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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0037**

In the Matter of the Welfare of the Child of T.T.B., Parent.

**Filed June 3, 2008
Reversed and remanded
Stoneburner, Judge**

Ramsey County District Court
File No. 62J904555392

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Considered and decided by Lansing, Presiding Judge; Stoneburner, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant, a juvenile, challenges the juvenile-protection court's discharge of his
child-protection case as contrary to his best interests and the mandates of child-protection

laws. Because the record does not support the juvenile-protection court's finding that closing the case is in appellant's best interests, we reverse and remand.

FACTS

R.J.S., whose date of birth is July 21, 1991, was raised in his mother's home with his younger sister and stepbrother. In September 2004, when R.J.S. was 13 years old, his siblings reported that R.J.S. had sexually abused them. When R.J.S.'s mother confronted him, he ran away, and his mother was unwilling to have him return to her home. At that time, R.J.S.'s father was in prison for a sex offense against a child.

In November 2004, Ramsey County Community Human Services (RCCHS) petitioned to have R.J.S. adjudicated a child in need of protection or services of the court (CHIPS), citing numerous statutory bases. R.J.S.'s mother appeared for a hearing on RCCHS's motion for an emergency protective care (EPC) order and admitted the need for child-protection involvement. The juvenile-protection court continued emergency protective care of R.J.S. through RCCHS and appointed a guardian ad litem (GAL).

R.J.S.'s mother failed to appear at the CHIPS-petition hearing in January 2005. R.J.S. was adjudicated a CHIPS under Minn. Stat. § 260C.007, subd. 6(2) (resides with a victim of domestic child abuse), (3) (is without necessary food, clothing, shelter, education or other required care and parent is unwilling or unable to provide care), (4) (is without the special care made necessary by physical, mental, or emotional conditions), (8) (is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent), (9) (is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others)

(2004). Temporary legal custody of R.J.S. was assumed by the court and delegated to RCCHS with authority to place him in alternative care. The child-protection court ordered RCCHS to submit a case plan for R.J.S., and scheduled a permanent placement determination hearing for November 15, 2005. RCCHS placed R.J.S. in foster care and began permanency planning involving R.J.S.'s father who had been released from prison.

In March 2005, pursuant to a plea agreement, R.J.S. admitted in Ramsey County Juvenile Court that he had committed indecent exposure, and he was adjudicated delinquent. The juvenile-delinquency court placed R.J.S. on probation and ordered him to complete an outpatient sex-offender-treatment program.

In May 2005, R.J.S.'s foster parent asked that he be removed from her home. He was taken to a shelter but ran away on June 3, 2005. He was arrested the same day for giving false information to police, trespassing, and obstruction of justice. He was taken to the Ramsey County Juvenile Detention Center (JDC) until his court appearance on the new charges. At his appearance in juvenile-delinquency court, R.J.S. admitted that he gave false information to police, and the other charges were dismissed. He was taken back to the shelter but ran away a few days later, and he remained on the run until he was picked up on a warrant on August 18, 2005, and returned to the JDC. R.J.S. was released to his father on September 1, 2005, to start a trial placement that the child-protection court had approved in July 2005.

In October 2005, at a time when R.J.S. was on the run from his father's home, RCCHS petitioned for permanent placement by transferring custody of R.J.S. to his father. While on the run, R.J.S. attempted to steal a car from his father's auto-repair

shop, was found in possession of a “Dixie cup full of pills,” was found at his mother’s home despite a no-contact order regarding his siblings, and stole money from a program with which his stepmother was involved. Nonetheless, in January 2006, the child-protection court issued an order stating that “the permanent placement determination for [R.J.S.] is a transfer of legal and physical custody to his adjudicated father.” The order authorized RCCHS to petition for permanent placement of R.J.S. with his father.

R.J.S. ran from his father’s home again in late January or early February 2006. He was picked up on February 8, but ran again shortly thereafter. R.J.S. remained on the run until April 25, at which time he was placed at the Dakota County JDC until July 10, 2006, when he was returned to his father’s home. By August 12, R.J.S. was again on the run and broke into his father’s home the following weekend. R.J.S.’s father notified RCCHS that he was no longer willing to have custody of R.J.S, and RCCHS recommended to the child-protection court that R.J.S., when found, be placed in a foster home. RCCHS therefore never petitioned for permanent placement of R.J.S. with his father. R.J.S.’s probation officer issued a warrant for R.J.S.

R.J.S. was arrested on September 27, 2006, for speeding in a stolen car. He gave false information to police and was driving without a license or insurance. He was initially taken to Ramsey County JDC, then to Dakota County JDC for a 60-to-90 day consequence program. R.J.S. was scheduled to be discharged from Dakota County JDC on December 15, 2006. RCCHS recommended that R.J.S. be placed in a therapeutic foster home after discharge from JDC. R.J.S. and his attorney expressed concern to the child-protection court that no appropriate foster home could be found, but the child-

protection court adopted RCCHS's recommendation. No appropriate foster home was located, and in January 2007, the juvenile-delinquency court placed R.J.S. at Mille Lacs Academy, where it was anticipated that he would remain for 12 to 14 months.

