STATE OF MINNESOTA
IN COURT OF APPEALS
A09-635

In the Matter of the Welfare of the Children of:
C. K. W. and R. D. T., Parents.

Filed October 13, 2009
Affirmed
Shumaker, Judge

Dakota County District Court
File Nos. 19HA-JV-08-767, 19HA-JV-08-2618

David A. Jaehne, 60 East Marie Avenue, Suite 109, West St. Paul, MN 55118 (for appellant C.K.W.)

Sharon L. Freiling, 222 Grand Avenue West, Suite 100, South St. Paul, MN 55075 (for appellant R.D.T.)

James C. Backstrom, Dakota County Attorney, Donald E. Bruce, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for respondent Dakota County Social Services)

Margoe Hermes, Dakota County Judicial Center, 1560 West Highway 55, Hastings, MN 55033 (guardian ad litem)

Considered and decided by Lansing, Presiding Judge; Shumaker, Judge; and Harten, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

SHUMAKER, Judge

Appellants challenge two of the statutory grounds for termination of their parental rights and challenge the district court's finding that termination is in the children's best interests. Because clear and convincing evidence supports the district court's essential findings, we affirm.

FACTS

Appellants C.K.W. and R.D.T. challenge the district court order that terminated their parental rights to T.T. and H.T.

C.K.W. gave birth to her first child, D.W., in June 2001.[1] One month later, C.K.W. agreed to participate in voluntary social services. A social worker was assigned to her, Section 8 housing was obtained for her, and a public-health nurse began making home visits. In June 2002, Dakota County Social Services (DCSS) filed a child-in-need-of-protection-or-services (CHIPS) petition for D.W. The petition was based on C.K.W.'s neglect of and lack of bonding with D.W., her unemployment, her lack of housing because of her eviction for lease violations, her failure to remain sober, her mental-health issues, her unwillingness and inability to follow her case plan, and D.W.'s developmental delays. C.K.W. voluntarily terminated her parental rights to D.W. in March 2003.

Appellants began living together in October 2002. Their daughter T.T. was born on September 23, 2003. In December 2003, Anoka County Social Services (ACSS)

[1] R.D.T. is not the father of D.W.

opened a voluntary file for T.T. because of C.K.W.'s frustration with parenting. This file was closed in May 2004 because C.K.W. failed to cooperate with social services.

In October 2004, ACSS initiated a CHIPS petition and placed T.T. in foster care. The basis of the petition was that appellants were living in a van and were not meeting T.T.'s basic needs. Appellants were ordered to obtain housing, improve their parenting, and address their mental-health issues.

Appellants' daughter H.T. was born on September 28, 2005.

In June 2006, T.T. was reunited with appellants on a trial basis after being in foster care for 20 months. ACSS continued to monitor the family and to provide services. In late November 2006, the Anoka County CHIPS file was closed. By that time, the family had moved to Dakota County.

In January 2007, DCSS received a complaint about the living conditions at appellants' residence. According to the complaint, garbage was "strewn all over the house," T.T. "had gotten hold of a razor and cut her wrist," there was prescription medication on the floor, and other chemicals were within reach of the children. DCSS and the Eagan Police Department made an unannounced visit to appellants' residence. A police officer confiscated a marijuana pipe that was found in the living room. DCSS determined that maltreatment did not occur and that protective services were not needed.

Appellants' relationship ended in approximately July 2007. In August 2007, C.K.W. reported to police that R.D.T. had thrown a cell phone at her. The cell phone missed C.K.W. and hit three-year-old T.T. The police referred this complaint to DCSS.

A DCSS social worker discovered that C.K.W. had been evicted from the Eagan residence. DCSS closed this case because C.K.W. could not be located.

During the following year, R.D.T. at times lived with his mother and at times was homeless. R.D.T. moved into a subsidized two-bedroom apartment in December 2008.

In November 2007, C.K.W. and the children moved into a short-term housing facility for homeless women and children. DCSS received several complaints about the living conditions in C.K.W.'s unit and her parenting. C.K.W. left the children unattended on multiple occasions, including leaving T.T. alone in the bathtub. When a social worker visited, C.K.W. was asleep, there were dirty diapers and garbage on the floor, the room smelled of urine, there were tablets of over-the-counter medications and two bottles of Listerine within reach of the children, and H.H. was in her crib covered in urine-soaked blankets and pillows. C.K.W. declined services or case management, and DCSS concluded that there were no grounds to seek court involvement at that time.

