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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0035
A17-0036**

In the Matter of the Welfare of the Children of:
N.M. a/k/a N.S. and M.T., Parents.

**Filed May 22, 2017
Affirmed
Kalitowski, Judge***

Lyon County District Court
File No. 42-JV-16-107

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Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and
Kalitowski, Judge.

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

In this consolidated appeal, appellants challenge the termination of their parental rights, arguing that the district court abused its discretion by concluding that (1) a statutory basis for terminating their parental rights existed, (2) termination of parental rights was in the best interests of their minor children, and (3) the county made reasonable efforts towards rehabilitation and reunification. We affirm.

FACTS

Appellant N.S. is the mother of two children, S.M. and E.T. S.M. was born in 2007, and E.T. was born in 2014. Appellant M.T.¹ is the father of E.T. S.M. had a different father, whose parental rights were terminated on June 1, 2016. S.M. and E.T. both have special needs. S.M. receives individual education and after-school services, and she is diagnosed with ADHD. S.M. is also “slow to process information and does not consistently demonstrate appropriate fear or apprehension of risks.” E.T. receives early childhood services, special services to assist her with speech and socialization, and physical therapy to assist her with various cognitive and motor skills.

M.T. has mental-health issues but “feels that he is doing fine on his own without therapy.” He does not take his mental-health medications “because he does not like to take pills.” N.S. has had “a history of cognitive delays dating back to elementary school.”

¹ N.S. and M.T. will hereinafter collectively be referred to as “appellants.”

On October 8, 2015, law enforcement executed a search warrant at appellants' house on an unrelated matter and, based on the condition of the home, placed S.M. and E.T. on a law-enforcement hold. The house was dirty and had a strong smell of dog urine/feces, and trace amounts of methamphetamine were discovered. On October 12, 2015, respondent Lyon County filed a child-in-need-of-protection-or-services (CHIPS) petition, seeking emergency protective care for S.M. and E.T. The district court granted the petition and ordered that the children remain in protective care. S.M. and E.T. have been in foster care in Minnesota since October 12, 2015, by order of the district court in the CHIPS proceedings.

Upon entering foster care, E.T. "had a double ear infection, pink eye, was very congested, and had diaper rash." She was quiet and lethargic. E.T.'s communication improved greatly after tubes were placed in her ears. S.M. required "substantial dental work when she entered foster care including a cap, pulled tooth, filling cavities, and a crown." S.M. requires supervision "to ensure that she completes basic hygiene routines, such as brushing her teeth and combing her hair." Both children did not appear familiar with rules and structure when they entered foster care.

The district court ordered a case plan for appellants with respect to E.T. M.T. failed to participate in individual therapy as required by the case plan. Appellants had supervised and unsupervised parenting time with S.M. and E.T. while they were in foster care; E.T. often suffered from diarrhea and stomach ailments after these visits. The condition of appellants' home remains poor. And in nearly one year of in-home services, the district

court found that appellants “have made minimal, if any, progress on developing and improving their parenting skills.”

The county petitioned the district court to terminate appellants’ parental rights on August 17, 2016. Appellants, the children’s guardian ad litem, a social worker assigned to their case, appellants’ in-home caseworker, and one of the foster parents testified at a two-day court trial.

After trial, the district court terminated N.S.’s parental rights to E.T. and S.M., and it terminated M.T.’s parental rights to E.T. It found that appellants are unable “to provide an environmentally safe home for the children” due to their cognitive deficits. The district court then concluded that appellants are palpably unfit to parent S.M. and E.T., the children are neglected and in foster care, the county made reasonable efforts to provide services to appellants, and termination of appellants’ parental rights to S.M. and E.T. is in the best interests of the children. Through a posttrial motion, N.S. asked the district court to amend its findings of fact and order a new trial. The district court amended one finding of fact and denied the motion for a new trial.

D E C I S I O N

Appellants argue that the district court abused its discretion in terminating their parental rights. We review the district court’s “determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion.” *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), review denied (Minn. Jan. 6, 2012). “[W]e will review the district court’s findings of the underlying or basic facts for clear error.” *Id.* “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.” *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012) (quotations omitted).

1. Statutory Basis For Terminating Appellants’ Parental Rights

Appellants argue that the district court abused its discretion in concluding that because S.M. and E.T. were neglected and in foster care, a statutory basis existed for terminating appellants’ parental rights. We disagree.

The district court may terminate all rights of a parent to a child if it finds that the child is neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(8) (2016). A child neglected and in foster case is defined as a child

- (1) who has been placed in foster care by court order;
- and
- (2) whose parents’ circumstances, condition, or conduct are such that the child cannot be returned to them; and
- (3) whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child.

Minn. Stat. § 260C.007, subd. 24 (2016).

Among other factors, the district court shall consider the following factors in determining whether a child is neglected and in foster care: (1) the length of time the child has been in foster care; (2) the level of effort by the parent to correct the circumstances that caused the child’s removal; (3) whether the parent has visited the child; (4) whether the parent had regular contact with the agency or person responsible for the child; (5) the adequacy of services provided to the parent; (6) whether additional services would likely

enable a return of the child at some point in the future; and (7) the nature of the agency's efforts to reunite the family. Minn. Stat. § 260C.163, subd. 9 (2016); *see also J.R.B.*, 805 N.W.2d at 902.

