STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2027

In the Matter of the Welfare of the Child of:
D. D. and G. M., Parents

Filed April 7, 2014
Affirmed
Chutich, Judge

Hennepin County District Court
File No. 27-JV-13-1123

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Considered and decided by Smith, Presiding Judge; Connolly, Judge; and Chutich, Judge.

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

CHUTICH, Judge

In this appeal from an order terminating their parental rights, appellant-mother D.D. and appellant-father G.M. challenge the adequacy of the relative search and the district court's determination that a transfer of custody to a relative is not in the child's best interests. Because the district court did not abuse its discretion by declining to order

a referral for a home study and by ruling that a transfer of custody is not in the child's best interests, we affirm.

FACTS

On May 8, 2011, G.A.M. was born to appellant-mother D.D. and appellant-father G.M. On July 15, 2012, the police found one-year-old G.A.M. alone in a stroller at a bus stop in downtown Minneapolis. D.D. picked G.A.M. up at the police station. The police notified the Hennepin County Human Services and Public Health Department (the department). Ten days later, G.A.M. was placed out of the home after the police arrested D.D. for an alleged theft. At the time of her arrest, D.D. was seen telling G.A.M. to "shut the f*** up" and either placing her hand over his mouth or hitting him to stop him from crying.

Two days later, on July 27, the department filed a petition alleging that G.A.M. is a child in need of protection or services. At a hearing in August 2012, D.D. admitted that she left G.A.M. alone at the bus stop earlier in July and that, because of her chemical-dependency and mental-health issues, G.A.M. is a child in need of protection or services.

The district court adjudicated G.A.M. to be a child in need of protection or services because G.A.M. "is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of [his] parent." *See* Minn. Stat. § 260C.007, subd. 6(8) (2012). The district court transferred legal custody of G.A.M. to the department.

D.D.'s case plan required her to: complete a chemical-dependency assessment and follow all recommendations; maintain sobriety; comply with all urinalyses requests;

complete a parenting assessment and follow all recommendations; complete a psychological evaluation and follow all recommendations; maintain safe and suitable housing; and cooperate with the department. G.M.'s case plan required him to: participate in parenting classes; maintain his sobriety; participate in urinalysis testing; complete chemical-dependency evaluation if urinalysis testing shows positive results; demonstrate mental-health stability; maintain safe and stable housing; and cooperate with the department.

The department began its search for possible relative placements in early August 2012. After the permanency progress review hearing on January 18, 2013, the district court found that the department had satisfied the relative-search requirements and that "no appropriate or available" options existed, but it nevertheless ordered the department to continue its search for relatives.

On February 19, 2013, the department petitioned to terminate the parental rights of D.D. and G.M. At a June 27, 2013 pretrial hearing, D.D. requested that a home study be ordered for her aunt in Chicago. The district court declined the request.

On July 30, August 2, and August 30, 2013, a trial was held on the petition to terminate appellants' parental rights. Witnesses included three social workers from the department; a chemical-dependency technician; G.A.M.'s foster parent; G.A.M.'s guardian ad litem; D.D.; and G.M. D.D.'s position at trial was that G.A.M. should be returned to her care or G.M.'s care; G.M.'s position at trial was that G.A.M. should be returned to his care or D.D.'s care.

On September 16, 2013, the district court terminated the parental rights of D.D. and G.M. The district court's findings detail the parents' history of chemical-dependency and mental-health issues. D.D.'s parental rights had previously been terminated for two of her older children, and she relapsed after each of her seven chemical-dependency treatments, including during this case. G.M. was absent from the first year of G.A.M.'s life and did not address his chemical-dependency or mental-health concerns. At the time of trial, neither parent was in substantial compliance with his or her case plan.

The district court found that the department had shown by clear-and-convincing evidence that termination is in G.A.M.'s best interests and that four statutory bases for termination were met. Specifically, the district court determined that "both parents have substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon them by the parent and child relationship"; "both parents are palpably unfit to be a party to the parent and child relationship"; "the Department's reasonable efforts failed to correct the conditions leading to [G.A.M.'s] placement out of home"; and "[G.A.M.] is neglected and in foster care." *See* Minn. Stat. § 260C.301, subds. 1(b)(2), (4), (5), (8) (2012).

The district court denied D.D. and G.M.'s joint motion for a new trial or amended findings. This appeal followed.

D E C I S I O N

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). We will affirm a district court's decision to terminate parental rights if at least one statutory ground for

termination is supported by clear-and-convincing evidence and termination of parental rights is in the child's best interests. *In re Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). "If statutory grounds for termination exist and termination is in the best interests of the child, the appellate court then determines whether there is clear and convincing evidence that the county made reasonable efforts to reunite the family." *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005).

