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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1735

In the Matter of the Welfare of the Child of A. G. and S. H., Parents

Filed April 16, 2018
Affirmed
Hooten, Judge

Mower County District Court
File No. 50-JV-17-1013

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Todd Schoonover, Austin, Minnesota (guardian ad litem)

Considered and decided by Cleary, Chief Judge; Hooten, Judge; and Randall, Judge.[*]

UNPUBLISHED OPINION

HOOTEN, Judge

The district court terminated appellant-father's parental rights following a court trial. On appeal, he argues that there is no statutory basis to terminate his parental rights

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

and that termination is not in the best interests of his daughter. Because the district court did not abuse its discretion, we affirm.

FACTS

Appellant S.H. is the father of K.H., who was born in March 2014. K.H. lived full-time with her mother, A.G., until October 3, 2016, when Mower County Health and Human Services (MCHHS) removed the child from her mother's care because of her mother's drug use. After MCHHS filed a Child in Need of Protection or Services petition, S.H. was awarded temporary custody of K.H. A.G. later entered an admission that K.H. was in need of protection or services. In March 2017, the district court ordered that a permanency petition be filed due to A.G.'s inability to comply with her case plan. MCHHS then filed a permanency petition on May 3, requesting that the permanent custody of K.H. be transferred to S.H.

S.H. suffers from a bevy of physical ailments, including issues with his feet, his shoulders, and ruptured discs in his back requiring surgery. These ailments cause him a great deal of pain and affect his ability to walk. S.H. has also been diagnosed with bipolar disorder and depression. For his physical and mental health issues, S.H. takes several medications, including oxycodone, lithium, methadone, and antidepressants. He also smokes medical marijuana to manage his pain. S.H. has used narcotic drugs in the past, including cocaine, LSD, and hallucinogenic mushrooms, and used to drink heavily. But there is no indication that he currently uses these drugs or drinks. And he has attended four chemical dependency treatment programs.

Before the resolution of the permanency petition, MCHHS and K.H.'s guardian ad litem requested that K.H. be put in emergency protective care. This was done in response to comments made by S.H. at a family circle meeting. At the meeting, S.H. indicated that he was unable to care for K.H. and another minor non-joint child because of the effects of his health issues and the medications that he takes. When his adult daughter asked him who would take care of the children if he was not able, S.H. responded "I don't know. Santa Claus." He also fell asleep at the meeting and became angry after the same daughter woke him. Subsequent to the meeting, K.H. was removed from S.H.'s care, and on June 16, the district court held an emergency protective care hearing. K.H. was eventually placed with her maternal grandfather. And on August 10, MCHHS filed an amended permanency petition, seeking to terminate S.H.'s parental rights.

On September 28, A.G. agreed to voluntarily terminate her parental rights. The district court then held a court trial for S.H. on September 28 and 29. A.G. testified first at trial, explaining that although she had initially been in favor of permanent custody being awarded to S.H., she had since changed her mind. She expressed several concerns. First, she did not believe that S.H. was physically able to take care of K.H. full-time due to his foot, neck, and back ailments. Second, she did not believe that S.H. was mentally able to take care of their child. She specifically cited the effect that his pain medications have on his mood, his frustration due to his physical ailments, and his anger management issues related to what she described as a manic depressive disorder. Finally, A.G. expressed concerns about abuse, saying that she and S.H. had "a record of abuse against one another" and that "me and him have been with domestic abuse three, four times in the last five

years." A.G. testified that S.H. had never physically harmed K.H. or directed his anger at the child, but that she nonetheless did not "want to have to think that something would happen to one of the children" and was "scared for . . . [K.H.'s] safety a couple of times." A.G. also felt that her daughter was doing a lot better mentally since being removed from S.H.'s care and placed with A.G.'s father.

Desirae Meyer, the child protection social worker on K.H.'s case, was the next person to testify. She explained that even prior to S.H.'s statements regarding his inability to parent K.H. at the family circle meeting, there had been concerns about S.H. not following through with the action plan put in place for him and not accomplishing some of its goals. Meyer also discussed S.H.'s use of medication. She explained that S.H. had made comments that he sometimes briefly lost track of his children and that the medications sometimes made him tired. Meyer also noted that S.H. seemed somewhat confused at times. She also explained that S.H. had been offered services for about 11 months but did not start participating in services until K.H. was removed from his care. Meyer indicated that despite this recent participation in services, the underlying concerns about his parenting ability had not been eliminated. And she recommended that terminating S.H.'s parental rights and placing K.H. with a relative would be in the child's best interests.

