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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0215**

In re the Matter of the Welfare of the Child of:
A. M. H. a/k/a A. M. K. and D. H., Parents.

**Filed July 22, 2019
Affirmed
Hooten, Judge**

Otter Tail County District Court
File No. 56-JV-18-2567

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Considered and decided by Reilly, Presiding Judge; Johnson, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant-father challenges the termination of his parental rights. We affirm.

FACTS

The child subject to these proceedings, C.S., was born to mother A.M.K. and appellant-father D.H. The Otter Tail County Department of Human Services (the county)

became involved with the child during mother's pregnancy after receiving a child welfare report in December 2015 alleging that mother was addicted to drugs and homeless. As a result of the report and the subsequent child welfare assessment, mother was civilly committed as a chemically dependent person in late March 2016. The child was born in May 2016, and in late June, mother reached out to the county in order to obtain services on a voluntary basis. She received those services until October 2016 when she was arrested. The child was eventually placed in emergency protective non-relative foster care, and the county filed a petition alleging that the child was in need of protection or services (CHIPS). The child was adjudicated to be in need of protection or services. Mother was incarcerated until mid-June 2017, but the county agreed that she had complied with her portion of the placement plan to the best of her ability while incarcerated. She was then allowed to have a trial home visit with the child, and custody of the child was soon returned to mother. That CHIPS case was terminated in late February 2018.

In early July 2018, the county received a maltreatment report alleging that mother was using drugs while caring for the child and had been caught stealing. In the course of the subsequent investigation, the county learned that the child had a significant speech delay. Additionally, mother tested positive for drugs and admitted to being addicted to stealing. In late July, mother was arrested for a probation violation, and the county filed a petition alleging that the child was in need of protection or services. A few days later, mother was sentenced to prison with an anticipated release date in September 2019. In early August 2018, the custody of the child was transferred to the county for out-of-home

placement, and the county filed a petition to terminate the parental rights (TPR) of both mother and appellant-father the next month. A TPR trial was held in December 2018.

Appellant-father was incarcerated at the Otter Tail County Detention Facility when the child was born in May 2016. During the course of the first CHIPS case, he had two parenting time sessions with the child while in that jail, and these sessions were set up by a social worker from the county. Appellant-father was then transferred to prison, first at MCF – St. Cloud in mid-December 2016, and then he was involuntarily transferred to MCF – Faribault, where he would remain until his release in April 2018. Although the social worker unsuccessfully attempted to set up parenting time while appellant-father was in prison, in mid-April 2017, the district court found that it was in the child's best interests to discontinue attempts to arrange for parenting time at MCF – Faribault because of the child's age and the distance that would have to be traveled for such a visit. The social worker attempted to arrange internet-based parenting time, but the prison did not allow appellant-father to participate. The social worker testified that during this first CHIPS case, appellant-father did not meaningfully participate in services or comply with his portion of the out-of-home placement plan during his incarceration.

Although he was released from prison in early April 2018, appellant-father was again incarcerated from early June through July 10, 2018. He was then arrested on August 11, 2018, and at the time of the TPR trial in mid-December 2018, appellant-father was being held at the Todd County Detention Facility awaiting the resolution of his new criminal charges. Following his arrest, the county did not make any attempts to arrange parenting time for appellant-father apparently because of the district court's denials of

appellant-father's requests for parenting time on the basis of: (1) the limited relationship that existed between appellant-father and the child; (2) the child's age; and (3) the distance between the child's foster placement and the jail where appellant-father was being held. The social worker testified that appellant-father had not financially or otherwise supported the child or complied with his duties as a parent.

The district court terminated both mother's and appellant-father's parental rights in late December 2018. It found that their parental rights should be terminated under Minn. Stat. § 260C.301, subds. 1(b)(2), 1(b)(4), and 1(b)(5) (2018). The district court found that the county had made reasonable efforts to reunify the child with mother and appellant-father and determined that the termination of mother's and appellant-father's parental rights was in the child's best interests. This appeal from appellant-father follows.

D E C I S I O N

Appellant challenges the termination of his parental rights. A natural parent is presumed to be fit to care for his or her child. *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980). But “the law secures parents’ right to custody only so long as they shall promptly recognize and discharge their corresponding obligations.” *In re Welfare of P.J.K.*, 369 N.W.2d 286, 290 (Minn. 1985) (quotation omitted). Therefore, parental rights may only be involuntarily terminated if at least one statutory basis for termination exists and termination is in the child's best interests. Minn. Stat. § 260C.301, subds. 1(b), 7 (2018). And if a statutory basis exists, then “the best interests of the child must be the paramount consideration.” *Id.*, subd. 7.

“We review the termination of parental rights to determine whether the trial court’s findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether those findings are clearly erroneous.” *In re Welfare of K.L.W.*, 924 N.W.2d 649, 653 (Minn. App. 2019) (quotation omitted), *review denied* (Minn. Mar. 8, 2019). And while “considerable deference” is given to the district court’s decision, we must still “closely inquire into the sufficiency of the evidence to determine whether the evidence was clear and convincing.” *Id.* (quotation omitted).

