STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1582

In the Matter of the Welfare of the Child of: L.L. and R.G., Parents.

Filed March 24, 2013
Affirmed
Rodenberg, Judge

St. Louis County District Court
File No. 69HI-JV-12-236

Bill L. Thompson, Duluth, Minnesota (for appellant R.G.)

Kimberly J. Corradi, Hibbing, Minnesota (for respondent L.L.)

Mark S. Rubin, St. Louis County Attorney, Gayle M. Goff, Assistant County Attorney, Hibbing, Minnesota (for respondent St. Louis County Public Health & Human Services)

Cassandra Hainey, Virginia, Minnesota (guardian ad litem)

Considered and decided by Johnson, Presiding Judge; Rodenberg, Judge; and Crippen, Judge.[*]

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

RODENBERG, Judge

Appellant-father R.G. challenges the district court's termination of his parental rights (TPR) to Z.G. Because the record substantially supports the district court's conclusions that reasonable efforts by respondent St. Louis County Public Health and

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

Human Services have failed to correct the conditions that led to Z.G.'s out-of-home placement and that termination is in Z.G.'s best interests, we affirm.

FACTS

Z.G. was born on May 31, 2011, the second child born to mother L.L. and appellant. In January 2011, and while L.L. was pregnant with Z.G., both parents were incarcerated and both voluntarily terminated their parental rights to their first child, L.G. L.G. was adopted by the foster family with whom he had been placed.

Because of Z.G.'s impending birth, appellant obtained a furlough from jail to care for Z.G. A St. Louis County social worker worked with both parents to develop a "safety plan" regarding Z.G. It contemplated that appellant would be the custodial parent, and that he and Z.G. would live with appellant's mother in Hibbing. For the first ten months after Z.G.'s birth, appellant followed most points and suggestions in the plan.

In July 2011, after disagreements between appellant and his mother, appellant and Z.G. moved out of appellant's mother's home and began living with K.A. Appellant continued to spend some time at his mother's house. In September 2011, appellant moved into his own apartment in Hibbing. Once L.L. was released from prison, she lived at that apartment for a short time before she violated conditions of her probation and returned to prison.[1] Appellant and Z.G. remained at this apartment until March 2012.

On March 6, 2012, appellant tested positive for methamphetamine, which violated a condition of his probation. He was arrested and, on March 15, 2012, admitted the

[1] L.L. has had little contact with Z.G. during his life. She voluntarily consented to a termination of her parental rights to Z.G., and she makes no appearance in this appeal.

probation violation. The district court determined that appellant's prison sentence should be executed but granted appellant a furlough until March 26, 2012, so that appellant could make arrangements for Z.G.'s care before beginning his prison sentence. However, appellant again tested positive for methamphetamine while on furlough and was rearrested and immediately sent to prison. While incarcerated, appellant underwent a psychiatric evaluation on May 3, 2012. He was diagnosed with, among other disorders, Borderline Personality Disorder. He stated to the mental-health examiner that methamphetamine made him "feel normal."

In April 2012, the county initiated a child-in-need-of-protection-or-services (CHIPS) proceeding concerning Z.G. Appellant admitted the petition and the district court adjudicated Z.G. to be in need of protection or services on May 21, 2012. Z.G. was placed with the same foster family that had adopted L.G. Appellant agreed with this out-of-home placement, as both parents were then incarcerated and neither could care for Z.G. In addition to appellant's untreated chemical dependency, concerns at the time of placement also included a history of his having made threats to kill L.G.

The district court ordered the county to develop an out-of-home placement plan as part of the CHIPS proceeding. The social worker worked with appellant to develop the plan. It was signed by appellant on July 13, 2012, and approved by the district court on August 16, 2012. As part of the order adopting the plan, the district court directed appellant to complete chemical-dependency treatment. Appellant's drug use and resulting incarceration are identified as the conditions that led to the out-of-home placement. The plan, prominently concerned with appellant's chemical dependency,

required appellant to address those concerns before Z.G. could be returned to his care. The plan contained a "danger statement" expressing "fears that [Z.G.] will be left unattended or will be without [appellant's] attention if [appellant] is abusing drugs while caring for [Z.G.]," and "fears that [appellant] will continue abusing methamphetamine . . . and that [appellant] reported to a psychologist that the effects of methamphetamine make him feel normal." The plan's "danger statement" also indicated a risk to Z.G. spending time around K.A., who admits that she has severe alcohol-abuse issues. K.A. had also informed the social worker that she was not comfortable with Z.G. being at her home, as it made her stressed. The placement plan set forth a goal for appellant to find housing, whether it was with his mother or on his own.[2]

