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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2191**

In the Matter of the Welfare of the Child of:
P. Y. A. and P. A. A., Parents.

**Filed May 6, 2008
Affirmed in part, reversed in part, and remanded
Halbrooks, Judge**

Watonwan County District Court
File No. 83-JV-06-253

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Considered and decided by Schellhas, Presiding Judge; Klaphake, Judge; and Halbrooks, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellants challenge the termination of their parental rights on the grounds that the district court relied on the recommendation of the guardian ad litem and did not make

its own best-interests findings concerning how termination serves the interests of all four children and social services did not attempt to reunify appellants with their children or place their children in the homes of relatives. Because the district court properly determined that M.A. suffered egregious harm while in their care and because the county was therefore not required to make reasonable efforts to reunify appellants with their children, we affirm in part. But because the district court did not make specific findings regarding whether the record contains clear and convincing evidence that P.Y.A. and P.A.A. knew or should have known that egregious harm occurred, we reverse in part and remand.

FACTS

Appellants P.Y.A. and P.A.A. are the parents of four children: D.A., P.A., A.A., and M.A. On October 5, 2006, when M.A. was approximately 3 1/2 months old, appellants took him to Immanuel-St. Joseph's Hospital (ISJ) in Mankato. The treating physician in the ISJ emergency room observed severe swelling and a large hematoma in the back of M.A.'s head. A CT scan revealed that M.A. had suffered an extensive skull fracture and a hematoma and hemorrhaging in his brain. M.A. was then airlifted to the Mayo Clinic in Rochester.

Mark Mannenbach, M.D., treated M.A. in the Mayo Clinic emergency room. Dr. Mannenbach, an expert in pediatric emergency medicine, observed that M.A. lacked alertness and was uncomfortable when he arrived. Upon further examination, Dr. Mannenbach discovered that M.A. had bruising under his nose and on his cheek and multiple fractures to the back of his skull.

Dr. Mannenbach determined that M.A.'s skull injuries were caused by an impact to the back of his head. The impact caused three distinct fracture lines in M.A.'s skull. One of the fractures separated the occipital bone, causing two pieces of bone to "float." Fractures in the occipital bone on each side of the skull extended across "suture" lines into M.A.'s parietal bones. Dr. Mannenbach also diagnosed hematomas causing significant blood loss in M.A.'s brain. M.A. also had six rib fractures that were estimated to be 7 to 14 days old and a possible fracture of his sternum.

Marcie Billings, M.D., subsequently examined M.A. in the Mayo Clinic pediatric-intensive-care unit and spoke with appellants regarding M.A.'s injuries. P.A.A. told Dr. Billings that P.Y.A. went to the store at about 4:00 p.m. on October 4, 2006. P.A.A. stated that, following P.Y.A.'s departure, he was showering when he heard a loud noise from downstairs. When he went to investigate, he found then 13-year-old D.A. picking M.A. up off the floor. According to appellants, D.A. was playing with M.A., got excited, and threw him up in the air. But D.A. slipped when he tried to catch M.A., and M.A. fell on the floor. P.A.A. said that M.A. did not lose consciousness but that his head began to swell immediately. Appellants stated that M.A. did not appear ill until noon the following day. They took him to the hospital sometime between 6:00-7:00 p.m.

After a child-protection report was filed with Watonwan County Human Services, a child-protection worker and a St. James police officer began investigating M.A.'s injuries. The two investigators interviewed P.Y.A., P.A.A., and D.A. Appellants were initially unable to provide an explanation for M.A.'s rib fractures, but later stated that they could have occurred when M.A. was passed around in church.

Human services subsequently filed a child-in-need-of-protection-or-services (CHIPS) petition regarding M.A. One month later, human services filed a CHIPS petition on behalf of appellants' other three children as well. The following day, the agency petitioned for the termination of appellants' parental rights (TPR). The petition alleged that M.A. had suffered "egregious harm" while in his parents' care that warranted termination of appellants' parental rights to all of the children.

