STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2158

In the Matter of the Welfare of the Child of: T. R. R. and L. R. O.

Filed June 16, 2009
Affirmed
Bjorkman, Judge

Sherburne County District Court
File No. 71-JV-08-185

Sean C. Dillon, Assistant Sherburne County Public Defender, 19230 Evans Street, Suite 116, Elk River, MN 55330 (for appellant L. R. O.)

Kathleen A. Heaney, Sherburne County Attorney, Arden Fritz, Assistant County Attorney, 13880 Business Center Drive, Elk River, MN 55330 (for respondent Sherburne County Social Services)

Thomas W. Richards, Johnson, Larson, Peterson & Matt, P.A., 908 Commercial Drive, Buffalo, MN 55313 (for respondent B. J. O.)

Patricia A. Zenner, 901 South 3rd Street, Suite 203, Stillwater, MN 55082 (for guardian ad litem)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant challenges the district court's order placing appellant's son in long-term foster care. Appellant argues that the district court erred in determining that respondent's

efforts to reunite him with his son were reasonable and that appellant failed to make reasonable efforts to correct the conditions leading to his son's out-of-home placement. We affirm.

FACTS

Appellant L.R.O. is the father of B.J.O., who was born February 17, 1993.[1] On April 8, 2007, B.J.O. witnessed a physical altercation between appellant and B.J.O.'s older brother. As a result of the incident, appellant was charged with fifth-degree assault. Respondent Sherburne County Social Services (the county) offered appellant voluntary services, which he declined, and placed B.J.O. in the custody of B.J.O.'s maternal grandparents in Iowa. Appellant objected to that placement but agreed to voluntarily place B.J.O. in foster care. B.J.O. was placed in a foster home in Minnesota on April 11, 2007.

In May 2007, the county filed a petition alleging that B.J.O. was a child in need of protection or services. After a June 12, 2007 hearing at which appellant denied the allegations in the petition, the district court ordered B.J.O.'s continued placement in the foster home. Between August 2007 and March 2008, the county filed three unexecuted out-of-home placement plans with the district court. Each plan indicated that the social worker had met with appellant and his wife "to jointly make this plan," but that they were "not in agreement with this plan."

[1] The whereabouts of T.R.R., B.J.O.'s biological mother, are unknown. She did not participate in the district court proceedings or in this appeal.

In an order dated March 2, 2008, the district court adjudicated B.J.O. a child in need of protection or services based on the finding that he "resides or would reside with a perpetrator of domestic child abuse or child abuse." Minn. Stat. § 260C.007, subd. 6(2)(iii) (2006). The county filed a petition for long-term foster care on March 6, 2008. At the permanency trial on June 9, 2008, the county presented evidence of the out-of-home placement plans it had developed since B.J.O.'s original placement, appellant's lack of cooperation with those plans, the viability of other permanent-placement options, B.J.O.'s experiences under appellant's care and in foster care, and B.J.O.'s desire not to return to appellant's home. The district court granted the petition to permanently place B.J.O. in long-term foster care in an order dated July 14, 2008. In response to appellant's motions for amended findings, the district court issued amended orders dated July 29, 2008, and November 4, 2008. This appeal follows.

D E C I S I O N

On appeal from a district court's permanent-placement decision, "the reviewing court determines . . . whether the trial court's findings address the statutory criteria and are supported by substantial evidence, or whether they are clearly erroneous." *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996) (quotation marks omitted) (citing *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990)). We view the evidence and the reasonable inferences to be drawn from the evidence in the light most favorable to the prevailing party. *Id.* Accordingly, "[w]e will not overturn the trial court's findings of fact in support of a permanent placement decision unless they are

clearly erroneous, regardless of whether the findings are based on oral or documentary evidence." *Id.* at 261-62.

A "county must prove the allegations of [a] petition for permanent placement by clear and convincing evidence." *Id.* at 261. When ordering the permanent placement of a child out of a parent's home, the district court must make detailed findings as to:

> (1) how the child's best interests are served by the order;
>
> (2) the nature and extent of the responsible social service agency's reasonable efforts . . . to reunify the child with the parent . . . ;
>
> (3) the parent's . . . efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
>
> (4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

Minn. Stat. § 260C.201, subd. 11(i) (2008). Appellant challenges the district court's findings as to the second and third of these factors. He does not dispute the court's conclusion that long-term foster care furthers B.J.O.'s best interests.

I. Substantial evidence supports the district court's determination that the county made reasonable efforts to reunify appellant and B.J.O.

When a child is alleged to be in need of protection or services and is under the jurisdiction of the district court, "the court shall ensure that reasonable efforts, including culturally appropriate services, by the social services agency are made to . . . eliminate the need for removal and to reunite the child with the child's family at the earliest possible time." Minn. Stat. § 260.012(a) (2008). To be reasonable, a social services agency's efforts toward reunification must be designed to address "the problem

presented," *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996), and must "include real, genuine help to see that all things are done that might conceivably improve the circumstances of the parent and the relationship of the parent with the child." *In re Welfare of M.A.*, 408 N.W.2d 227, 236 (Minn. App. 1987) (quotation omitted), *review denied* (Minn. Sept. 18, 1987). But efforts toward reunification must be "realistic under the circumstances." Minn. Stat. § 260.012(h)(6) (2008). Reasonable efforts do not include efforts that would be futile. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004); *S.Z.*, 547 N.W.2d at 892.

