STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0985

In the Matter of the Welfare of the Child of:
S. R. D. and J. D., Parents.

Filed December 27, 2022
Affirmed
Wheelock, Judge

Becker County District Court
File No. 03-JV-22-402

Timothy H. Dodd, Detroit Lakes, Minnesota (for appellant J.A.D.)

Brian W. McDonald, Becker County Attorney, Lisa Tufts Frederick, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent Becker County Human Services)

Monica Felt, Detroit Lakes, Minnesota (guardian ad litem)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

The district court terminated appellant-father's parental rights because reasonable efforts failed to correct the conditions leading to his child's out-of-home placement. On appeal, father argues that the district court erred by determining that (1) father did not rebut the presumption that reasonable efforts had failed to correct the conditions leading to the out-of-home placement, and (2) the county established that it made reasonable efforts toward reunification. We affirm.

FACTS

The following facts were established at trial. S.R.D. and appellant-father J.D. are married and are the biological parents of A.D., born in April 2020. Respondent Becker County Human Services became involved with the family shortly after A.D.'s birth. The county received several maltreatment reports between May 2020 and March 2021. As a result of a maltreatment report in May 2020, the county removed A.D. from the home for 33 days.

In May 2021, child-protection worker Kim Brill conducted a home visit in response to another maltreatment report. A.D. was about 12 months old at the time, but when J.D. placed A.D. in a crawling position, A.D. fell forward onto her forehead and appeared to be unable to crawl or push herself back up to a seated position. When placed in a seated position, A.D. was unsteady. Brill expressed concern about A.D.'s development at that time.

Later that month, S.R.D. texted Brill, alleging that J.D. was abusive and that A.D. was not safe in their home. Child-protection worker Donna Hanson and law enforcement responded to the home and found alcohol bottles, prescription-pill bottles, garbage, and choking hazards throughout the home. A.D. was seated in a bouncy chair in a two-foot-by-three-foot clear space on the floor. The county placed a 72-hour hold on A.D. and transported S.R.D. and A.D. from the home. J.D. did not initially allow responders to take A.D.; he became agitated and had to be restrained by law enforcement during the removal process.

Brill met S.R.D. and A.D. at the county office. Brill interviewed S.R.D., who reported that J.D. physically, sexually, and emotionally abused her and that he did not allow A.D. to be out of her car seat or bouncy walker, or to be fed "table food." S.R.D. later recanted her allegations of domestic abuse.

When a nurse assessed A.D., Brill noted that A.D. cried inconsolably when placed on her back, appeared unsteady when sitting upright, and was unable to hold a sippy cup. The assessment also raised concerns about A.D.'s head circumference and flatness on the back of A.D.'s head.

The county filed a petition to designate A.D. a child in need of protective services (CHIPS) on May 20, 2021. In June, the county and both parents finalized an out-of-home placement plan for A.D., and the district court filed a CHIPS adjudication in which it determined that A.D. was a child in need of protective services.

In March 2022, the county filed a petition to involuntarily terminate the parental rights (TPR) of both parents, alleging that S.R.D. and J.D. had been unable to correct the conditions that led to A.D.'s out-of-home placement. The district court held a two-day trial on the TPR petition in May and June. S.R.D. was incarcerated at the time of trial and did not appear; she requested to proceed by default. The majority of the trial focused on J.D.'s progress with the case plan and whether his parental rights should be terminated.

At trial, the county called county child-protection workers Hanson, Brill, and Rachel Juhl, as well as Dr. Wanda Dahlen, to testify. Both Brill and Juhl recommended termination of J.D.'s parental rights. Similarly, Dr. Dahlen did not recommend

reunification as a result of the capacity-to-parent evaluation she administered to J.D. in September 2021.

The county's witnesses described J.D.'s failure to comply with his case plan and their assessments of his parenting. Of particular concern were J.D.'s mental health and chemical dependency, allegations that J.D. engaged in domestic violence, and instability in the home.