In March 2008, C.K.W. and the children moved to a supportive-housing program (CAP Housing). C.K.W. agreed to participate in services provided through Adult Rehabilitative Mental Health Services (ARMHS) and People Inc.'s Next Steps Program.

On May 1, 2008, DCSS received a report that T.T. and H.T. were "hanging out of" an open, unscreened second-story window of C.K.W.'s building. C.K.W. was out of the building at the time. C.K.W.'s ARMHS worker retrieved the children and returned them to C.K.W.

At approximately 9:52 p.m. on May 2, 2008, police arrived at C.K.W.'s building in response to a report of an unattended child. T.T. had come to a resident's door, crying

and saying that she could not find her mother and that her mother had gone to a bar. Police located C.K.W., who admitted to leaving T.T. and H.T. unattended while she went to a local bar. C.K.W.'s alcohol concentration was .145.

The children were taken into protective custody for 72 hours and later placed in the temporary custody of DCSS. A CHIPS petition was filed. At the initial hearing on May 14, 2008, appellants admitted the allegations in the petition. The children were placed in foster care.

Appellants agreed to complete out-of-home-placement plans. C.K.W.'s tasks included: managing her mental health by attending individual therapy, taking prescribed medications, and making and keeping all appointments; cooperating with CAP Housing; and cooperating with her employment plan. C.K.W. and R.D.T. were both required to complete a chemical-use assessment and follow all recommendations; abstain from mood-altering chemicals and follow all recommendations; complete a parenting assessment and follow all recommendations; apply for and maintain health insurance through General Assistance; obtain and maintain stable housing; obtain and maintain full-time employment; establish a transportation plan; demonstrate the ability to budget income; and cooperate with DCSS by keeping all appointments and signing all releases of information.

C.K.W. was evicted from CAP Housing in the summer of 2008 for missing appointments with the service providers, leaving the children unattended, propping open the building's door, and having overnight guests without permission. C.K.W. now lives with her boyfriend and his parents.

On September 17, 2008, DCSS filed a termination-of-parental-rights (TPR) petition. At the initial hearing, appellants denied the allegations in the TPR petition.

On October 28, 2008, the district court ordered that reunification efforts be ceased. In December 2008, the children were transferred to a different foster family, but later were returned to the original family because the replacement foster parents could not cope with the children's behavior problems.

The TPR trial took place on January 26 and 29, 2009. A DCSS social worker testified that termination is in the children's best interests. The social worker testified that she filed the TPR petition

> [b]ecause these kids cannot afford to wait any longer for these parents to figure out stability for themselves. The kids have been in care a long time. The parents have been involved with child protection for years. They've been provided with numerous services and it doesn't appear that things are changing.

The social worker testified that T.T. and H.T. exhibited disturbing behavior, such as being aggressive toward each other and members of the foster family, physically abusing animals, biting, lying, and stealing. The social worker also testified that she was certain the children could be adopted despite these behaviors.

A family therapist, who had conducted parenting assessments for appellants in June 2006 and September 2008, testified that both C.K.W.'s and R.D.T.'s relationships with the children had not changed since 2006. The therapist also testified that R.D.T. had told her it would be in the children's best interests to be adopted because he could not meet their needs. The therapist recommended that C.K.W.'s parental rights be terminated

based on "the poor prognosis indicators, [and] . . . what I would classify as chronic neglect and needs not being met consistently." The therapist also recommended that R.D.T.'s parental rights be terminated.

The court-appointed guardian ad litem (GAL) testified that termination is in the children's best interests. The GAL also testified that the children have exhibited "extremely sexualized behaviors." According to the GAL, the children have improved while in foster care.

The district court terminated appellants' parental rights to T.T. and H.T. on February 3, 2009. In its detailed factual findings, the district court recounted appellants' involvement with child-protection services; summarized the testimony of C.K.W., R.D.T., the social worker, the therapist, and the GAL; summarized the results of appellants' psychological and chemical-dependency evaluations; described the extensive services provided to appellants over the years; described the disturbing behaviors of the children; summarized the content of the trial exhibits; and took judicial notice of the content of the 2008 CHIPS file, the present TPR file, and the GAL's reports. The district court also adopted the observations and opinions of a therapist who conducted a parenting assessment of appellants in May 2005; James Gilbertson, Ph.D., L.P., who conducted a psychological evaluation of C.K.W. in October 2005; the family therapist who conducted parenting assessments in 2006 and 2008; Gary Schwery, Psy.D., who conducted a psychological evaluation of C.K.W. in September 2008; and Laurie Dunn, Ph.D., L.P., who conducted a psychological evaluation of R.D.T. in October 2008.

