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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0672**

In the Matter of the Welfare of the Children of:
I. C. G. and T. A. T., Parents.

**Filed October 30, 2017
Affirmed
Cleary, Chief Judge**

Hennepin County District Court
File No. 27-JV-16-1483

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Considered and decided by Larkin, Presiding Judge; Cleary, Chief Judge; and Worke, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

Appellant-father T.A.T. argues that the district court erred in determining that clear and convincing evidence supported three statutory grounds to terminate his parental rights.

T.A.T. also argues that termination was not in the best interests of his children, IL.G. and IM.G. We affirm.

FACTS

IL.G. was born in February of 2009 and IM.G. was born in October of 2010 to I.C.G. and T.A.T. I.C.G.'s parental rights were terminated in a separate proceeding and are not at issue in this appeal.

The family has a lengthy child protection history. From 2008 to 2015, child protection services from four different counties intervened on behalf of the children on 17 occasions. As a result, the children have spent over 800 days in some form of out-of-home placement over the last five years. Child services often became involved due to domestic violence between T.A.T. and I.C.G. or I.C.G.'s serious mental health issues and abuse of the children in her care. The most serious domestic violence incident between T.A.T. and I.C.G. occurred in 2013 and involved I.C.G. attacking and stabbing T.A.T. in front of the children. After this incident, T.A.T. left the children in the care of I.C.G. and began working as an over-the-road truck driver in Mexico. T.A.T. lived primarily in Mexico from 2014 to May of 2016.

In September of 2015, a child protection social worker (the social worker) was assigned to work with the family. She explained that both children have special needs. She stated that T.A.T. needed to demonstrate that he could provide a stable environment for himself and the children, develop the ability to separate from I.C.G., and learn to be responsible for two children with special needs before the children could be placed in his care. She described T.A.T. as reluctant to engage with the services provided by the county

throughout the case and expressed serious concerns about his ability to provide a stable life for himself and the children and to keep I.C.G. from inflicting further harm on the children.

In October of 2015, Hennepin County Human Services (the county) opened a child in need of protective services (CHIPS) case on two children in I.C.G.'s care following a report of physical abuse. In December of 2015, all four children in I.C.G.'s care, including IL.G. and IM.G., were removed from her home and placed in foster care. T.A.T. monitored the case from Mexico and returned periodically. He believed that his children would eventually be returned to I.C.G. T.A.T. returned permanently to Minnesota in May 2016 after I.C.G.'s parental rights were terminated.

In March of 2016, the county filed a petition to terminate T.A.T.'s parental rights. The petition alleged termination was proper because: (1) T.A.T. abandoned the children; (2) he substantially or repeatedly refused or neglected to comply with the duties imposed upon him by the parent and child relationship; (3) following the children's out-of-home placement, reasonable efforts had failed to correct the conditions leading to the children's placement out of home; and (4) the children were neglected and in foster care. Shortly after the petition was filed, the county offered a case plan to T.A.T. to connect him with the services that he needed to demonstrate his fitness as a parent. The case plan consisted of four components: (1) "provide safe and stable housing for himself and the children;" (2) "submit to random [urinalysis testing] at the direction of the department;" (3) "attend individual therapy, specifically to address co-dependence and boundary issues;" and (4) "establish ongoing, regular visitation with his children with enough time in advance to accommodate the children's schedules and emotional needs." It was also suggested that

T.A.T. complete a parenting assessment and follow the recommendations of that assessment.

In June of 2016, the court appointed a guardian ad litem. She stated that IL.G. has serious emotional, educational, and behavioral needs that have delayed his progress in school. She stated that IM.G. had sexualized behavioral issues upon entering foster care, but addressed those issues through therapy. She emphasized that both children required stability and a caregiver who understood and appreciated their needs and was committed to providing them with access to the services they needed.