At trial, Dr. Mannenbach testified that the explanation provided by appellants did not adequately account for M.A.'s injuries. Because the fractures to M.A.'s ribs occurred at a different time than his skull fractures, Dr. Mannenbach opined that a single event could not have caused all of the injuries. He testified that a significant amount of force is necessary for a fracture to extend across the sutures and plates of the skull, such as the force created by a motor-vehicle accident or a fall from a second- or third-story window. Dr. Mannenbach concluded that M.A.'s head injuries were non-accidental and were consistent with "someone taking the child . . . and striking [him] against a concrete floor and . . . potentially doing that repeatedly." Both Dr. Mannenbach and Dr. Billings testified that M.A.'s rib fractures required more force than comparable breaks in an adult because children's ribs are not yet calcified and are, therefore, more malleable. Both physicians opined that the rib injuries were likely non-accidental.

M.A.'s future recovery is uncertain. While Drs. Mannenbach and Billings stated that the skull and rib fractures, themselves, will heal, the full extent of M.A.'s brain injury will not be known until he reaches some developmental milestones. But M.A. has

an increased risk for seizures, and his overall motor and cognitive development may be affected.

At the request of the court-appointed guardian ad litem, Michael McGee, M.D., the Ramsey County Medical Examiner, performed an independent forensic review of M.A.'s injuries, including the medical records, radiology reports, police investigative reports, and interviews. Based on his review, Dr. McGee opined that M.A.'s injuries were non-accidental. He noted the serious nature of M.A.'s skull injuries, including the fractures and the deep hemorrhaging near M.A.'s brain stem. Dr. McGee also noted that the rib fractures and possible sternum fracture required significant force and were not caused at the same time as the skull fractures. Dr. McGee testified that the injuries that M.A. suffered could not be explained by a simple fall or drop and that accelerated force was necessary to cause such injuries.

Appellants and D.A. did not testify at trial. And there was no medical testimony that refuted the conclusions of Drs. Mannenbach, Billings, and McGee.

The district court found that M.A.'s injuries were non-accidental and constituted egregious harm. The district court concluded pursuant to Minn. Stat. § 260C.301, subd. 1(b)(6) (2006), that appellants' parental rights should be terminated because M.A. had suffered egregious harm in their care that is of "a nature, duration, or chronicity that indicates a lack of regard for [M.A.'s] well-being, such that a reasonable person would believe it contrary to the best interests of the child or any child to be in the parents' care." The district court further concluded that the county was not required under Minn. Stat. § 260.012(a)(1) (2006) to use reasonable efforts to reunify appellants with their children

because M.A. had been subjected to egregious harm. After determining that the benefit of all four children “being in a safe and healthy environment outweighs any interest . . . for preserving the parent-child relationship,” the court ordered that appellants’ parental rights be terminated. This appeal follows.

DECISION

I.

A district court may order termination of parental rights on the basis of one or more of the nine criteria listed in Minn. Stat. § 260C.301, subd. 1(b) (2006). “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). Because a child’s best interests are the paramount consideration in a termination-of-parental-rights proceeding, the district court cannot terminate parental rights unless it is in the child’s best interests. *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 149 (Minn. App. 2007), *review denied* (Minn. Mar. 28, 2007). “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)). 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).

One condition for termination of a parent's rights occurs when

a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care[.]

Minn. Stat. § 260C.301, subd. 1(b)(6).

Minn. Stat. § 260C.007, subd. 14 (2006), defines "egregious harm" as "the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care" that includes the infliction of "substantial bodily harm" as defined in Minn. Stat. § 609.02, subd. 7a (2006). "Substantial bodily harm" is defined as "bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member." Minn. Stat. § 609.02, subd. 7a. The state need not prove that the child suffered harm as the result of an intentional act of the parent. *See In re Welfare of the Child of T.P.*, ___ N.W.2d ___, ___, 2008 WL 1747227, at *1 (Minn. Apr. 17, 2008) (stating that under the egregious-harm provision of the termination statute, "a child can be considered to have experienced egregious harm 'in the parents' care' even though the parent was not physically present at the time the harm occurred").

A. Egregious Harm

Here, the district court determined that M.A.'s injuries were non-accidental and constituted egregious harm as reflected by the following factual findings:

84. i. [M.A.'s] injuries are of a nature that one would expect to see in a child who had been involved in a motor vehicle accident, had fallen from a two to three story building, or had their head struck against a concrete floor multiple times resulting in "floating" skull.

ii. The explanation provided by the family was inconsistent with the nature of injuries sustained by [M.A.]. Dr. Mannenbach, Dr. Billings, and Dr. McGee all believed these injuries could not have been caused by the explanation provided by the parents.

iii. [M.A.] had six fractured ribs that occurred sometime prior to the skull fracture. An infant's ribs are more pliable than an adult's ribs as they are not yet calcified. A significant amount of force is needed to fracture a child's ribs. No adequate explanation has been provided by the family for those rib fractures.

