STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2183

In the Matter of the Welfare of the Child of: W. H. S., Parent

Filed May 18, 2010
Affirmed
Peterson, Judge

Ramsey County District Court
File No. 62-JV-09-1694

Patrick D. McGee, St. Paul, Minnesota (for appellant father W.H.S.)

Susan Gaertner, Ramsey County Attorney, Kathryn M. Eilers, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County Community Human Services Department)

John M. Jerabek, Minneapolis, Minnesota; and

James I. Laurence, St. Paul, Minnesota (for guardian ad litem Tiffany Halligan)

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

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

PETERSON, Judge

In this appeal from an order terminating his parental rights, appellant concedes that statutory grounds for termination exist but argues that the district court erred in finding that termination is in the best interests of the child. We affirm.

FACTS

Appellant W.H.S. is the father of A.C., who was born on December 10, 2007. At the time of A.C.'s birth, appellant was incarcerated. Appellant was also incarcerated at the time of trial in the termination proceeding and had been incarcerated for all but approximately five months of A.C.'s life.

At birth, A.C. tested positive for cocaine and marijuana. Based on these test results, Ramsey County made a maltreatment determination on December 17, 2007. On February 19, 2008, the Ramsey County Community Human Services Department (RCCHSD) initiated a child-in-need-of-protection-or-services (CHIPS) proceeding. On May 29, 2008, A.C. was adjudicated CHIPS. A.C.'s mother was not able to adequately address the underlying conditions of the CHIPS determination, and on February 17, 2009, she voluntarily terminated her parental rights to A.C.

In September 2008, RCCHSD social worker Rebecca Schultz was assigned to be A.C.'s child-protection worker. Schultz contacted appellant in prison and developed a case plan, which was ultimately accepted and ordered by the district court on March 20, 2009. Appellant's case plan required him to remain law-abiding; submit to random urinalyses (UAs) twice weekly; demonstrate sobriety; secure adequate housing for appellant and A.C.; maintain a legal means to provide for the child; obtain adequate funding for the needs of appellant and A.C.; complete a parenting assessment and follow all recommendations; work with an in-home parenting therapist; attend all of A.C.'s medical appointments; and visit with A.C.

Appellant failed to satisfy a number of the requirements of his case plan. On March 22, 2009, appellant was incarcerated for submitting three UAs that tested positive for THC, one of which also tested positive for cocaine. Appellant admitted to using marijuana but denied using cocaine. Appellant was arrested on July 28, 2009, and remained in jail at the time of trial in this case. Between March 2009 and his arrest in July, appellant spent some time living with a friend in St. Paul and some time living at the Dorothy Day Center. Appellant has not been employed full-time since 2006, but he received $200 monthly in general assistance and $200 monthly in food stamps.

Appellant attended two meetings with Dr. Frayda Rosen for a parenting assessment. Rosen's assessment report noted that appellant lacked "even a basic understanding of child development or parenting" and that his limitations are "likely to negatively impact a child's current and future development." Rosen found that appellant "does not possess the necessary stability to appropriately meet a child's needs." Her report concluded with a list of ten recommendations for appellant, including that appellant seek individual therapy, psychiatric treatment for depression and anxiety, and anger-management and skills training. There is no evidence that appellant sought any of the recommended therapy or treatment; he also failed to comply with other recommendations that Rosen made, including that he remain law-abiding.

Rosen reported that there was minimal communication and interaction between A.C. and appellant during observation. She found that appellant did not give A.C. praise, encouragement, or reinforcement, and that appellant failed to react to nonverbal cues from A.C. She concluded that there was no bond or attachment between appellant and

A.C. However, Rosen acknowledged that appellant had spent very little time with A.C. before the observation and, therefore, may not have had the time to establish a bond with him.

A.C. is developmentally delayed. He requires or will require several types of therapy, including physical, occupational, and speech therapy. Schultz testified that A.C. will require extra stimulation and extra patience in his development.

Schultz also testified that she believed that appellant desired to parent A.C. Appellant testified that he wants to parent A.C. and that he tried to be involved in A.C.'s life while in prison by writing letters to the child-protection workers. Appellant also testified that he would like his family to raise A.C. if he is not allowed to raise him, and if his family is not allowed to raise A.C., he would like a nice family to adopt him.

The district court found statutory grounds for terminating appellant's parental rights and concluded that termination is in A.C.'s best interests. The district court issued an order terminating appellant's parental rights. This appeal followed.

D E C I S I O N

"[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). Accordingly, appellate courts exercise "great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). While appellate review of a termination of parental rights requires careful review, a reviewing court "will not overturn the [district] court's

findings of fact unless those findings are clearly erroneous." *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995).

Termination of parental rights will be affirmed as long as (1) at least one statutory ground for termination is supported by clear and convincing evidence and (2) termination is in the child's best interests. *In re Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004); *see also* Minn. Stat. § 260C.301, subd, 1(b) (2008). Appellant concedes that at least one of the statutory grounds for termination was established, but he challenges the district court's finding that termination of his parental rights is in A.C.'s best interests.

The best-interests analysis in proceedings to terminate parental rights requires the district court to balance the child's interest in preserving the parent-child relationship, the parent's interest in preserving the parent-child relationship, and any competing interests of the child. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *Id.* "Where the interests of the parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7 (2008).

The district court found

> [Appellant's] repeated incarcerations, not only during [A.C.'s] life, but throughout [appellant's] adult life, his inability to obtain suitable, stable housing and employment, his inability to maintain his sobriety, his inability to obtain the requisite parenting knowledge and skills, and his inability to fully and adequately address his mental health are of a duration and nature that renders him unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental or emotional needs of [A.C.].
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> . . . .

> While [appellant] may want to be able to provide parenting to his son, and while [A.C.] may have an interest in preserving the parent-child relationship, given [appellant's] current situation and overall functioning and lack of parental knowledge and skills, [A.C.] would be extremely vulnerable to emotional and physical risk if placed in [appellant's] care. If [A.C.] were placed in [appellant's] care, [A.C.] would be at an increased physical and emotional risk.

The district court determined that terminating appellant's parental rights is in A.C.'s best interests:

> It is in [A.C.'s] best interests to be placed in a home that can provide him with an opportunity for success and one that is able to meet his special needs and ensure his safety. [Appellant] cannot provide [A.C] the home that he needs. The child's need for a safe, stable, consistent home outweighs any interest the child may have in maintaining the parent child relationship. The child's need for a safe, stable and consistent home also outweighs any interest [appellant] may have in parenting [A.C.].

There is substantial support in the record for the district court's findings with respect to A.C.'s needs and appellant's inability to satisfy those needs. A.C. is a developmentally challenged child who will require more stimulation and patience than many children. Appellant lacks the knowledge or skills to satisfy A.C.'s enhanced needs. Also, appellant has not been able to provide a stable residence or income for himself, which indicates that he would not be able to provide for A.C.'s basic needs. Appellant is chemically dependent and has not addressed his mental-health issues. Appellant has a history of incarcerations, which includes being incarcerated at the time of the trial. And despite appellant's desire that his family care for A.C., no evidence was presented to

suggest that appellant's family is willing or able to provide a safe and stable home for A.C.

Because the record supports the district court's findings of fact and its determination that terminating appellant's parental rights is in A.C.'s best interests, the district court did not abuse its discretion in ordering the termination of appellant's parental rights.

Affirmed.