STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0071

In the Matter of the Welfare of the Child of:
T. M. B. and S. E. C., Parents.

Filed June 26, 2023
Affirmed
Gaïtas, Judge

Dodge County District Court
File No. 20-JV-22-170

James McGeeney, Doda McGeeney, Rochester, Minnesota (for appellant-father S.E.C.)

Anthony J. Moosbrugger, Moosbrugger Law Office, P.A., Kasson, Minnesota (for respondent-petitioners A.B. and J.B.)

Renae Streich, West Concord, Minnesota (guardian ad litem)

Considered and decided by Gaïtas, Presiding Judge; Johnson, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant-father S.E.C. challenges the district court's decision to terminate his parental rights to his seven-year-old child following a court trial. Father argues that the district court erred by finding that clear and convincing evidence established that he abandoned the child, that he is palpably unfit to parent the child, and that termination of

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

his parental rights serves the child's best interests. Because substantial evidence in the record supports the district court's factual findings, the district court addressed the statutory criteria for terminating parental rights, and clear and convincing evidence supports at least one statutory ground for termination of father's parental rights, we discern no abuse of discretion and affirm.

FACTS

This appeal concerns a child born in January 2016. T.M.B. is the child's biological mother. While pregnant with the child, mother began residing with respondent A.B., her aunt.[1] Because mother was struggling with drug addiction, she asked aunt to consider adopting the child.

Aunt has cared for the child since the child's birth. Aunt married her current husband, respondent J.B., in September 2019. Since the marriage, husband has developed a paternal-type relationship with the child.

Father has never met the child. When the child was born, father was serving a 60-month prison sentence. Father took a DNA test in prison, which established his paternity. About six months after the child's birth, father filed a pro se petition to adjudicate his paternity of the child and moved to proceed in forma pauperis. The district court denied the motion to proceed in forma pauperis. Father did not appeal the denial of his motion, and there were no further proceedings to adjudicate his paternity.

[1] The record shows that aunt is mother's aunt and the child's great-aunt. In the interest of simplicity, we refer to this individual as "aunt."

Father was released from prison in 2019. Upon his release, he made several requests to mother and aunt to meet the child. Aunt refused these requests because she was concerned about father's criminal activity and drug use. She informed father that any visitation would have to be established through mediation or legal action. Father stopped contacting aunt around February 2019 and made no further efforts to visit the child.

In March 2022, aunt and aunt's husband, who wish to adopt the child, filed a petition in the district court to terminate father's parental rights. The petition alleged two grounds for involuntary termination: that father abandoned the child and that father is palpably unfit to parent the child.[2] Father opposed the petition, and the district court presided over a court trial in October 2022.[3]

At trial, the district court heard testimony from mother, aunt, father, a social worker, a guardian ad litem, father's mother, and two of father's friends. Additionally, the district court took judicial notice of district court records in father's other cases, which included twelve criminal cases, two juvenile matters, and a child-protection case. The district court also received five child-protection reports concerning two children father shares with his current partner.

Following the trial, the district court reopened the record to receive new evidence regarding father's recent probation violation. The probation-violation report, dated

[2] The petition was filed pursuant to Minnesota Statutes section 260C.307, subdivision 1 (2022), which allows "[a]ny reputable person . . . having knowledge of circumstances which indicate that the rights of a parent to a child should be terminated" to petition for the termination of parental rights.

[3] Mother intends to consent to the adoption and voluntarily terminate her parental rights.

November 30, 2022, alleged that father had tampered with a drug test and used methamphetamine and alcohol. Father later admitted to these allegations in court and was resentenced to probation.

On December 23, 2022, the district court issued a 31-page order terminating father's parental rights to the child. The district court determined that there was clear and convincing evidence that father abandoned the child and that father is palpably unfit to parent the child, and that termination of father's parental rights is in the child's best interests.

DECISION

The law presumes that a natural parent should be entrusted with caring for his own child and that it is in a child's best interest to be cared for by a parent. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014) (quotations omitted). A district court can involuntarily terminate a parent's rights only when it finds clear and convincing evidence of at least one of nine statutory bases for termination. *Id.* at 132; *see also* Minn. Stat. § 260C.301, subd. 1(b) (2022) (listing nine statutory factors). When a statutory basis for termination is present, the district court's "paramount consideration" in deciding whether to terminate parental rights is "the best interests of the child." Minn. Stat. § 260C.301, subd. 7 (2022); *see also In re Welfare of Child. of J.D.T.*, 946 N.W.2d 321, 327 (Minn. 2020).

