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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2264**

In the Matter of the Welfare of the
Child of R.C.W., Jr., Parent

**Filed May 25, 2010
Affirmed
Worke, Judge**

Anoka County District Court
File No. 02-JV-09-1165

Sheridan Hawley, Coon Rapids, Minnesota (for appellant R.C.W., Jr.)

Robert M.A. Johnson, Anoka County Attorney, Kathryn M. Timm, Assistant County Attorney, Brenda S. Ramphal Sund, Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County Social Services)

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

UNPUBLISHED OPINION

WORKE, Judge

On appeal from the termination of his parental rights, incarcerated appellant-father argues that the district court clearly erred in finding that (1) appellant's rights should be terminated for failure to register with the fathers' adoption registry, (2) he abandoned the child, and (3) the county made reasonable reunification efforts. We affirm.

FACTS

V.L.P. was born on December 29, 2008. V.L.P.'s biological mother, M.L.P., came to the attention of Anoka County Social Services due to her chemical use. A police hold was placed on V.L.P., and a Child in Need of Protection or Services (CHIPS) petition was filed. The district court found that the facts in the petition were proved and adjudicated V.L.P. a child in need of protection or services. Since December 30, 2008, V.L.P. has been living with a foster family that wishes to adopt her. On September 7, 2009, M.L.P. consented to the adoption petition.

Appellant R.C.W., Jr. is the presumed father of V.L.P. Appellant and M.L.P. were never married, his name is not on V.L.P.'s birth certificate, he has not signed a recognition of parentage for V.L.P., and he has not registered with the Minnesota Fathers' Adoption Registry. Appellant provided a DNA sample on July 21, 2009; testing indicated that there is a 99.99% probability that appellant is V.L.P.'s biological father. The county petitioned to terminate appellant's parental rights to V.L.P.¹

¹ We note that appellant made no effort to comply with the requirements to establish paternity. Under these circumstances, it was not necessary for the county to petition to terminate parental rights when parentage was not established. Under the Parentage Act, genetic-test results indicating that the likelihood of the alleged father's paternity is at least 99% create a presumption that the alleged father is the biological father of the child. Minn. Stat. § 257.62, subd. 5(b) (2008). While the presumption exists here, the genetic-test results are evidence relating to the establishment of paternity, but do not alone establish paternity. Minn. Stat. § 257.63, subd. 1(c) (2008). Although appellant did not establish paternity, the county's petition and the district court's decision to terminate appellant's parental rights will sever and terminate all "rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent." Minn. Stat. § 260C.317, subd. 1 (2008).

The district court held a trial on the county's petition; because he was incarcerated in Wisconsin, appellant participated by telephone. Appellant testified that he has had chemical-dependency issues since he was 13 years old. Since V.L.P.'s birth he saw her only two times at supervised visits. One such visit occurred on February 27, 2009; at that visit, appellant submitted a dirty urinalysis (UA). Appellant never contacted the assigned social worker to inquire about V.L.P.'s welfare. Appellant testified that he was last employed in 2005, and has never supported V.L.P. financially. He claimed entitlement to Social Security benefits because of his mental-health issues and stated that he will use those benefits and part-time employment wages to raise V.L.P. Appellant testified that while he is incarcerated, he wants V.L.P. to live with the foster family and "stay there until [he] get[s] out and [] can establish a bond with [her]." Appellant conceded that he has a "bunch of stuff to complete before [he] would be able to be looked [at] to be her father, like [his] treatment and parenting classes and everything else."

The social worker assigned to the case testified that she developed a case plan for appellant and described the limited contact she had with him. The social worker saw appellant on January 8, 2009, during M.L.P.'s supervised visit with V.L.P. The social worker provided appellant with information, including release forms, one of which was a random UA schedule. Appellant did not sign the releases, claiming that he needed his probation officer's permission to do so. The social worker saw appellant again on February 6 when he arrived late with M.L.P. for a court hearing, missing the entire proceeding. M.L.P. smelled like alcohol and was given a breathalyzer test; appellant was not tested, but left with M.L.P. after the test.