I. Sufficiency of the evidence on the bases for termination

Appellant-father begins by arguing that there was insufficient evidence to terminate his parental rights on the statutory bases for termination relied upon by the district court. We review for an abuse of discretion a district court’s determination that there is a statutory basis present for terminating parental rights. *Id.*

In its petition to terminate appellant-father’s and mother’s parental rights, the county alleged three bases for termination: refusing or neglecting to comply with the duties imposed upon the parent by the parent/child relationship under Minn. Stat. § 260C.301, subd. 1(b)(2); palpable unfitness to parent the child under Minn. Stat. § 260C.301, subd. 1(b)(4); and reasonable efforts failing to correct conditions leading to the child’s placement outside the home under Minn. Stat. § 260C.301, subd. 1(b)(5). The district court terminated appellant-father’s parental rights under all three bases.¹

¹ In its order terminating mother’s and appellant-father’s parental rights, the district court wrote that it was terminating their parental rights under subdivision 1(b)(2), subdivision 1(b)(4), and then again subdivision 1(b)(4). This second reference to subdivision 1(b)(4) is a typographical error. Based upon the law and analysis in that part of the order, it is

The first basis is found in Minn. Stat. § 260C.301, subd. 1(b)(2), which allows for termination if the district court 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 for the petition or reasonable efforts would be futile and therefore unreasonable.

In concluding that this basis had been met, the district court relied on the following: (1) the fact that appellant-father was incarcerated for most of the child's life; (2) the fact that appellant-father "relied on others to meet [the child's] physical, mental, and emotional needs and, unlike [mother], he provided no meaningful support for [the child] when he was not incarcerated"; and (3) its finding that appellant-father's incarceration does not justify his failure to comply with his duties as a parent and that his incarceration is "part of a pattern" of having minimal contact and providing no substantial support to the child even when not incarcerated. The district court also found that continued efforts toward reunification would be futile and unreasonable under the circumstances due to the fact that the child had been in out-of-home placement for 455 days at the time of trial and it was unknown when appellant-father would be released from his present incarceration.

obvious that the district court intended to refer to subdivision 1(b)(5) as the third basis for termination. Moreover, the parties on appeal treat the termination as having been on all three bases. Accordingly, we interpret the district court's order as terminating mother's and appellant-father's parental rights on all three bases.

Appellant-father's primary argument—which he seems to direct toward all three bases—is that the district court failed to consider his “conditions as they existed at the time of the termination hearing.” It is true that the evidence supporting a statutory basis for termination “must relate to conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period.” *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001).

But the district court *did* refer to conditions that existed at the time of the termination hearing. Central to its analysis of whether appellant-father's parental rights should be terminated was appellant-father's near-constant incarceration. While some of this necessarily includes past incarceration—and therefore a past, rather than present, condition—the district court specifically noted appellant-father's incarceration at the time of the termination trial and the fact that it was unclear when he would be released from custody. This comports with the requirement that the condition “continue for a prolonged, indeterminate period” because (1) it was unclear when appellant-father would be released and (2) his inability to stay out of jail or prison suggests that he may be reincarcerated in the future. Moreover, the district court found that appellant-father provided no meaningful support for the child and instead relied on others for meeting the child's physical, mental, and emotional needs. Accordingly, appellant-father's argument that the district court did not consider his conditions as they existed at the time of termination is unpersuasive.

Appellant-father also argues that “[i]n the absence of any finding of harmful effects on [the child], the District Court failed to receive clear and convincing evidence of Appellant's neglect or inability to comply with parental duties.” But, as explained above,

the district court *did* find that appellant-father provided no meaningful support to the child and relied on others to meet the child's physical, mental, and emotional needs. And appellant-father cites to no authority mandating that a district court find specific harmful effects. Rather, by its very wording, subdivision 1(b)(2) looks to whether a parent is complying with his duties; the failure to comply with those duties is not excused just because someone else undertakes those duties and spares the child from harm.

We conclude that the district court did not abuse its discretion in finding that there was clear and convincing evidence supporting termination under subdivision 1(b)(2). Because there was sufficient evidence supporting one basis, and only one basis is required for termination, it is unnecessary for us to review the district court's findings on the other two bases. See *P.R.L.*, 622 N.W.2d at 545 ("Because a court need find only one of the statutory grounds . . . to terminate a parent's rights to a child, we need not address the remaining grounds for termination considered by the district court.).

II. Reasonable efforts

Appellant-father next argues that the county did not make reasonable efforts to reunite him with the child. Under Minn. Stat. § 260.012 (a) (2018), the district court must ensure that the county makes reasonable efforts "to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time."

Appellant-father essentially argues that the county failed to make reasonable efforts to reunite him with the child and rectify the need for out-of-home placement, and that this failure to provide reasonable efforts was not excused by the fact that he was incarcerated.