In an appeal of a district court's decision to terminate parental rights, we review the district court's findings of fact for clear error and its determination regarding the existence of a statutory basis for termination for an abuse of discretion. *In re Welfare of Child. of*

J.R.B., 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). The appellate court must consider "whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). An appellate court will "affirm the district court's termination of parental rights 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." *Id.*

The scope of clear-error review is narrow. This standard "does not contemplate a reweighing of the evidence, inherent or otherwise; it is a review of the record to confirm that evidence exists to support the decision." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021); *see In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* in a juvenile-protection appeal), *rev. denied* (Minn. Dec. 6, 2021). "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Kenney*, 963 N.W.2d at 223 (quotation omitted). In applying the clear-error standard of review, the appellate court (1) views the evidence in the light most favorable to the findings, (2) does not reweigh the evidence, (3) does not find facts, and (4) does not reconcile conflicting evidence. *Id.* at 221-22.

Here, the district court found that the evidence supported termination of father's parental rights on two statutory grounds—abandonment and palpable unfitness. Moreover, the district court found that clear and convincing evidence established that termination was in the child's best interests. We conclude that the record supports the district court's factual

findings and that the district court did not abuse its discretion in ruling that father is palpably unfit to be a parent. Additionally, we conclude that the district court did not abuse its discretion in determining that termination serves the child's best interests.

I. The district court did not abuse its discretion in concluding that clear and convincing evidence established that father is palpably unfit to be a party to the parent and child relationship.

Father argues that the record does not support the factual findings underlying the district court's determination that he is palpably unfit to be a party to the parent and child relationship. Thus, father contends, the district court abused its discretion in terminating his parental rights on this ground.

Under Minnesota Statutes section 260C.301, subdivision 1(b)(4), a statutory basis to terminate parental rights exists when a parent is deemed

> palpably unfit to be a party to the parent and child relationship because of a consistent pattern . . . of specific conditions directly relating to the parent and child relationship . . . which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

To terminate on this basis, there must be "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). In addition, the specific condition must directly affect the individual's ability to parent. *Id.* at 662.

The district court made the following factual findings to support the determination that father is palpably unfit: father has a long record of criminal behavior and a "significant

anti-social criminal lifestyle"; father's claim that he has recently changed his lifestyle to endorse only law-abiding behavior is undercut by his recent probation-violation report where he admitted to using methamphetamine; father's criminal lifestyle exposes the child to "illegal drug use, illegal drug activity," domestic violence, traumatic episodes, and frequent, unpredictable absences from the home; father has consistently engaged in a criminal lifestyle, beginning in 2004 and continuing through the month of the termination trial; social services intervention is not likely to accomplish reform and rehabilitation goals with father; and father's testimony that he is willing to engage with social services is "undermined by his insistence that he will only do so under Court order." Based on these facts, the district court concluded that father is "unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child."

Father contends that "any argument that he is unfit is conjecture based on his past history" and that he presented evidence that he "is employed, in a relationship, has housing and resources, and helps co-parent his partner's children." But there is ample evidence in the record that supports the district court's finding that father's criminal activity and drug use are both consistent and likely to continue for a prolonged, indefinite period. *See T.R.*, 750 N.W.2d at 661.

The record shows that father's criminal behavior and drug use have been continuous. Since 2004, father has pleaded guilty to many criminal offenses, including theft, burglary, receiving stolen property, and possession and manufacture of methamphetamine. As a result of these offenses, he has spent frequent and prolonged

periods of time in jail or prison. At the time of the trial, father had four pending criminal cases charging him with multiple felony-level offenses for incidents occurring in late 2021. Although father testified at trial that he has been sober for "a few years now," the social worker noted that father tested positive for methamphetamine in August 2021 and was observed driving with an infant in his car that same day. Shortly after the trial, father also admitted to methamphetamine and alcohol use in connection with a probation violation. He admitted that he does not participate in drug treatment options such as support meetings. Indeed, father's mother testified that father has not participated in formal drug treatment since father was approximately 16 years old.

Additionally, the record contradicts father's assertion that he is "employed, in a relationship, has housing and resources, and helps co-parent his partner's children." Father called three witnesses to testify on his behalf at the trial, each of whom testified about wanting to support father's sobriety. However, as the district court noted, these witnesses have had no past success in influencing father's criminality and drug use. Father's mother testified that she has suggested treatment several times, but father has not participated. Another witness testified that she has provided similar support to her own children but has not yet helped father with his chemical-dependency issues.