Dr. Dahlen testified that the results of J.D.'s capacity-to-parent evaluation indicated several potential mental-health/parenting issues. Specifically, she was concerned about J.D.'s history of assault and allegations of domestic abuse; his lack of judgment and inability to solve problems; his "power and control issues in the home"; his defensiveness, denial of problems, and lack of self-awareness; and his use of manipulation. The results of J.D.'s evaluation also indicated that he had a substance-use disorder.

Dr. Dahlen made several recommendations in the capacity-to-parent evaluation, including that J.D. engage in individual therapy, comply with the chemical-dependency-treatment recommendations of his chemical-use assessment, undergo full-scale IQ testing, and complete a domestic-abuse assessment addressing power and control issues.

J.D. completed a domestic-violence assessment prior to the capacity-to-parent evaluation, but the county was concerned with the accuracy of that assessment because S.R.D. was in the room with J.D. during the assessment. That assessment recommended that J.D. participate in adult rehabilitative mental-health services (ARMHS). J.D. had not engaged with ARMHS but was on a waitlist at the time of the TPR trial. J.D. completed a

second domestic-violence assessment after his capacity-to-parent evaluation, which also recommended ARMHS services as "medically necessary."

J.D. admitted that he has an addiction to opiates and participates in a suboxone-medication program to manage his addiction. He was prescribed suboxone and a benzodiazepine medication. Juhl testified that J.D. completed his first chemical-use assessment in September 2021 after he tested positive for oxycodone—an opioid—during a drug screen. J.D. began the recommended outpatient-treatment service for chemical health in October 2021, but he frequently missed treatment dates, citing his lack of reliable transportation and his work schedule as excuses. Juhl testified that J.D. did not have a valid driver's license but still drove to work and that he never utilized the transportation service offered through his insurance to get to treatment. He was discharged from the program in January 2022 after missing too many treatment appointments.

Juhl testified that J.D.'s participation in random drug testing during outpatient treatment was "sporadic" but resulted in two or three positive results demonstrating drug use. J.D. also missed several drug screens and regularly failed to produce his prescription medication for the county social workers to count to ensure he was not abusing his prescription medications. Juhl stated that J.D. had become more compliant with drug testing since February 2022.

J.D. completed two additional chemical-use assessments in March 2022. The later assessment recommended inpatient services due to concerns about J.D.'s abuse of his prescription medications. Despite this, J.D. maintained that he did not need

chemical-health services and disputed the positive drug-test results. J.D. reported to Juhl that he would begin another treatment program in June 2022.

Juhl described continued concerns about the home environment at J.D.'s residence and the relationship between J.D. and S.R.D. The couple separated several times during the case. Police frequently responded to the home while S.R.D. and J.D. were living together due to domestic-violence calls. Furthermore, S.R.D. was in and out of the shelter system during the case, and J.D. made verbal threats to kill the staff at S.R.D.'s shelter. Juhl was also concerned about J.D.'s plan to have his ex-partner provide childcare for A.D. while J.D. was at work because there had been similar allegations of domestic violence between J.D. and his ex-partner.

J.D. called two friends and his mother to testify, and he testified on his own behalf. J.D. denied that A.D. slept in her car seat and not in a crib, disputed the results of his positive drug tests, denied having problems with domestic violence, and denied abuse of his prescription medications.

At the end of the trial, the guardian ad litem (GAL) Monica Felt testified. She reported that J.D.'s employment and housing had remained stable and that his residence was cleaner than it had been when A.D. was removed from the home. However, the GAL also recommended termination of J.D.'s parental rights based on concerns that included a "stench of cat urine" in the home, J.D.'s alleged domestic-violence issues, J.D.'s potential to relapse in his chemical use, and continued instability in the home.

The district court terminated S.R.D.'s and J.D.'s parental rights in an order filed July 5, 2022. J.D. appeals.