Because appellants concede that the district court placed S.M. and E.T. in foster care, our analysis is limited to a review of the second and third statutory criteria. Here, the district court concluded that appellants' "circumstances and conduct are such that S.M. and E.T. cannot be returned to them" and appellants "failed to adjust their conduct and/or condition" even though rehabilitative services were provided.

N.S. contends that the district court's conclusions are unsupported by the record because she corrected the conditions that led to the initiation of the CHIPS case and completed the case plan requirements. M.T. argues that the record demonstrates some evidence that he (1) has the ability to parent, (2) satisfied reasonable expectations to visit E.T. or provide her with financial support, (3) did not need rehabilitative services, and (4) made reasonable efforts to adjust his circumstances.

The district court found that appellants do not possess the necessary parenting skills and insight to ensure that S.M.'s and E.T.'s medical, educational, cognitive, and mental-health needs are met. It also held that, if appellants "are not prompted and supervised, it is highly unlikely that any of the foregoing necessary services would be provided to the children consistently, if at all." It determined that appellants "have not demonstrated that they have been able to put any plans to address their parenting deficits into effect." The district court found that M.T. is not receptive to mental-health or cognitive-development services, and N.S. "minimizes her deficits and issues" because she "does not believe she

has any struggles with parenting, that there are any improvements she needs to make, or that she has any deficits in her daily life.” The record supports the district court’s findings and conclusions.

At trial, N.S. testified in response to a question about what she could do to improve her skills as a parent: “I’m trying to do stuff by myself. That’s what I’m doing. I don’t need anybody’s help.” M.T. testified that he left supervised visits with E.T. because he did not agree with the monitors’ direction and he did not “want to get too mad and irate” at them because he did not like them. He also testified: “I don’t like authorities like higher people than me. Like—I like to do my own thing.” Further, he stated that he probably missed other visits with E.T. because he “would rather go out and work.”

Appellants’ in-home caseworker testified as to major concerns, including failure to follow visitation rules, missing appointments, and S.M.’s report on how the visits were going. She testified that she was worried about appellants’ ability to understand what she taught them because “they have some significant limitations with their IQ, with their functioning, [and] with their ability to learn and comprehend the information that [she is] telling them.” Their in-home caseworker also testified that no additional services would help N.S. improve her parenting skills and that M.T. could benefit from a developmental-disabilities service, but he declined those services.

Finally, the district court appropriately considered the significant amount of time that S.M. and E.T. have been in foster care: 389 days, as of November 3, 2016.

Because its conclusion that S.M. and E.T. were neglected and in foster care is supported by clear and convincing evidence in the record, the district court did not abuse

its discretion by invoking this basis to terminate appellants' parental rights. And although the district court also determined that appellants are palpably unfit to parent S.M. and E.T., we need not address any additional statutory grounds for involuntary termination. *See In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385-87 (Minn. 2008) (affirming the district court's termination of parental rights after concluding that the district court did not err with respect to one of two statutory grounds).

2. Best Interests of the Children

Appellants challenge the district court's conclusion that terminating their parental rights was in the best interests of S.M. and E.T. "We review a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion." *J.R.B.*, 805 N.W.2d at 905.

"[I]nvoluntary termination of parental rights is proper only when at least one statutory ground for termination is supported by clear and convincing evidence *and* the termination is in the child's best interest." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014). To determine whether termination of parental rights is in the child's best interests, the district court "must balance three factors: (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." *J.R.B.*, 805 N.W.2d at 905. Competing interests of the child may "include such things as a stable environment, health considerations and the child's preferences." *Id.*

M.T. argues that there "was hardly any evidence offered as to why [his] parental rights to E.T. should be terminated." N.S. contends that termination of her parental rights

is not in the best interests of the children because S.M. and E.T. (1) love and care for her, (2) were never malnourished, (3) were clothed, (4) and had housing in N.S.'s care.

In concluding that terminating appellants' parental rights is in the best interests of S.M. and E.T., the district court reasoned that, "[d]ue to the children's special needs, they need to attend numerous appointments throughout the week. Coordinating these necessary appointments requires some degree of commitment on the caretaker's part and the ability to coordinate these appointments with other activities the children participate in." The district court determined that appellants are not able to provide the children with "a stable and consistent home that can meet their needs" now or in the reasonably foreseeable future. The record supports this conclusion.

At trial, the guardian ad litem testified that appellants lacked the ability "to accept the information [on parenting] and to put it into action." She also testified, "[U]nfortunately I think that . . . it's best for the children if their parents' rights are terminated." Appellants' social worker testified about her concern that appellants would be unable to satisfy S.M.'s and E.T.'s needs. Specifically her concern was

[t]hat their medical needs would not be met, that dental appointments would be missed. Even though [S.M.] is on an [individual education plan], that does require additional work at—in the home and there would be concerns that that would not happen, that her school work would not get done, that [E.T.]'s early childhood services would not be able to be meeting with her as those are appointments that are set up with the parents. A lot of concerns about the follow through with appointments, that the children would not be supported emotionally or developmentally.

