STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0700

In the Matter of the Welfare of the Child of: K. L. and F. L. T., III, Parents

Filed October 7, 2013
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-JV-12-3899

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

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Considered and decided by Cleary, Presiding Judge; Connolly, Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant-father challenges the district court's termination of his parental rights. We affirm.

FACTS

Appellant-father F. L. T., III is the biological father of A.T., a female child who was born March 10, 2012. A.T. and her mother both tested positive for

methamphetamine at the time of A.T.'s birth. On March 22, the district court assumed emergency protective care of A.T., and she was placed with her maternal grandmother. On May 14, the district court adjudicated A.T. a child in need of protection or services.

On May 10, father met with a child-protection worker from respondent Ramsey County Community Human Services Department (the county). On May 25, he signed an out-of-home placement plan. The components of the case plan included establishing parentage for A.T.; completing psychosexual and chemical-dependency evaluations; attending a parent support program or therapy to address domestic violence, miscommunication, anger, and stress management; attending a parenting education program; obtaining regular employment and stable housing; participating in supervised visits with A.T.; and maintaining regular contact with the assigned child-protection worker and guardian ad litem.

Father initially complied with several components of his case plan, including attending weekly supervised visits with A.T. Father completed a chemical-dependency evaluation, but he failed to follow the recommendations. He later admitted ongoing marijuana use to his parenting worker, but he refused her attempts to get him to do a new evaluation. Father initially attended parenting and domestic-violence programming, but he did not complete a psychosexual evaluation, which he agreed to do as part of his case plan based on his status as a predatory offender. Father ceased all efforts at case-plan compliance, including contact with social workers and visitation with A.T., approximately four months before the ensuing termination-of-parental-rights (TPR) trial.

He testified at trial that he stopped cooperating and visiting because he was homeless and his car broke down.

On December 6, the county petitioned the district court for termination of father's parental rights to A.T., and the court later held a trial on the petition. The trial evidence shows that father has a history of criminal convictions, including a conviction that requires him to register as a predatory offender. Father previously signed an agreement with the county that he would not reside with any children until he completed a treatment program for sexual offenders, obtained a letter from a qualified therapist stating that he posed no risk to children, or completed a psychosexual assessment stating that he posed no risk to children. None of these requirements had been fulfilled at the time of trial. The evidence also showed that father had repeatedly refused to complete a psychosexual evaluation. At the time of trial, he was taking prescription medication for mental illness. He had demonstrated a pattern of instable housing and employment. And he had admitted to his parenting worker that he continued to use marijuana. The district court terminated father's parental rights to A.T., and this appeal follows.

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). A district court's decision in a termination proceeding must be based on evidence concerning the conditions that exist at the time of trial. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007). 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). On appeal we examine the record to determine whether the district court applied the appropriate statutory criteria and made findings that are not clearly erroneous. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 249 (Minn. App. 2003). A finding is clearly erroneous when "it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted). We give the district court's decision considerable deference, but "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

This court will affirm the district court's decision to terminate parental rights if the county made reasonable efforts to reunite the family, at least one statutory ground for termination is supported by clear-and-convincing evidence, and termination is in the best interests of the child. *Id.* We address each of those components in turn.

I.

Father's arguments on appeal focus on the district court's reasonable-efforts determinations. He argues that "[t]he district court's finding that [the county] made reasonable efforts to reunify [father] with [A.T.] is not supported by clear and convincing evidence and is clearly erroneous." After a child is under the court's jurisdiction, the county must make reasonable efforts to prevent placement, to reunify the child with the child's family, and to finalize a permanency plan for the child. Minn. Stat. § 260.012(a) (2012). "In determining reasonable efforts to be made with respect to a child and in

making those reasonable efforts, the child's best interests, health, and safety must be of paramount concern." *Id.* To determine whether reasonable efforts were made, the district court must consider a number of factors, including whether the services were relevant to the safety and protection of the child, adequate to meet the needs of the child and family, culturally appropriate, available and accessible, consistent and timely, and realistic under the circumstances. *Id.* (h). "In the alternative, the court may determine that provision of services or further services for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances . . . ." *Id.*

