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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A19-1052

A19-1057

A19-1062

In the Matter of the Welfare of the Children of:
J. B. O., Parent (A19-1052),

In the Matter of the Welfare of the Children of:
J. B. O., Father (A19-1057, A19-1062)

Filed December 30, 2019

Reversed

Rodenberg, Judge

Hennepin County District Court
File No. 27-JV-17-5140

Mary Moriarty, Fourth District Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota (for appellant-father J.B.O.)

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Mary Moriarty, Fourth District Public Defender, Kellie M. Charles, Assistant Public Defender, Minneapolis, Minnesota (for appellant-child E.O. and appellant-mother V.O.)

Michael O. Freeman, Hennepin County Attorney, Britta K. Nicholson, Assistant County Attorney (for respondent Hennepin County Human Services and Public Health Department)

Rebecca Shlafer, Minneapolis, Minnesota (guardian ad litem)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

In these consolidated appeals, appellants J.B.O. (father), V.O. (mother), and their children E.O., age 17 and J.O., age 15, appeal from the district court's order terminating father's rights to E.O. and J.O. Father and E.O. argue that the district court's order should be reversed because the district court never relieved Hennepin County Department of Human Services and Health (the county) of the obligation to make reasonable efforts to reunify the family. Appellants all argue that the record does not support the district court's determination that termination is in each child's best interests. Because the record does not support the district court's best-interests determination, we reverse.

FACTS

Father and mother are the parents of E.O., born in 2002, and J.O., born in 2004. On October 26, 2017, child-protection authorities received a report alleging that then-15-year-old E.O. had been sexually abused for approximately seven years by father. Assessment and investigation revealed the sexual-abuse report to be true. Father was charged with one count of first-degree criminal sexual conduct.

On November 1, 2017, the county filed a petition for the termination of father's parental rights to E.O. and J.O. on the basis of palpable unfitness and his having caused egregious harm to a child. When the emergency protective care (EPC) hearing was held before a district court judge, father was in custody at the Hennepin County Jail. He was not present for the EPC hearing. The county requested an admit/deny hearing in ten days, "in order to have [father] . . . present for the further hearing." The county indicated that it

would “be asking to be relieved of reasonable efforts, but . . . did not want to make that request at this time.”

The district court found that the petition to terminate father’s parental rights “establishes a prima facie showing that a juvenile protection matter exists,” and it issued an order for protective care regarding J.O., and an order for E.O. to be placed in foster care under the county’s care and custody. The district court did not relieve the county of reasonable efforts to reunify. Using a form order, the district court left blank all of the portions of the form order relating to reasonable efforts. The county did not request to be relieved of reasonable efforts at the next hearing or at any other hearing.

Despite having made no request to be relieved of the obligation to make reasonable efforts to reunify, and despite the district court not having relieved the county of that obligation, a child protection social worker (CPSW) wrote in a prehearing report dated January 15, 2019, that “[t]he [county] continues to be relieved of reasonable efforts with regard to [father].” In another prehearing report dated April 5, 2019, the CPSW wrote that “[d]ue to the allegations in the case, the [county is] statutorily relieved of reasonable efforts in reunifying [father] with his children.” No pretrial order of the district court addressed the issue of whether the county should be relieved of reasonable efforts to reunify.

A termination of parental rights trial was held on April 10, 2019. The CPSW testified that father was originally “included in the case plan,” but that the county was “relieved of efforts initially due to the nature of the incident.” The attorneys for father, mother, 17-year-old E.O. and 15-year-old J.O. did not challenge this assertion, but instead

argued that termination of father's parental rights was not in the best interests of E.O. and J.O.

J.O. testified that his relationship with father was "strong" and that terminating father's parental rights would make him "heartbroken." He stated that termination "wouldn't benefit [him] in any way."

E.O. did not testify at trial. But, by agreement between the parties, her attorney made a statement on E.O.'s behalf, to which there was no response or challenge by the county. Despite being a junior in high school, E.O. attends the University of Minnesota as a full-time college student and is "very mature beyond her years." Concerning E.O.'s therapy, her attorney stated that E.O. "was where she needed to be in her treatment." E.O.'s attorney urged the district court to "really listen to [E.O.] and listen to what she believes is in her best interest" and stated that E.O. "never supported a termination" and "does not want a termination."

Similarly, and again by agreement of the parties, mother's attorney made a statement on mother's behalf, stating that "her children are . . . intelligent children and [the court] should give great weight and credibility to [E.O. and J.O.'s] wants in this case."

