STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1145

In the Matter of the Welfare of the Child of: B. A. B. and B. J. J., Parents.

Filed January 23, 2023
Affirmed
Smith, John, Judge[*]

Cottonwood County District Court
File No. 17-JV-22-37

Rene Diebold, Diebold Law Firm, L.L.C., Marshall, Minnesota (for appellant-father B.J.J.)

Nicholas Anderson, Cottonwood County Attorney, Windom, Minnesota (for respondent Des Moines Valley Health and Human Services)

Carma Nordahl, Sheldon, Iowa (Guardian ad Litem)

Considered and decided by Frisch, Presiding Judge; Slieter, Judge; and Smith, John, Judge.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court's order terminating parental rights because the district court had subject-matter jurisdiction over the termination proceedings and the district court's findings of fact are not clearly erroneous. Further, the district court did not abuse its discretion in (1) determining that at least one statutory basis for termination of

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

appellant's parental rights was present or (2) in finding that termination of appellant's parental rights was in the child's best interest.

FACTS

The child (child), who is the subject of this case, was born on September 29, 2019, and was two years and nine months old at the time of the trial. Child was adjudicated a child-in-need-of-protection and services (CHIPS) in mother's care on both November 15, 2019, and February 4, 2022. On December 2, 2021, Cottonwood County's child welfare agency Des Moines Valley Health and Human Services (DVHHS) removed child from mother's home and placed him in emergency protective custody. Child has remained in foster care ever since.

Child's maternal grandmother, S.W., provided foster care for him throughout the first CHIPS case and at the beginning of the second CHIPS case. When S.W. saw child in December 2021, she observed that he was in "really rough shape." Child had a rash that covered his body, was malnourished, and had lost quite a bit of weight. Child's head appeared bigger than when S.W. last saw him in the summer of 2021, but his arms were smaller. He had also regressed developmentally; he was not talking much and had an apparent problem with walking, favoring one leg over the other. In December 2022, child was diagnosed with acute hip dysplasia. The doctor explained that while hip dysplasia is usually corrected at a younger age with a less invasive measure such as a harness, child must receive surgery soon and should not wait any longer. The doctor even stated that he had never known of any other case of untreated dip dysplasia in a first-world country. The surgery turned out to be more extensive than what the doctors had anticipated. They had

to insert bars into the child's hip, and another surgery needs to be scheduled later to remove those bars. Despite being offered to participate in child's medical appointments, neither parent attended any pre-op appointments or the surgery itself.

Since March 9, 2022, child has been living with his uncle D.W., who is mother's brother, and C.W., who is D.W.'s wife. D.W. and C.W. have two minor children of their own, and C.W. became a licensed foster care provider by the time of trial. Even before child moved to live with her family, C.W. interacted with him almost daily because S.W. also took care of her children after school. Child is now healthy, and he is bonding with D.W. and C.W.'s children.

Appellant-father B.J.J. first became aware that he was the alleged father on January 18, 2022, when he received DNA test results showing a 99.999% probability that he is the biological father of child. DVHHS developed a case plan for him, focusing on ensuring the stability in his home and his mental health. DVHHS also wanted to make sure that appellant had no issues with chemical use, and that there were not any concerns about anyone else in the home.

Appellant has cooperated with signing releases, getting his chemical use assessment, and talking with DVHHS most of the time when requested. He completed a diagnostic assessment on April 21, 2022. Appellant's chemical assessment did not reveal any chemical addiction, but it did contain a recommendation of abstaining from chemicals. Inspection of appellant's home revealed that appellant has maintained safe and stable housing, and that he has a space to set up for child. While appellant complied with some aspects of the case plan, he failed to substantially comply with the two most important

aspects in his case plan: he did not maintain contact with child, and he did not follow through individual counselling for his mental health issues.

In addition to being a parent to child, appellant also has a daughter who is approximately 11 years old. Appellant had primary custody of his daughter. However, due to an order for protection (OFP), appellant's daughter was removed from his care during most of the case planning for child's second CHIPS case. Appellant did not regain custody of his daughter until early June 2022, which was just a couple of weeks before the trial. Not having his daughter had been a significant stressor for appellant. He could not talk to DVHHS about child without reverting to discuss how difficult it was to not have his daughter. On several occasions, appellant expressed that if he just had his daughter back, his mental health and life would be better. DVHHS viewed these statements as a "red flag" and explained to appellant that it is the parent's job to provide structure, routines, and stability for the children, not the other way around. Although DVHHS attempted to focus appellant's attention onto the case with this child, the conversations all circled back to him not having his daughter and feeling wronged by his parents. When DVHHS recommended mental health services to appellant, he claimed that he just needs to get his daughter back, and he would no longer have mental health concerns.

