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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0945**

In the Matter of the Welfare of the Children of: C. R. T. and B. M. K., Parents.

**Filed October 29, 2018
Affirmed
Reyes, Judge**

Becker County District Court
File No. 03-JV-17-2033

Timothy H. Dodd, Detroit Lakes, Minnesota (for appellant B.M.K.)

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Considered and decided by Florey, Presiding Judge; Ross, Judge; and Reyes, Judge.

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

REYES, Judge

Appellant father challenges the district court's denial of his motion to reverse an order for voluntary termination of parental rights (TPR), arguing that: (1) the district court did not protect his statutory right to counsel; (2) he consented to the order under a misunderstanding of his counsel's advice; and (3) failing to vacate the order is contrary to the best interests of the children. We affirm.

FACTS

In January 2017, Becker County Human Services (BCHS) filed a child in need of protection or services (CHIPS) petition regarding the welfare of the three children (K.K., C.K., and J.T.) of appellant B.M.K. (father) and C.R.T. (mother). The petition stated that mother, who had sole custody of the children at the time, had engaged in drug use. The children were placed on a 72-hour emergency hold. Father initially entered a denial to the CHIPS petition. At a subsequent pre-trial hearing, father rescinded his denial and entered an admission to the CHIPS petition. During the hearing, the district court ordered father to complete a case plan.¹ Father never signed or completed a case plan.

In September 2017, BCHS filed a TPR petition against father. At the TPR trial in November 2017, father appeared with counsel and entered an admission to a voluntary TPR. He answered questions from the district court concerning his understanding of the matter, his state of mind, and his relationship with the children. Father then signed an affidavit voluntarily consenting to the TPR. In December 2017, the district court issued an order terminating father's parental rights. The order included a provision discharging father's counsel of record.

Less than a month after the district court issued its TPR order, father filed a pro se "Motion to Reverse Voluntary TPR Order." The district court denied father's motion. Father, still acting pro se, appealed the district court's denial. This court dismissed the appeal without prejudice and remanded the case to the district court to consider various

¹ The district court ordered father to complete a case plan at three different hearings.

issues regarding the discharge of father's counsel, including whether the discharge was authorized under Minn. R. Juv. Prot. P. 25.06 and whether father's right to counsel was protected throughout post-trial proceedings. On remand, the district court found that father's right to counsel was not protected.

In May 2018, with newly appointed counsel, father filed a new motion to reverse and set aside the TPR order. Once again, the district court denied father's motion. This appeal follows.

D E C I S I O N

“When a [district] court's findings in a termination case are challenged, appellate courts are limited to determining whether the findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether they are clearly erroneous.” *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997) (quoting *In re M.D.O.*, 462 N.W.2d 370, 374-75 (Minn.1990)). A finding of fact is clearly erroneous if we are left with the definite and firm conviction that a mistake has been made. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quotations and citations omitted). A voluntary TPR order can be rescinded only upon a showing of fraud, duress, or undue influence. *Matter of Welfare of K.T.*, 327 N.W.2d 13, 17-18 (Minn. 1982).

I. Even if father's right to counsel was not protected, this error was harmless.

Father argues that his right to counsel was not protected because, after the discharge of his counsel, the district court did not make an affirmative effort to inform him of his continued right to counsel throughout post-trial proceedings, and this resulted in prejudice to him. We disagree as to prejudice.

Due-process rights include the right to counsel. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008). Whether father's due-process rights have been protected in a TPR proceeding is a question of law, which we review de novo. *Id.* To prevail on his due-process claim, father must demonstrate that the district court committed an error *and* that he suffered prejudice as a result. *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008). Under Rule 25 of the Minnesota Rules of Juvenile Protection Procedure, every party has the right to be represented by counsel in every juvenile-protection matter, *including through appeal*, if any. Minn. R. Juv. Prot. P. 25.01 (emphasis added). This includes the right to be advised by the district court on the record of the right to representation pursuant to Rule 25 if any party appears in court in a juvenile-protection case without counsel. Minn. R. Juv. Prot. P. 25.04.

On remand, the district court found that it erred in not protecting father's right to counsel. This finding was based on the fact that father's counsel was discharged with the entry of the TPR order, leaving him without counsel for any post-trial motions. But, the inquiry does not end there. Whether father's right to counsel was protected also depends on whether the district court later informed father on the record of his continued right to representation under Rule 25 when he filed his pro se motion and pro se appeal.