Father does not cite legal authority supporting his contention that the county failed to make reasonable efforts to reunify him with A.T. His reasonable-efforts argument is as follows:

> The evidence adduced at trial demonstrated that [father] wanted to parent his daughter, but was struggling with mental illness and homelessness and needed some assistance from [the county]. Because [the child-protection workers] were unable to testify as to whether or not [father] was provided with information about how to cooperate with the random UA requirement and no one from the agency took the simple step of arranging the appointment for the psychosexual evaluation, despite [father's] expressed frustration with his inability to complete this requirement and the only assistance offered to [father] during his time of homelessness was a single bus card, [the county] failed to meet its burden of proving by clear and convincing evidence that it made reasonable efforts to reunify A.T. with [father].

For the reasons that follow, we are not persuaded. First, the record contradicts father's assertion that increased assistance from the county would have improved his mental health and his homelessness. Father testified that he had been seeing a doctor for

his mental illness and that he took all of his prescribed medications. Father does not assert that his current mental-health treatment plan is inadequate. Nor does he explain what additional services the county could have offered to improve his mental health. Moreover, father's parenting worker testified that she worked with father to find housing but that "housing became a problem because [father] had felonies" and therefore "wasn't eligible for anything."

Second, father's assertion that the county was deficient in their willingness to help him schedule required UAs amounts to an assertion of error without any assertion of prejudice arising from that asserted error. *See Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that to prevail on appeal, an appellant must show both error and prejudice resulting from the error); *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 171 (Minn. App. 2005) (applying *Midway* in a TPR appeal). Here, father admitted marijuana use to his parenting worker, and a UA likely would have confirmed that use. Thus, the lack of UAs did not harm father's defense of the TPR petition.

Third, the record refutes father's assertion that the county did not adequately help him to schedule the psychosexual evaluation. A child-protection worker testified that father repeatedly refused to undergo a psychosexual evaluation, and the guardian ad litem testified that father told her that he did not need to undergo a psychosexual evaluation. Further, the county twice referred father for a psychosexual examination, and it agreed to pay for any portion of the examination that was not covered by insurance. Thus, father's testimony regarding his willingness to undergo a psychosexual evaluation is contradicted

by the evidence, and we defer to the district court's determination that father's testimony on the point was not credible. *See In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) (stating that because the district court is in a superior position to observe witnesses during trial, its assessment of witness credibility is accorded deference on appeal).

Fourth, the record also refutes father's assertion that the only service offered to him by the county was a bus card. The county offered father numerous services intended to improve his overall lifestyle. The county referred father to chemical-dependency, parenting, and anger-management services. The parenting worker assisted father with housing. The county also referred father for a psychosexual evaluation. Lastly, the county provided father with supervised visitation with A.T.

On this record, the district court found that "[t]he efforts made by [the county] to rehabilitate [father] and reunify him with [A.T.] were reasonable under the circumstances of this case." The district court further found that "[a]dditional services would be unlikely to bring about lasting parental adjustment enabling [father] to care for [A.T.] within the foreseeable future" and that "[t]he provision of further efforts or services by [the county] to rehabilitate [father] or reunify him with [A.T.] would be futile and unrealistic under the circumstances of this case." *See* Minn. Stat. § 260.012(h) (stating that "the court may determine that provision of services or further services for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances"). The district court's determination that the county made reasonable efforts to reunify father and A.T. is supported by clear-and-convincing evidence and does not constitute error.

II.

The district court terminated father's parental rights on three statutory grounds. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (8) (2012). We address each in turn.

Failure to Comply with Parental Duties

A district court may terminate parental rights if it determines

> 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).

Father contends that "[t]he district court's finding that [father] has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon him by the parent and child relationship . . . is not supported by clear and convincing evidence and is in clear error." Father argues that because "there was not sufficient evidence presented at trial to support a finding that reasonable efforts to reunify had been made by [the county], the district court's determination that [father] had repeatedly refused or neglected his personal duties was not based on sufficient evidence." This argument fails because, as noted above, the county made reasonable efforts to reunify father with A.T.