We review the district court's findings of fact for clear error. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). "We review a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Jan. 6, 2012). "A finding is clearly erroneous if it is manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *J.K.T.*, 814 N.W.2d at 87 (quotations omitted). "An abuse of discretion occurs if the district court improperly applied the law." *Id.*

D.D. and G.M. do not challenge the district court's decision that clear-and-convincing evidence supports four statutory grounds for termination, including that they are "palpably unfit" to parent. Nor do they challenge the ruling that the department made reasonable efforts to reunite and rehabilitate the family. D.D. and G.M. contest the district court's ruling that "[a] transfer of legal custody to a relative is not in [G.A.M.'s] best interests, as the kinship study has not identified relatives who are available to provide for his care." The parents argue that the district court did not sufficiently

consider whether to order a home study for D.D.'s aunt that was first requested about one month before trial.[1]

We disagree. As discussed below, the district court did not abuse its discretion by declining to order a referral for a home study and by determining that a transfer of custody to a relative is not in G.A.M.'s best interests.

I. Preserved for Appeal

The department contends that "[t]he issue of the relative search was not properly preserved for appellate review" because appellants did not object to the district court's decisions. We generally consider "only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). "Nor may a party obtain review by raising the same general issue litigated below but under a different theory." *Id.*

At the June 27, 2013 pretrial hearing, D.D.'s attorney clearly requested that the department "take a look at" D.D.'s aunt:

> There's been some talk about doing a consent to adopt to the foster – current foster parents, and [D.D.] is not in agreement with that. [D.D.] has asked at this point that the department consider that if this Court does in fact terminate rights and free the child for adoption, that she has an aunt in Chicago that has told her specifically that she would be willing to be available. I'd ask the Court at this point to order that the department take a look at her.

[1] A "home study" is "an evaluation of a home environment . . . to determine whether a proposed placement of a child would meet the individual needs of the child, including the child's safety; permanency; health; well-being; and mental, emotional, and physical development." Minn. Stat. § 260.92, subd. 6(b) (2012).

D.D.'s attorney provided the name, address, and telephone number for the aunt and noted that D.D. "has spoken to her and she's expressed a willingness to try to cooperate with an investigation at this point." D.D. first told the department about the aunt three days earlier, on June 24.

The district court denied D.D. and G.M.'s request, stating, "I'm going to decline to order an ICPC at this time."[2] D.D. then asked the district court whether her family was supposed to "get" G.A.M. "before anybody else." The district court responded that adoption questions would come up in a contested-adoption hearing.

In her posttrial motion for a new trial, D.D. argued that the district court "erred in finding that the kinship studies found no available relatives after refusing, before trial, the request by both [appellants] to consider a further relative." The district court disagreed, holding that D.D. and G.M. "were provided multiple opportunities to offer potential kinship options" and that the finding that the kinship study was accurate "did not deprive [D.D. and G.M.] of their right to a fair trial or require a new trial in the interests of justice."

Because the issue of the adequacy of the relative search as it relates to D.D.'s aunt was presented to and considered by the district court in a pretrial hearing and in posttrial motions, we may properly consider the issue on appeal.

[2] "ICPC" is short for "Interstate Compact for the Placement of Children." *See* Minn. Stat. § 260.93 (2012). This compact guides Minnesota in placing children out of the state and requires a determination that a placement is safe and suitable for the child. *Id.*

II. Relative Search

D.D. and G.M. argue that, because the name and contact information for the aunt in Chicago were available on June 24, 2013, the department should have contacted the aunt and obtained a home study. D.D. and G.M. further assert that the district court should have made specific findings on its refusal to order a home study. The parents contend that, because the district court did not make specific findings regarding its decision to decline to order a home study at the June 27 hearing, the district court could not conclude in its termination-of-parental-rights order that a transfer of legal custody to a relative is not in G.A.M.'s best interests.

A. Relative-Search Requirements

Because D.D. and G.M. contest the relative search as it relates to the home study for D.D.'s aunt, we look to the relevant statutes that require the department to conduct a relative search. When a child is determined to be in need of protection or services, the district court "must ensure that the responsible social services agency makes reasonable efforts to finalize an alternative permanent plan for the child." Minn. Stat. § 260.012(a) (2012). "Reasonable efforts to finalize a permanent plan for the child" include "due diligence by the responsible social services agency to . . . conduct a relative search to identify and provide notice to adult relatives as required under section 260C.221." Minn. Stat. § 260.012(e)(3).