Father testified that his current partner is a support for him. But the social worker testified that between September and November 2021, the county had investigated father's partner five times. The county was concerned about criminal activity, chemical dependency, and domestic violence in the presence of the two children father shares with his partner. And the social worker testified that while she was working with father's partner

and their children, the family was potentially homeless or living in a trailer or storage locker. This testimony was corroborated by one of father's witnesses, who testified that father lived in a trailer behind a business for a period of time.

Finally, the record supports the district court's finding that social service intervention is not likely to rehabilitate father in the foreseeable future. Father's own testimony demonstrates his unwillingness to engage with rehabilitative services. Father admitted that he does not attend sober support meetings. He also testified that, when his current partner was being investigated by the county over concerns about the wellbeing of their two children, he was not "involved in it" because it was "between [his partner] and whatever." Father acknowledged that he has been unwilling to work with social services in the past and would do so in this case only "[i]f the judge thought that [a social service agency] would be required into our lives."

The district court's factual findings are well supported by the record, as is its determination that the evidence established father's palpable unfitness by clear and convincing evidence. Thus, the district court did not abuse its discretion in concluding that this basis for termination exists in this case. Because one statutory basis is sufficient for termination of parental rights, *S.E.P.*, 744 N.W.2d at 385, we need not address the second statutory ground for termination that father challenges on appeal, abandonment of the child.

II. The district court did not abuse its discretion by determining that termination of father's parental rights is in the best interests of the child.

Father argues that the district court erred when it determined that the termination of his parental rights is in the child's best interests.

A district court may only terminate parental rights if, among other things, the termination is in the best interests of the child. *Id.* In evaluating the best interests of a child in a proceeding to terminate parental rights, a district court must consider (1) "the child's interests in preserving the parent-child relationship," (2) "the parent's interests in preserving the parent-child relationship," and (3) "any competing interests of the child." Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). "Competing interests include health considerations, a stable environment, and the child's preference." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012).

"[D]etermination of a child's best interests is generally not susceptible to an appellate court's global review of a record, and . . . an appellate court's combing through the record to determine best interests is inappropriate because it involves credibility determinations." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quotation omitted). We review a district court's best-interests determination for an abuse of discretion. *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 669 (Minn. App. 2020).

The district court found clear and convincing evidence that the child had no interest in preserving the parent-child relationship because "[t]here is no relationship to preserve as one has never been established in almost 7 years." Additionally, the district court found that father's efforts to establish a relationship "have never been more than nominal." It noted that father has never had contact with the child and, besides "a few attempts in January of 2019," father has "made no effort to have contact with the child" and "provided no financial support to the child."

The district court further found that the balance of these interests weighed in favor of terminating father's parental rights. It observed that the child has lived with aunt since birth and has formed strong relationships with aunt, her husband, and their other children. According to the district court, aunt and her husband provide a "safe, loving and stable home for the child" while father has done "virtually nothing to advance the interests of the child." Based on these underlying findings of fact, the district court concluded that terminating father's parental rights is in the child's best interests because the child will be "freed for adoption" by aunt and her husband and will "achieve stability in his life."

Father argues that the district court's determination was clearly erroneous because the evidence "shows [father] attempted to initiate a relationship with child, but was rebuked by [aunt]." He contends that the record shows he "made efforts to preserve a parent-child relationship."

However, the record supports the district court's findings. After nearly seven years, father has never met the child. Other than sending the child a single gift card, father admitted that he has never attempted to financially support the child. Father has never sought the advice of legal counsel or the support of social services to pursue visitation or parenting time, which father admitted was not due to financial constraints.

The record also shows that the child has been living in a safe, stable environment with aunt since birth. According to aunt, the child has close relationships with his custodial family, thinks of aunt's husband as a father figure, and is "very—very attached" to aunt's four other children. Both aunt and mother testified that, because the child is in a stable environment, the child has not been impacted by father's frequent criminal activity,

substance abuse, and absence. Mother also testified that "nobody in this world loves that child more than [aunt] does." The guardian ad litem testified that she was concerned about how long it would take for father and the child to build a relationship given father's continued incarceration.

The district court's factual findings have substantial support in the record. Accordingly, we conclude that the district court did not abuse its discretion by determining that the child's interest in a permanent, safe, and stable home outweigh father's competing interest in maintaining his parental rights, and that termination of father's parental rights was in the child's best interests.

Affirmed.