In its order, the district court specifically noted that it found the testimony of the experts to be credible and appellants to not be credible.

The district court's findings are based on the medical opinions of two treating physicians and one forensic physician, all of whom reached the consistent conclusion that M.A.'s injuries were non-accidental in nature. The injuries, themselves, are not disputed and clearly fit within the statutory definition of substantial bodily harm. Because substantial evidence in the record supports the district court's finding of egregious harm to M.A. while he was in appellants' care, the findings are not clearly erroneous.

B. Parents' Knowledge

How M.A. suffered his various injuries, who inflicted those injuries, and who was present when they were inflicted, is unclear on this record. If a district court is going to terminate parental rights based on egregious harm occurring to a child when a parent is

not physically present when the harm occurred, the district court, in addition to finding the existence of egregious harm to the child, must also find both that the parent knew or should have known that the child suffered egregious harm and that the egregious harm was of a nature, duration, or chronicity to show that the parent lacked regard for the child's wellbeing. See *T.P.*, ___ N.W.2d at ___, 2008 WL 1747227, at *5-*6; see also Minn. Stat. § 260C.301, subd. 1(b)(6). Regarding whether egregious harm suffered by a child when a parent is not present is of a nature, duration, or chronicity showing that a reasonable person would believe it contrary to the best interests of the child or of any child to be in the parent's care, the supreme court has stated:

[W]here a parent who has not inflicted egregious harm but who either knew or should have known that a child experienced egregious harm, the “nature, duration, or chronicity” of the egregious harm may not necessarily “indicate[] a lack of regard [by that parent] for the child's well-being.” Minn. Stat. § 260C.301, subd. 1(b)(6). That such a parent either knew or should have known that a child experienced egregious harm is necessary, but not sufficient, to satisfy that statutory requirement. Other factors will be relevant to whether that requirement is met in a given case.

T.P., ___ N.W.2d at ___ n.4, 2008 WL 1747227, at *6 n.4. The supreme court declined to comment on the other factors relevant to the analysis because it was unnecessary to the *T.P.* opinion. *Id.*

Here, the district court's exemplary findings understandably do not fully and specifically address the concerns articulated in *T.P.*, which was issued after this case was submitted for decision on appeal. For this reason we remand for the district court to specifically address whether there is clear and convincing evidence in the record that

each parent knew or should have known that egregious harm occurred and whether the harm of which they were aware was “of a nature, duration, or chronicity that indicates a lack of regard for the child’s well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent’s care.” Minn. Stat. § 260C.301, subd. 1(b)(6). In addressing whether any egregious harm of which the parents were aware was of a nature, duration, or chronicity showing such a lack of regard for the child’s well-being that a reasonable person would believe it contrary to the best interests of the child or of any child to be in the parent’s care, the district court shall identify what “[o]ther factors” are, on this record, relevant making this determination and make findings identifying those factors and explaining how they bear on its decision. *T.P.*, ___ N.W.2d at ___ n.4, 2008 WL 1747227, at *6 n.4. On remand, whether to reopen the record shall be discretionary with the district court.

C. Best Interests

In addition, contrary to appellants’ assertion, the district court did examine whether termination of appellants’ parental rights is in the children’s best interests. A child’s best interests are paramount and outweigh any interest of the parents; they may also preclude termination of parental rights even when a statutory basis for termination is otherwise proven. *In re Tanghe*, 672 N.W.2d 623, 625-26 (Minn. App. 2003); *see also* Minn. Stat. § 260C.301, subd. 7 (2006) (stating that the best interests of the child are paramount in termination proceedings). Ordinarily, it is in the best interests of a child to be in the custody of his or her parents. *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995).

When considering the best interests of the child in a termination case, three factors are balanced: “(1) the child’s interest in preserving the parent-child relationship; (2) the parent’s interest in preserving the parent-child relationship; and (3) any competing interest of the child.” *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004) (quotation omitted). “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).