The district court found that there was clear and convincing evidence to terminate C.K.W.'s parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2008), and to terminate R.D.T.'s parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4), (5), (8). The district court also found that DCSS's reasonable efforts to reunify appellants with the children had failed and that termination of appellants' parental rights is in the best interests of the children.

Appellants moved for amended findings and a new trial. The district court denied the motion, and this appeal followed.

D E C I S I O N

"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). "Considerable 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).

I.

Appellants argue that there is not clear and convincing evidence to support the district court's termination of their parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5). We disagree.

The district court may terminate parental rights if it finds that, following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement. Minn. Stat.

§ 260C.301, subd. 1(b)(5). "Reasonable efforts at rehabilitation are services that go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Mar. 28, 2007). Reasonable efforts do not include efforts that would be futile. *R.W.*, 678 N.W.2d at 56.

A. Reasonable efforts

Appellants argue that there is not clear and convincing evidence to support the district court's findings that reasonable efforts were made to reunify appellants with T.T. and H.T. We address each of appellants' reasonable-efforts arguments in turn.

First, appellants contend that they are entitled to six full months of reunification efforts.[2] We disagree. It is presumed that reasonable efforts have failed if, among other things, a child under the age of eight has resided out of the parental home under court order for six months unless the parent has complied with the out-of-home placement plan. Minn. Stat. § 260C.301, subd. 1(b)(5)(i). But subdivision 1(b)(5) also states: "This clause does not prohibit the termination of parental rights . . . in the case of a child under age eight, prior to six months after a child has been placed out of the home." *Id.*, subd. 1(b)(5). It is undisputed that T.T. and H.T. are both under the age of eight. Appellants were not entitled to six months of reunification efforts. The statute creates a presumption but not an entitlement to a particular period of time.

[2] T.T. and H.T. had been in out-of-home placement for approximately five months when reasonable efforts ceased on October 28, 2008. T.T. had previously spent an additional 20 months in foster care.

Second, C.K.W. appears to argue that her psychological evaluation was not completed prior to the cessation of reunification efforts. The social worker testified that she did not receive a copy of C.K.W.'s evaluation until after the social worker had filed the TPR petition. But the social worker also testified, and the district court acknowledged, that it took four months for C.K.W. to complete the evaluation because she had missed four appointments with Dr. Schwery. The delay in C.K.W.'s evaluation is attributable to C.K.W., not DCSS.

Third, C.K.W. argues that she was not informed of a recommendation that she undergo dialectical behavior therapy (DBT). The social worker testified that she did not inform C.K.W. of Dr. Schwery's recommendation that "[a] DBT approach may be considered" because the social worker did not receive a copy of the psychological evaluation until after she had filed the TPR petition. Again, the delay in the completion of C.K.W.'s psychological evaluation is attributable to C.K.W., not DCSS.

Fourth, C.K.W. argues that DCSS "did not adequately address her learning abilities given her mental health issues." But, because C.K.W. does not expand upon this argument, it is unclear to what learning disabilities or mental-health issues she is referring. We conclude that C.K.W. has not adequately briefed this issue and, therefore, we are unable to address it meaningfully. *See In re Welfare of Children of J.B.*, 698 N.W.2d 160, 166 (Minn. App. 2005) (declining to address issue in absence of adequate briefing).

Appellants do not dispute that they received extensive support services while T.T. and H.T. were in foster care. C.K.W. received a CAP housing unit, the assistance of an

ARMHS worker, the assistance of DCSS social workers, the assistance of People Inc., the assistance of a parent educator, free transportation, continuous telephone access, free medical assistance other than co-pays for her own prescriptions, and free beds and dressers. R.D.T. received the assistance of a mental-health worker, a subsidized apartment, and free transportation. We therefore conclude that there is clear and convincing evidence that reasonable efforts were made to reunite appellants with the children.

B. Failure to correct

Appellants argue that there is not clear and convincing evidence to support the district court's findings that DCSS's efforts failed to correct the conditions leading to T.T. and H.T.'s placement.

First, R.D.T. argues that he obtained housing before trial, that he maintains this housing, and that his earlier statements that he could not care for the children are attributable to his former lack of housing. But during an interview with the family therapist, R.D.T. stated that, even if he were to obtain housing, the stability of that housing would be questionable because of his depression and overall health. At trial, R.D.T. denied making this statement, but the district court found that R.D.T. had acknowledged that he is unable to parent the children. We give considerable deference to the district court's assessment of witness credibility. *L.A.F.*, 554 N.W.2d at 396.