She also testified that appellants failed to attend all doctor appointments and education appointments; “they missed two of [E.T.]’s medical appointments and one of [S.M.]’s medical appointments.”

The children’s foster-care provider also testified about concerns she had about M.T.’s ability to parent:

- Q. What was your concern?
- A. Um a couple times um [M.T.] would buckle [E.T.] in and he would snap her um skin in the buckle and then he would say, I don’t understand why she’s crying. I just don’t know why. And -- and she would really scream. Well then when we’d get home -- and I knew what happened. I knew that she had gotten buckled in the seat so when I got home, she had a quarter size um sore on her stomach from being buckled.
- Q. Did this happen on one occasion or more than once?
- A. Um more than once, yes.
- Q. And was that always when [M.T.] would buckle [E.T.] in?
- A. Yes. [N.S.] never really put her in the car.

Although M.T. argues that we should not credit this testimony, we give a district court considerable discretion in its credibility determinations because it “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).

Because the record supports its determination that termination of appellants’ parental rights to S.M. and E.T. is in the children’s best interests, we conclude that the district court did not abuse its discretion.

3. Reasonable Efforts For Reunification

Appellants contend that the district court abused its discretion in concluding that the county made reasonable efforts toward rehabilitation. We disagree.

In every termination-of-parental-rights proceeding, the district court must find either that reasonable efforts for reunification are not required or “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) (2016).

In determining whether the county’s efforts are reasonable, the district court must consider whether the services 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.

In the alternative, the court may determine that provision of services or further services for the purpose of rehabilitation is futile and therefore unreasonable under the circumstances. . . .

Minn. Stat. § 260.012(h) (2016). “Reasonable efforts at rehabilitation are services that go beyond mere matters of form so as to include real, genuine assistance. The quality and quantity of efforts to rehabilitate and reunify the family impact the reasonableness of those efforts.” *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotations and citation omitted), *review denied* (Minn. Mar. 28, 2007). “Whether the

county has met its duty of reasonable efforts requires consideration of the length of the time the county was involved and the quality of effort given.” *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990).

Here, the record indicates that the county provided the following services: child-protection case-management services, foster-care and respite-care services, supervised parenting time, diagnostic assessments, mental-health referrals, parental-capacity assessments, cognitive testing, health home referral, chemical-use assessments, family group decision-making, urinalysis hair-follicle testing, Minnesota choices evaluation, and in-home services. The district court concluded that the county’s efforts were reasonable.

The record further indicates that the county provided accommodations for appellants. The in-home caretaker testified that she changed meeting times to accommodate M.T.’s schedule. And the social worker testified that she helped M.T. with his work schedule and wrote a letter to M.T.’s employer, explaining the importance of attending in-home therapy.

N.S. argues that the county’s efforts were not reasonable because she only had about one month after all of her assessments were complete before the county petitioned to terminate her parental rights. But appellants’ in-home caseworker testified that no additional services could be provided to help N.S. improve her parenting skills. And the guardian ad litem testified that appellants were not willing to offer S.M. and E.T. a stable consistent home to meet their needs now or in the reasonably foreseeable future.

Citing *In re Children of T.R.*, M.T. argues that the county’s efforts were not reasonable because it failed to provide appropriate services to accommodate his needs as a

person diagnosed with ADHD. 750 N.W.2d 656 (Minn. 2008). In *T.R.*, the supreme court concluded that services provided to the father were unreasonable because, after the father testified “that he had difficulty understanding what was happening” during meetings with his social worker and guardian ad litem, no services were offered to address his “lack of verbal skills and acknowledged difficulty in understanding the proceedings.” *Id.* at 659, 666. But the facts here are distinguishable because M.T. never testified or mentioned that he did not understand what was required of him. Rather, he testified that he did not want to listen to his caseworker because he would “rather listen to certain people” and he had “enough people to listen to.”

M.T. also argues that the county’s efforts were not reasonable because it failed to respond to a request by the district court regarding unsupervised visitation at appellants’ home. But the county determined, based on its further review, that unsupervised visitation at appellants’ home was inappropriate because appellants’ progress had deteriorated, they failed to abide by visitation rules, and they were not attending appointments. The record supports the county’s assertions.

Because its finding that the county made reasonable efforts to rehabilitate and reunite appellants with S.M. and E.T. is reasonably supported by the record as a whole, the district court did not abuse its discretion.

Finally, N.S. argues that the district court abused its discretion in denying her motion for a new trial. Because we conclude that the district court’s findings are supported by the record, and the district court did not abuse its discretion in terminating appellants’

parental rights, the district court did not abuse its discretion in denying N.S.'s request for a new trial. *See* Minn. R. Juv. Prot. P. 45.04(g)-(h), 45.06(a).

Affirmed.