Appellant was released from prison on August 20, 2012. The social worker drove to the St. Cloud prison and returned appellant to Hibbing. During the drive, the two discussed what would be expected of appellant for Z.G. to be returned to his care. Appellant moved back into his mother's house. Until the end of September 2012, he was having unsupervised overnight visits with Z.G. However, the social worker discovered that appellant had been spending time at K.A.'s house, and may have moved in with her. This concerned the social worker because of K.A.'s severe alcohol problems. The record

[2] The placement plan set forth 13 goals for appellant. Several of these were never implicated because they concerned what would happen after Z.G. returned to appellant's care. But Z.G. never returned to appellant's care. Other identified goals were significant in identifying issues to be resolved *before* Z.G. could be returned to appellant's care, including that appellant (1) participate in mental-health treatment to follow up on his May 3, 2012 psychological assessment, and (2) set up daycare services for Z.G. as necessary.

also reflects that the social worker found it increasingly difficult to contact appellant by phone or mail during this time.

On October 2, 2012, appellant was drinking alcohol with K.A. at her house, which led to his arrest for violating conditions in both the CHIPS file and in appellant's criminal files. He was jailed until October 10, 2012. A family group conferencing meeting was held on October 19, 2012, to discuss the future plan regarding Z.G., and to address concerns related to appellant's housing situation and his resumed use of mood-altering chemicals. Appellant, his mother, the guardian ad litem, and the social worker were present at this meeting. The social worker testified that he intended to discuss "how much more the people [in appellant's life] could help out and what specifically those individuals could do to help [appellant] out if he were raising [Z.G.] on his own." Early in the meeting, the social worker suggested that further visits between appellant and Z.G. would have to be supervised for a time and the meeting was cut short when appellant became angry and left. Appellant discontinued any visits or contact with Z.G.[3]

On November 13, the county filed a TPR petition. The petition alleged two statutory grounds for TPR: (1) that appellant is palpably unfit to be a party to the parent and child relationship, and (2) that, following Z.G.'s placement out of the home, reasonable efforts, under the direction of the district court, had failed to correct the conditions leading to the out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(4), (5) (2012). At the admit/deny hearing on December 11, 2012, appellant denied

[3] On November 2, 2012, appellant was arrested for driving without a license. The county does not rely on this fact on appeal.

the petition and shortly thereafter resumed efforts to set up supervised visits with Z.G. The visits resumed at some point in January 2013, after a several-month period where appellant had not had any contact with Z.G. The TPR trial was not held until May, 2013.

Concerning his chemical-dependency issues, appellant testified at trial that he had not had a positive drug test in a year, and that he was attending two Alcoholics Anonymous meetings per week. However, he also admitted drinking alcohol "a couple of weeks ago," but he did not consider himself chemically dependent.[4] Other witnesses testified that appellant had continued consuming alcohol after his October 2, 2012 arrest for alcohol consumption. Between his August 20, 2012 release from prison and trial, appellant had not started chemical-dependency treatment as required by his court-ordered case plan. Appellant testified that he was living with his mother at the time of trial, as K.A. had obtained a harassment restraining order (HRO) against him. K.A. testified that she obtained the HRO because she had recently completed chemical-dependency treatment and she was "just trying to work on [herself]" and wanted no contact from appellant. There was testimony regarding criminal charges pending against appellant for violating the HRO and for a fifth-degree assault related to his contact with K.A.[5]

The social worker and the guardian ad litem testified at trial that Z.G., then just under two years old, has special needs. Z.G. was displaying signs of developmental and health problems, and concerns included his poor hearing, potential for diabetes, potential for autism, and a recurring skin condition that required ongoing medical treatment. At

[4] Appellant also testified that he did not think he has mental-health problems.
[5] We take judicial notice that appellant has since pleaded guilty to both offenses.

the time of trial, Z.G. had several medical appointments per week and required ongoing check-ups to monitor for diabetes and autism, and bi-weekly in-home visits for physical therapy and special education. Appellant had not been attending any of Z.G.'s doctor's appointments prior to trial. The guardian ad litem, having witnessed appellant improperly administer medication to Z.G. on multiple occasions, expressed concerns about appellant's ability to provide appropriate care for Z.G., given the child's special needs.

