STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0725

In the Matter of the Welfare of the Children of:
K. W. and N. M., Parents.

Filed December 5, 2022
Affirmed
Segal, Chief Judge

Ramsey County District Court
File No. 62-JV-19-587

Nicole S. Gronneberg, Minneapolis, Minnesota (for appellant N.M.)

John J. Choi, Ramsey County Attorney, L. Michelle Thompson, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County Social Services Department)

Alex Brusilovsky, Eden Prairie, Minnesota (for guardian ad litem)

Considered and decided by Johnson, Presiding Judge; Segal, Chief Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

On appeal from the district court's termination of parental rights to his two children, father argues that the district court erred in concluding that statutory grounds for termination were proven and that termination is in the children's best interests. We affirm.

FACTS

Appellant-father N.M. and mother K.W. are the parents of two children: J.M., born in 2013, and C.M., born in 2017. Respondent Ramsey County Social Services Department (the county) became involved with the family in October 2017 when mother was hospitalized for an intentional drug overdose. While hospitalized, mother admitted that she had been physically abusing J.M. since the birth of C.M. four months earlier. Specifically, mother stated that she "felt no love for" J.M.; hit J.M. "as many as 10-12 times [with a spatula] while [J.M.] was crying and pleading for her to stop"; and tried "to stuff [J.M.] into the freezer, garbage can and refrigerator."

At the time the county began its investigation, father had been living with mother and the children in mother's apartment for approximately one year following several years of housing instability. The investigating social worker interviewed mother and father and did not recommend that a petition for a child in need of protection or services (CHIPS) be filed at that time "because the family is cooperative, dad took time off from work to be home to care for the children, [they] have a Safety Plan in place and dad is a protective factor." But the social worker noted that "[i]f the family fails to cooperate, follow through with services, or if there [are] any concerns of abuse/safety, CHIPS is highly recommended."

The family's safety plan required that father supervise all contact between mother and the children. The social worker referred the parents and children to services, including intensive in-home parenting support, and the case was assigned to a case manager. The next month, parenting services and the case manager expressed concern that father would

leave the children alone with mother and that the parents were not engaged in following the safety plan. The county filed a CHIPS petition and the children were removed from the home in January 2018. Neither father nor mother appeared at the CHIPS hearing and the district court adjudicated J.M. and C.M. as CHIPS.

The county placed the children with their maternal grandmother and instructed the grandmother to supervise the parents' visits with the children. The children were removed from that placement later in 2018 after father reported to the case manager that he and mother had been caring for the children unsupervised for the last several months.

For most of 2018 and 2019, father did not comply with his case-plan requirements. He failed to consistently attend scheduled visitations with J.M. and C.M., communicate with the case manager and guardian ad litem (GAL), or appear at hearings in the CHIPS case.

In November 2018, police pulled father over for speeding and father reported that he was suicidal and that he had previously sexually abused a 12-year-old.[1] The child had been staying with father and taking care of J.M. and C.M. while father was at work. Father also reported, during a subsequent hospitalization for suicidal ideation, that the 12-year-old was sexually provocative and encouraged him to engage in sexual contact with her; that he had "sexual contact with her and on several occasions groped her and touched her genitalia"; that he maintained contact with her via Facebook over the six months since she left his home, which included "sending pictures of himself [to her] in his boxers with an

[1] At trial, father testified that the sexual abuse occurred in 2017.

erect penis"; and that he confessed because her parents were blackmailing him. Father was charged a couple of months later with two counts of second-degree criminal sexual conduct.

In December 2018, the GAL recommended termination of parental rights (TPR) for both mother and father. She further recommended that father not be allowed visits due to his statement to police that he had sexually abused a 12-year-old. The county filed a TPR petition in April 2019. The district court issued an order relieving the county of providing reasonable efforts at reunifying the children with father because father's sexual assault of the 12-year-old constituted egregious harm against a child in his care.

Following another period of intermittent homelessness, hospitalization, and severe drug use, father completed six weeks of inpatient chemical-dependency treatment at Vinland National Center between mid-August and October 2019. Father also completed a psychosexual assessment at Skipped Parts LLC upon referral from his public defender.