DVHHS offered appellant two visits a week when child was in foster care. Appellant visited child for the first time shortly after receiving the DNA test results on January 18, 2022. By the time of trial, appellant had visited him four times in total, three of which were in-person. Appellant's last visit on June 3, 2022, was a virtual visit where

he also included his daughter without first obtaining permission from DVHHS. As of the trial date, child still does not recognize appellant.

During the trial and on appeal, appellant claimed that DVHHS's scheduling was the primary reason that he missed the visits. DVHHS initially scheduled his twice-weekly visits at 8:00 a.m. to best accommodate child's schedule and other visits. Appellant did not attend those visits and wanted to schedule the visits "more around supper time." Appellant had been working as a maintenance person for an individual who owns several properties since October 2021. Appellant claims that he cannot visit child at the scheduled time because he is "on call at all times" and needs to fix things right away when anything breaks. DVHHS eventually moved the visits to 3:30 p.m., but appellant insisted that he needed the visits to be even later in the day and preferably around supper time. Appellant claims that he cannot risk losing his job because he needs to provide for his children. DVHHS told appellant that the agency can make an exception if there is written documentation from his employer stating that the scheduled visitation time would not work for his employment. Appellant never provided such documentation. DVHHS called and emailed his boss but never heard anything back.

Appellant also had trouble getting up early for morning visits. At trial, he testified that he now wakes up at six o'clock in the morning because he has his daughter back. But during most of child's case plan, he felt that here was "no purpose or no reason" to go to bed early and wake up early. DVHHS tried to arrange a medical evaluation to find out if any medical conditions might have been the cause for appellant's inability to get up in the

morning or his back pain. He refused. Appellant admitted at trial that he missed visits because he was struggling with issues about his daughter.

DVHHS requested random urinalysis (UA) before each visit. Appellant was frustrated by these UAs and refused to come to DVHHS's office to provide them. Even after DVHHS lifted the UA restrictions on June 14, 2022, appellant never visited child. Appellant contends that DVHHS never listened to or considered his needs.

Appellant also claims that he missed visits because of vehicle problems. In February 2022, DVHHS offered to set up transportation so that he could attend the visits. Appellant refused and told DVHHS that the problem was that he did not have his daughter. On March 31, 2021, appellant's attorney emailed DVHHS at noon, saying that appellant could not make the visit that day because his vehicle broke down. DVHHS offered to arrange transportation for him, but appellant still cancelled the visit. On other occasions, appellant had cancelled visits because: he had struggles with court in his criminal matter, he had back pain, it was too hot and windy and he had paint on his clothing. DVHHS social worker K.H. testified at trial that appellant appeared very enthusiastic and cooperative during their initial meeting. He expressed a desire to develop a case plan and to be a placement option for child. As time went on, however, appellant's interest and attention to child deteriorated.

In April 2022, DVHHS petitioned to terminate the parental rights of both parents. Following a court trial on June 28, 2022, the district court granted the petition and terminated both parents' parental rights to child. This appeal follows.

DECISION

I. The district court had subject-matter jurisdiction to conduct the termination proceedings before the adjudication of paternity.

Appellant argues that, without a formal adjudication of a parent-child relationship, the district court lacked subject-matter jurisdiction to terminate rights that he did not possess at the time of trial. We disagree.

This court has recently held that "a district court has subject-matter jurisdiction over a case in which a petitioner seeks to terminate a biological father's parental rights even if the biological father's parentage has not been formally adjudicated." *In re Welfare of Child of S.B.G.*, 981 N.W.2d 224, 228 (Minn. App. 2022), *rev. granted* (Minn. Dec. 2, 2022). If a party raises an issue concerning the existence or non-existence of a party's parentage at the district court, the court needs to determine that issue. *Id.* However, "an alleged absence of parentage does not defeat a district court's subject-matter jurisdiction over a termination-of-parental rights [(TPR)] case." *Id.*

Here, appellant never disputed his parentage to the district court. To the contrary, the DNA test results established his parentage by a 99.999% probability, and appellant has held himself out as the child's father since January 2022. The district court made a finding of fact that appellant was the child's father, and he does not claim that the finding is clearly erroneous. The district court therefore properly treated him as the presumed father.

II. The factual findings of the district court were not clearly erroneous.

Appellant challenges several of the district court's findings of facts. We review a district court's factual findings for clear error. *In re Welfare of J.R.B.*, 805 N.W.2d 895,

901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). "A finding is clearly erroneous only if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred." *In re Welfare of J.H.*, 844 N.W.2d 28, 35 (Minn. 2014) (quotations omitted). Having carefully reviewed the record, we are satisfied that the findings that appellant challenges are not clearly erroneous. *See In re Civil Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (addressing the clear error standard of review and stating, among other things, that "an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court" (quotation and citation omitted)); *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* in appeal termination of parental rights appeal), *rev. denied* (Minn. Dec. 6, 2021).