Although ultimately recommending that father's parental rights be terminated because father "is not able to fully parent and provide for [E.O. and J.O.] physically, emotionally, financially, and spiritually[,]" the GAL testified at trial that both J.O. and E.O. are "old enough to make their own decisions regarding the type and frequency of contact that they have with their father, both now and in the future."

The district court terminated father’s parental rights to both E.O. and J.O., finding that statutory grounds for termination existed under Minn. Stat. § 260C.301 (2018), that the county was relieved of reasonable reunification efforts on November 1, 2017, and that the termination of father’s rights was in the best interests of E.O. and J.O. The district court denied a motion for a new trial.

These consolidated appeals followed.

D E C I S I O N

On appeal from an order terminating parental rights, we consider whether the district court’s findings address the statutory termination requirements and whether the findings are supported by substantial evidence. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). Reviewing courts “give considerable deference to the district court’s decision to terminate parental rights[]” and will “affirm the district court’s termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family.” *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted).

Father and E.O. argue that the district court erred when it found as a fact after trial that it had relieved the county of the obligation to make reunification efforts to reunify the family. Appellants argue that this error requires reversal. The county argues in reply that this challenge is forfeited and unavailable on appeal because it was not raised to the district court and no party requested reasonable reunification efforts.

Minn. Stat. § 260.012(a) (2018) requires the county to make reasonable reunification efforts to both prevent removal and “reunite [a removed child] with the child’s family at the earliest possible time.” Reasonable efforts are “services that go beyond mere matters of form so as to indicate real, genuine assistance.” *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Mar. 28, 2007). However, such reasonable efforts to reunify may be bypassed “*upon a determination by the court* that a petition has been filed stating a prima facie case that . . . the parent has subjected a child to egregious harm.” Minn. Stat. § 260.012(a)(1) (emphasis added). *See* Minn. R. Juv. Prot. P. 42.08, subd. 1(e)(1) (stating that “reasonable efforts . . . for rehabilitation and reunification are always required except upon notice by the county attorney and a determination by the court . . . that a petition has been filed stating a prima facie case that at least one of the circumstances under Minnesota Statutes, section 260.012, paragraph (a), exists”).

The district court’s finding that it relieved the county of the reasonable-efforts obligation is erroneous. There is no record support for the finding that the county was relieved of the reasonable-efforts obligation *by the district court*.

We reject as flawed the county’s argument that the appellants forfeited this issue because they did not ask the district court to order that the county make reasonable reunification efforts. Nothing in section 260.012(a)(1) obligates a parent to request reunification efforts. The statute is clear and unambiguous that the county must make reasonable reunification efforts unless and until the district court relieves the county of reasonable efforts. Minn. Stat. § 260.012(a)(1). Only the district court may relieve the

county of the reasonable-efforts obligation, and inaction by the parents or children cannot relieve the county of this statutory obligation.

The district court never expressly relieved the county of reasonable efforts to reunify, resulting in error in the termination proceedings. But we decline to address whether this error was harmless and, if it was not harmless, what remedy would be appropriate on appeal. We leave these questions for another day, because we reverse the termination of father's parental rights for other reasons, as discussed below.

The record does not support the district court's finding that termination of father's parental rights is in the best interests of E.O. or J.O.

Father, mother, E.O., and J.O. each argue that the best-interests factors weigh against termination and that the district court abused its discretion by finding otherwise.

In a termination proceeding, we consider whether termination of parental rights is in the children's best interests because the children "are the paramount consideration, and conflicts between the rights of the child and rights of the parents are resolved in favor of the child." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 902 (Minn. App. 2011), review denied (Minn. Jan. 17, 2012). A child's best interests may preclude termination, even if a statutory basis for termination exists. *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009).

A proper best-interests analysis requires the district court to 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 (quotation omitted). Competing interests of the child "include

a stable environment, health considerations, and the child's preferences." *In re Welfare of M.A.H.*, 839 N.W.2d 730, 744 (Minn. App. 2013). We review a best-interests determination for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

Here, the district court found that E.O. and J.O. have an interest in preserving the parent-child relationship with father. The record amply supports this finding.

The district court next found that father has an interest in preserving the parent-child relationship with each of his children. Again, the record supports this finding.

Despite these record-supported findings, the district court found that the competing interests of the children weighed against preservation of father's parental rights, and found that this factor outweighs the first two factors. The district court found that, considering "the children's ages and stated preferences," it viewed the "weight and persuasiveness of [E.O.'s and J.O.]'s statements as neutral." It reasoned that J.O. may not "understand the extent of the abuse allegations," and that E.O. may "feel[] responsible and blame[] themselves for the disruption their disclosure caused their family."