R.J.S. ran from Mille Lacs Academy in May 2007. He was picked up on June 17, 2007. The juvenile-delinquency court then ordered R.J.S. to complete the secure, nine-to-twelve month sex-offender-treatment START program at the Ramsey County JDC.

In August 2007, RCCHS issued a review-hearing report recommending that the child-protection court discharge the CHIPS petition, leaving the provision of services to R.J.S. to his probation officer. Despite R.J.S.'s objection, the child-protection court found that discharge of the CHIPS case would be in R.J.S.'s best interests, discharged the GAL, and closed the file. The discharge order does not address custody of R.J.S., but at oral argument on appeal, the parties agreed that closing the file de facto returned custody of R.J.S. to his mother. R.J.S. moved to vacate the order dismissing the CHIPS case or for an amended order. The motion was denied, and this appeal followed.

D E C I S I O N

I. Statutory mandates

R.J.S. asserts that discharge of his CHIPS case is irreconcilable with the mandates of Minn. Stat. § 260C.201, subd. 11(d), (f) (2006), (l) (Supp. 2007). R.J.S. also asserts that RCCHS was required by Minn. Stat. § 260C.212, subd. 1(c)(8) (2006), to provide him with an independent-living plan. "Whether the district court correctly applied the law is a legal question [that this court reviews] de novo." *In re A.R.M.*, 611 N.W.2d 43,

47 (Minn. App. 2000). We find no merit in R.J.S.'s arguments that the cited statutory provisions precluded discharge of his CHIPS case.

Minnesota law provides that “if a trial home visit ordered or continued . . . terminates, the court shall re-commence proceedings under this subdivision to determine the permanent status of the child not later than 30 days after the child is returned to foster care.” Minn. Stat. § 260C.201, subd. 11(1)(2). R.J.S. did not raise this issue at the child-protection court and concedes that this provision was not in existence at the time his trial home visit was ordered, continued, or terminated. R.J.S. asserts that we should nonetheless consider this provision on appeal because it is “plainly decisive of the entire controversy.” We disagree. Nothing in the provision precludes the discharge of a CHIPS case; the statute merely directs how the case should proceed if it remains open.

Minnesota law also provides that once the court makes a permanent-placement determination and such permanent placement has been established, further court reviews are necessary if “there is a disruption of the permanent . . . placement.” Minn. Stat. § 260C.201, subd. 11(f)(4). R.J.S. argues that because permanent placement with his father was disrupted, further review hearings are required. But in this case, there was not a permanent placement, and therefore the provision does not apply. Additionally, even if permanent placement had occurred and was disrupted, the provision does not preclude discharge of the case but merely requires that so long as it remains open, the juvenile-protection court must continue to review the case.

Minnesota law provides that “an independent living plan [shall be prepared] for a child age 16 or older who is in placement as a result of a permanency disposition.” Minn.

Stat. § 260C.212, subd. 1(c)(8). An independent-living plan should address, but is not limited to, educational and employment planning, health-care planning, transportation, money management, housing, social skills, and family/community connections. *Id.*, subd. 1(c)(8)(i)–(vii). R.J.S. argues that because he was 16 years old and in “placement” in the START program at the time the case was discharged, this statute required RCCHS to provide such a plan. But RCCHS correctly notes that section 260C.212, subdivision 1(c)(8), does not preclude a case from being discharged if a plan is not provided. Additionally, when the juvenile-protection court discharged his case, R.J.S. was not in a “placement as a result of a permanency disposition.” The juvenile-delinquency court ordered R.J.S.’s placement in the START program, a placement mandated by R.J.S.’s actions that disrupted permanency planning. Therefore, RCCHS was not required to prepare an independent living plan for R.J.S. before the case could be discharged.

II. Best interests of the child

“The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child.” Minn. Stat. § 260C.001, subd. 2 (2006). RCCHS argues that because Minn. Stat. § 260C.193, subd. 6 (2006), provides that “[t]he [district] court may dismiss the [CHIPS] petition or otherwise terminate its jurisdiction on its own motion or on the motion or petition of any interested party at any time,” the child-protection court can discharge a CHIPS case even when to do so would not be in a child’s best interests. At oral argument on appeal, RCCHS recited hypothetical scenarios involving a child who would be best served by additional services or continued protection of the court but whose

circumstances do not provide a statutory ground for court intervention. R.J.S., however, is not such a child. We conclude that where there are statutory grounds for child-protection court intervention, it is an abuse of discretion to discharge a CHIPS case when to do so would not be in a child's best interests.

