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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0434**

In the Matter of the Welfare of the Children of: A. P. and D. L., Parents.

**Filed November 8, 2021
Affirmed
Slieter, Judge**

St. Louis County District Court
File No. 69DU-JV-20-52

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Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant-father challenges the involuntary termination of his parental rights, arguing that the county failed to prove a statutory basis exists to support termination and failed to make reasonable efforts to reunite the family. Appellant also contends that termination of his parental rights was not in the best interests of the child. Because the

child is neglected and in foster care, the county made reasonable efforts to reunite the family, and termination was in the child's best interest, we affirm.

FACTS

The district court, in a March 15, 2021 order, terminated the parental rights of appellant D.L., the noncustodial father of the child, M.L., born in February 2018.¹ In October 2018, police in Superior, Wisconsin arrested father on outstanding warrants following a traffic stop for suspected driving while impaired. Mother, who was also in the vehicle, was arrested on outstanding warrants as well. M.L. was in the vehicle and was taken into protective custody after law enforcement found drugs and drug paraphernalia in the vehicle. M.L. was transferred to a crisis shelter in St. Louis County, Minnesota.

Out of Home Placement and Child Protection Proceedings

Mother, the child's legal custodian, agreed to an initial voluntary-placement plan in which M.L. would remain in mother's custody. Following confirmed reports in early December 2018 that mother lacked stable housing and continued to use drugs in M.L.'s presence, the county and mother agreed to a voluntary out-of-home placement.² Following mother's failure to comply with her voluntary case plan, on May 16, 2019, the county filed a petition to adjudicate M.L. in need of protection or services (CHIPS) and requested an emergency protective care (EPC) hearing. Following the emergency protective care hearing, the district court determined M.L. should remain in the voluntary-placement foster

¹ The district court previously terminated the parental rights of child's custodial mother, A.P. This termination is not before us.

² Only mother signed the placement plan as the custodial parent.

home under court-ordered protective care. M.L. continued living with the same foster parent from the initial voluntary out-of-home placement through the termination of parental rights (TPR) trial.

Father's Case Plan

A critical concern for the county was that father address the findings of two county human services offices from 2005 regarding sexual maltreatment of family members. These findings formed the basis of a requirement in a 2015 case plan involving one of father's other children that father complete a psychosexual evaluation before being in a caretaking role for children. Therefore, a key component in the current case plan is for father to complete a psychosexual evaluation and this was expressed to father in his first visit with the social worker following his October 2018 arrest.

The county developed a case plan which required father to: 1) complete a psychosexual evaluation, 2) complete a rule 25 assessment and follow its recommendations, 3) consistently submit uranalysis (UA) samples demonstrating sobriety, 4) complete parenting courses, 5) address mental health issues, and 6) obtain safe housing free of illegal substances. The district court adjudicated M.L. in need of protection or services on September 30, 2019, approved the case plan, and ordered father, who remained in custody, to comply with his case plan.

Father's History of Incarceration

After M.L. was placed out-of-home and the county began to offer services, father continued involvement with new arrests and incarceration from October 2018 to May 2019, including the following:

- October 13 – mid-November, 2018: arrested and jailed in Superior, Wisconsin;
- April 7 – 9, 2019: arrested and jailed in Duluth, Minnesota;
- May 9, 2019: arrested in Duluth, Minnesota and “accidental[ly]” released after transfer to Hennepin County;
- May 24, 2019 - present: arrested and jailed in Duluth, Minnesota and ultimately imprisoned on various criminal convictions.

Termination Petition and Trial

On January 28, 2020, the county filed a petition to terminate father's parental rights alleging four statutory grounds for involuntary termination: (1) refusing or neglecting the duties of the parent-child relationship, (2) palpable unfitness, (3) failing to correct the conditions that led to the child's out-of-home placement, and (4) the child is neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), and (8) (2020).

The district court heard testimony from father's parole officer, county social workers, M.L.'s foster parent, and the guardian *ad litem*. Father chose not to testify. In its termination order, the district court concluded that the county had established by clear and convincing evidence all four alleged bases for termination, the county made reasonable efforts to reunify the family, and it was in M.L.'s best interest to terminate father's parental rights. Father appeals.

DECISION

I. The district court did not abuse its discretion in determining that the child was neglected and in foster care, and the county made reasonable efforts to reunite the family.

