STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0454

In the Matter of the Welfare of the Children of:
T. L. D. T., a/k/a L. D. T. T., Parent.

Filed August 26, 2013
Affirmed
Worke, Judge

Hennepin County District Court
File Nos. 27-JV-12-7400, 27-JV-11-6227, 27-JV-11-10515, 27-JV-11-10518

William M. Ward, Hennepin County Chief Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota (for appellant father T.L.D.T.)

Michael O. Freeman, Hennepin County Attorney, Cory A. Carlson, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

Eric S. Rehm, Burnsville, Minnesota (for respondent guardian)

Considered and decided by Worke, Presiding Judge; Johnson, Chief Judge; and Toussaint, Judge.[*]

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

WORKE, Judge

Appellant challenges the termination of his parental rights (TPR), arguing that the record does not support the district court's determinations that he (1) neglected his

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

parental duties, (2) is a palpably unfit parent, and (3) failed to correct the conditions leading to out-of-home placement. Appellant also argues that TPR is not in the best interests of the children. We affirm.

FACTS

Appellant T. L. D. T., a/k/a L. D. T. T. and S.T. are married. S.T. is cognitively disabled with an I.Q. of 43, and is a vulnerable adult. Appellant is 59 years old and is cognitively delayed with an I.Q. of 61. The couple voluntarily transferred legal and physical custody of their four-year-old son to his maternal grandmother.[1] On June 21, 2010, S.T. gave birth to E.T. E.T. has been in court-ordered out-of-home placement since August 30, 2010. In February 2011, the district court terminated S.T.'s and appellant's parental rights to E.T. Appellant challenged the TPR, and this court reversed.[2] *See In re Welfare of the Child of S.T.*, No. A11-443 (Minn. App. Oct. 24, 2011).

On July 18, 2011, while the appeal was pending, S.T. gave birth to twins K.T. and N.T. At three days old, the twins began living in court-ordered out-of-home placement. In November 2011, respondent Hennepin County Human Services and Public Health Department filed a CHIPS petition. The district court determined that E.T., K.T., and N.T. were in need of protection or services, and ordered appellant to comply with a case plan. On August 13, 2012, respondent petitioned to terminate appellant's parental rights.

[1] S.T.'s mother has custody of five of S.T.'s nine children.
[2] S.T. did not appeal the termination of her parental rights.

During the four-day trial, the district court heard testimony from several witnesses, including appellant, the children's pediatricians and therapist, a parenting-program coordinator, a parenting-development instructor, a child-protection worker, and the children's guardian ad litem. On December 31, 2012, the district court concluded that there was clear and convincing evidence to support the TPR. This appeal follows.

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). TPR requires clear and convincing evidence that (1) there is a statutory ground for termination, (2) the county has made reasonable efforts to reunite the family, and (3) termination is in the child's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We review the district court's findings "to determine whether they address the statutory criteria for [TPR] and are not clearly erroneous, in light of the clear-and-convincing standard of proof." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012) (citation omitted). We review the district court's conclusion that the requirements for TPR have been established for an abuse of discretion. *See In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). This court will affirm the district court's decision when at least one statutory ground for TPR is supported by clear and convincing evidence and TPR is in the child's best interests. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

The district court found that three statutory bases for TPR were proved by clear and convincing evidence: (1) appellant failed to comply with his parental duties; (2) appellant is a palpably unfit parent; and (3) reasonable efforts have failed to correct the conditions that lead to out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(2),(4), (5) (2012).

Refused or neglected to comply with parental duties

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, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable[.]

Id., subd. 1(b)(2).

The district court found that appellant failed to comply with his parental duties because he (1) attended few medical appointments and believes that they are unnecessary; (2) showed a lack of understanding of the children's special needs, and an inability or unwillingness to adapt his behavior to care for the children; (3) unsuccessfully followed instructions regarding E.T.'s diet; (4) failed to actively engage with the children or spend more than an hour with them; and (5) refused to accept new information. The district court found that the children have complex special needs that are challenging to the most capable parent. Because appellant rejects the existence

of any medical condition, he is unwilling and unable to insure that the children receive necessary treatments. The district court concluded that respondent's efforts were reasonable, but appellant failed to meet his requirements as a parent. The record supports the district court's findings, which are summarized below.