The termination trial began in January of 2017 and was held over the course of four days, spread over two months. Extensive testimony was offered about the family's child protection history, the children's special needs, T.A.T.'s historical parenting abilities, and his progress over the course of the 17 month case. T.A.T. testified that he loves his children and that he could provide for them now that he had returned from Mexico. He stated that individual therapy was unnecessary and that he ended his relationship with I.C.G. in 2013. He stated that he understood the special needs of his children, but attributed these issues to his children being separated from him and that they could be resolved by the children being placed in his care and in sports programs.

Extensive testimony was offered about T.A.T.'s compliance with his case plan. T.A.T. did not substantially comply with his case plan. T.A.T. complied with the urinalysis component of his case plan and does not have any chemical dependence issues. T.A.T. moved into his parents' home and stated that his children could live there as well if returned to his custody. However, his history of instability and cycle of homelessness indicated that

he would not be able to provide a long-lasting stable environment and his failure to understand his children's special needs led the social worker and guardian ad litem to conclude that the children would not receive the services they needed if placed in T.A.T.'s care. T.A.T. resisted the individual therapy requirement and did not believe it was necessary. During the 17 month case, T.A.T. attended individual therapy four times. During those sessions, T.A.T. resisted the process and defended or made excuses for I.C.G. T.A.T. failed to establish a regular visitation schedule due to the demands of his jobs and still required supervised visits at the time of trial. T.A.T. participated in the parenting assessment but did not follow its recommendations, which included attending his children's therapy appointments and getting involved with their school lives.

Both the guardian ad litem and the social worker testified that T.A.T. was reluctant to get involved in the termination proceedings while living in Mexico. Both believed T.A.T. lacked the ability and understanding to properly address his children's special needs. Both discussed T.A.T.'s lack of compliance with his case plan and his overall lack of commitment to working with the child protection personnel. The guardian ad litem and the social worker acknowledged that the children and T.A.T. had a loving relationship. But both expressed grave concerns that T.A.T. would allow I.C.G. access to the children and believed I.C.G. posed a real and substantial threat to the health and safety of the children. Both the guardian ad litem and the social worker believed termination was in the best interests of the children. The district court found the testimony of the guardian ad litem and the social worker to be credible and persuasive.

The district court terminated T.A.T.'s parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2), (5), and (8) (2016), after finding clear and convincing evidence established that: (1) he substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon him by the parent and child relationship; (2) following the children's placement out of the home, reasonable efforts, under the direction of the court, failed to correct the conditions leading to the placement; and (3) the children were neglected and in foster care, and that termination was in the best interests of the children. T.A.T. appeals.

D E C I S I O N

I. Statutory Grounds

T.A.T. challenges the district court's decision to terminate his parental rights. Parental rights may only be terminated for grave and weighty reasons. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). There is a "presumption that a natural parent is a fit and suitable person to be entrusted with the care of his or her child." *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995).

Minnesota Statutes section 260C.301, subdivision 1(b), provides nine statutory grounds for involuntary termination of parental rights. A district court may terminate parental rights if clear and convincing evidence establishes: (1) at least one statutory basis for termination; (2) that the county has made reasonable efforts to reunite the family unless reasonable efforts are not required under the statute; and (3) termination is in the child's best interests. Minn. Stat. § 260C.301, subd. 8 (2016); *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

Determining whether there is a statutory basis for involuntary termination of parental rights requires the district court to make findings of fact and decide whether its findings show the statutory basis for termination to be present. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 899-900 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012). On appeal, we review a district court’s findings of fact for clear error. *In re Welfare of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008). A finding of fact is clearly erroneous if it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Id.* at 660-61. Considerable deference is given to the district court’s ultimate decision regarding whether to actually terminate parental rights. *S.E.P.*, 744 N.W.2d at 385.

A. Consideration of Case Plan

T.A.T. argues that the district court improperly considered his failure to comply with his case plan in its analysis and thus the termination order must be reversed because it relied upon an alleged failure to complete a voluntary case plan. T.A.T. relies on unpublished authority to support his argument. Unpublished opinions are of limited value in deciding an appeal. *See* Minn. Stat. § 480A.08, subd. 3(c) (2016) (stating that “[u]npublished opinions of the court of appeals are not precedential”). Further, we note that T.A.T. was aware of and understood the components of the case plan. T.A.T. received a copy of the case plan. T.A.T. reviewed the case plan with counsel and challenged components of the case plan at a pretrial hearing shortly after the case plan was offered. He testified that he understood the components and that he met with the social worker

“several, maybe dozens of times” to discuss the case plan and his obligations under it. The case plan was known to and understood by T.A.T. and all those involved in the case.