III. The district court did not abuse its discretion in determining that at least one statutory basis was proved to terminate appellant's parental rights.

Appellant contends that the district court abused its discretion in determining that the statutory bases for termination of his parental rights were present. We are not persuaded.

While the district court identified two statutory bases to terminate appellant's parental rights, we will affirm "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 Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted). The petitioner "must prove a consistent pattern of specific conduct or specific conditions

existing at the time of the hearing that, it appears, will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child." *In re Welfare of Child. of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008) (quotation omitted). We review the district court's factual findings for clear error, but "each determination of whether a particular statutory basis for termination of parental rights is present is reviewed for an abuse of discretion." *J.R.B.*, 805 N.W.2d at 901.

A district court may terminate parental rights when clear and convincing evidence shows that a "parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent," and that "reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition." Minn. Stat. § 260C.301, sub. 1(b)(2) (2022). "A parent's failure to satisfy key elements of the court-ordered case plan provides ample evidence of lack of compliance with the duties of the parent and child relationship." *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003).

The record shows that while appellant complied with some aspects of the case plan, such as maintaining stable and safe housing, he failed to substantially comply with the two most important aspects: maintaining contact with child and following through with individual counselling for his mental health issues. Having found that appellant only visited child four times in six months, that he never attended any of child's medical appointments, and that he refused to attend individual therapy without his daughter, the district court stated in its termination order that appellant has shown through his actions that child is not a priority for him. We therefore see no abuse of discretion in the district

court's determination that appellant has substantially, continuously, and repeatedly refused or neglected to comply with his parental duties, which constitutes a statutory basis for termination of parental rights.

A district court may also terminate parental rights if clear and convincing evidence shows that a parent is palpably unfit because of "specific conditions directly relating to the parent and child relationship . . . that render[] the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child." Minn. Stat § 260C.301, subd.1(b)(4) (2022). Substantial facts in the record support the district court's finding that appellant's lack of interest in child and inability to acknowledge the need to work on his individual mental health issues directly relate to his failure to complete the case plan and to build even a minimal bond with child. The district court expressly found that "nothing in [appellant's] action demonstrates that he loves and cares for [the child]."

Despite DVHHS's reasonable efforts to build a relationship between appellant and child, such as arranging transportation, changing visitation time to suit appellant's schedule, and making referrals for individual therapy, appellant was too occupied with his own stress relating to his daughter and could not acknowledge this child's need. Child still did not know appellant by the time of trial, and nothing in the record indicates that appellant would change his mentality and behavior in the reasonably foreseeable future. We therefore conclude that the district court did not abuse its discretion in determining that at least one statutory basis was present to terminate appellant's parental rights.

IV. The district court did not abuse its discretion in determining that it was in the best interest of the child to terminate appellant's parental rights.

Appellant claims that termination of his parental rights is not in the best interest of child. We are not convinced.

Even if a statutory basis for termination of parental rights is present, a district court must determine that termination of parental rights is in the child's best interest before ordering the termination. *S.E.P.*, 744 N.W.2d at 385. We apply an abuse-of-discretion standard of review to a district court's determination that the termination of parental rights is in a child's best interests. *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 657 (Minn. App. 2018). A best-interests analysis should include consideration and evaluation of "all relevant factors," Minn. Stat. § 260C.511(a) (2022), including "a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact," Minn. Stat. § 260C.511(b) (2022). This court has identified three factors that must be balanced when considering a child's best interests: "(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); *see also* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii).

Looking at the three best-interest factors, the district court properly noted that child was too young to express an informed interest, and that appellant testified that he wants custody of child. The third factor regarding child's competing interest therefore carries the weight. The district court considered testimony from appellant's caseworker K.H. and

child's guardian ad litem (GAL). K.H. opined that it is in child's best interests to terminate the parental rights of appellant because child does not have a bond with appellant, and appellant appears to view his relationship to child to merely help him bond with his daughter. Child's GAL similarly expressed that terminating both parents' parental rights is in child's best interests because child needs a custodian who can take care of his emotional, physical, and medical needs.

Child was first placed in foster care in October 2019 when he was approximately one month old and has been in continuous foster care since December 2021. Child began living with D.W. and C.W. on March 9, 2022. Child's grandmother, S.W., his uncle D.W. and D.W.'s wife C.W. were the only family members who attended the medical appointments for child and provided a stable safe environment for him. Child is now healthy and has bonded with D.W. and C.W.'s children. Under our caselaw, a child's need for permanency and stability is an important factor in the court's best-interests analysis. *See In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004) (affirming a district court's best-interests determination because the child's immediate need for permanency as well as stable, nurturing, drug-free caretakers outweighed any competing interests). We therefore conclude that the district court did not abuse its discretion by determining that termination of appellant's parental rights would be in child's best interests.

Affirmed.