DECISION

The district court's decision to terminate parental rights is discretionary. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). However, the district court may terminate parental rights only for "grave and weighty reasons." *In re Child of Simon*, 662 N.W.2d 155, 162 (Minn. App. 2003). Furthermore, a statutory basis for termination must exist, and termination must be found to be in the child's best interests. Minn. Stat. § 260C.301, subds. 1(b), 7 (2022); *In re Welfare of K.L.W.*, 924 N.W.2d 649, 653 (Minn. App. 2019), *rev. denied* (Minn. Mar. 8, 2019).

Appellate courts "review the termination of parental rights to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (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." *In re Welfare of Child. of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012) (quotation omitted). A district court's determination that a statutory basis exists to terminate parental rights is reviewed for an abuse of discretion. *In re Welfare of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012).

We give "considerable deference" to the district court's decision to terminate parental rights. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). However, we also "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998); *see also In re*

Welfare of S.Z., 547 N.W.2d 886, 893 (Minn. 1996) (stating that appellate courts "exercise[] great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result"). This court affirms termination "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." *S.E.P.*, 744 N.W.2d at 385 (citation omitted).

The district court terminated J.D.'s parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5), which states that the district court may terminate parental rights if it determines that "following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Under certain circumstances detailed in the statute, there is a presumption that reasonable efforts have failed to correct the conditions leading to out-of-home placement. *Id.*

With this statutory framework in mind, we turn to J.D.'s arguments.

I. The district court did not abuse its discretion by determining that J.D. failed to correct the conditions leading to out-of-home placement.

In ruling that termination of J.D.'s parental rights was appropriate under Minn. Stat. § 260C.301, subd. 1(b)(5), the district court stated:

> Recognizing that it takes *very little* for [J.D.] to rebut this presumption [that the county's reasonable efforts have failed to correct the conditions leading to out-of-home placement], he has not. There is no evidence to support a conclusion that [J.D.] will not continue to abuse chemicals without continued appropriate treatment, followed by aftercare, and continued support in his life, such as ARHMS worker assistance and other supports. There is little evidence

> to support a conclusion that [J.D.] will make a safe home for [A.D.] and ensure she can be healthy and grow as she should.
>
> Aside from (and without regard to) the presumption, which has not been rebutted, there is also clear and convincing evidence that the concerns leading to [A.D.'s] out-of-home placement have not been corrected in spite of the county's reasonable efforts to help [J.D.]. Specifically, [J.D.] has not participated in services to help him address his mental health concerns, his parenting skills, and his chemical use. [A.D.'s] physical health was detrimentally impacted by all of these things.

Here, the district court determined both that it is statutorily presumed that the county's reasonable efforts failed to correct the conditions leading to the out-of-home placement and—apart from the statutory presumption—that despite the county's reasonable efforts, J.D. did not correct the conditions leading to the out-of-home placement.

The district court's order included ample findings of fact identifying the concerns that initially led to A.D.'s out-of-home placement and which of those concerns had not been corrected at the time of the TPR trial. These concerns included J.D.'s chemical use, mental health, parenting skills, and inability to maintain a safe and stable home environment for A.D. County worker Juhl testified that J.D. (1) never completed the outpatient chemical-dependency treatment that his September 2021 chemical-use assessment recommended; (2) repeatedly stated that he did not need chemical-health services and blamed S.R.D. for his positive drug-screen results; (3) had difficulty gaining approval for another treatment program after his March 2022 chemical assessments due in part to "his history with the treatment centers, and their feeling that he has no desire to make a positive change"; and (4) was not consistently compliant with meeting the

family-resource worker to count his prescription medications until the end of March 2022, after the TPR petition had been filed. Thus, the district court's ongoing concerns about J.D.'s chemical use are supported by the record.

