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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0321**

In the Matter of the Welfare of the Child of:
T. A. L. B. and T. M., Parents.

**Filed August 12, 2013
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-JV-12-2564

Nicole S. Gronneberg, St. Paul, Minnesota (for appellant T.M.)

Allison L. Marshall, LEGALnudge, LLC, Minneapolis, Minnesota (for respondent T.A.L.B.)

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Considered and decided by Hudson, Presiding Judge; Halbrooks, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant T.M. challenges the involuntary termination of his parental rights, arguing that (1) the record lacks clear and convincing evidence that he abandoned his child, (2) termination is not in the child's best interests, and (3) the district court erred by

denying his motion for a directed verdict that asserted that reasonable efforts for reunification were required before the termination. We affirm.

FACTS

Respondent T.A.L.B. and T.M. are the biological parents of K.A.L., who was born in 2005. T.A.L.B. and T.M. were not in a long-term relationship at the time K.A.L. was conceived. They have never lived or resided in the same state. T.A.L.B. moved from Ohio to Georgia shortly after becoming pregnant with K.A.L. Although she informed T.M. of the pregnancy, he was not present at the birth and did not contribute to the financial costs associated with the birth.

T.M. has seen K.A.L. three times. The first visit took place in 2005 when K.A.L. was five weeks old. While T.A.L.B. was in Ohio to visit her parents, T.M. arranged to see K.A.L. to determine “if she looked like [him].” He spent approximately 30 minutes with T.A.L.B. and K.A.L. He held K.A.L. for a few minutes and handed her back to T.A.L.B. when she began to cry. Four years then passed without any further contact between T.M. and K.A.L.

In 2009, when K.A.L. was four years old, T.A.L.B. initiated child-support proceedings against T.M. in Ohio after making no progress with her efforts to obtain child support through Georgia’s court system. As a part of the Ohio proceedings, T.M. was confirmed as K.A.L.’s biological father. Later that year, when T.A.L.B. and K.A.L. visited Ohio, T.M. and his mother spent a few hours with K.A.L.

In 2010, when K.A.L. was five years old, T.A.L.B. again returned to Ohio to see her parents. During that visit, T.M. took K.A.L. to a restaurant and, the next day,

attended a cookout at T.A.L.B.'s mother's house where K.A.L. was present. Although T.M. was at the cookout for 2-3 hours, he had what T.A.L.B. characterized as "very, very minimal" interaction with K.A.L. Aside from K.A.L. asking T.M. if he wanted to come in, and the two later saying "goodbye," they did not interact. T.M. last spoke to K.A.L. in January 2011.

Since July 2011, T.M. has been incarcerated in a federal penitentiary. His scheduled release date is in January 2017. T.M. was in arrears in his child support prior to incarceration and remains so. He has paid approximately \$7,000 of court-ordered child support to T.A.L.B. and has not financially contributed to T.A.L.B. outside of the child-support system.

T.M. has spoken to K.A.L. on the telephone between two and six times and has sent her three gifts. Over the past eight years, T.M. has telephoned T.A.L.B. only twice—once to discuss the child-support case and another to speak to K.A.L. on her fifth birthday. T.M. has never initiated a visit with K.A.L. or written her a letter. He never has requested parenting time or visitation, expressed a desire to stay in contact with K.A.L. or have a relationship with her, or discussed K.A.L.'s well-being with T.A.L.B.

K.A.L. is now eight years old. She lives in Minnesota with her mother, her stepfather K.B., and her half-sister. K.B. has a pending petition to adopt K.A.L.

In August 2012, T.A.L.B. brought a petition for the termination of parental rights (TPR) against T.M., alleging four statutory grounds for termination: (1) abandonment of the child; (2) continuous failure to contribute to the support of the child without good cause; (3) palpable lack of fitness as a parent; and (4) conviction of a crime listed in

Minn. Stat. § 260.012(g) (2012). *See* Minn. Stat. § 260C.301, subd. 1(b)(1), (3), (4), (9) (2012). T.A.L.B. withdrew the fourth ground.