On this record, the district court did not err in considering T.A.T.’s failure to complete the components of his case plan in determining whether to terminate parental rights.

B. Minn. Stat. § 260C.301, subd. 1(b)(2)

T.A.T. argues that there was insufficient evidence to support termination under Minn. Stat. § 260C.301, subd. 1(b)(2). Under this provision, the district court may terminate parental rights if it finds

that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child’s physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable[.]

To support termination on this basis, the district court must determine that the parent is not presently able and willing to assume the responsibilities of parenting and that the condition will continue for the reasonably foreseeable future. *See In re Welfare of J.K.*, 374 N.W.2d 463, 466-67 (Minn. App. 1985), *review denied* (Minn. Nov. 25, 1985). This court generally requires more than mere failure to complete a case plan to affirm a termination based on this statutory ground. *See, e.g., In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 666-

67 (Minn. App. 2012). The record must otherwise show that the parent failed to comply with his or her duties in the parent-child relationship. *Id.*

T.A.T. argues that there is no evidence to support the district court's finding that he failed to comply with the obligations of the parent-child relationship. But, the district court's conclusion that T.A.T. failed to complete his case plan and failed to comply with the duties of the parent-child relationship is supported by the record. The district court found that he did not substantially comply with his case plan as a whole and found that he satisfied only one component—the urinalysis component—successfully. The district court also made numerous non-case plan specific findings regarding T.A.T.'s demonstrated lack of consistency and stability and his long-standing and ongoing lack of commitment to the parent-child relationship: T.A.T. never served as the children's primary caregiver during their lives; could not name the schools his children attended; did not understand their special needs; and visited them on an inconsistent and abbreviated basis. Further, the district court determined that he currently posed a safety risk to the children due to his unhealthy relationship and poor boundaries with I.C.G.

T.A.T. also argues that this case is distinguishable from *In re Child of Simon*, 662 N.W.2d 155 (Minn. App. 2003). We disagree. There, this court affirmed the termination of parental rights under subdivision 1(b)(2) after determining that the father failed to satisfy his obligations under his court-ordered case plan, that he “failed to provide any meaningful parenting” to the child and “offered no evidence that he possess[es] the skills and knowledge to parent” the child. *Simon*, 662 N.W.2d at 163. Here, the district court came to a similar conclusion: T.A.T. had a longstanding and ongoing lack of commitment to the

parent-child relationship and a lack of understanding of and ability to provide for the special needs of either of his children; T.A.T. had a documented history of homelessness and instability; a history of allowing his children to reside with I.C.G. despite being aware of the danger she posed to his children; and did not fully understand the serious emotional, educational, and behavioral special needs of IL.G. The district court's finding that T.A.T.'s minimization of IL.G.'s special needs and his lack of knowledge about his children's lives demonstrated a lack of the skills and knowledge necessary to parent the children is supported by the record.

In re Welfare of Barron, 268 Minn. 48, 127 N.W.2d 702 (1964), cited by T.A.T., is not analogous to this case because it does not involve either a parent who has a child with serious mental health, educational, and emotional special needs or a parent who failed to comply with a case plan designed to equip him with the skills necessary to provide for that child's special needs. Likewise, *In re Welfare of L.L.N.*, 372 N.W.2d 60, 62-63 (Minn. App. 1985), also cited by T.A.T., is not analogous to this case because there, this court concluded that “[i]nfrequent visitation and sporadic child support payments are insufficient reasons to terminate [the] parental rights” of a father who “is presently able to carry out his fatherly duties.” Here, the district court made extensive findings and determined that T.A.T. was not presently able to carry out his fatherly duties nor would he be able to do so in the future.