In December 2019, father pleaded guilty to one count of second-degree criminal sexual conduct. The sentencing court stayed imposition of his sentence and placed him on probation for ten years. The conditions of father's probation required that he complete psychosexual programming and random drug testing. Father was also prohibited from having contact with minors until approved by probation and treatment providers.

In February 2020, father began sex-offender treatment at Skipped Parts, though his attendance throughout 2020 was "poor." In 2020, father also completed outpatient chemical-dependency treatment and obtained employment. Throughout this time, father's treatment providers, the county case manager, and the GAL agreed that father should not

have contact with his children. During this period, however, mother had the children for several months on a trial home visit and the case manager believed father may have seen the children while in mother's care.

In February 2021, the district court ordered emergency protection of the children and they were removed from mother's care due to mother's drug relapse and mental-health decline. Prior to this removal, the county had stayed its TPR petition based on efforts to reunify the children with mother and because father had been more engaged in services. In June 2021, the county filed a notice of intent to proceed with the TPR, and the district court scheduled the trial for September 2021. The court also granted father's request for supervised visits, though no visits occurred at least in part because the children's therapist stated that the visits would not be in the children's best interests at that time.

Near the start of trial, mother stated that she intended to voluntarily terminate her parental rights and would consent to adoption. The trial thus proceeded only as to father.

The district court held the hearing on the county's TPR petition over ten days between December 2021 and February 2022. The court heard testimony from father, his probation officer, the children's foster parents, and various county social workers and treatment providers involved in the case.[2] These witnesses generally testified that father had made improvements with sobriety and participation in sex-offender treatment, but the

[2] The district court heard extensive testimony from the owner and evaluating psychologist at Treehouse Psychology, where father was evaluated in September 2021. There was also significant argument from the parties regarding this testimony and the related psychological report. However, the court stated in its findings of fact, conclusions of law, and order terminating parental rights that it did not consider this testimony or the report in its decision.

only witness who advocated for father to reunite full-time with the children was father himself.

Father's probation officer testified as to father's probation conditions, which required father to complete sex-offender programming and prohibited him from having contact with minors until approved by his sex-offender treatment providers and probation. The probation officer noted that father was initially inconsistent in submitting to random urinalyses (UAs) and expressed concern that father had not sought psychiatric care despite this being recommended to him. However, she also testified that father had become more consistent with his UAs, had been compliant with probation, and had stable housing in an apartment.

The co-owner of Skipped Parts, where father attended sex-offender treatment, testified that father had been taking therapy more seriously, and that his assessed risk level had decreased since he started treatment. But she also highlighted that father continued to see mother, who had relapsed and with whom father has had a historically unhealthy relationship. She further noted that, after two years in treatment, father was still in part one of a three-part program and had not yet addressed his risk factors in therapy. The Skipped Parts co-owner and the probation officer testified that they supported working toward supervised visits with the children but would not approve unsupervised contact between father and the children at that time.

The county case manager at the time of trial and the GAL agreed that they did not believe father could parent full-time currently or in the reasonably foreseeable future. The case manager and GAL also emphasized that father is not aware of his children's academic

and behavioral needs and would not be able to go to J.M.'s school to assist J.M. J.M. had an individualized education program (IEP) and academic challenges. The case manager testified that J.M.'s caregiver might be needed to assist J.M. at school to meet J.M.'s academic needs. The case manager also testified that she did not believe that the safety concerns that necessitated removal of the children had been sufficiently addressed because she did not think father had gained the protective capacity to keep the children safe from mother. The GAL opined that she believed that termination of father's parental rights was in the children's best interests.

Following trial, the district court issued an order terminating father's parental rights. The court determined that the county had established five statutory grounds for termination by clear and convincing evidence and that the county had established by clear and convincing evidence that it is in the best interests of the children for father's parental rights to be terminated.

Father moved for amended findings and a new trial. The district court granted several amended findings, none of which altered the district court's conclusions of law, and denied father's motion for a new trial.