“We 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) (citation omitted); *see* Minn. Stat. § 260C.301, subd. 7 (2020). “[W]e will review the district court’s findings of the underlying or basic facts for clear error, but we review its 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), *rev. denied* (Minn. Jan. 6, 2012). This two-part standard, reviewing findings of underlying fact for clear error and “ultimate facts” for abuse of discretion, “is inherent in juvenile-protection caselaw.” *Id.* at 900-01. Evidence supporting termination of parental rights “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. 2011). The district court may consider the past, but the primary consideration should be “the projected permanency of the parent’s inability to care for his or her child.” *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) (quotation and citation omitted).

Neglected and in Foster Care

The district court concluded that M.L. was neglected and in foster care pursuant to Minn. Stat. § 260C.301, subd. 1(b)(8).³ Neglected and in foster care is statutorily defined to mean 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 of the child.

Minn. Stat. §260C.007, subd. 24 (2020). It is undisputed that M.L. was placed in foster care by court order and so we now review the second two prongs of the definition.

When the court determines a child is neglected and in foster care, it must consider a number of factors including “the effort the parent has made to adjust circumstances, conduct, or conditions that necessitates the removal of the child to make it in the child’s best interest to be returned to the parent’s home in the foreseeable future, including the use of rehabilitative services offered to the parent” and “the nature of the efforts made by the responsible social services agency to rehabilitate and reunite the family and whether the

³ If this court affirms the district court’s determination that one statutory basis to terminate parental rights is present, the court need not address other statutory bases found by the district court. *S.E.P.*, 744 N.W.2d at 385. Here, we affirm the district court’s determination that M.L. was neglected and in foster care. Therefore, we do not consider the other statutory bases addressed by the district court.

efforts were reasonable.” Minn. Stat. § 260C.163, subd. 9(2), (7) (2020). “[T]he nature of the services that constitute reasonable efforts depends on the problem presented.” *In re Child. of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008) (quotation omitted).

Shortly after father’s October 2018 arrest, the county first discussed with father the conditions he needed to address before M.L. could be returned to him. The county’s primary goals for father were “[c]ompletion of a psychosexual [evaluation], a Rule 25 [assessment], [and] maintaining sobriety,” as well as completing a parenting evaluation and addressing his mental health. Following father’s release from jail in November 2018, he did not have stable housing, so the county offered him services to help him find stable housing. The record supports the district court’s factual findings that the conditions outlined at the first meeting remained the county’s concern throughout the CHIPS and TPR proceedings, forming the core of the court-ordered case plan.

Father argues that he has not been able to work on the plan requirements while in custody. However, even when not in custody as the district court found, during the period from November 2018 to May 2019, father did not cooperate with the social worker to address the conditions leading to M.L.’s out-of-home placement. He vacillated regarding his willingness to complete a psychosexual evaluation and ultimately refused, telling the social worker he did not need the evaluation and suggested the victims would recant. He declined assistance to find stable housing, did not complete UAs, did not complete a parenting assessment, did not complete a rule 25 assessment, and did not address his mental health. Throughout this period, the social worker had difficulty contacting father and father missed arranged visits with M.L. Father was arrested and charged in April 2019 for illegal

firearm possession, which he pleaded guilty to in July 2019 and was sentenced to a prison term with an anticipated release date in September 2022. He has been incarcerated through the entire CHIPS and TPR proceedings.

While in custody, father only “on occasion” expressed interest in, and asked about, M.L. He was disruptive and threatened jail staff and their families, which prevented him from being able to access programming that would have satisfied his plan. He did not attempt to communicate with M.L. by sending letters, gifts, or any other items. The only element of his case plan father ultimately complied with was completion of a rule 25 assessment, which was arranged by his probation officer following his arrests in April 2019.

The district court found that father “failed to make reasonable efforts to adjust [his] circumstances, condition or conduct,” thus preventing M.L. from being placed in his care “now, or in the foreseeable future.” The record supports these factual findings and, therefore, the district court did not abuse its discretion by concluding that M.L. is neglected and in foster care.

Reasonable Efforts

A court conducting TPR proceedings “shall make findings and conclusions as to the provision of reasonable efforts.” Minn. Stat. § 260.012(h) (2020). “[P]rovision of reasonable efforts must be evaluated by the court in every case.” *S.Z.*, 547 N.W.2d at 892. However, a detailed analysis of the factors set out in Minn. Stat. § 260.012(h) is not always required. *J.R.B.*, 805 N.W.2d at 904. The district court’s findings that the county provided reasonable efforts to reunite the child with father are supported by the record.