On February 18, appellant left the social worker a voice-message stating that he did not have identification required to complete a UA. The social worker obtained a booking photo for appellant and called him with instructions to pick it up. But appellant failed to pick up the booking photo and never completed a random UA; he completed only one UA through his chemical dependency treatment facility. When appellant returned the signed releases on February 27, the social worker told him that he should establish paternity. M.L.P. was present and said that appellant did not want to establish paternity because he did not want to pay child support. The social worker next saw appellant on March 31, but she did not speak with him. She went to M.L.P.'s father's home to pick up M.L.P. for a visit with V.L.P. M.L.P. arrived with appellant and he walked into M.L.P.'s father's home as M.L.P. entered the social worker's vehicle. M.L.P. tested positive for methamphetamine that day and admitted to using the night before when she was with appellant, although she did not indicate whether appellant also used. The social worker opined that appellant's parental rights should be terminated.

V.L.P.'s guardian ad litem (GAL) testified that she was not successful in her numerous attempts to contact appellant. She testified that the case plan created for appellant was appropriate given his circumstances. The GAL opined that it would be in V.L.P.'s best interests to terminate appellant's parental rights so that she can be adopted.

The district court found the testimony of the social worker and GAL to be credible, and concluded that there was clear and convincing evidence that appellant's parental rights should be terminated because, in the case of a child born to an unwed mother, appellant is not entitled to notice of an adoption when he failed to register with

the fathers' adoption registry, and he abandoned V.L.P. The district court found that appellant never had separate visitation with V.L.P., although he could have had he provided clean UAs; he failed to complete chemical-dependency programming; he was told of the importance of establishing paternity, and could have established paternity in a timely fashion, but, instead, used the excuse that he needed his probation officer's permission; he never provided financial or emotional support for V.L.P., attended only two visits, and did not establish paternity for fear of it creating a financial obligation; and he showed an interest in V.L.P. and in completing his case plan only after his current incarceration. The district court determined that it is in V.L.P.'s best interests to terminate appellant's parental rights because of: (1) V.L.P.'s need for a permanent, stable home, (2) her need for a parent that is committed to remaining drug-free and that will refrain from associating with drug-involved individuals, (3) appellant's untreated chemical dependency and lengthy criminal history, (4) appellant's lack of interest in having visitation with V.L.P. or checking on her welfare, (5) his failure to provide financial or emotional support for V.L.P., (6) his lack of any parental relationship with V.L.P., (7) the fact that appellant will be incarcerated for several months following the trial and he does not have any type of bond with V.L.P., and (8) appellant's failure to present any kind of evidence that he is ready to be a parent to V.L.P. or that he understands her needs and will be able to manage them successfully.

The court also found that social services made reasonable reunification efforts, finding that: attempts were made to get appellant to perform UAs in order to prove his sobriety, he failed to complete chemical-dependency treatment, he was frequently

inaccessible, and he would not establish paternity despite urging to do so. The district court determined that social services attempted to rehabilitate appellant, requiring him only to establish paternity, prove sobriety, and complete chemical-dependency treatment, which he was unable to do. This appeal follows.

D E C I S I O N

Appellant challenges the termination of his parental rights. “[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 court may terminate parental rights on the basis of one or more of nine statutory criteria. Minn. Stat. § 260C.301, subd. 1(b) (2008). “An order terminating parental rights is reviewed ‘to determine whether the district court’s findings address the statutory criteria and whether those findings are supported by substantial evidence and are not clearly erroneous.’” *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005) (quoting *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001)). “Termination of parental rights will be affirmed as long as 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 R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). On review, “[c]onsiderable deference is due to the district court’s decision because a district court is in a superior position to assess the credibility of witnesses.” *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

Appellant argues that the district court erred in terminating his parental rights under Minn. Stat. § 260C.301, subd. 1(b)(7). The district court may terminate parental rights if it finds

that in the case of a child born to a mother who was not married to the child's father when the child was conceived nor when the child was born the person is not entitled to notice of an adoption hearing under section 259.49 and the person has not registered with the fathers' adoption registry under section 259.52[.]

Minn. Stat. § 260C.301, subd. 1(b)(7). Section 259.49 provides that notice of a hearing upon a petition for adoption must be given to certain people, including the child's parent if:

- (1) the person's name appears on the child's birth record, as a parent;
- (2) the person has substantially supported the child;
- (3) the person either was married to the person designated on the birth record as the natural mother within the 325 days before the child's birth or married that person within the ten days after the child's birth;
- (4) the person is openly living with the child or the person designated on the birth record as the natural mother of the child, or both;
- (5) the person has been adjudicated the child's parent;
- (6) the person has filed a paternity action within 30 days after the child's birth and the action is still pending; [or]
-
- (8) the person:
 - (i) is not entitled to notice under [the previous] clauses;
 - (ii) has registered with the fathers' adoption registry;
 - (iii) after receiving a fathers' adoption registry notice, has timely filed an intent to retain parental rights with entry of appearance form under section 259.52; and
 - (iv) within 30 days of receipt of the fathers' adoption registry notice has initiated a paternity action[.]