Second, appellants argue that reunification efforts should have continued because appellants had maintained sobriety for "a majority" of the reunification period. It appears

that R.D.T. has maintained his sobriety. But C.K.W.'s urine tested positive for alcohol in June 2008, and she admitted to consuming alcohol on New Year's Eve 2008.

Even if R.D.T. has maintained his sobriety throughout the reunification-efforts period and has obtained housing, the district court's finding that reasonable efforts have failed is supported by clear and convincing evidence. R.D.T. has failed to comply with his case plan, as shown by the record and the district court's findings that he is unemployed, has no transportation plan, and has not been attending psychological therapy as recommended by Dr. Dunn. C.K.W. has also failed to comply with her case plan, as shown by the record and the district court's findings that she failed to abstain from mood-altering chemicals, failed to attend sobriety support groups, failed to enter and complete an outpatient treatment program for chemical dependency, failed to establish a stable residence since her eviction from CAP Housing, failed to budget her money, failed to obtain full-time employment, failed to develop a transportation plan, has not attended individual therapy on a consistent basis, is no longer meeting with her ARMHS worker, and was dismissed from the Next Steps Program due to missed appointments.

We therefore conclude that clear and convincing evidence supports the district court's termination of appellants' parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5).

II.

Appellants contend that there is insufficient evidence to show that termination of their parental rights is in the best interests of the children. We disagree.

"The paramount consideration in termination of parental rights proceedings is the best interests of the child." *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 672 (Minn. 2008) (quotations omitted). In evaluating a child's best interests, the district court balances "(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 R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992).

Appellants' first best-interests argument involves the GAL's opinion that termination is in the best interests of the children. Appellants criticize the GAL's opinion on the following grounds: (1) the GAL observed "only" two contacts between C.K.W. and the children; (2) did not observe a visit between R.D.T. and the children; (3) had "only" one contact with R.D.T.; (4) did not visit R.D.T. in his home; (5) met "only one time" with C.K.W. to discuss the reunification plan; (6) had no contact with appellants after September 2008; and (7) did not observe the children in their "home" setting.

Minnesota law provides that

> a guardian ad litem shall carry out the following responsibilities:
>
> (1) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case . . . .

Minn. Stat. § 260C.163, subd. 5(b)(1) (2008). It is undisputed that the GAL reviewed the relevant documents in this matter. Appellants make no argument regarding the wishes of

the children. Nor do appellants dispute that the GAL met with C.K.W. and R.D.T.

Appellants argue that the GAL failed to meet with and observe children in the home setting. But the GAL had six in-person contacts with the children by the time of trial, including four contacts at the children's foster homes. The children were in foster care; the "home" setting was with the foster parents, not with C.K.W. or R.D.T.

Appellants also argue that the GAL's investigation was inadequate because "she appears to have attended court hearings and rubber stamped [DCSS]'s recommendations as her own." But the record shows that the GAL conducted a thorough investigation, and that this investigation entailed far more than attending court hearings and reviewing the recommendations of DCSS. In addition to her contact with the children and appellants, the GAL made contact with DCSS employees, the children's foster parents, and various social-services representatives. The GAL's independent investigation is detailed in three reports, of which the district court took judicial notice. We therefore conclude that the record shows that the GAL completed her statutory responsibilities.

We also conclude that the district court's best-interests determination is supported by the testimony of the social worker and family therapist, who both opined that termination is in the children's best interests.

Appellants' second best-interests argument is that termination of their parental rights may result in T.T. and H.T. being "doomed . . . to spending the remainder of their minority in the foster care system." There are at least two significant problems with this argument.

First, the record shows that the children are adoptable and adoption is in their best interests. Both the GAL and the social worker testified that the children are adoptable despite their behavioral problems. And appellants do not contest the GAL's testimony that an adoptive home would be beneficial to the children.

Second, the record shows that even if the children are not adopted, termination is in the children's best interests because of the detrimental effects suffered by the children through their visitation with appellants. Appellants ignore testimony and findings that T.T. and H.T.'s problematic behaviors and symptoms of distress—such as using violence against people and animals, throwing tantrums, experiencing night terrors, having toileting accidents, smearing feces, and using profanity—flare up immediately before and after visitation. Appellants also ignore testimony and findings that the children's behaviors have improved since they were placed in foster care.

We therefore conclude that clear and convincing evidence supports the district court's finding that termination is in the best interests of the children.

Because one statutory factor supports termination and termination is in the children's best interests, we do not reach the issues related to any other statutory bases for termination. *See In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005).

Affirmed.