STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1428

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

Filed February 11, 2019
Affirmed
Worke, Judge

Hennepin County District Court
File Nos. 27-JV-17-4366, 27-JV-16-5236

Mary F. Moriarty, Hennepin County Public Defender, Peter W. Gorman, Assistant Public Defender, Minneapolis, Minnesota (for appellant father J.B.)

Michael O. Freeman, Hennepin County Attorney, Britta K. Nicholson, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services)

Perry Moriearty, Allison Chadwick (certified student attorney), University of Minnesota Child Advocacy Clinic, Minneapolis, Minnesota (for guardian ad litem)

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

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant-father challenges the district court's termination of his parental rights (TPR), arguing that the department failed to comply with procedural and statutory requirements. We affirm.

FACTS

C.F. gave birth to T.M.D.B. (the child) in 2014. C.F. was not married when the child was conceived, nor when the child was born. In April 2015, genetic testing revealed that appellant-father J.B. is the child's biological father.

The child was placed in foster care on October 4, 2016, and was adjudicated a child in need of protection or services on November 8, 2016. Respondent Hennepin County Human Services (the department) made contact with J.B. in October 2016.

In January 2017, C.F. and her boyfriend, T.T., filed a recognition of parentage establishing T.T. as the child's father. Due to J.B.'s failure to attend proceedings or maintain contact with the department, and T.T.'s recognition of parenthood, T.T. was treated as the child's legal father from January 2017 until J.B. adjudicated his fatherhood in May 2018 and vacated T.T.'s recognition of parenthood.

In September 2017, the department filed a TPR petition for C.F. and T.T, and both consented to the voluntary termination of their parental rights. Following the voluntary TPR, father contacted the department to inquire into gaining custody of the child to place her with her maternal grandmother.

On January 11, 2018, father met with a case worker and created his case plan, which he signed on April 3, 2018. Father's case plan required him to maintain safe and suitable housing; complete a parenting assessment and follow recommendations; demonstrate sobriety; and cooperate with the department. When father failed to comply with his case plan, he was not allowed visitation with the child. On January 18, 2018, the department amended its TPR petition, adding father.

On April 3, 2018, the district court held an admit-deny hearing on the amended petition. Father asserted that the department could not proceed because the amended petition failed to make a prima facie showing for TPR. The district court found that the petition alleged a prima facie case.

At the June 15, 2018 pretrial hearing, father moved for a continuance, claiming that the department failed to provide him with a written case plan and failed to file it with the court. The department informed the district court that the case plan was filed that day, and the court denied the continuance request due to the length of time the child's permanency proceedings were already pending.

Following a court trial on July 6, 2018, the district court issued an amended order on August 2, 2018, terminating father's parental rights. The district court concluded that father refused or neglected to comply with the duties of the parent-child relationship; reasonable efforts failed to correct the conditions leading to the child's out-of-home placement; and the child is neglected and in foster care. The district court also found that TPR was in the child's best interests. The district court denied father's subsequent request for a new trial. This appeal followed.

D E C I S I O N

This court reviews a TPR to determine "whether the [district] court's findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether those findings are clearly erroneous." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). This court will affirm a TPR "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) (citations omitted).

Father does not challenge the district court's findings that clear and convincing evidence supports the TPR on three grounds, or that termination is in the child's best interests. Rather, he asserts that the department's failure to comply with procedural and statutory requirements demonstrates a failure to make reasonable efforts to reunite him with the child. A district court's decision that the department made reasonable efforts to reunite the family is reviewed for an abuse of discretion. *See In re Welfare of Child of: D.L.D.*, 865 N.W.2d 315, 323 (Minn. App. 2015) (ruling that the district court's "reasonable-efforts finding was not an abuse of discretion"), *review denied* (Minn. July 20, 2015). A district court abuses its discretion if its findings of fact are clearly erroneous, if it misapplies the law, or if it resolves the matter against logic and the evidence. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

Department's requirement of a case plan

Father argues that the department lacked a reasonable basis to provide him with a case plan. "Whether a written case plan is required is a question of statutory interpretation, which we review de novo." *In re Welfare of Children of: A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018).

When a child is in foster care, the social services agency is required to make efforts to offer services to the child's parents. Minn. Stat. § 260C.219(a) (2018). "The responsible social services agency shall assess whether a noncustodial or nonadjudicated parent is

willing and capable of providing for the day-to-day care of the child temporarily or permanently." *Id*.(a)(1) (emphasis added). If the agency determines that the parent is unable to care for the child, the agency is required to prepare a case plan identifying the remedial steps the parent must take before the child can be returned to his care. *Id*.(a)(2)(i).

The child was placed in foster care in October 2016. The department contacted father that same month, but he failed to maintain contact with the department or attend court proceedings until December 2017. The district court found that once father established meaningful contact with the department in January 2018, he was offered a case plan so that the department could determine whether he could be a safe reunification resource for the child. Father's year-long absence from proceedings, of which he was admittedly aware, supports the district court's finding that he was offered a case plan in order to determine whether he could care for the child.