Minn. Stat. § 259.49, subd. 1(b) (2008). Appellant claims that he was openly living with M.L.P. *See id.*, subd. 1(b)(4). But there is no evidence of that in the record. And he never raised this issue below. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)

(stating that a reviewing court generally considers only issues presented to and considered by the district court). The district court did not err in finding that this statutory ground supported termination of appellant's parental rights.

Appellant also argues that there is insufficient evidence to conclude that he abandoned V.L.P. merely because of his incarceration or chemical dependency. The district court may terminate parental rights if it finds that the parent has abandoned the child. Minn. Stat. § 260C.301, subd. 1(b)(1). “[A]bandonment requires both actual desertion of the child and an intention to forsake the duties of parenthood.” *L.A.F.*, 554 N.W.2d at 398 (quotation omitted).

Appellant correctly argues that incarceration alone cannot support a conclusion of abandonment. See *In re Welfare of Staat*, 287 Minn. 501, 506, 178 N.W.2d 709, 713 (1970) (stating that “separation of child and parent due to misfortune and misconduct alone, such as incarceration of the parent, does not constitute intentional abandonment”). In *Staat*, the supreme court held that an imprisoned father's lack of financial support, visits, correspondence, or any evidence showing his interest in the welfare of the children, constituted abandonment. *Id.* at 506-07, 178 N.W.2d at 713. Like *Staat*, appellant failed to provide any emotional or financial support for V.L.P., showed interest in her welfare on only one occasion, failed to take steps to establish paternity until July 2009, visited her only two times, and failed to comply with his case plan. The district court did not err in finding that this statutory ground supported termination of appellant's parental rights.

Finally, appellant argues that the district court erred in finding that there was clear and convincing evidence that the county made reasonable efforts toward reunifying appellant with V.L.P. A district court must make a finding that social services provided reasonable efforts to reunite the child and parent before parental rights may be terminated. Minn. Stat. § 260C.301, subd. 8(1) (2008); *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). “Reasonable efforts” mean “the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child’s family” in order to reunify the family. Minn. Stat. § 260.012(f)(2) (2008). Whether services constitute “reasonable efforts” depends on the nature of the problem, duration of the county’s involvement, and quality of the county’s effort. *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). 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.” Minn. Stat. § 260.012(h) (2008). “Services must go beyond mere matters of form so as to include real, genuine assistance[,]” *H.K.*, 455 N.W.2d at 532, and must reach the parent’s specific needs. *In re Welfare of M.A.*, 408 N.W.2d 227, 236 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987). Reasonable efforts do not include efforts that would be futile. *S.Z.*, 547 N.W.2d at 892.

The district court concluded that the county “proved by clear and convincing evidence that it made reasonable efforts to rehabilitate [appellant] and reunify him with

V.L.P.” The district court found that social services developed a reunification plan and attempted to engage appellant in services that required him to: abstain from mood-altering chemicals, including alcohol; submit random, negative/clean UAs/BAs; cease relationships with people who use drugs or are drug dealers; complete a psychological evaluation by a psychologist approved by social services, with Social Services being a contact for the evaluator; follow psychological-evaluation recommendations; complete a Rule 25 assessment with social services being a contact for the assessment; and to follow recommendations of the rule 25 assessment.

Appellant acknowledges receipt of a case plan. The district court found that appellant’s testimony “reflected an expectation that things would be given to him without putting the effort forward to do them himself.” Appellant expected visitation, but would not establish paternity or complete UA testing. When incarcerated, he expected social services to engage him in services when he “made little effort to complete case plan services or learn about V.L.P. before his incarceration.” The court found that social services used reasonable efforts to reunify V.L.P with appellant, stating that the services provided to appellant were culturally appropriate, relevant and adequate to meet the needs of V.L.P. and appellant, and to ensure V.L.P.’s safety. The record supports the district court’s findings.²

Affirmed.

² The district court’s determination that it is in the child’s best interests to terminate appellant’s parental rights was not challenged and is not at issue here.