The district court terminated appellant's parental rights to Z.G. on July 10, 2013. The district court noted appellant's failure to comply with several provisions of the out-of-home placement plan, including that he

> did not complete chemical-dependency treatment; he did not complete parenting education; he did not set up individual therapy sessions to discuss the results of the May 3, 2012 psychological evaluation; he did not obtain adequate housing (although [he claims to be] living with his mother . . .); and he did not obtain an adult mental health worker through St. Louis County. [Appellant] also had additional criminal charges and problems complying with his parole.

The district court concluded that both statutory grounds for termination alleged in the petition had been proven and that termination was in Z.G.'s best interests. This appeal followed.

D E C I S I O N

"We review the termination of parental rights to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of*

Children of S.E.P., 744 N.W.2d 381, 385 (Minn. 2008). "We give considerable deference to the district court's decision to terminate parental rights," but we also "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *Id.* "While we defer to the [district] court's findings, we are required to exercise great caution in proceedings to terminate parental rights. Indeed, parental 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) (citations omitted).

A district court may, on petition, terminate all rights of a parent to a child on one or more statutory grounds asserted in a TPR petition and on a finding that TPR is in the child's best interests. Minn. Stat. § 260C.301, subds. 1(b), 7 (2012). "[T]he standard of proof in a TPR proceeding is clear-and-convincing evidence." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 663 (Minn. App. 2012); *see* Minn. Stat. § 260C.317, subd. 1 (2012). We will affirm a district court's TPR if "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).

Parental rights may be terminated when, "following the child's placement out of the home, reasonable efforts, under the direction of the [district] court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). When determining whether a county's efforts were reasonable, the district court must "consider whether services to the child and family 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) (2012).

The condition that led to Z.G.'s out-of-home placement was appellant's incarceration in March 2012, which incarceration was, in turn, the result of appellant's chemical dependency. Appellant testified at trial that he does not consider himself chemically dependent, contending that, at the time of trial, he had not used methamphetamines in over a year. But the record overwhelmingly establishes that appellant has either failed or refused to acknowledge the nature of his dependency: appellant claims that his chemical-dependency issues have been resolved, but he has substituted one intoxicant (alcohol) for another (methamphetamine). Appellant has intermittently lived with K.A., a severe and admitted abuser of alcohol, which doubtless made it more difficult for appellant to remain sober. And despite the district court's order and an out-of-home placement plan directing appellant to engage in chemical-dependency treatment, he had not begun treatment at the time of trial. *See In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003) (noting that failure to satisfy important elements of the case plan constituted substantial evidence that conditions had not been corrected). Despite the case plan's specific correlation of appellant's chemical dependency and his inability to care for Z.G., he was arrested for drinking alcohol within months of his release from prison. *See id.* (holding that parent did not correct the conditions leading to the child's out of home placement because parent reoffended only two months after his release from prison). Finally, appellant refused contact with Z.G. for approximately two months in angry response to the county's requirement that visits

be supervised because of his resumed use of chemicals. A two-month period is significant to a child who would have been approximately 18 months old at that time. And, by the time of trial, Z.G. had been out of appellant's home for more than half his life. There is substantial evidence supporting the district court's conclusion that the conditions leading to Z.G.'s out-of-home placement had not been corrected.[6]

We next consider whether the county's efforts to correct the conditions leading to Z.G.'s out-of-home placement were reasonable. Appellant argues that they were not and that the county did not truly provide him with necessary services.

A case plan was developed and approved by the district court. It contained requirements reasonably related to the reasons Z.G. was removed from appellant's care. Upon appellant's release from prison, the social worker drove to St. Cloud and brought appellant back to Hibbing. During the drive, the social worker discussed the case plan with appellant. Shortly after appellant was released from prison, the social worker had difficulty contacting appellant by phone or mail. Within a month, the social worker learned that appellant was spending time with and possibly living with K.A. The social worker expressed his concern about K.A.'s alcohol abuse to appellant. In October, when appellant was supposed to be working toward completing chemical-dependency treatment with the objective of regaining custody of Z.G., appellant was arrested and

[6] The record also supports the district court's finding that appellant's having moved back to his mother's home shortly before the trial did not amount to satisfactory completion of the adequate-housing requirement of the case plan. The district court found that appellant's attempt to live with his mother "would [not] last for very long" because appellant's other attempts to live with her were not successful. And minimal cooperation with a case plan by a parent shortly before trial is not enough to avoid a TPR. *In re Welfare of D.C.*, 415 N.W.2d 915, 918-19 (Minn. App. 1987).

jailed for drinking alcohol while at K.A.'s house. A family group conferencing meeting was held to address concerns about appellant's housing situation and resumed chemical use, and to set up supervised visits. Appellant became angry and left the meeting shortly after it began, and then he refused to have any contact with Z.G. for several months.