T.M. moved for a directed verdict, arguing that the petition should not proceed to trial because social services never made reasonable efforts to reunite him with K.A.L. The district court denied the motion.

At trial, T.M. acknowledged that he is able to call and write K.A.L. from prison but that he has not done so. He testified that, prior to his incarceration, he intended to establish visitation with K.A.L., but admitted that he has not met with an attorney, conducted any research, or pursued visitation in any way. He testified that T.A.L.B. interfered with his ability to parent K.A.L. But T.M. could not provide any detail about any interference and ultimately admitted that he had made no attempt to contact K.A.L. for the past two years, although nothing prevented him from doing so. T.M.'s sister and mother testified that T.A.L.B. prevented T.M. from visiting K.A.L.

A guardian ad litem appointed to represent K.A.L. testified that the child is happy and well-adjusted, but recalls "very little" about T.M. K.A.L. can only remember one encounter with T.M., cannot recall what he looks like, and does not wish to visit with him. K.A.L. refers to her stepfather as "Dad." The guardian ad litem testified that K.A.L. "clearly . . . understands what's going on" in this matter and wants K.B. to adopt her.

The district court terminated T.M.'s parental rights, concluding that clear and convincing evidence established that he abandoned K.A.L. and that termination is in the

child's best interests. The district court rejected the other two asserted grounds for termination. This appeal follows.

DECISION

I.

We review a termination of parental rights to determine whether the district court's findings address the statutory criteria, are supported by substantial evidence, and are not clearly erroneous. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). While we give considerable deference to the district court's decision to terminate parental rights, we "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *Id.* We will affirm a termination if at least one statutory ground for termination is proved by clear and convincing evidence and if termination is in the child's best interests. *Id.*

The district court may terminate parental rights if "the parent has abandoned the child." Minn. Stat. § 260C.301, subd. 1(b)(1). Abandonment is presumed under two circumstances. *Id.*, subd. 2(a) (2012). When a statutory presumption does not apply, abandonment requires proof that the parent (1) actually deserted the child and (2) intends to forsake the duties of parenthood. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 398 (Minn. 1996). Abandonment must be intentional, rather than due to misfortune or misconduct alone. *Id.* While incarceration alone is insufficient evidence of abandonment, when combined with other factors, such as parental neglect and withholding parental affection, it can support a finding that a parent has abandoned a child. *In re Children of Vasquez*, 658 N.W.2d 249, 254 (Minn. App. 2003).

The district court found that the evidence established both elements of abandonment. The district court found that desertion was evidenced by K.A.L.'s inability to recognize or remember anything "distinct" about T.M. and T.M.'s admission that he has not attempted to have any contact with K.A.L. in the past two years. The district court discredited the testimony of T.M., T.M.'s sister, and T.M.'s mother that T.A.L.B. interfered with T.M.'s ability to parent. Instead, the district court found that T.M. was absent from K.A.L.'s life because he made the "decision to not be present for [K.A.L.] emotionally and physically," not as a result of his incarceration or any interference with his parental rights. In support of its finding that T.M. intended to forsake his parental duties, the district court cited evidence that T.M. failed to establish regular and consistent contact with K.A.L., never inquired about K.A.L.'s welfare, left the responsibility of K.A.L.'s care to T.A.L.B. and K.B., and never affirmatively sought paternity, visitation, or regular contact with K.A.L. The record provides clear and convincing support for the district court's determination that T.M. abandoned K.A.L.

T.M. argues that the district court erred in finding abandonment because he never declined an offered visit with K.A.L. and every visit he had with her was "of his own volition." These facts do not defeat the overwhelming evidence that T.M. never attempted to establish a relationship with K.A.L. While it is true that T.M. did not refuse to see K.A.L. in the past, he saw her only three times in eight years and, in the past two years, chose to have no interaction with her whatsoever. The district court's characterization of T.M.'s contact with K.A.L. as "negligible and superficial" is supported by the record.