A social services agency is required to detail the efforts it makes toward reunification in an out-of-home placement plan. Minn. Stat. § 260C.212, subd. 1(c)(3) (2008). The plan also must set forth "the specific actions to be taken by the parent or parents of the child to eliminate or correct the problems or conditions identified . . . and the time period during which the actions are to be taken." *Id.*, subd. 1(c)(3)(i). If a parent refuses to engage in case planning, the social services agency is required to "note such refusal or disagreement" in the out-of-home placement plan and "notify the court of the services it will provide or efforts it will attempt under the plan notwithstanding the parent's refusal to cooperate or disagreement with the services." Minn. Stat. § 260C.178, subd. 7(c) (2008).

Appellant argues that the district court erred in finding that the county made reasonable efforts to reunify because the out-of-home placement plans are legally deficient and do not demonstrate that the county made sufficient efforts to overcome his refusal of services. There is merit to appellant's argument. Aside from noting the

statutory deadline for the court to make a permanency decision, the unexecuted out-of-home placement plans do not specify a time period during which appellant must comply with the plans as required by Minn. Stat. § 260C.212, subd. 1(c)(3)(i). Similarly, while the county noted appellant's disagreement in each out-of-home placement plan it filed with the district court, the county outlined its attempts to provide services despite appellant's refusal in only general terms, without the specificity the statute requires.

But considering the broad purpose of protecting children embodied in the permanency statutes, technical deficiencies in an out-of-home placement plan will not invalidate a permanent-placement decision when there is evidence that the social services agency's efforts were realistic under the circumstances and curtailed by a parent's lack of effort. *See* Minn. Stat. § 260C.001, subd. 3 (2008) (declaring child's safety and best interests paramount in permanency proceedings); *R.W.*, 678 N.W.2d at 56 (rejecting interpretation of reasonable-efforts requirement that would force social services agency to "provide or attempt to provide a case plan to parents who have shown but minimal interest or involvement with their children or the [child protection] proceeding"). Here, the county demonstrated both the adequacy of its efforts under the circumstances and appellant's lack of effort.

In a pre-disposition report filed before trial, the county informed the district court that reunification was no longer the goal because appellant had "refused to cooperate" in the creation of a reunification case plan.[2] The report indicated that appellant said "that he

[2] The first two out-of-home placement plans, dated June 6, 2007, and September 6, 2007, recommended reunification.

doesn't want anything to hinder his criminal case and he feels that if he completes anything on the case plan that he would be entering a guilty plea." Appellant and his wife "both stated that they aren't willing to complete anything at this time."

At trial, the county presented substantial evidence of appellant's ongoing unwillingness to engage in case planning and comply with appropriate programming. The county presented testimony from B.J.O. and the guardian ad litem (GAL) and cross-examined appellant. The county also offered reports from the GAL, B.J.O.'s therapist, the social worker from the county, and B.J.O.'s foster mother; a psychological assessment conducted in connection with appellant's criminal case; and a psychological evaluation/parenting assessment that the district court ordered for the permanency trial.

The district court considered all of this evidence and made credibility determinations in making its permanency decision. The district court made numerous findings regarding appellant's refusal to cooperate with the social worker, GAL, and therapists. In its July 14 order, the district court determined that "[appellant] refused to cooperate in the creation of a case plan, and indeed, had no intention of examining his own responsibility for removal of [B.J.O.]. Under the circumstances, [the county] made reasonable efforts to reunite this family." The district court's findings credit the reports of the GAL, parenting assessor, and foster parent, as well as B.J.O.'s express desire to remain in his foster-care placement.

The district court made additional factual findings and legal conclusions regarding the county's reunification efforts in its November 4, 2008 order. While the district court was critical of the manner in which the county documented its case plans and appellant's

refusal to comply with them, the district court expressly concluded that the county's efforts to reunify were reasonable, noting that

> [t]he efforts made . . . to correct [appellant's abusive behavior] reasonably started with a requirement that [appellant] submit to psychological and parenting assessments, that [appellant] permit his home and interaction with his other children be observed and evaluated and that [B.J.O.]'s school, medical and counseling records be made available for review. [Appellant] refused to cooperate with these efforts as requested by [the county], and delayed court ordered compliance with the evaluation process until the eve of the permanency trial. [Appellant]'s actions prevented additional efforts by [the county] to reunify the family.

The district court's legal conclusion properly recognizes that reasonable efforts do not include efforts that would be futile. *R.W.*, 678 N.W.2d at 56. The district court's determination that the county made reasonable efforts to reunify appellant and B.J.O. is supported by substantial evidence.

II. Substantial evidence supports the district court's determination that appellant failed to make reasonable efforts to correct the condition leading to out-of-home placement.

Appellant also argues that "his actions, under the circumstances, were reasonable and sufficient to have [B.J.O.] returned to his custody." As required under Minn. Stat. § 260C.201, subd. 11(i)(3), the district court considered appellant's "efforts and ability to use services to correct the conditions which led to the out-of-home placement." The district court determined that appellant had not made reasonable efforts toward correcting the condition that led to B.J.O.'s out-of-home placement, that the condition had not been sufficiently corrected, and that B.J.O. could not be safely returned to appellant's custody. The district court considered appellant's pattern of refusing services offered by the

county and delaying services ordered by the court, the recommendations and conclusions of professionals who interacted with and observed B.J.O. and appellant, and the nature and credibility of appellant's testimony at trial. Our review of the record reveals substantial evidence supporting the district court's determination that appellant failed to make reasonable efforts toward correcting the condition that led to B.J.O.'s placement out of appellant's home.

Affirmed.