Father also argues that, given his initial case-plan compliance, there is no reason to believe that he would not have remained compliant "if [the county] had made reasonable efforts to assist" him after his car broke down and he became homeless. But mere compliance with the case-plan requirements does not necessarily avoid termination of parental rights. *See In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012) ("A parent's substantial compliance with a case plan may not be enough to avoid termination of parental rights when the record contains clear and convincing evidence supporting termination."). Essentially, father equates case-plan compliance with satisfaction of parental duties. But in a TPR case, "[t]he critical issue is not whether the parent formally complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child." *Id.* We therefore reject father's theory that if the county had offered him additional services, then he would have remained fully compliant with his case plan and thus would have satisfied his parental duties.

In determining that father "has substantially and repeatedly failed and neglected to comply with the duties imposed upon him by the parent and child relationship" and that father is "currently unable to provide appropriate parental care for [A.T.], nor will be able to provide proper parental care for [A.T.] in the reasonable foreseeable future," the district court properly focused on father's parenting history. The district court found that father has "never provided [A.T.] with a safe, stable home or the consistent food, clothing, education and other care necessary for [A.T.'s] physical, mental, and emotional health and development." Although father testified that he had provided financial

support for A.T., the district court found the testimony not credible, and we defer to that credibility determination. *See L.A.F.*, 554 N.W.2d at 396.

In sum, our review of the record evidence reveals clear-and-convincing support for the district court's determination that father has substantially and repeatedly neglected to comply with the duties imposed upon him by the parent and child relationship. *See Engquist v. Wirtjes*, 243 Minn. 502, 503, 68 N.W.2d 412, 414 (1955) (stating that "[t]he function of an appellate court is that of review. It does not exist for the purpose of demonstrating to the litigants through a detailed statement of the evidence that its decision is right").

Palpably Unfit

A district court may terminate parental rights to a child if the district court finds that the 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.

Minn. Stat. § 260C.301, subd. 1(b)(4). "[T]he county must prove a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that, it appears, will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child." *Children of T.R.*, 750 N.W.2d at 661.

Father contends that "[t]he district court's finding that [father] is palpably unfit to [be a party to] the parent-child relationship with A.T. . . . is not supported by clear and convincing evidence and is clearly in error." Father argues that the county "failed to present evidence that [father's] criminal history would negatively impact his ability to parent A.T. in the future." We disagree. The record shows that father has had orders for protection and a harassment restraining order filed against him based on domestic violence. Prior to A.T.'s birth, A.T.'s mother obtained an OFP against father for hitting her in the face. Another woman obtained an HRO against father for verbally abusing her, spitting on her in front of her children, and pushing her into a table. After A.T.'s birth and while the child protection case was pending, the subject of the HRO obtained an OFP against father after A.T.'s mother physically assaulted the HRO subject while father watched and said that she "deserved it." Moreover, father has to register as a predatory offender based on a felony terroristic-threats conviction that stemmed from a criminal-sexual-conduct charge. In addition, father was charged with second-degree assault and three counts of terroristic threats while the underlying action was pending. He allegedly threatened to kill people, including children, and threatened another individual with a knife. The record evidence regarding father's history of violent behavior and criminal activity clearly demonstrates that father presents a risk to A.T.'s safety that negatively impacts his ability to parent.

Father again argues that the county "did not present clear and convincing evidence that reasonable efforts were provided to [father] to reunify him with A.T." We disagree that the county's efforts were not reasonable. And the record does not support father's

suggestion that "it is entirely possible that if such efforts had been provided, [father's] problems with housing, employment and even criminal activity could have been remedied."

Father contends that "the district court's finding that [father] demonstrated a pattern of being unavailable to parent A.T. is manifestly contrary to the evidence that was presented at the termination trial." He argues that even while "homeless and living out of his car," he managed to "consistently attend scheduled visits with A.T., attend parenting classes every week, complete a chemical dependency evaluation and engage in anger management classes." But engaging in some case-plan services and visits with A.T. does not equate to being "available to parent." The record demonstrates that father was in no position to assume full-time parenting responsibilities at the time of trial. At best, the record shows that father was initially willing to attempt to make himself available to parent A.T., but he ultimately failed to do so.