As previously noted, competing interests in this context include stability, health considerations, and the child's preferences. *M.A.H.*, 839 N.W.2d at 744. The district court determined that father "by his own actions made himself unavailable to parent[,] that father's actions were egregious, and that "based [on] the children's needs, history, and vulnerability," father is not a stable, "safe[,] or appropriate" caregiver. The district court also gave substantial weight to the testimony of both the CPSW and the GAL that father was unable to provide stability to E.O. and J.O.

This case is extraordinary. These children are, by all accounts, doing well. They are bright and accomplished. E.O. is successfully attending college at the age of 17 years. J.O. is also a successful student. Both children have received appropriate therapy for what has happened to them and to the family as a consequence of father's crimes, and each clearly expressed a reasoned desire to retain a legal relationship with father. Although father's criminal conduct harmed both children, those children are mentally and physically healthy and both currently live in a safe and stable environment with mother, who ensures that the family's financial and other needs are met. The children are receiving all of their medical, dental, educational, and other needs while in their mother's care. The record contains nothing to suggest that mother covered up or was complicit in father's abuse of E.O. or that she pressured either child to posit a desire that father's parental rights not be terminated. The county made no effort to terminate mother's rights and did not dispute that mother is providing both children with excellent care. As the GAL expressly recognized, each child is mature and able to make decisions about what contact each will have with father.

Because father is in prison, his conviction has been affirmed by this court on appeal,¹ and his projected release from prison is not until 2026, he poses no safety threat to either child. Both children intend to maintain a relationship with their father, and they will be free to do that as adults regardless of whether father's rights are terminated. Simply stated, the record does not support the district court's finding that E.O.'s and J.O.'s stability and

¹ To avoid disclosure of the family name, we omit citation to the unpublished opinion affirming father's appeal. Minn. R. Juv. Prot. P. 8.08, subd. 2.

health considerations in the best-interests analysis weigh in favor of terminating father's parental rights, much less that those considerations outweigh the clearly expressed preference of the children that father's rights not be terminated.

In re Welfare of M.P. supports preserving father's parental rights. 542 N.W.2d 71, 74-75 (Minn. App. 1996), *overruled in part on other grounds by In re Welfare of J.M.*, 574 N.W.2d 717, 722-24 (Minn. 1998). In *M.P.*, we held that the preference of a child old enough to express such a preference must be given significant weight in a best-interests analysis in a termination-of-parental-rights context. *Id.* Similarly, in *Ross v. Ross*, we determined that "[t]he choice of an older teenage child is an overwhelming consideration in determining the child's [best interests]." 477 N.W.2d 753, 756 (Minn. App. 1991).

Here, and despite the district court's determination that J.O. did not understand the extent of the abuse, J.O. testified that he discussed father's crime with his therapist and that he understood the crime father committed against E.O. And, although the district court expressed a valid concern regarding E.O. and her safety, E.O. has opposed termination of father's parental rights since the beginning of this case and will be well over 18 years old by the time father is released from prison. The record clearly indicates that these exceptional children prefer that father's parental rights remain intact. On this record, we conclude that the district court clearly erred in finding that the third factor in the best-interests analysis favored termination of father's parental rights.

In addition to the record not supporting the three-factor best-interests analysis of the district court, we also observe that the district court's best-interests analysis failed to differentiate between the individual interests of each child. *See In re Welfare of Child of*

S.S.W., 767 N.W.2d 723, 731 (Minn. App. 2009) (“[T]he district court traditionally considers the *child’s unique circumstances and individual needs*.” (emphasis added)). The district court’s order fails to adequately consider the unique circumstances and individual needs of E.O. and J.O., and instead finds that “[father] will not be able to care for *the children* for the reasonably foreseeable future,” that it “considered *the children’s* ages and stated preferences,” and that “[i]t is in the best interests of *the children* that. . . [father’s] parental rights be terminated.” On this record, the district court’s failure to differentiate between the unique circumstances and individual needs of E.O. and J.O. also supports reversal.

Father committed horrible crimes against E.O. Those crimes permanently disrupted the lives of both children. Mother has stepped into the breach and cares for both of these extraordinary children in all relevant ways. Each child has received appropriate therapy. And both children and their mother believe that the best interests of each child will best be served by preserving father’s parental rights. The government doesn’t always know what is best for families. The power of the state should not be used to break up an otherwise-viable family. This family is united in a preference that safeguards and protects each child. The wishes of a mature and responsible child that a parent’s rights not be terminated must be honored in a case where that child’s needs are fully met by the other parent.

Reversed.