STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0644
A21-0646

In the Matter of the Welfare of the Child of:
L. L. H. and C. A. M., Parents.

Filed November 22, 2021
Affirmed
Ross, Judge

Scott County District Court
File No. 70-JV-20-10028

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Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Klaphake, Judge.[*]

NONPRECEDENTIAL OPINION

ROSS, Judge

Scott County took custody of L.L.H. and C.A.M.'s son after learning that they were using heroin and methamphetamine in their home and leaving drug paraphernalia where

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

their son could access it. The county successfully petitioned the district court to terminate both parents' parental rights after more than a year of trying unsuccessfully to facilitate drug treatment. The parents argue that the county failed to make reasonable efforts toward reunification and that termination is not in the child's best interests. Because substantial evidence supports the district court's finding that the county made reasonable reunification efforts and because the district court did not abuse its discretion by concluding that termination serves the child's best interests, we affirm.

FACTS

The district court heard evidence of the following facts during the termination-of-parental-rights trial. When this case began, C.A.M. (Father), L.L.H. (Mother), and their nine-year-old child (Son) lived together with two of Father's daughters. The family first came to the county's attention by an anonymous report that Mother and Father were using heroin and methamphetamine in their home. Mother and Father denied the accusation, but a police search confirmed the report. Police found trace amounts of heroin and methamphetamine throughout the house. They also found drug paraphernalia, including a backpack full of used hypodermic needles in a bedroom containing children's toys. Son regularly slept in the adjacent bedroom and was sleeping there unattended when police found the evidence.

Police removed Son for his safety, and the county placed him with his grandparents in Iowa on Mother's request. Both parents agreed to comply with a parenting plan requiring them to complete chemical assessments and allow random urinalyses to show their ongoing sobriety. Mother failed to provide a urine sample for the first three tests, asserting that a

past traumatic experience prevented her from providing a sample. Father failed to provide a sample for his first two tests, and his third test revealed his methamphetamine and opiate use. Because Mother and Father were lying to the county and violating the parenting plan, the county petitioned the district court to find Son was in need of protection or services. Two months later, Mother admitted to the petition and the county took custody of Son.

Over an uncharacteristically lengthy period extended because of pandemic-related reasons, the county made and the district court approved six out-of-home placement plans outlining what Mother and Father needed to address before Son could return home. To address their chemical health, the agency required them to submit to regular drug testing, complete chemical assessments, and follow the treatment recommendations of those assessments. The county provided three types of drug testing: random urinalysis testing, sweat-patch testing, and hair-follicle testing.

Mother regularly tested positive for methamphetamine and opiates. She often tried to undermine the positive results of her sweat-patch testing by tampering with the patches. She completed three chemical assessments early on, and she completed a fourth nine months after the district court ordered her to do so. The county offered to help Mother follow the recommendations of the first two assessments and find treatment options, but she refused. The fourth chemical assessment, completed one week before trial, concluded that Mother "has no awareness of addiction . . . and does not want or is unwilling to explore change." At trial, Mother denied that she was addicted to drugs and disputed the accuracy of her many positive drug tests. She denied ever tampering with her patches. The district court did not believe her testimony.

Father also regularly tested positive for illegal drugs. He also tampered with his sweat-patch tests. He did attempt drug-use treatment. He began outpatient treatment through the Native American Community Clinic. But during treatment he regularly tested positive for methamphetamine, heroin, and opiates. He had a period of sobriety a year into the case plan, but he relapsed. Father restarted outpatient treatment with the Native American Community Clinic, but he continued to test positive. The county urged Father to enter alternative, more comprehensive treatment options, but he did not do so until immediately before trial and then left that treatment 14 days later, claiming he left for medical reasons. The district court did not find his explanation credible.

The county also offered other services to the family. To ensure parent-child contact, the county provided gas cards to fund the parents' drives to Iowa. The county made referrals for neuropsychological assessments to address Mother's mental health. It offered safety planning and family group decision-making meetings. And the county offered to help the parents find housing by referring them to a family-unification program.

The district court intermittently believed that the Indian Child Welfare Act (ICWA) applied to this case. The county learned that Son may be eligible for enrollment in the St. Croix Chippewa Indians of Wisconsin the day after receiving the initial report of the parents' in-home drug use. The county communicated with the tribe during the early stages of the case, consulting it about Son's placement in Iowa and informing it when it filed the child-protection petition. One month after the initial report, the tribe informed the county that Son was ineligible for enrollment. The district court then found that ICWA did not apply. About one year into the case, the county learned that Son might be eligible for

enrollment in four other tribes. The county contacted those tribes and recontacted the St. Croix Chippewa Indians of Wisconsin to ensure Son was ineligible. The tribe confirmed Son was ineligible but asked the county to allow the tribe to assume jurisdiction of the case. The county told the tribe it would not be opposed. At trial, the tribal representative testified that the tribe could have provided more services if they were more involved in the case. After the county had heard back from all relevant tribes, the district court again determined ICWA did not apply.