Lastly, father emphasizes trial testimony that indicated that the visits between father and A.T. "went very well" and that father "very much wanted to parent A.T." We agree that the record evidence shows that visitation went well. But the existence of a bond between father and A.T. does not preclude TPR. *See In re Welfare of A.D.*, 535 N.W.2d 643, 650 (Minn. 1995) (concluding that mother's love for child and desire to regain custody were not sufficient where she failed to demonstrate requisite parenting skills); *In re Welfare of A.J.C.*, 556 N.W.2d 616, 622 (Minn. App. 1996) (concluding that despite a mother's love for her children, her inability to comply with parental duties due

to alcoholism and drug addiction warranted termination), *review denied* (Minn. Mar. 18, 1997).

In determining that father "is palpably unfit to be a party to the parent/child relationship" and that "[h]e is unable for the reasonably foreseeable future to care appropriately for the ongoing physical, mental or emotional needs" of A.T., the district court found that father "has demonstrated a pattern of violent and criminal behaviors that place [A.T.'s] health, safety and welfare at risk" and that he "has demonstrated a pattern of being unavailable to parent" A.T. Clear-and-convincing evidence in the record supports the district court's findings as to this statutory factor.

Neglected and in Foster Care

Father also argues that "[t]he district court's finding that A.T. was neglected and in foster care at the time of the trial is contrary to the weight of the evidence and is made clearly in error." Because the record evidence clearly and convincingly supports two statutory grounds for termination, we do not consider father's argument regarding this ground. *See S.E.P.*, 744 N.W.2d at 385 (stating that an appellate court will "affirm the district court's termination of parental rights when *at least one statutory ground for termination is supported by clear and convincing evidence* and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family" (emphasis added) (citations omitted)).

Failure to Correct Conditions

Lastly, father contends that "[t]he district court's finding that reasonable efforts have failed to correct the conditions that led to the child's out-of-home placement is

clearly in error." A district court may terminate a person's parental rights to a child upon a finding that, after the child's placement out of the home, reasonable efforts "failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5) (2012).

But the district court did not terminate father's parental rights based on failure to correct the conditions that led to the child's out-of-home placement. Father's argument with regard to this statutory basis for termination therefore does not establish reversible error. *See Midway Ctr. Assocs.*, 306 Minn. at 356, 237 N.W.2d at 78 (stating that to prevail on appeal, an appellant must show both error and prejudice resulting from the error).

III.

In every termination proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2012). Even if a statutory ground for termination exists, the district court must still find that termination of parental rights or of the parent-child relationship is in the best interests of the child. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). In considering the child's best interests, the district court must balance the preservation of the parent-child relationship against any competing interests of the child. *In re Welfare of M.G.*, 407 N.W.2d 118, 121 (Minn. App. 1987). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *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. "We review a 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).

Father contends that "[t]he district court abused its discretion in determining that terminating the parental rights of [father] is in the best interests of A.T." Father's entire best-interests argument is that because the county "failed to present clear and convincing evidence to demonstrate that the agency made reasonable efforts to reunify, there was not sufficient evidence for the district court to determine that a continuing relationship between [father and A.T.] would [not] be in A.T.'s best interest." The argument is unavailing for two reasons. First, the county made reasonable efforts to reunite father with A.T. Second, father's argument does not address the best-interest factors. *See In re Welfare of the Child of D.L.D.*, 771 N.W.2d 538, 545 n.2 (Minn. App. 2009) (concluding that an issue was not adequately briefed, and therefore waived, because appellant failed "to provide legal argument or to cite legal authority" in support of his argument).

The district court considered the best-interest factors and concluded that termination is in A.T.'s best interests. The district court found that A.T. "does not have an interest in preserving the parent-child relationship with" father and that "[a]ny interest [father] may have in preserving the parent-child relationship with [A.T.] is outweighed by [A.T.'s] competing interests." The district court further found that A.T. is "in need of permanency" and that her "various needs outweigh [father's] desire to parent her." The record evidence indicates that A.T. has lived with her maternal grandmother since shortly after she was born and that A.T. is bonded with her sisters, who also live with maternal

grandmother. A.T.'s mother has consented to her adoption by her maternal grandmother. The record evidence supports the district court's discretionary determination that termination is in A.T.'s best interests.

Affirmed.