Here, father makes only a conclusory statement that the district court did not advise him of his continued right to representation. Father fails to substantiate his claim with any details as to the times when the district court had a duty to inform him of his right to counsel

and failed to do so. Father also fails to cite to any relevant legal authority. Without submission of facts and legal authority to support his claim, father's argument is forfeited.²

Even if we were to consider father's due-process claim, it still lacks merit. In addition to his burden to show that the district court erred, father has the burden on appeal to demonstrate that such error caused him prejudice. *Bloom v. Hydrotherm, Inc.*, 499 N.W.2d 842, 845 (Minn. App. 1993), *review denied* (Minn. June 28, 1993). Father fails to proffer any evidence of prejudice, and the record does not support such an allegation.

After the discharge of his first counsel and after remand to the district court, father was appointed new counsel. This allowed him the opportunity to replead his motion to reverse the TPR order. Father also had the opportunity to appeal the district court's denial of his motion a second time.

In his pro se motion before the district court to reverse the TPR order, father stated that his first counsel threatened him, lied to him, failed to do what was in his best interests, and made him feel forced to give his consent to the voluntary TPR. Such statements contradict father's claim of prejudice because dismissal of his first counsel presumably would have relieved father of these issues. Father has not provided any evidence to contradict these previous statements.

² For this court to consider a claim, litigants must provide citation to relevant legal authority or legal analysis to support it. See Minn. R. Civ. App. P. 128.02, subd. 1(d); *Stephens v. Bd. of Regents of Univ. of Minn.*, 614 N.W.2d 764, 770 n.4 (Minn. App. 2000), *review denied* (Minn. Sept. 26, 2000) (citation omitted).

We conclude that, because father failed to provide any evidence of prejudice on his claim of due-process right to counsel and the district court subsequently provided father with new counsel, any initial error in not protecting father's right to counsel was harmless.

II. The district court did not commit clear error in denying father's motion to reverse the voluntary TPR order based on father's argument that his consent was based on a misunderstanding of advice from his counsel.

Father argues that reversal of the voluntary TPR order is warranted because his consent was based on a misunderstanding of his counsel's advice regarding the case plan and the future consequences of an involuntary TPR. We are not persuaded.

Father contends that he understood his first counsel to advise him not to complete his case plan. He also notes that his interpretation of the consequences of an involuntary TPR affected him deeply because he comes from a large family with a lot of children. Father's argument is belied by his previous statements in the record, and he fails to offer any new evidence or legal authority to contradict them.

At the TPR hearing, the district court questioned father as to whether he had an opportunity to go through the affidavit before signing it and ask his counsel any questions he may have had. Father responded in the affirmative. The district court inquired as to whether father understood that, after the hearing, he could not "come back in a month and say, 'Oh, I've changed my mind.'" Father again responded in the affirmative. At the end of the hearing, in the presence of the court, father signed an affidavit avowing, among other things, that he discussed his decision to consent to the voluntary TPR with his counsel and that he understood the implications of terminating his parental rights.

In light of father's previous statements to the district court and the lack of evidence or legal authority on appeal to the contrary, we conclude that the district court did not commit clear error in finding that father's alleged misunderstandings were insufficient grounds to reverse the voluntary TPR order.

III. The district court did not commit clear error, contrary to the best interests of the children, in denying father's motion to reverse the voluntary TPR order.

Father argues that the district court committed clear error in failing to vacate the TPR order because doing so was contrary to the best interests of the children. We disagree.

In arguing for the reversal of a TPR, a serious and compelling reason must exist in order to once again displace the children and dramatically change their living environment. *K.T.*, 327 N.W.2d at 18. In considering the best interests of children, stability is a factor which must be given high priority as it is simply not in the best interests of children for the parent-child relationship to be continually altered. *Id.*

Here again, father's argument is contrary to his previous statements in the record, and he fails to offer any legal authority or additional evidentiary support to refute them. Accordingly, his argument is forfeited. Even if we were to consider his claim, it lacks merit.

At the TPR hearing, father admitted that he was not involved in the children's lives and that it was in their best interests to have his parental rights terminated. Father claims that he completed a drug-treatment program in February 2018 and has since abstained from drug use. He claims that, since the issuance of the TPR order, he has worked a case plan to the extent that another of his children (not part of this proceeding) has been placed with

him. He also argues that, to the best of his knowledge, his children remain in foster care awaiting a permanent option and that he wants to be that option. However, these are merely conclusory statements regarding a change in his circumstances.

The record indicates that, as of February 2018, two of father's children (K.K. and C.K.) had been in out-of-home placement for a total of 753 days and father's youngest child (J.T.) had been in out-of-home placement for a total of 397 days. Undoubtedly, these figures have increased significantly since that time. The best interests of the children require that, at some point, permanence for the children becomes more important than the natural parent's right to reconsider their decision, absent serious and compelling reasons. *K.T.*, 327 N.W.2d at 18. Father's assertions do not rise to the level of serious and compelling reasons to once again displace the children. Therefore, we conclude that the district court did not commit clear error in finding that reversal of the voluntary TPR order was not in the best interests of the children.

Affirmed.