The statutory language is mandatory—if the agency determines that the child cannot be in the care of the parent, it *shall* prepare a case plan. *Id*.; *see A.R.B.*, 906 N.W.2d at 898 (emphasizing the mandatory nature of a case plan); *see also* Minn. Stat. § 260C.212, subd. 1(a) (2018) ("An out-of-home placement plan shall be prepared within 30 days after any child is placed in foster care by court order . . . ."). Therefore, the department was required to provide father with a case plan.

Statutory requirements of a case plan

Father next argues that his case plan failed to comply with statutory requirements. "Interpretation of a statute involves a question of law, which is subject to de novo review." *In re Welfare of Children of: R.W.*, 678 N.W.2d 49, 54 (Minn. 2004).

First, he asserts that the department failed to prepare his plan within 30 days of placement, as required by Minn. Stat. § 260C.212, subd. 1(a). Father agreed to a case plan on January 11, 2018. The district court found that the delay in providing him with a case plan was attributable to his failure to maintain contact with the department. The department's failure to provide a case plan within 30 days does not warrant reversal. *See In re Welfare of J.J.L.B.*, 394 N.W.2d 858, 863 (Minn. App. 1986) ("Given [mother's] failure to cooperate and the fact that the underlying purpose for the case plan was met through numerous court orders, we cannot say that [the failure to provide mother with a formal case plan] is reversible error."), *review denied* (Minn. Dec. 17, 1986).

Second, father asserts that the department failed to consult with him in development of his case plan, as required by Minn. Stat. § 260C.212, subd. 1(b). This assertion lacks support in the record. The caseworker's notes indicate that the caseworker "called to engage [father] in a case plan" and that he came to the office for that purpose. Furthermore, the entry states that father "agreed to the case plan" and the case plan bears father's signature. The record does not support father's contention that the department failed to consult him in the development of his case plan.

Finally, father argues that his case plan was not approved by the district court, as required by Minn. Stat. § 260C.212, subd. 1(b)(1), (2), which provides that "[a]s appropriate, the plan shall be: (1) submitted to the court for approval . . . [and] (2) ordered by the court, either as presented or modified after hearing." Father's case plan was filed with the district court on June 13, 2018.

The district court's remarks on the record at the pretrial hearing following filing of the case plan, while not explicitly approving the plan, indicate as much. While discussing whether father would be allowed supervised visits, the district court stated: "You get supervised visits, but it's only if you are engaged in . . . the plan. . . . I see no engagement yet. Work the case plan. I'll give you supervised visit[s] as long as you're engaged in the case plan." The district court's comments indicate approval of the case plan. We see no basis to reverse the TPR due to statutory defects in the development of father's case plan.

Father relies on *A.R.B.* for the proposition that failure to develop a case plan constitutes failure to make reasonable efforts toward reunification, but *A.R.B.* is distinguishable. In *A.R.B.*, this court reversed the TPR when the county never developed a case plan for the incarcerated father. 906 N.W.2d at 896, 900. Here, not only did father meet with the department, discuss his case plan, and sign the case plan, the district court approved that plan. Because the department developed a written case plan for father which was approved by the district court, *A.R.B.* does not support his claim for reversal.

A prima facie case for TPR

Father next claims that the amended petition fails to make out a prima facie case for TPR. "We review for abuse of discretion the [district] court's underlying determination that [the] petition states a prima facie case. . . ." *D.L.D.*, 865 N.W.2d at 318.

Under Minn. R. Juv. Prot. P. 33.02, subd. 1(a), every petition shall contain "a statement of facts that, if proven, would support the relief requested in the petition." A prima facie case "means one that prevails in the absence of evidence invalidating it." *Tousignant v. St. Louis Cty.*, 615 N.W.2d 53, 59 (Minn. 2000) (quotation omitted). The

amended petition lists father as a party, as the child's presumed father. It makes the following factual allegations: "The [d]epartment made several attempts to contact [J.B.], establish adjudication, and offered a case plan. [J.B.] was not compliant with the [d]epartment's attempts. [J.B.] has not visited the child since the child was put in placement."

These allegations, while concise, are sufficient to establish a prima facie case for TPR on the grounds that father did not have contact with the child, father did not comply with the department's efforts to offer him a case plan, and the child is neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (5), (8) (2018). Because the amended TPR petition pleads sufficient factual bases for TPR on three statutory grounds, the district court's on-the-record denial[1] of father's motion to dismiss for failure to establish a prima facie case was not an abuse of discretion.

Continuance

Father argues that the district court should have granted his request for a continuance at the pretrial hearing. "Whether to grant a continuance is a ruling within the [district] court's discretion, which will not be reversed absent a showing of a clear abuse of that discretion." *In re Welfare of J.A.S.*, 488 N.W.2d 332, 335 (Minn. App. 1992), *review denied* (Minn. Oct. 20, 1992).

[1] Father also argues that an oral amendment to the petition made by the department at the June 15, 2018 pretrial was insufficient to remedy the lack of a prima facie case. Because the district court denied his motion to dismiss at the April 3, 2018 admit-deny hearing, these subsequent oral amendments are not relevant.