K.H.'s guardian ad litem, Todd Schoonover, testified next. He described some of his interactions with S.H., stating that S.H. often appeared to be confused, angry, and in great pain. He noted that S.H. was struggling physically. Schoonover was present at the family circle meeting that triggered K.H.'s removal from her father's care. Schoonover

explained that S.H. talked about his medication at the meeting and how he would sometimes "get blanked" and confused. This apparently caused S.H. to lose track of the whereabouts of K.H. and the non-joint child, though he later found the two children outside. At the meeting, S.H. admitted that he was struggling to take care of his children. Schoonover explained that although S.H. had done assessments since the family circle meeting, S.H. had not followed through with many of the assessment's recommendations. As a result, Schoonover still had the same concerns that he had coming out of the family circle meeting. Schoonover testified that he did not believe that it would be safe for K.H.to return to her father and that she would be in physical danger if returned to his care. In contrast, Schoonover said that K.H. was thriving in her maternal grandfather's care.

Barbara Carlson, a mental health professional, was the county's last witness. Carlson conducted a parenting capacity evaluation of S.H. which was admitted as an exhibit at trial. She explained that S.H. had physical ailments that would likely make it difficult for him to parent a small child. She also explained that S.H. had difficulties with stress management, noting that in the domestic violence inventory, he scored a 97% on his stress-coping skill, meaning that when confronted with stress he tends to "disorganize or kind of fall apart." The evaluation indicated that in addition to his poor stress-coping skill, S.H. scored poorly in other parts of the domestic violence inventory. He scored an 88% on the violence scale and a 77% on the alcohol scale, indicating that he is in the "problem risk" range. He also scored a 90% on the drug scale and a 95% on the control scale, indicating that he is in the "severe problem risk" range. The evaluation also contained a criminal history which included several criminal convictions for domestic abuse and

driving while impaired. Carlson concluded that it would not be safe for a child to be in S.H.'s care and that the chances were "pretty slim" that S.H. would be able to improve enough to safely parent a child.

S.H. called his brother to testify. The brother testified that, from what he had seen, S.H.'s physical ailments did not prevent him from parenting his children.

S.H. was the last person to testify. He explained that he had some physical ailments, but that his condition would improve after an upcoming back surgery and six-week recovery period. S.H. also explained that he had participated in parenting education classes as recommended by the case plan, and though he did not find all of the programs to be useful, he felt like he did learn some things about parenting from one of the programs. And S.H. testified that he was seeing a therapist and that he was consulting with a doctor regarding his medication use. He testified that K.H. was emotionally attached to him and that terminating his parental rights would have a harmful long-term impact on her.

On October 13, 2017, the district court terminated S.H.'s parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5) (2016). This appeal follows.

DECISION

I.

S.H. first argues that the district court abused its discretion in finding that there was a basis to terminate his parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5). When reviewing whether a statutory basis for terminating parental rights exists, we review underlying facts for clear error and the "determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In*

re Welfare of M.A.H., 839 N.W.2d 730, 740 (Minn. App. 2013) (quotation omitted). Section 260C.301, subdivision 1(b)(5) says that a parent's rights may be terminated if the district court finds:

> (5) that following the child's placement out of the home, reasonable efforts . . . have failed to correct the conditions leading to the child's placement. It is presumed that reasonable efforts under this clause have failed upon a showing that:
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> (i) . . . In the case of a child under age eight at the time the petition was filed . . . the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;
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> (ii) the court has approved the out-of-home placement plan . . . ;
>
> (iii) conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan; and
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> (iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