A review of the record establishes that the county might have taken additional steps concerning appellant's chemical-dependency issues. The out-of-home placement plan and court order of August 16, 2012 directed appellant to engage in chemical-dependency treatment, and the county could perhaps have more actively motivated appellant to engage in treatment. It did not set up a chemical-dependency evaluation for a specific time and at a specific place. Chemically dependent individuals are unlikely to possess the self-motivation to seek out and engage in treatment on their own. But the county correctly notes that appellant did not maintain regular contact with his social worker, and was himself doing little or nothing to address the requirements of the case plan. The record substantially supports the district court's conclusion that the county's efforts were reasonable under the circumstances.

The timeline of the TPR proceeding in this case is also concerning. A trial was required to be held within 60 days of the admit/deny hearing, which was held on December 11, 2012. Minn. R. Juv. Prot. P. 4.03, subd. 1(e). And in any event, the trial should have taken place within 12 months of Z.G.'s out-of-home placement, which began at the end of March 2012. Minn. R. Juv. Prot. P. 42.01, subd. 5(b). Neither of these deadlines was met. One of the purposes of these procedural requirements is "to secure for the child a safe and permanent placement" in a timely fashion. Minn. Stat.

§ 260C.001, subd. 3(2) (2012). Z.G. was less than one year old when he was placed in foster care in March 2012. He was over two years old when the TPR order was issued on July 10, 2013. The district court phase of this proceeding encompassed significantly more than half of Z.G.'s life by the time it concluded. "[I]njustice may result to the children by not enforcing the deadlines set forth in the rules. . . . Each delay in the termination of a parent's rights equates to a delay in a child's opportunity to have a permanent home and can seriously affect a child's chance for permanent placement." *In re Welfare of J.R., Jr.*, 655 N.W.2d 1, 5 (Minn. 2003) (discussing appellate deadlines related to TPR proceedings). In context, this delay in bringing the TPR matter to trial afforded appellant more time than the law generally permits to work on his case plan. But even so, appellant still did not complete, nor even begin, chemical-dependency treatment.

The conditions that led to Z.G.'s out-of-home placement were not corrected by the time the trial began. And although the county's efforts were less than perfect, the record substantially supports the district court's conclusion that they were reasonable within the meaning of Minn. Stat. § 260C.301, subd. 1(b)(5). This statutory ground for termination was proved by clear and convincing evidence. *See* Minn. Stat. § 260C.317, subd. 1; *K.S.F.*, 823 N.W.2d at 663. And one statutory basis having been proven is sufficient to support termination. *R.W.*, 678 N.W.2d at 55 (noting that only one statutory ground for termination needs to be proved by clear and convincing evidence in order to affirm).

Best Interests of the Child

After finding that a statutory basis for termination exists, a district court must determine whether termination is in the child's best interests. Minn. Stat. § 260C.301, subd. 7. This analysis requires the district court to balance "(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," where competing interests include things like stable environment, health considerations, and child's preferences. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). In balancing the best-interests considerations, the interests of the parent and the interests of the child "are not necessarily given equal weight." *Id.* Conflicts between the rights of the child and the rights of the parent are resolved in favor of the child. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 902 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

The district court concluded that termination of appellant's parental rights was in Z.G.'s best interests. In making this conclusion, it relied on the existence of appellant's untreated chemical-dependency issues, his unstable housing situation, and the fact that Z.G. may have significant special needs and health issues beyond appellant's capacity to manage. These are all valid considerations in determining the child's best interests. *See In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 93 (Minn. App. 2012) (holding that "the child's complex needs outweighed" the parent's interest in preserving the parent-child relationship, and therefore termination was in the child's best interests); *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 251-52 (Minn. App. 2003) (rejecting argument that TPR was not in child's best interests when findings showed parent's continuing inability to

improve parenting skills or deal with mental-health and drug-abuse issues); *In re Welfare of J.L.L.*, 396 N.W.2d 647, 652 (Minn. App. 1986) (holding TPR in child's best interests where child had special needs and parent had history of chemical abuse and failed to address that problem). These proceedings have taken up more than half of Z.G.'s life. Z.G. has a strong interest in a permanent placement. The district court's conclusion that Z.G.'s best interests are served by the TPR is amply supported by the record, and any competing interests of appellant do not warrant reversal.

Affirmed.