Multiple professionals expressed significant doubts about J.D.'s mental health and his ability to provide a safe and stable home. Juhl testified that J.D. had not complied with aspects of his case plan addressing his mental health. Specifically, at the time of trial, J.D. had not yet begun working with an ARMHS worker, as his domestic-violence assessment recommended. Juhl and the GAL both expressed concern that J.D. was not willing to internalize and utilize the parenting-skills resources and mental-health services that the county provided. The GAL and Dr. Dahlen also cited concerns about J.D.'s power and control issues within the home. We therefore conclude that the district court's concerns on these matters are supported by the record.

J.D. also argues that his parental rights should not be terminated because he substantially completed his case plan. We reject that argument for two reasons. First, as noted above, the record supports the district court's concerns about J.D.'s chemical use, mental health, and inability to provide a safe and stable home. Second, in *In re Welfare of Child of J.K.T.*, the appellant-mother posited that because she completed her case plan, clear and convincing evidence did not support termination under Minn. Stat. § 260C.301, subd. 1(b)(5). 814 N.W.2d 76, 89 (Minn. App. 2012). This court rejected that argument, noting that while certain conditions can generate a statutory presumption that reasonable efforts failed to correct the conditions leading to out-of-home placement, there is no

"converse presumption" that "completion of the case plan amounts to a correction of [the] conditions" leading to out-of-home placement. *Id.*

Rather, "[a] parent's substantial compliance with a case plan may not be enough to avoid termination of parental rights when the record contains clear and convincing evidence supporting termination." *Id.* Here, as noted, J.D.'s chemical dependency and mental health were conditions that contributed to A.D.'s removal from the home in May 2021. The record contains substantial evidence showing that J.D. had not corrected these conditions by the time of the TPR trial. And even if J.D. had substantially completed his case plan, the mere fact that he did so would not preclude a termination of his parental rights when that termination is otherwise supported by the record, as it is here.

Finally, J.D. makes a conclusory argument that the evidence in the record did not establish that the conditions giving rise to termination would continue for a "prolonged, indeterminate" amount of time. *See In re Welfare of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007) (stating the district court's determination must be based on evidence that the conditions giving rise to the termination will continue for a prolonged and indeterminate period). The district court, however, implicitly rejected this interpretation of the evidence by stating that "self-evident, definitive showings of a parent's fitness and ability to appropriately parent . . . are absent here." In the context of this particular record involving significant chemical-use and mental-health concerns, we understand this to be an implicit determination that J.D. will not be able to adequately parent A.D. within the reasonably foreseeable future. *See In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009) (reviewing a district court's implicit finding of fact).

In sum, we conclude that substantial evidence in the record shows that, despite the county's reasonable efforts to aid him, J.D. did not correct the conditions leading to A.D.'s out-of-home placement, and therefore, the district court did not abuse its discretion by basing its termination of his parental rights on his failure to do so.[1]

II. The district court did not abuse its discretion by determining that the county made reasonable efforts to reunite J.D. with A.D.

J.D. next argues that the county did not establish that it made reasonable efforts to reunite him with A.D. because the county did not "allow him the reasonable opportunity to demonstrate his parenting" outside of the supervised-visitation center.

Minn. Stat. § 260.012(f) (2020)[2] states that the county social-services agency has the burden of demonstrating that it has made reasonable efforts to reunite the family through "the exercise of due diligence . . . to use culturally appropriate and available services to meet the needs of the child and the child's family." When determining whether

[1] J.D.'s primary argument on appeal was framed as a challenge to the district court's ruling that J.D. did not rebut a statutory presumption that the county's reasonable efforts did not correct the conditions leading to his child's out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5)(i)-(iv) (identifying circumstances that create a presumption that a parent failed to correct conditions leading to a child's out-of-home placement). Because we affirm the district court's determination that the county's reasonable efforts actually failed to correct the conditions leading to out-of-home placement, any error in the district court's ruling that those efforts were presumed to have failed is harmless. Therefore, we decline to address J.D.'s argument challenging the district court's determination that he failed to rebut the presumption. Were we to address that point, however, we would affirm the district court's determination.