T.A.T. also argues that termination on this ground is improper due to his participation in parts of his case plan. But participation in a case plan does not preclude a finding that a parent has failed to comply with parental duties under the statute. *K.S.F.*,

823 N.W.2d at 667. “Rather, the issue is whether the parent is presently able to assume the responsibilities of caring for the child.” *Id.* (quotation omitted). The district court recognized T.A.T.’s efforts but found a historical pattern of neglect of the parent-child relationship, a present resistance to services, poor insight into his children’s special needs, and a complete lack of progress during the 17 months of the case.

The district court weighed the credibility of the witnesses and noted T.A.T.’s efforts, but determined they were insufficient to establish that he was able to parent his children, either presently or in the foreseeable future. The record supports the district court’s finding that T.A.T. neglected his duties in the parent-child relationship. Because clear and convincing evidence supports this statutory ground, we need not address the other statutory grounds on which the district court relied. *See K.S.F.*, 823 N.W.2d at 667 (declining to analyze other statutory bases after affirming on one statutory basis).

II. Best Interests

T.A.T. challenges the district court’s conclusion that termination was in the best interests of IL.G. and IM.G. 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. Once a court has determined that there is a statutory basis for terminating parental rights, it must consider whether termination is in the child’s best interests. *Id.* The court balances 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 interests of the child.” *Id.* (quotation marks omitted); Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). “Competing interests include such things as a stable environment, health

considerations and the child's preferences." *J.R.B.*, 805 N.W.2d at 905 (quotation marks omitted). The stability of the child is an important factor in the best-interests determination. *In re Welfare of K.T.*, 327 N.W.2d 13, 18 (Minn. 1982). The district court may also consider "the children's need for stability and predictability, [and a parent's] limited bond with the children." *K.S.F.*, 823 N.W.2d at 668.

T.A.T. argues that termination cannot be in the best interests of his children because it is never in the best interest of a child to have the parental rights of both parents terminated; the case should have been reverted to a CHIPS proceeding because of the social worker's testimony that the foster parent may allow T.A.T. to remain in contact with his children; and there is voluminous evidence that he and his children love each other.

T.A.T.'s argument that termination of the parental rights of both a mother and father can never be in the best interest of a child is unsupported by law and is without merit. Likewise, his argument that termination cannot be in the best interests of the children because the social worker indicated the foster parent may allow T.A.T. to continue to see his children during supervised visits is unsupported and without merit.

The record demonstrates that all of those involved in this case—including the court—struggled with the grave and weighty conclusion that T.A.T.'s time to demonstrate the understanding and ability to care for his children had run out. In summary, the district court found that termination was in the best interests of the children because: (1) the children had spent over 800 days in foster care and reverting the matter back to CHIPS would not be appropriate due to the length of time the children spent in foster care; (2) T.A.T.'s "inconsistency, instability, passive involvement, and poor insight" with

respect to his children's special needs made him incapable of providing the consistency and stability they required; (3) though T.A.T. and his children love each other, the preferences of T.A.T. and his children are strongly outweighed by the children's competing interests in stability, permanency, structure, and a safe home; and (4) termination would put an end to the children's uncertainty and the cycle of child protection involvement.

A parent's bond with a child weighs in favor of reunification. *In re Welfare of A.J.C.*, 556 N.W.2d 616, 620 (Minn. App. 1996), *review denied* (Minn. Mar. 18, 1997). However, a parent's love may not be enough to outweigh competing interests. *See In re Welfare of Child of K.T.*, 814 N.W.2d 76, 93 (Minn. App. 2012) (concluding that while the love between parent and child was undisputed, because of the child's complex medical needs, the parent lacked the skills necessary to provide for the child's best interests). Evidence of T.A.T.'s love for his children was presented at trial, considered by the district court, and found to be outweighed by the competing interests of ensuring that the children's special needs and their interests in a stable and safe life were provided for.

The district court did not abuse its discretion in determining that termination of T.A.T.'s parental rights would be in IL.G. and IM.G.'s best interests.

Affirmed.