The relative-search statute, Minnesota Statutes section 260C.221 (2012), provides that the social services agency "shall consider placement with a relative . . . without delay and whenever the child must move from or be returned to foster care." Minn. Stat.

§ 260C.221(a). The agency "shall exercise due diligence to identify and notify adult relatives prior to placement or within 30 days after the child's removal from the parent." *Id.* The relative search must be "comprehensive in scope." *Id.* The agency's responsibility to consider relatives for placement continues even after the district court finds that the agency has made reasonable efforts to conduct the relative search. *Id.*

When it is likely that a child will not return to a parent's care, the relative-search statute requires the social services agency to send notice to relatives that states that a permanent home is sought for the child. Minn. Stat. § 260C.221(f), (g). The notification requirements regarding permanency "do not apply when the child is placed with an appropriate relative or a foster home that has committed to adopting the child or taking permanent legal and physical custody of the child and the agency approves of that foster home for permanent placement of the child." Minn. Stat. § 260C.221(f). The district court may order the social services agency "to make a referral under the Interstate Compact on the Placement of Children when necessary to obtain a home study for an individual who wants to be considered for transfer of permanent legal and physical custody or adoption of the child." Minn. Stat. § 260C.204(c)(2)(ii) (2012).

With this background in mind, we turn to the relative search and the district court's related findings in this case.

B. Due Diligence to Conduct Relative Search

Here, the relative-search process conformed to Minnesota law. G.A.M. was placed out of the home on July 25, 2012. The department promptly began its search for relative placements for G.A.M. on August 3, 2012. The record shows that the department

contacted and considered eight relatives or important friends as placement options for G.A.M.

D.D. did not cooperate with the kinship worker "for the first months of the case" and "[w]as avoiding worker contact." One of the social workers testified at trial that D.D. initially told her that she wanted G.A.M. "to go to a non-relative foster home placement, rather than be with relatives" and that she "could not think of a relative to care for the child." But the social worker also testified that D.D. later called her "many times" to offer names of relatives.

As required by statute, the district court reviewed the department's relative search after G.A.M. had been out of the home for two months and again after six months. *See* Minn. Stat. §§ 260C.202(b) (requiring district court to review department's relative-search efforts no later than three months after child's placement), .204(a) (2012) (requiring permanency progress review hearing no later than six months after child's placement).

In September 2012, when the district court adjudicated G.A.M. as a child in need of protection or services and transferred custody of him to the department, it found that the department "has satisfied the relative search and other requirements of Minn. Stat. § 260C.22l"; "[t]here are no relatives presently identified who are available or appropriate for placement of the child"; and the department "is continuing to search for and/or assess relatives who are willing and able to be a permanency resource for the child if reunification cannot occur." The district court's order also stated—in bold and capitalized letters—that "a permanent placement determination hearing must be made no

later than twelve months following foster placement" and that "the dispositions available for permanent placement, in order of preference, are termination of parental rights and adoption, transfer of legal and physical custody to a relative or long-term foster care."

After G.A.M. was in foster care for almost six months, the district court held a permanency progress review hearing. The department's permanency plan for G.A.M. at that time was "[t]ermination of parental rights to free the child for adoption." The district court found that the department was making reasonable efforts to finalize the permanency plan by providing appropriate and reasonable case plan services, conducting a relative search, and continuing to recruit a permanency resource for G.A.M. The district court also found that the department had satisfied the relative-search requirements of section 260C.221 and that "no appropriate or available permanency resources from among the child's relatives" had been identified at that time. The district court ordered the department to file within 30 days a petition to terminate parental rights or to transfer permanent custody of the child, and it also ordered the department to continue the relative search.

On February 19, 2013, the department filed the petition to terminate the parental rights of both parents. The district court held three more intermediate disposition hearings before trial was held on July 30, August 2, and August 30, 2013. Under the statute, a trial should have been held within 60 days of the date the termination petition was filed. *See* Minn. Stat. § 260C.204(d)(3).

In its termination order, the district court held that a transfer of custody to a relative is not in G.A.M.'s best interests "as the kinship study has not identified relatives

who are available to provide for his care." The district court found that G.A.M. "is currently placed in a foster-to-adopt home and the foster family anticipates adoption if parental rights are terminated. The professionals involved in the case as well as the Guardian ad Litem strongly support this outcome as being in [G.A.M.'s] best interests."