The district court terminated Mother's and Father's parental rights to Son. After trial it found that Mother is palpably unfit to be a party to the parent-child relationship, that the county's reasonable efforts had failed to correct the conditions leading to out-of-home placement, and that Son was neglected and in foster care under Minnesota Statutes section 260C.301 subdivision 1(b)(4), (5), and (8) (2020), respectively. As to Father, the district court found that the county's reasonable efforts had failed to correct the conditions leading to out-of-home placement, and that Son was neglected and in foster care under section 260C.301, subdivision 1(b)(5) and (8). The district court found the county made reasonable efforts to reunite the family and that termination is in the best interests of Son. Mother and Father each appealed. We consolidated their separate appeals and now decide them both.

DECISION

Mother and Father challenge the district court's termination decision. A district court may terminate parental rights if clear and convincing evidence establishes that: (1) at least one statutory basis supports termination; (2) the county made reasonable efforts to reunite the family; and (3) termination is in the child's best interests. Minn. Stat.

§ 260C.301, subds. 1(b)(1)–(9), 7, 8 (2020); *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We review a district court's ultimate decision to terminate parental rights for an abuse of discretion, but we review its fact findings for clear error. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). We give considerable deference to the district court's termination decision. *S.E.P.*, 744 N.W.2d at 385. Mother and Father argue specifically that the county did not make reasonable efforts toward reunification and that termination is not in Son's best interests. Their arguments do not convince us the district court abused its discretion when it terminated their parental rights.

In briefing, Mother and Father contend that the county needed to but failed to make active efforts during the time the district court believed that ICWA applied to the case. But they conceded at oral argument that the district court correctly determined that ICWA did not apply to the termination. We therefore review for whether the county made reasonable, rather than active, efforts.

The parents contend the county did not make reasonable efforts toward reunification. Before a district court terminates parental rights, it must find that the county made reasonable efforts to reunite the family. Minn. Stat. § 260C.301, subd. 8. To determine whether reasonable reunification efforts were made, 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)(1)–(6) (2020). We must determine whether

the district court's findings concerning the county's efforts are supported by substantial evidence and are not clearly erroneous. *S.E.P.*, 744 N.W.2d at 385. The parents argue that the county's efforts were not culturally appropriate and therefore were unreasonable.

The parents' cultural argument is not convincing. In considering whether the services were culturally appropriate, the district court found that any additional, more culturally appropriate services proposed by the parents would not have done any more than the multiple services provided to correct the drug use that led to the removal. Substantial evidence supports the finding. The county placed Son with his grandparents in Iowa at Mother's request and routinely provided gas cards to ensure the parents could travel to see him. It communicated with the relevant tribes to determine whether Son was eligible for enrollment. It referred the family for a family-unification program to help them obtain housing. It offered three types of drug testing to accommodate Mother's wishes and to safely test during restrictions related to the COVID-19 pandemic. The county made referred the parents for chemical assessments and neuropsychological assessments. And it persistently encouraged Mother and Father to seek the treatment recommended to overcome their addictions. Although these services were not culturally specific, the record supports the district court's determination that they were culturally appropriate.

We are not persuaded otherwise by the assertion that the county could have offered additional or different services. The parents contend that if they were offered Native American service providers for testing or treatment, they would have more likely overcome their addictions. They cite no record evidence to corroborate this speculation and the record shows that Father attended outpatient treatment with the Native American Community

Clinic, twice. Neither treatment corrected his addiction. As for Mother, the record shows that she adamantly denied being addicted to drugs despite the overwhelming evidence to the contrary. She does not attempt to explain how a more culturally specific service would have overcome this obstacle to her recovery.

The parents also challenge the district court's best-interests determination. In any termination-of-parental-rights proceeding, the best interests of the child are the paramount consideration. Minn. Stat. § 260C.301, subd. 7. The district court therefore must specifically find that termination is in the best interests of the child and must analyze: the child's interest in preserving the parent-child relationship; the parent's interest in preserving the parent-child relationship; and any competing interests of the child. Minn. R. Juv. Prot. P. 58.04(c)(2)(ii); *In re Welfare of the Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009). We review best-interests determinations for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

Mother and Father maintain that the district court did not adequately factor Son's Native American heritage into its best-interests determination, arguing that terminating their rights and placing Son with family in Virginia will sever him from his cultural heritage against his best interests. The district court did consider Son's cultural heritage. The district court concluded that Son has a compelling interest in preserving the relationship with his parents. It placed extra weight on Son's interest in preserving his relationship with Father because of their shared Native American heritage. But it concluded that Son's "competing interest in a safe home with a sober parent, and to have this in place soon, is the most important factor and outweighs the others." It found that Son was necessarily out of the

home well beyond the statutory permanency timelines. And that because neither Mother nor Father made progress addressing their addiction, it found Son's best interests were served by terminating their rights. It added that Son would not be cut off from his cultural heritage, finding the prospective adoptive placement is committed to nurturing his cultural background. The district court did not abuse its discretion when it found termination is in Son's best interests.

Because we affirm the district court's determination that reasonable efforts failed to correct the conditions leading to the out-of-home placement we do not address any other challenge.

Affirmed.