DECISION

Father asserts two arguments on appeal. First, he argues that the district court abused its discretion in determining that the county proved a statutory ground for

termination. Second, he challenges the district court's determination that termination is in the children's best interests.[3]

On appeal from a district court's decision to terminate parental rights, we review a district court's factual findings for clear error, and we review for abuse of discretion a district court's conclusions that a statutory basis for termination of parental rights is present and that termination is in the children's best interests. *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). "[W]e will not conclude that a district court has abused its discretion absent a resolution of the question that is against logic and the facts of record." *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 660 (Minn. App. 2018). "Parental rights are terminated only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). "The child's best interests, however, remain the paramount consideration in every termination case." *Id*.

A. Statutory Ground for Termination

The district court in this case determined that the county established five statutory grounds for termination by clear and convincing evidence: a child experienced egregious harm in father's care, father neglected his parental duties, father was palpably unfit to parent, the children were neglected and in foster care, and reasonable efforts failed to

[3] In his brief, father also includes, as an issue in his statement of issues, a claim that "the district court abuse[d] its discretion in concluding that [the county] made reasonable efforts in this case." This issue, however, was not otherwise mentioned or argued in the brief. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1981) (applying the rule that arguments not argued in brief are waived). Moreover, the county was relieved of providing reasonable efforts in this case because father subjected a child to egregious harm as defined by statute when he committed criminal sexual conduct. Minn. Stat. § 260.012(a)(1) (2020). We therefore do not address reasonable efforts in our opinion.

correct the conditions that led to out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(2), (4)-(6), (8) (2020). We will affirm a district court's termination of parental rights if at least one statutory ground for termination is supported by the record. *In re Welfare of Child. of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). Because we conclude that the district court did not abuse its discretion in determining that a child experienced egregious harm in father's care, we need not address the other four statutory grounds.

A district court may terminate parental rights if

> a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care.

Minn. Stat. § 260C.301, subd. 1(b)(6).

Minnesota law defines "egregious harm" as "the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care." Minn. Stat. § 260C.007, subd. 14 (2020). Egregious harm includes "conduct toward a child that constitutes criminal sexual conduct under sections 609.342 to 609.345." *Id.*, subd. 14(10). To meet the grounds for termination of parental rights based on egregious harm, the parent need not have inflicted the harm on their own child—it is sufficient that the parent inflicted harm on a child in their care. *In re Welfare of A.L.F.*, 579 N.W.2d 152, 155-56 (Minn. App. 1998).

The district court concluded that egregious harm was established because father pleaded guilty to criminal sexual conduct under Minn. Stat. § 609.343 (2016), one of the listed offenses in the definition of egregious harm in Minn. Stat. § 260C.007, subd. 14(10).

The court also found, and father himself testified, that the 12-year-old victim of that offense was in his care while she lived with him. The district court determined the offense is "of a nature and duration that demonstrates a grossly inadequate ability to provide minimally adequate parental care, such that a reasonable person would believe it contrary to the best interest of the children or any child to be in [father's] care."

Father acknowledges that his offense constitutes egregious harm as defined in the child welfare statutes but argues that the evidence presented at trial was insufficient to demonstrate that this harm was "of a nature, duration or chronicity that would cause a reasonable person to believe that [father] could never appropriately care for a child." Father contends that the district court's conclusion is undermined by the county's decision earlier in the case to stay the TPR proceeding against father, the court's order granting father supervised visits approximately six months earlier, and the decision of father's sex-offender treatment providers to develop a safety plan for supervised visits. We are not persuaded.

First, the statute states that the harm must cause a "reasonable person [to] believe it contrary to the best interest of the child or of any child *to be in the parent's care*." Minn. Stat. § 260C.301, subd. 1(b)(6) (emphasis added). Here, none of the witnesses at trial, aside from father, testified that they believed father should be a primary caregiver for his children, or any child. Instead, they emphasized that father's sex offense required that there be a safety plan and professional supervision for father to have contact with his children. And, even though the evidence supports that father demonstrated some progress, there is no evidence that father could have unsupervised contact with the children, let alone

custody, at any point in the determinate future. Witnesses also noted that father was not permitted to interact with other children because of his conviction and that this would, of itself, be a significant barrier to father's ability to provide adequate care for J.M. and C.M.