The record in this matter also contains evidence of intentional, non-accidental injuries to P.A., another child of appellants. On July 19, 1995, P.A.A. took 21-month-old P.A., who is deaf, to the Sioux Valley Hospital in New Ulm; P.A.A. told the medical staff that P.A. and D.A. (then age 3) had been playing on the bed when P.A. fell off and started crying. Within minutes, P.A. was gasping for air and jerking. P.A. was diagnosed by Christopher Schubert, M.D., with closed-head trauma, profound developmental delays, and as a possible battered child.

Dr. Schubert referred P.A. to the pediatric neurology department at the University of Minnesota, where he was examined by William Dobyns, M.D. Dr. Dobyns observed bruises over P.A.’s left eye and left leg; petechiae and swelling on his right thigh; and possible shearing-type injuries in his subcortical white matter. When Dr. Dobyns asked appellants about P.A.’s injuries, they stated that he had fallen off the bed and down the stairs on a number of occasions.

While no child-protection case was ever initiated concerning P.A., the record contains three child-protection reports that were made—two when P.A. was six years old

and the family lived in Texas and the third when P.A. was at a school for deaf students in Minnesota. P.A. told school officials that P.A.A. had choked him.

As he had done with M.A., Dr. McGee performed an independent forensic review of P.A.'s medical records associated with the July 19, 1995 incident. Dr. McGee determined that P.A. had evidence of recent bruising and/or hemorrhages on his brain surface with possible shearing-type injuries on the left subcortical white matter. Dr. McGee opined that these injuries would not be associated with a simple fall and that they were consistent with what is termed "shaken baby." Based on his review, Dr. McGee concluded that P.A.'s injuries were intentional and non-accidental in nature.

While the district court noted that appellants "have demonstrated a desire to maintain their relationship with their children" and that D.A. has demonstrated a desire to maintain the parent-child relationship, the district court found that "[t]he benefit of [D.A., P.A., A.A., and M.A.] being in a safe and healthy environment outweighs any interest provided by any party for preserving the parent-child relationship in this case."

In support of its best-interests conclusion, the district court relied on multiple bases, including (1) the guardian ad litem's conclusion that the "children have not been provided with a safe and stable environment due to the multiple injuries and child protection reports that have been received about [appellants'] home; (2) the seriousness of the injuries and the medical opinions that the injuries sustained by M.A. and P.A. were intentional and not accident-related; and (3) P.Y.A.'s failure to take any action to separate herself from P.A.A., despite the medical information that discredited her family's

explanations for M.A.'s injuries, that demonstrated P.Y.A.'s inability to protect her children in the future.

This record reflects the district court's careful consideration of the children's best interests in addition to the statutory ground for termination of appellants' parental rights. Because M.A. suffered egregious harm and because termination is in the children's best interests, the district court did not err in its conclusions.¹

II.

Appellants argue that termination was nonetheless improper because social services failed to offer them reasonable efforts to reunite the family. When termination of parental rights is based on egregious harm inflicted by a parent, reasonable efforts are not required. *See* Minn. Stat. §§ 260C.301, subd. 8(2) (stating that reasonable efforts are not required "as provided under section 260.012"), 260.012(a)(1) (stating that reasonable efforts are not required where a parent has subjected a child to egregious harm) (2006). In this case, the egregious harm inflicted upon M.A. constituted the statutory basis for termination. Therefore, reasonable efforts to reunify the family were not required.

¹ Appellants argue that the district court erred in its best-interests determination because D.A. has a preference to stay with his parents and the children were not all placed together. D.A. did not take the stand at the TPR hearing to express his preference. Without knowing D.A.'s preference, the district court could not have accurately considered it while making its best-interests determination. With regard to the children's placement, the record establishes that the children were all initially placed together, but D.A. and P.A. were unable to interact appropriately with the younger children. D.A. and P.A. have since been placed together with their aunt, uncle, and maternal grandmother. M.A. and A.A. have also been placed together, although not with relatives.

III.

Appellants argue that “once the children were removed from their parents’ care, diligent efforts as required by law to afford family placement was not appropriately pursued.” Under Minn. Stat. § 260C.212, subd. 2(1) (2006), the responsible social-service agency must prioritize placement with relatives when children are placed out of their parental home. This issue was not raised in the district court. As a result, we need not consider this argument on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). Because this issue was not previously raised, the record does not contain relevant documentation or testimony about the efforts that social services made when the children were placed. We note, however, that social services did contact relatives in an attempt to discuss placement options. And D.A. and P.A. were placed together with their aunt, uncle, and maternal grandmother.

Affirmed in part, reversed in part, and remanded.