With impending permanency deadlines, the district court decided in June 2013 not to order a referral to obtain a home study for D.D.'s aunt. *See* Minn. Stat. § 260C.204(c)(2)(ii). This decision was not an abuse of the district court's discretion. D.D. had the opportunity to inform the department or the district court of her aunt's existence and interest in placement well before June 24, 2013, just one month before the termination-of-parental-rights trial and eleven months after G.A.M. was placed in foster care. Because G.A.M. was placed in a foster home that was committed to adopting him, the relative-notification requirements of section 260C.221(g) did not apply. *See* Minn. Stat. § 260C.221(f)–(g).

In addition, appellants can point to no authority that supports their assertion that a failed relative search impacts the validity of a district court's decision to terminate parental rights. The statute only directs the department to *consider* placement with a relative. Minn. Stat. § 260C.221(a); *see* Minn. Stat. § 260C.212, subd. 2(a) (2012). Placement with a relative is an issue distinct from whether parental rights will be terminated.

Moreover, D.D.'s attorney qualified his request for the home study, stating, "[D.D.] has asked at this point that the department consider that *if this Court does in fact terminate rights and free the child for adoption*, that she has an aunt in Chicago that has

told her specifically that she would be willing to be available." (Emphasis added.) D.D. also stated that her aunt is "willing to adopt him." The district court's responses at the hearing and in its corresponding order show that it understood that D.D.'s request was not for immediate placement with the aunt or for a transfer of custody to her aunt, but for her aunt to be an option for adoption for G.A.M. should D.D.'s rights be terminated.

Contrary to the parents' argument, the district court was not required to make more specific findings as to the relative search, either in its June 2013 order or in the order to terminate parental rights. District courts are required to make "specific findings" that "reasonable efforts to finalize the permanency plan to reunify the child and the parent were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family." Minn. Stat. § 260C.301, subd. 8(1); *see T.A.A.*, 702 N.W.2d at 709 (requiring same). But D.D. and G.M. do not contest the findings on the department's reasonable efforts to reunify G.A.M. with his parents or to rehabilitate D.D. and G.M. The relative-search law and related statutes do not require—and appellants do not point to any other law that does require—specific findings regarding the relative search in pretrial orders or in the termination order. *See, e.g.*, Minn. Stat. §§ 260C.212, .221; Minn. R. Juv. Prot. P. 41.05; Minn. R. Juv. Prot. P. 42.08.

We conclude that the record shows that the department used due diligence in its comprehensive search for relative placement options and that the district court did not abuse its discretion in declining to order a home study for D.D.'s aunt one month before trial.

C. Determination of G.A.M.'s Best Interests

The district court must be "governed by" the best interests of the child when deciding a permanency disposition order or termination of parental rights, which includes "a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact." Minn. Stat. § 260C.511(b) (2012).

Here, the district court explained in detail, as required, why termination is in G.A.M.'s best interests. *See In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003). The district court's best-interests findings show that it made "a specific finding that termination is in the best interests of the child" and analyzed, as necessary, "the child's interests in preserving the parent-child relationship," "the parent's interests in preserving the parent-child relationship," and "any competing interests of the child." *See* Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). D.D. told the department about her aunt only one month before the trial, and the record does not show whether G.A.M. had ever met D.D.'s aunt or had any relationship with her. G.A.M. was 28 months old and had been in foster care for half of his life at the time of the district court's termination order. The district court found that G.A.M. "would be in immediate risk of harm" if he were returned to his parents' care and that he "needs a permanent, safe, and stable home."

Furthermore, a transfer of custody to a relative is not the preferred permanency disposition. *See* Minn. Stat. § 260C.513(a) (2012). The preferred permanency options for a child who cannot return home are (1) "termination of parental rights and adoption," or (2) "guardianship to the commissioner of human services through a consent to adopt."

Id. The district court may transfer custody of a child to a relative if it determines that it is in the best interests of the child and if "termination of parental rights and guardianship to the commissioner is not in the child's best interests." *Id.* As D.D. requested and as the district court noted in its June 2013 order, D.D.'s aunt could be considered an adoption resource if appellants' parental rights were terminated. *See* Minn. Stat. § 260C.607 (2012); Minn. R. Juv. Prot. P. 42.08.

The district court ultimately found that the benefits G.A.M. "would achieve from adoption" outweigh the detriment to D.D. and G.M. from termination of their parental rights. The district court's decisions show that it considered that the "best interests of a child are not served by delay that precludes the establishment of parental bonds with the child by either the natural parent or adoptive parents within the foreseeable future." *See Matter of Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). The district court acted within its discretion in determining that a transfer of custody to a relative is not in G.A.M.'s best interests.

Affirmed.