Children's special needs

E.T. and N.T. have special needs that require medical and therapeutic attention. E.T.'s pediatrician, Dr. Timothy Johanson, testified that E.T. has food allergies that can cause hives, breathing problems, a swollen tongue, respiratory arrest, and sudden death; she has an EpiPen for use in an emergency. She has asthma and uses a nebulizer during asthmatic episodes. E.T. has a generalized developmental delay, most significantly in her gross-motor skills. At 12 months, E.T. was functioning as a three-month-old child, but she has made progress due mainly to her foster parents' diligence in attending appointments and following instructions. According to Dr. Johanson, E.T. would be traumatized if removed from her foster family. E.T.'s physical therapist, Stacy Siats, testified that E.T. attends weekly physical-therapy, occupational-therapy, and speech-therapy appointments. E.T.'s therapy requires repetitive routines that become incorporated into her daily life. She needs to be continually supervised and must practice her routines daily.

The twins' primary pediatrician, Dr. Sonja Colianni, testified that K.T. is developmentally on track, but N.T. is six months behind. N.T. has been diagnosed with global developmental delay, macrocephaly, severe swallowing difficulties, positional plagiocephaly, and low muscle tone. N.T.'s head is out of proportion with the rest of his

body, which could be the result of a brain disorder; his symptoms include tremors and clonus. N.T. wears a cranial cap because he developed severe facial asymmetry as a result of his neck muscles being too weak to support his head. N.T. cannot swallow thin liquids—they travel to his lungs causing bacteria growth, which leads to pneumonia. All liquids must be thickened to a honey-like consistency. N.T. must use a therapeutic walker to assist with walking muscle-tone development. N.T. also has delays in language. The twins' foster family attended every appointment, and followed all recommendations.

Appellant's lack of understanding

Dr. Johanson described appellant as "dismissive" of E.T.'s problems. Appellant rejected E.T.'s medical conditions or blamed their emergence on her removal from his custody. Appellant also disregarded instructions regarding E.T.'s restricted diet to control her weight. Emily Glasgow, a supervised-parenting-program coordinator, testified that appellant was advised of E.T.'s severe food allergies, but he believed that her doctor did not know what he was talking about. Appellant continued to bring restricted food items to visits, and told E.T. that after she was removed from his custody, she became "all screwed up." Siats stated that appellant observed a therapy session and cheered for E.T., but he did not participate. Siats gave appellant a book on E.T.'s therapy program, but appellant admitted that he did not practice any of the strategies that the therapeutic team taught him to help E.T.

Glasgow testified that she is concerned that appellant does not believe that the children have special needs and he claims to understand the children's needs better than

professionals. For example, appellant believed that N.T. did not need his therapeutic walker or cranial helmet and he would remove N.T.'s helmet despite being instructed that N.T. needed to wear it. Glasgow testified that appellant fails to assist his children with cognitive growth or basic motor-skill development.

Appellant's failure to engage with the children and accept new information

Glasgow testified that since August 2011, appellant had over 100 supervised visits with the children, but he frequently cancelled appointments or left early. Appellant spent 90-95% of each visit sitting in a chair; he did not get up to play with the children. Appellant left the twins in their strollers, rarely used books, and brought inappropriate food, such as potato chips, which made E.T. choke.

Leah Austin provided appellant with parenting-development instruction and conducted in-home parenting sessions, but terminated services after twelve months because appellant's behavior did not change. Appellant did not accept the material Austin taught him to address the children's special needs, and stated that he would parent the way he wanted. Appellant denied that E.T. had any nutritional constraints, failed to acknowledge the children's medical needs, did not trust medical professionals caring for the children and refused to follow their advice or treatment plans, and believed that nothing was wrong with the current situation.

The district court's findings addressing the statutory criteria are not clearly erroneous. Because there is clear and convincing evidence that appellant substantially, continuously, or repeatedly refused or neglected to comply with his parental duties, the district court did not abuse its discretion by concluding that this basis supports TPR.

Palpably unfit

The district court may terminate parental rights if it finds that:

> a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Id., subd. 1(b)(4). "[T]he actual conduct of the parent is to be evaluated to determine his . . . fitness to maintain the parental relationship with the child in question so as to not be detrimental to the child." *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). A finding that a parent is palpably unfit "requires that the [district] court make the determination of whether reasonable efforts have been made to rehabilitate the parent and to reunite the family." *Id.* Respondent must show, by clear and convincing evidence, "a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008).