Second, the record supports the district court's determination that father's "harm of the child was not isolated, and it was of a duration that reflects an inability to provide minimally adequate parental care." Father informed clinicians, while hospitalized following his confession, that he had "sexual contact with [the 12-year-old]" on multiple occasions and that he maintained contact with her over Facebook for six months following her departure from his home. The Facebook contact included "sending pictures of himself [to her] in his boxers with an erect penis."

Finally, while the district court credited father's acknowledgment of his culpability for the offense, the court also underlined that father "had not begun the phase of sex offense therapy where he begins to study and understand what led to the offense." The court stated that it lacked confidence, based on father's testimony, that father can self-assess the risk he poses to others.

Considering the deference given to credibility findings and the substantial support in the record, the district court did not abuse its discretion in determining that the egregious-harm statutory basis for termination of parental rights was established by clear and convincing evidence. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) ("Considerable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses."). Because at least one statutory

ground for termination is supported by the record, we proceed to father's argument that termination is not in the children's best interests.

B. Best Interests

Father argues that the district court abused its discretion in determining that termination is in the children's best interests. He specifically contends that, because the children's foster placement was disrupted shortly after trial, the children were "once again in non-relative foster care with no prospects for permanency after over four years of foster care placement," thus "[p]reserving [the children's] relationship with their father would present an opportunity for the siblings to stay together and be placed permanently with a loving parent."

But a district court's best-interests and TPR decision does not require an imminent permanent placement or adoption. *In re Welfare of P.J.K.*, 369 N.W.2d 286, 292 (Minn. 1985). The district court instead determines whether it is in the child's best interests at the time of the hearing to be placed with the parent facing TPR, balancing (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. *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980); *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012). "Competing interests include health considerations, a stable environment, and the child's preference." *J.K.T.*, 814 N.W.2d at 92.

The district court determined that father "credibly testified that he loves [J.M. and C.M.]" and that he has an interest in maintaining the parent-child relationship. However, the court determined that, given the length of the separation and father's inability to assume

parenting responsibility at any reasonably foreseeable time, J.M. and C.M. do not have an interest in preserving the parent-child relationship and that their competing interests outweigh father's. The record supports the district court's determinations.

The district court determined here that J.M. and C.M. do not have an interest in preserving the parent-child relationship because they have not been in father's care since 2018. The first county case manager testified that father's visitation with the children was inconsistent in 2018 and 2019 due to his drug use, hospitalizations, and homelessness. For the subsequent two years, father was not approved for supervised visits because of restrictions imposed as a result of his sex offense. Even after supervised visits were approved by the district court, the children's therapist advised that it would not be healthy for the children to have such visits with father, let alone to be returned to father's custody. Moreover, the children are still unable to have unsupervised visits with father due to his probation conditions. Thus, the record supports the district court's determination that the children do not have an interest in preserving their relationship with father based on this lengthy separation caused by father's instability and criminal offense.

The district court also determined that the children's competing interests outweigh father's interest in preserving the parent-child relationship. The court cited J.M.'s behavioral issues, IEP, and other educational needs, which the children's foster parents and the second county case manager testified require regular contact with school. The court highlighted that "both children are in therapy and require support at home to address the trauma they have suffered and their ongoing behavioral issues as a result of this trauma."

Testimony of the foster parents and case manager, along with that of the children's therapist, further supports the determination.

The district court's determination that father has not demonstrated that he can meet the children's behavioral and health needs or their need for a stable environment is grounded in the record as well. In addition to father's inability to go to J.M.'s school for IEP and other meetings due to his sex offense and probation terms, multiple witnesses expressed concern regarding father's ongoing relationship with the children's mother—they worried that father would not protect the children from their mother, who is a significant source of their trauma.

The district court thus did not abuse its discretion in finding that clear and convincing evidence established that termination of father's parental rights is in the children's best interests.

Affirmed.