*, 662 N.W.2d 155, 162 (Minn. App. 2003) (stating that a district court may not terminate parental rights solely because the parent is incarcerated, but that incarceration may be considered in conjunction with other factors when determining whether to terminate parental rights). Even setting aside his incarceration, T.T.W. did not demonstrate that he could provide a safe, stable home or be a fit parent for L.C. in the reasonably foreseeable future, and the

district court therefore did not abuse its discretion in concluding that termination of T.T.W.'s parental rights was in L.C.'s best interests.

Affirmed.