Whether the county made reasonable efforts is an underlying factual finding that is reviewed for clear error. See *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 387 (Minn. 2008). Due diligence by the county in making reasonable efforts to finalize a permanent plan for the child means “assess[ing] a noncustodial parent’s ability to provide day-to-day care for the child and, *where appropriate*, provide services necessary to enable the noncustodial parent to safely provide care.” Minn. Stat § 260.012 (e)(2) (emphasis added). And while incarceration does not excuse the requirement that the county must make reasonable efforts, incarceration is a circumstance that “might change what qualifies as ‘reasonable’ under the county’s duty to make ‘reasonable efforts.’” *In re Welfare of A.R.B.*, 906 N.W.2d 894, 899 (Minn. App. 2018).

In this case, the district court discussed the first CHIPS proceeding and found that the underlying problem in that case was appellant-father’s incarceration and his resulting unavailability to provide day-to-day care for the child. The district court explained that the county made efforts to rehabilitate appellant-father at that time but that he did not meaningfully participate in the services he was offered because he was incarcerated. And the district court concluded that despite this provision of services during the first CHIPS proceeding, the conditions making out-of-home placement necessary continue to exist; in appellant-father’s case, he continues to be incarcerated. And the district court concluded that no combination of services or efforts by the county would allow appellant-father to overcome this obstacle within the statutorily prescribed permanency timeline.

The county made several attempts to provide services to appellant-father during the first CHIPS proceeding, but it became evident that providing those services while he was

incarcerated was ineffective. This gives context for the district court's finding that continued efforts toward reunification during the second CHIPS proceeding would be futile and unreasonable under the circumstances. In light of appellant-father's incarceration at the time of the TPR trial and his "inability to maintain his freedom," it would not have been appropriate for the county to "provide services necessary to enable the noncustodial parent to safely provide" care of the child. Minn. Stat. § 260.012 (e)(2). Accordingly, we conclude that the district court's finding that the county made reasonable efforts is not clearly erroneous and that appellant-father's argument fails.

III. Best interests

Appellant-father also argues that termination was not in the child's best interests. The involuntary termination of parental rights requires not only that at least one statutory basis be present but also that termination is in the child's best interests. *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 668 (Minn. App. 2012). A best-interests analysis involves weighing three primary factors: "the child's interest in maintaining the parent-child relationship, the parent's interest in maintaining the parent-child relationship, and any competing interest of the child." *In re Welfare of M.A.H.*, 839 N.W.2d 730, 744 (Minn. App. 2013). And these competing interests include "a stable environment, health considerations, and the child's preferences." *Id.* A best-interests determination is reviewed 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* (Minn. Jan. 6, 2012).

The district court found that the child had no interest in maintaining a parent-child relationship with appellant-father because no such relationship had been meaningfully

established. It also found that the child's competing interests favored termination because the child needs "stability and a permanent home." This need for stability, the district court found, was heightened because of the length of time that the child had lived in out-of-home placement (455 days over the course of two CHIPS proceedings). It also found that appellant-father loved the child and had an interest in maintaining their relationship but that the child's needs for permanency and stability outweighed appellant-father's interest.

With regard to the first best-interests factor—the child's interest—appellant-father argues that "there was no information or evidence provided of any therapist recommendations or opinions as to what is in [the child's] best interests." While there was no therapist testimony, there was testimony from the social worker managing the child's case. The social worker recommended that both parents' parental rights should be terminated, and when asked, "How would that serve [the child's] best interests?" answered, "We are way over for permanency timelines. And [the child] is so young. [The child] needs a stable environment and someone that is constantly there for [them]." While this reasoning applies more to the third factor, competing interests, it shows that appellant-father is incorrect to the extent that he argues that there was no testimony saying that termination was in the child's best interests. And to the extent that he argues that this recommendation must come from a therapist specifically, he cites to no law that stands for that proposition, and we reject this argument.

Appellant-father does not explicitly challenge the district court's finding that the relationship between him and the child was never meaningfully established, but he does emphasize in his brief that he spent some time with the child when he was released from

custody and that between July 12 and 24, 2018, he had five separate parenting-time sessions with the child. Appellant-father himself testified that he had only ever been in the same room as the child seven or eight times over the course of the child's life. Because appellant-father and the child have spent so little time together, we conclude that the district court's finding that they never established a meaningful relationship is supported by the record. This fact supports the finding that the child had no interest in the parent-child relationship.

The only other relevant argument that appellant-father makes with regard to best interests is that there was "no evidence presented that there are any issues of Appellant that impact his ability to provide basic care and adequate nutrition for his child." It seems that appellant-father is referring to the third factor, competing interests. But appellant-father testified himself that when mother was incarcerated, he provided no food or financial support to the child. And his argument does not address the concern that the child has been living in an unstable environment due to continually being placed out of the home.

We conclude that the district court did not abuse its discretion in determining that termination of appellant-father's parental rights was in the child's best interests.

Affirmed.