The district court found that appellant's refusal to acknowledge the children's special needs, combined with his organic cerebral dysfunction, which is compounded by his alcohol use, are specific conditions directly related to the parent-child relationship that render appellant unable, for the reasonably foreseeable future, to care appropriately for the physical, mental, or emotional needs of the children. The district court found that

appellant demonstrated his inability to appropriately care for the children because he (1) cancelled and left visits early because he had difficulty caring for all three children for more than an hour, (2) fell short of complying with his court-ordered case plan despite respondent's reasonable reunification efforts, and (3) failed to make any progress in 12 months of parenting education. The record supports the district court's findings, which are summarized below.

Appellant's pattern of conduct

Dr. Paul Marshall performed a neuropsychological exam on appellant and testified that appellant's intellectual functioning is limited, with an I.Q. of 61. Because appellant suffers from an "executive functioning deficit," it is difficult for him to understand his children's behavior or how his behavior must change, and to make significant behavioral changes. Although appellant's deficit alone does not prevent him from being a competent parent, it suggests that appellant may be unable to make appropriate parental decisions because of his inability to benefit from therapy and to adapt his behavior to parental demands. Dr. Marshall stated that he has concerns about appellant raising children, especially children with special needs, because appellant will respond inappropriately or ineffectively to the children's needs. The record supports the district court's finding that appellant is unlikely to change his conduct due in part to his own limitations.

The record further shows that appellant's behavior is unlikely to change because he chooses not to change. Dr. Marshall testified that appellant's organic cerebral dysfunction leading to inappropriate parental decision-making is compounded by

appellant's alcohol abuse. Appellant testified that he consumes alcohol to relax, sleep, or treat ailments such as head-colds. Appellant admitted that he cancelled visits with the children, claiming that he missed visits when the weather was "bad" and he did not want to go outside or if he had other appointments because he wanted to "equalize [his] time with the kids" and his other commitments. Regarding the specialized therapy that E.T. and N.T. require, appellant testified that he believes that any exercise is fine because "exercise is exercise." Appellant stated that there are too many people telling him what to do, and that E.T. might have food allergies, but he does too and he "ain't dead." He testified that he would attend to his children's emergencies, but did not believe that the children currently suffer from anything that is deemed an emergency situation. The record shows that appellant's conduct will continue for an indefinite period of time and is detrimental to the welfare of the children.

Reasonable efforts

Child-protection worker Charlotte Miller testified that appellant's case plan included: a psychological evaluation, chemical-dependency classes, anger-management classes, domestic-violence classes, parenting education, individual therapy, and supervised visits. In-home services were terminated due to safety concerns regarding appellant and S.T.'s behavior. Appellant was given random urinalyses (UAs)—31 out of 100 were positive. Appellant completed the domestic-abuse program, but even during the program, domestic incidents between appellant and S.T. continued. Reports indicated that appellant failed to participate in chemical-dependency treatment. Appellant's documented failures, combined with his neuropsychological report, his problems with

S.T., and the fact that he does not believe that the children are in need of services, led Miller to conclude that appellant failed to make the progress necessary to reunify with the children. Miller opined that there are no circumstances under which she could foresee appellant being able to safely care for the children.

Appellant testified that he believes that his children were removed from his custody for no reason and that he agreed to the case plan just to "play along with the game." Appellant admitted that he failed court-ordered UAs because they fell on holidays and he "felt like if other people can be at home and enjoy the holiday, [he] can too." Appellant testified that he attends the individual therapy required by his case plan "when he has free time."

The record supports the district court's determinations that appellant is palpably unfit to be a part of the parent-child relationship, and that the specific conduct would continue for the foreseeable future despite respondent's reasonable reunification efforts. The district court's findings addressing the statutory criteria are not clearly erroneous. Because there is clear and convincing evidence that appellant is a palpably unfit parent, the district court did not abuse its discretion by concluding that this basis supports TPR.