Importantly, R.J.S. was not adjudicated CHIPS solely because he committed criminal sexual conduct against his siblings, although this is the only basis recited in RCCHS's numerous reports to the child-protection court. He was also adjudicated CHIPS based on a finding that his mother was unable or unwilling to provide for his necessary care, and because he was without proper care due to mother's disability or immaturity. The record shows that R.J.S. will not be able return to his mother's home unless the entire family undergoes therapy that has never been required or provided. Without a viable plan to return to his mother's care, R.J.S. is effectively homeless. There is very little evidence in the record that R.J.S.'s mother is willing or able to provide him food, clothing, shelter, education, or other necessary care. On this record, there are statutory bases for the continued involvement of the child-protection court, making this case distinguishable from those hypothesized by RCCHS in which services could benefit the child but whose circumstances would not provide a statutory basis for intervention.

Adequacy of the juvenile-protection court's best-interest findings

The child-protection court specifically based its decision to discharge the case on its findings that discharge is in R.J.S.'s best interests and that RCCHS has made reasonable efforts to alleviate the problems which brought the matter before the child-protection court. R.J.S. does not challenge the finding of "reasonable efforts," but argues

that the child-protection court clearly erred in finding that discharging the case is in his best interests. Under the clear-error standard, “a district court’s individual fact findings will not be set aside unless our review of the entire record leaves us with a definite and firm conviction that a mistake has been made.” *In re Welfare of D.T.J.*, 554 N.W.2d 104, 107 (Minn. App. 1996) (quotation omitted).

The child-protection court’s discharge order stated that its best-interests finding was based on the reports of RCCHS and the GAL, files, records, and proceedings herein. The only reference to R.J.S.’s best interests in the RCCHS report requesting discharge is the social worker’s statement that he believes discharge will serve R.J.S.’s best interests because the “Delinquency Court will have jurisdiction for at least another 12 months, while [R.J.S.] completes the START sex offender program.”¹

The order denying R.J.S.’s motion for relief from the discharge order states that “[i]t is in [R.J.S.’s] best interest[s] to have one social worker in order to avoid duplicative, repetitive, and even possibly contradicting opinions and/or treatment.” This order also says that the order discharging the case provided that the delinquency court will continue supervision of R.J.S. through the probation office, but there is no such provision in the initial discharge order. The juvenile-protection court failed to address R.J.S.’s wishes that the case remain open. We conclude that the record does not support

¹ The record on appeal does not contain the GAL’s report for the August 7, 2007 hearing, although a transcript of the hearing indicates that the report was received by the child-protection court at the beginning of the hearing. At the hearing, the GAL did not make any recommendations based on R.J.S.’s best interests, but requested that she be appointed as GAL in the delinquency matter.

the juvenile-protection court's finding that discharging the CHIPS case is in R.J.S.'s best interests.

Availability of additional or continued child-protection services

Unquestionably, R.J.S.'s own actions and the delinquency disposition disrupted and delayed any efforts at permanency planning, and the juvenile-delinquency court disposition will provide some of the services that R.J.S. needs. But the juvenile-delinquency court is not charged with permanency planning and does not have R.J.S.'s best interests as its focus. Minn. Stat. § 260B.001, subd. 2 (2006). RCCHS concedes that the juvenile-delinquency court and child-protection court do not have the same purpose. *See In re Welfare of S.A.C.*, 529 N.W.2d 517, 518 (Minn. App. 1995) (stating that “[t]he paramount consideration in CHIPS proceedings is the best interests of the child, and the purpose of the CHIPS provision is to secure care and guidance for the child”; while the purpose of the delinquency provisions is “to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior”) (quotation omitted).

Nothing in the child-protection statutes prevents the probation agent and social worker from continuing to work cooperatively to provide services to R.J.S. and his family as they have apparently done for over four years during which there is no evidence of any duplicate or contradictory services. RCCHS's assertion that it has nothing more to offer R.J.S. is unsupported; it can recommend that the child-protection court require R.J.S.'s mother to begin the therapy necessary to reunification, oversee R.J.S.'s educational needs

and planning, provide independent-living-skills information to R.J.S., and assist in placement if R.J.S. cannot return to his mother's home when he has completed the START program and aftercare. The child-protection court can ensure that R.J.S. has a GAL to continue to advocate for his best interests.

Because discharge of the CHIPS case was not in R.J.S.'s best interests, we reverse and remand to the child-protection court to continue providing protection and services to R.J.S. until such time as permanency is achieved, the bases for adjudicating R.J.S. a CHIPS no longer exist, evidence supports that termination of the child-protection court's jurisdiction is in R.J.S.'s best interests, or R.J.S. is no longer a child, whichever occurs first.

Reversed and remanded.