[2] The legislature revised section 260.012 in 2022, and the revisions took effect August 1, 2022, pursuant to Minn. Stat. § 645.02 (2022). Because the TPR hearing took place in May and June 2022, prior to the effective date of the revisions, we review the decision under the former version of the statute.

the county made reasonable efforts toward reunification, the district court must consider whether services to the child and family were "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Minn. Stat. § 260.012(h) (2020).

"At a minimum, 'reasonable efforts' requires the responsible agency to provide those services that would assist in alleviating the conditions leading to the determination of dependency." *In re Welfare of M.A.*, 408 N.W.2d 227, 235-36 (Minn. App. 1987), *rev. denied* (Minn. Sept. 18, 1987). We review whether these services "go beyond mere matters of form, such as the scheduling of appointments, so as to include real, genuine help to see that all things are done that might conceivably improve the circumstances of the parent and the relationship of the parent with the child." *In re Welfare of J.A.*, 377 N.W.2d 69, 73 (Minn. App. 1985), *rev. denied* (Minn. Jan. 23, 1986).

The district court found that the county provided the following services to support reunification of A.D. with her parents: child-protection case management, timely referrals for services, coordination of services, case-plan monitoring, transportation assistance and gas vouchers, home visits, foster-home visits, office visits, drug testing, an in-home family-resource worker, a Rule 25 chemical-use assessment, funding for treatment, intensive outpatient chemical-dependency treatment, a capacity-to-parent evaluation, individual therapy, medication assessment/management, family-group decision-making, supervised visitation with A.D., and parent coaching. The record supports the finding that the county provided these services to J.D.

J.D. does not dispute that the county offered those services to him. Instead, he cites to *In re Welfare of Children of B.M.*, 845 N.W.2d 558 (Minn. App. 2014), to argue that the county's reasonable efforts must include providing the parent with a reasonable opportunity to parent, which, he further argues, means the county should have allowed J.D. unsupervised parenting time with his child. J.D.'s reliance on that case is misplaced. Although this court in *B.M.* took issue with the fact that the appellant's case plan allowed for only weekly, supervised visits with his child, we did not base the decision to reverse the district court's TPR order on the type of visitation allowed in that case. 845 N.W.2d at 566. We reversed the district court's TPR order in *B.M.* because the district court did not make any finding that the county actually made reasonable efforts to reunify the appellant with his child. *Id.*

Here, notwithstanding that the county made reasonable efforts by providing parenting-skills coaching to J.D. through the family-resource worker and the supervised-visitation center, the GAL, Dr. Dahlen, and Juhl all expressed concern about J.D.'s inability and unwillingness to learn and implement new parenting skills and make good parenting choices. Juhl testified that she was concerned about J.D.'s "lack of desire to learn, frequently stating that he has successfully raised three children and has nothing to learn" about parenting. She also testified that J.D. was asked to stop bringing food to visits with A.D. after he repeatedly brought inappropriate food to feed her.

The evidence in the record supports the county's decision not to allow unsupervised visits between J.D. and A.D. And J.D. did not present evidence to the district court to show that he has the parenting skills to safely parent A.D. outside of a supervised setting.

Therefore, we conclude that the district court did not abuse its discretion in determining that the county made reasonable efforts to reunify J.D. and A.D. based on its provision of numerous services that met the criteria in Minn. Stat. § 260C.012(h).[3]

Affirmed.

[3] We also note that "[t]he child's best interests is a statutory criterion in any TPR proceeding." *D.L.D.*, 771 N.W.2d at 546; *see* Minn. Stat. § 260C.301, subd. 7 ("In any proceeding under this section, the best interests of the child must be the paramount consideration."); *In re Termination of Parental Rts. of Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003) (holding that the district court must consider a child's best interests and explain the reasoning for its decision to terminate parental rights in a TPR proceeding). Because J.D. did not challenge the district court's determination that termination was in the child's best interests, we do not review this issue on appeal.