S.H. argues that the third requirement—the conditions leading to out-of-home placement remain uncorrected—was not met. He asserts that the underlying condition leading to K.H.'s placement was A.G.'s drug use. And that because A.G.'s parental rights were terminated, the underlying condition leading to placement had in fact been corrected. It is true that K.H. was initially taken from her mother's care because of her mother's drug use. However, K.H. was removed from her father's care because of the concern raised in the family circle meeting that he is unable to parent K.H. or supervise her properly. This is significant because the case plan finalized on November 1, 2016 had two main goals:

safety and well-being. The safety goal required that A.G. and S.H. "demonstrate that they can physically and emotionally care for the child while sober." The well-being goal stated that A.G. and S.H. "need to ensure that the child's needs are being met such as her physical, mental, emotional, and developmental needs." There was ample testimony that S.H. is not able to care for K.H. because of his physical limitations and that he is unable to care for her emotionally because of his anger and stress-management issues. We conclude that the record supports the district court's determination that the underlying condition that caused K.H. to be removed from his care—his inability to provide a safe environment for his daughter—has not been corrected.

S.H. argues that the district court erred because he substantially complied with the case plan. This argument is misplaced. Substantially complying with the placement plan is relevant only if the district court tries to apply the presumption that the reasonable efforts failed under Minn. Stat. § 260C.301, subd. 1(b)(5)(iii) based on a parent not substantially complying. But the district court may still terminate parental rights if reasonable efforts have failed to correct the conditions leading to the child's placement. *See In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 89 (Minn. App. 2012) ("The critical issue is not whether the parent formally complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child."). If the underlying conditions leading to placement have not been corrected, it does not matter whether S.H. substantially complied with the case plan.

The caselaw is clear that the presence of a parent's mental illness or intellectual disability does not alone support termination of parental rights, but termination has been

found to be appropriate when the mental illness or intellectual disability "was likely to be detrimental to the child" or "directly affect the ability to parent." *In re Children of T.R.*, 750 N.W.2d 656, 661–62 (Minn. 2008); *see also In re Welfare of P.J.K.*, 369 N.W.2d 286, 290–91 (Minn. 1985); *In re Welfare of Children of B.M.*, 845 N.W.2d 558, 563 (Minn. App. 2014); *In re the Matter of K.M.T.*, 390 N.W.2d 371, 373–74 (Minn. App. 1986). And we believe that, in this situation, the logic that applies to parents with mental illnesses or intellectual disabilities also applies to parents with physical disabilities or ailments. Accordingly, we reiterate that S.H.'s physical ailments, on their own, do not provide a sufficient basis to terminate his parental rights, but that his inability to provide a safe environment for K.H. controls. Based upon this record, we conclude that the district court did not abuse its discretion by determining that there was a statutory basis for terminating S.H.'s parental rights.

II.

S.H. next argues that the district court erred in finding that it was in K.H.'s best interests to terminate S.H.'s parental rights. If there is a statutory basis for terminating parental rights, then "the best interests of the child must be the paramount consideration" for the district court in deciding whether to terminate parental rights. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011) (quoting Minn. Stat. § 260C.301, subd. 7), *review denied* (Minn. Jan. 6, 2012). To determine what is in the child's best interests, courts 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." *Id.* (quotation omitted). "Competing interests include

such things as a stable environment, health considerations and the child's preferences." *Id.* (quotation omitted). We review the district court's decision that termination of parental rights is in the child's best interests for an abuse of discretion. *Id.*

S.H. asserts that both he and K.H. have an interest in preserving their relationship and that any competing interest is speculative. While it may be true that they both have an interest in preserving the relationship, there exists a strong competing interest. A.G. testified that she sometimes worried about K.H.'s safety when her daughter was in S.H.'s care and that she did not believe that S.H. could take care of K.H. Carlson testified that S.H.'s history of domestic-abuse-related convictions and his domestic violence inventory scores created safety concerns for K.H. Schoonover testified that it was in K.H.'s best interests to have S.H.'s parental rights terminated because he did not believe that S.H. could keep her safe. Meyer testified that she did not believe that K.H. would be safe if she were returned to S.H. and that it was in her best interests to be placed with someone else. The district court found A.G., Carlson, Schoonover, and Meyer credible. And we generally defer to the factfinder's credibility determinations. *In re Welfare of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007). We also note that approximately a year and a half has passed since K.H. was taken from her mother's home and we are sensitive to her need for permanency. Because there is a serious competing interest—K.H.'s safety and need for permanency—we conclude that the district court did not abuse its discretion in determining that terminating S.H.'s parental rights is in K.H.'s best interests.

Affirmed.