Failure to correct conditions leading to placement

Parental rights may be terminated if, following a child's placement out of the home, "reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). A presumption that reasonable efforts have failed arises if (1) the child is under age eight and has resided in court-ordered out-of-home placement for six months; (2) the court

approved an out-of-home placement plan; (3) the conditions leading to the out-of-home placement have not been corrected, which is presumptively shown by a parent's failure to "substantially compl[y] with the court's orders and a reasonable case plan"; and (4) the social-services agency made reasonable efforts to rehabilitate the parent and reunite the family. *Id.*

The record supports the district court's determination that appellant failed to correct the conditions that led to out-of-home placement. First, the children are under age eight and have spent nearly their entire lives in court-ordered out-of-home placement: E.T. for 26 months and the twins for 15 months. Second, the court ordered appellant to comply with a case plan that included: a psychological evaluation, anger-management classes, chemical-dependency classes, domestic-violence classes, parenting education, individual therapy, and supervised visits. Third, appellant failed to substantially comply with the court-ordered case plan. Although appellant completed the psychological evaluation and attended chemical-dependency classes, he continued to consume alcohol and had positive UAs. Appellant completed anger-management and domestic-abuse programming, but he continued to have domestic disturbances with S.T. He attended individual therapy "when he ha[d] free time." And the record shows that while appellant attended supervised visits, he cancelled several visits and left several other visits early.

Finally, respondent made reasonable efforts to rehabilitate appellant and reunite the family. Appellant was required to participate in parenting education and follow recommendations, participate in supervised visits, and attend the children's medical appointments. Appellant's parenting-education program was terminated after he failed to

make any progress in 12 months. Appellant failed to participate in supervised visits—he sat in a chair at least 90% of the time of each visit and barely engaged with the children. Appellant attended medical appointments, but he was dismissive and mistrusting, he rejected diagnoses, and concluded on his own that the children were not in need of any services.

Because there is clear and convincing evidence that appellant failed to correct the conditions leading to the children's extended out-of-home placement despite respondent's reasonable efforts, the district court did not abuse its discretion by concluding that this statutory basis supports TPR.

Best interests

The "paramount consideration" in all TPR proceedings is the best interests of the child. Minn. Stat. § 260C.301, subd. 7 (2012). Analyzing the child's best interests requires balancing the child's interest in preserving a parent-child relationship, the parent's interest in preserving that relationship, and any competing interest 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.* When the parent's interests conflict with the child's interests, the interests of the child override those of the parent. Minn. Stat. § 260C.301, subd. 7.

The district court determined that TPR is in the children's best interests because appellant is not able to care for the children in the reasonably foreseeable future; there are no relatives available to whom custody can be transferred; appellant does not recognize the children's special needs; appellant has an inability to apply parenting techniques; and

the children have an interest in a safe, secure, and supportive environment. The district court determined that the children's interests outweigh that of appellant. The record supports the district court's findings.

The children's guardian ad litem, Michelle Muthiani, testified that appellant fails to acknowledge that the children have special needs and require specialized therapy, fails to attend medical appointments, lacks parental skills, and does not understand his inability to care for the children. Muthiani testified that the children's need for stability, safety, security, and establishing permanency outweigh appellant's interest in maintaining a relationship with the children.

The children have special needs and require a parent who will insure that their medical needs are addressed, can commit time to regular treatment, and can provide a stable environment. Appellant failed to acknowledge that the children have special needs and testified that he may have difficulty getting the children to their medical appointments. He testified that he has fathered 27 children with whom he "spent time" at points in their lives, but never lived with on a long-term basis or raised to adulthood. He had one son with cerebral palsy whom he gave up for adoption to a family who could handle his special needs. Further, appellant lives with S.T., with whom he has domestic issues and who has had her parental rights to these children terminated.

To an extent, appellant appears to recognize his limitations, testifying that he is unable to accommodate the children's needs at this time because he is under stress and cannot do it all. He suggests that the district court should have continued the out-of-home placement and his case plan. But Muthaini testified that appellant's case plan

should not be continued because appellant refused to fully participate with the reasonable plan. The record shows that the children have been in out-of-home placement essentially since their births. Appellant had significant time to show improvement, but he was unsuccessful with the case plan. The district court was well within its discretion to conclude that the children's interests in a stable environment and in continued consistent treatment outweigh appellant's interests in a parent-child relationship. Therefore, the district court did not abuse its discretion by terminating appellant's parental rights.

Affirmed.