Before father's incarceration, the county provided referrals for a psychosexual evaluation and rule 25 assessment, provided information about completing UAs, offered transportation to testing, set up alternative testing opportunities, offered phone minutes and a cell phone, and offered assistance finding stable housing. Once father was incarcerated, the county inquired of these facilities about programming for father as he moved between jails in Douglas County, Wisconsin and St. Louis County, Minnesota; and prisons in St. Cloud and Faribault, Minnesota. As found by the district court, father's improper conduct in these facilities often prevented him from being eligible for these programs. The county also provided photos of M.L., encouraged father to write to M.L., and attempted to set up remote visits. Father did not take advantage of these efforts.

“[A] case plan that has been approved by the district court is presumptively reasonable.” *S.E.P.*, 744 N.W.2d at 388. If a parent believes an aspect of the case plan is unreasonable, the proper remedy is to seek modification of the plan, not cease efforts to comply. *Id.* Although father now argues that his plan should have been modified because he was incarcerated, father did not request modification; he simply did not comply.

In sum, the record supports the district court's conclusion that M.L. is neglected and in foster care despite the county's reasonable efforts to reunite father with child, which are summarized by the district court as follows:

[father] has made no efforts to reunify with [M.L.]. It has been shown he is unwilling, despite be[ing] capable, to address the ongoing concern of the substantiated finding of sexual abuse made against him. He continues to engage in criminal behavior, resulting in lengthy incarceration rendering him unable to provide care for [M.L.]. While not incarcerated, [father] has not shown an ability or willingness to make an

effort to reunify with [M.L.]. While incarcerated, he has not shown a willingness to maintain a relationship with [M.L.].

II. The district court did not abuse its discretion in determining that termination of father's parental rights was in the best interests of the child.

“Even when statutory grounds for termination are met, the district court must separately find that termination is in the child’s best interests.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012). In analyzing the best interests of the child, the district court must consider “(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.” *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); *see* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). “Competing interests include health considerations, a stable environment, and the child’s preference.” *J.K.T.*, 814 N.W.2d at 92. “[T]he best interests of the child must be the paramount consideration” and “[w]here the interests of parent and child conflict, the interests of the child are paramount.” Minn. Stat. § 260C.301 subd. 7. On appeal, appellate courts “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. Additionally, “[b]ecause the best-interests analysis involves credibility determinations and is generally not susceptible to an appellate court’s global review of a record, we give considerable deference to the district court’s findings.” *J.K.T.*, 814 N.W.2d at 92 (quotation omitted). Here, the district court made sufficient factual findings to support its determination that termination is in M.L.’s best interest.

The district court acknowledged that “[i]t is always preferable for a child to preserve a parent-child relationship” and father had “at the very least, shown a desire to preserve his

child-parent relationship with [M.L.].” However, father was “incarcerated, resulting in him being voluntarily, completely unable to care for [M.L.] until September, 2022,” and when given “the opportunity to maintain contact with [M.L.] through letters, cards, and drawings, . . . [father] has failed to do even that.” These findings are supported by the record.

Father’s failure to take advantage of the available opportunities to connect with M.L. undermines his claim that a lack of a bond between he and M.L. is due to inadequate opportunities. Moreover, the record indicates, as the district court found, the competing interests of M.L., such as her need for “a safe, stable environment that meets her special needs and provides her with stability and care,” outweigh father’s interest in maintaining his relationship with the child. At the time of the TPR trial, M.L. had been placed out-of-home with the same foster parent from the time she was nine months old until she was nearly three years old. M.L. has bonded with the foster parent, who credibly testified that she was committed to providing for the child’s needs and wanted the child “to have the best life that she can have.”

After M.L. had been placed out-of-home, father committed new crimes leading to incarceration. Father did not take steps as required by his plan and, while incarcerated, father behaved in ways that prevented him from accessing programming for his plan and made negligible progress on any of the steps. The district court found father “completely unable to care for [M.L.] until September, 2022” because of his incarceration and that his consistent failure to engage with his plan indicates he would be unable to provide M.L. the appropriate care when he is released.

Father alleges no error in the district court's credibility determinations and the record supports the district court's factual findings that M.L.'s interest in "a safe, stable environment that meets her special needs and provides her with stability and care" outweighs father's interest in preserving the relationship. Therefore, the district court did not abuse its discretion in concluding that termination of father's parental rights is in M.L.'s best interests.

Affirmed.