T.M. also objects to the district court's reference to certain facts as supportive of both elements of abandonment. He contends that his general "lack of involvement" with K.A.L. cannot establish both actual desertion and an intention to forsake parental duties, arguing that this "eviscerates the distinction" between the two elements. T.M. cites no authority that supports his argument that this demonstrates "clear error." Furthermore, the record reflects that the district court treated each element of abandonment as distinct, explaining which facts supported each element. That some facts prove both elements does not reflect a misapplication of the legal standard.

The record, in light of the clear and convincing standard of proof, supports the district court's determination that T.M. abandoned K.A.L.

II.

T.M. argues that termination of his parental rights is not in K.A.L.'s best interests. We review the district court's ultimate determination that termination is in a child's best interest for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). The "paramount consideration" in all TPR proceedings is the best interests of the child. Minn. Stat. § 260C.301, subd. 7 (2012). A child's best interests may preclude termination even if a statutory ground for termination exists. *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009). In analyzing a child's best interests, the district court is required to balance (1) the child's interest in preserving a parent-child relationship, (2) the parent's interest in preserving that 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). "Where the

interests of parent and child conflict, the interests of the child are paramount.” Minn. Stat. § 260C.301, subd. 7.

The district court weighed the competing interests of T.M. and K.A.L. in determining that termination is in K.A.L.’s best interests. First, the district court observed that K.A.L. has no interest in preserving her relationship with T.M. because “there is not, in fact, any relationship” to preserve. Second, the district court reasoned that any interest T.M. has in preserving a relationship with K.A.L. is “not compelling” because his opposition to the TPR “lacked depth, was conclusory and did not reveal any true commitment to be a part of [K.A.L.’s] life.” Finally, the district court considered K.A.L.’s competing interest in “a permanent sense of identity and belonging” and her desire to be adopted by her stepfather.

T.M. disagrees that termination is in K.A.L.’s best interests, arguing that he never “harmed” K.A.L. But there is no legal requirement of parental harm for termination based on abandonment, and T.M. fails to provide any legal citation or analysis to support his contrary position.

Because the district court balanced the competing interests of T.M. and K.A.L. and treated K.A.L.’s interests as paramount in that consideration, it did not abuse its discretion by concluding that termination of T.M.’s parental rights is in K.A.L.’s best interests.

III.

T.M. challenges the district court’s denial of his motion for a directed verdict, arguing that reasonable reunification efforts are required before the district court can

order a TPR. We review de novo the denial of a motion for a directed verdict. *Am. States Ins. Co. v. Ankrum*, 651 N.W.2d 513, 521 (Minn. App. 2002).

The Minnesota Supreme Court has settled the question of whether reasonable reunification efforts are required before a district court can order a TPR based on abandonment. First, in *L.A.F.*, a case that involved a private petition by the child's mother to terminate the father's parental rights on grounds of abandonment, the supreme court held that reasonable efforts by a social-service agency are not required before a TPR based on abandonment, unless the petitioner seeks to establish a presumption of abandonment as the basis for termination. 554 N.W.2d at 397. Subsequently, in *In re Welfare of Children of R.W.*, a case involving a county's TPR petition asserting abandonment, the supreme court reiterated the holding in *L.A.F.* that reunification efforts are not required in a TPR based on abandonment where the petitioner does not rely on a statutory presumption of abandonment. 678 N.W.2d 49, 55 (Minn. 2004) (citing *L.A.F.*, 554 N.W.2d at 398).

Because this TPR was based on child abandonment without reliance on a statutory presumption of abandonment, no social-service efforts to reunify T.M. and K.A.L. were required. Accordingly, the district court did not err by denying T.M.'s motion for a directed verdict.

Affirmed.