The district court denied the continuance request due to the length of time the child was in foster care without a permanency determination. A district court may continue a hearing or trial so long as the timeliness for achieving permanency is not delayed. Minn. R. Juv. Prot. P. 5.01, subd. 1.

Typically, the permanency petition would have been filed within 335 days. Minn. Stat. § 260C.505(a) (2018). The admit-deny hearing would have been held within 365 days. Minn. Stat. § 260C.507(a) (2018). The pretrial would have been held within 415 days. Minn. R. Juv. Prot. P. 36.01 (pretrial shall be held at least ten days prior to trial). The trial would have commenced within 425 days. Minn. Stat. § 260C.509 (2018) (permanency trial shall be commenced within 60 days of the admit-deny hearing). And after a one day trial, a decision would have been filed within 440 days. Minn. Stat. § 260C.517(b) (2018) (TPR order shall be issued within 15 days of the close of proceedings).

The child was placed in foster care on October 4, 2016. Under the normal timeline, the child's permanency would have been determined by December 18, 2017, at the latest. Because father was not served with an amended TPR petition until February 6, 2018, this delayed the child's permanency determination. However, even under this timeline, father's admit-deny hearing should have occurred by March 8, his pretrial should have occurred by April 27, and his trial should have commenced by May 7. Because father's request for a continuance would have delayed the statutory timelines for achieving permanency, the district court did not abuse its discretion in denying the continuance request.

Testimony of the guardian ad litem (GAL)

Father argues that the district court abused its discretion by denying his motion to exclude the testimony of the GAL. "The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). Father argues that the failure to create a written report in accordance with rule 38.11 subdivision 1, and Minn. Stat. § 260C.163, subd. 5(b)(5) (2018)[2], required exclusion of the GAL's testimony.

The GAL "shall submit periodic certified written reports to the court." Minn. R. Juv. Prot. P. 38.11, subd. 1. Under rule 38.11, subdivision 2,

> [t]he [GAL] shall file the report with the court and serve it upon all parties at least five (5) business days prior to the hearing at which the report is to be considered, including a review hearing required under Rule 41.06, permanent placement review hearing under [section] 260C.204, review of a child under guardianship of the commissioner of human services under [section] 260C.607, any reviews conducted regarding a child in the permanent custody of the agency under [section] 260C.521, and as otherwise directed by the court.

Id. This non-exclusive list of hearings for which the GAL is required to file and serve a written report five days in advance of a hearing does not include a TPR petition under Minn. Stat. § 260C.301 (2018).

[2] This provision also sets forth the responsibilities of a GAL appointed for a hearing in a child-protection matter, which includes the responsibility to "present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based." Minn. Stat. § 260C.163, subd. 5(b)(5).

Neither rule 38.11, nor Minn. Stat. § 260C.163, subd. 5(b)(5), provide any sanction for a GAL's failure to produce a written report. Construed as a whole, and in light of subdivision two's non-exclusive enumeration of the hearings for which a written report of the GAL is required, rule 38.11, subdivision 1's requirement of the submission of "periodic" written reports cannot reasonably be read so as to mandate a written report by the GAL five days before trial on a TPR petition. *See Shamrock Dev., Inc., v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008) ("We do not examine the rules [of civil procedure] in isolation, but instead read them in light of one another and interpret[ ] them according to their purpose." (quotation omitted)). The district court's decision not to exclude the GAL's testimony due to the lack of a written report was not based upon an erroneous view of rule 38.11, and therefore, was a proper use of the district court's discretion on an evidentiary issue.

Relative search

Father next asserts that the department failed to perform a relative search on his family. The department is required to report to the court within 90 days of the child's placement on its attempts to identify and notify relatives who can provide support for the child in accordance with Minn. Stat. § 260C.221 (2018). Minn. R. Juv. Prot. P. 38.04, subd. 1(a). Father concedes that the district court followed the proper procedure for conducting a relative search as to C.F.'s family, but argues that the department erred by not searching out his family even though genetic testing established him as the child's father prior to her placement in foster care.

The child was placed in out-of-home care in October 2016. It was not until May 22, 2018, about 19 months later, that father established legal parenthood of the child, vacating the prior order recognizing T.T. as the child's parent. The relative search statute provides that "[a]t any time during the course of juvenile protection proceedings, the court may order the agency to reopen its search for relatives when it is in the child's best interest to do so." Minn. Stat. § 260C.221(a). The district court ordered that the department "may disclose private or confidential data . . . to relatives of the child for the purpose of locating a suitable adoptive home," and provided that "[a] hearing will be held every 90 days to review the progress of the [department] toward adoptive placement of the child." These portions of the order demonstrate that the relative search has no bearing on the TPR proceedings, as the search for suitable relatives to care for the child was ordered to continue after father's rights were terminated as contemplated by Minn. Stat. § 260C.221(a). There is no authority to reverse the TPR on this basis.

Affirmed.