This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).

STATE OF MINNESOTA
IN COURT OF APPEALS
A09-899

In the Matter of the Welfare of the Child of: P.R.S., Jr., Parent.

Filed December 1, 2009
Affirmed
Stauber, Judge

Anoka County District Court
File Nos. 02JV082376; 02JV071767

Sherri D. Hawley, Attorney at Law, Suite 500, 13055 Riverdale Drive Northwest, PMB 246, Coon Rapids, MN 55448 (for appellant)

Robert M.A. Johnson, Anoka County Attorney, Kathryn M. Timm, Assistant County Attorney, Anoka County Government Center, Suite 720, 2100 Third Avenue, Anoka, MN 55303-5025

Monique Bergan, P.O. Box 16442, St. Paul, MN 55116 (guardian ad litem)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

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

STAUBER, Judge

On appeal from the termination of his parental rights, appellant-father argues that the record does not show that (1) the child is neglected and in foster care; (2) father failed to comply with the duties of the parent-child relationship; (3) reasonable efforts failed to correct the conditions leading to the child's out-of-home placement; (4) father is a

palpably unfit parent; and (5) termination of father's parental rights is in the child's best interests. We affirm.

FACTS

Appellant P.R.S. Jr. is the biological father of P.E.J.S. (the child), who was born January 23, 1999. The child's biological mother died shortly after his birth, and since that time, he has been cared for by various people, including appellant, appellant's second wife, several women whom appellant dated, and relatives.

Appellant has a history of mental illness and mental-health interventions dating back to childhood and has received psychiatric treatment since 1994. He was most recently diagnosed with schizophrenia, paranoid type, chronic with acute exacerbation, and mixed substance abuse, in remission. He has been prescribed antipsychotic medications to control his symptoms, but he has a history of self-cessation of medications against medical advice. He also has an extensive criminal history that includes convictions of theft, controlled-substance crime, and assault.

In 2005 and 2006, county social services received reports that appellant had physically harmed the child. In September 2007, appellant was arrested and charged with fourth-degree assault for punching and choking a police officer after the officer attempted to arrest him for an outstanding warrant. After his arrest, a county social worker interviewed appellant in jail. Appellant told the social worker that he heard voices telling him to kill himself and believed the "devil was trying to poison him with medication."

Due to appellant's arrest and concerns about his mental state, the child was placed in foster care. On September 18, 2007, the county filed a petition alleging that the child

was in need of protection or services (CHIPS). Following a hearing on the petition, the district court adjudicated the child CHIPS and transferred legal custody of the child to the county welfare board for foster care placement. At a subsequent dispositional hearing on November 16, 2007, the district court ordered appellant to comply with more than 20 conditions listed in the case plan prepared by the county. Among other things, the plan required appellant to (1) participate in mental-health, domestic-abuse, chemical-dependency, and psychosexual evaluation and treatment; (2) refrain from using controlled substances and submit to drug testing; (3) demonstrate consistent mental health and adhere to all prescribed medications; (4) appreciate the impact of his mental illness, drug use, and decisions on the child and ensure that the child's needs are met; and (5) conduct himself in an honest and cooperative manner.

For several months, appellant failed to comply with many of these conditions. In February 2008, he was discharged from a mental-health facility after he was found to be in possession of hashish and admitted that he had recently smoked methamphetamine. From February to August of 2008, appellant failed to submit to urinalysis testing. During March and April 2008, appellant ceased taking his psychiatric medication for a short time without doctor approval and was hospitalized for suicidal ideation. In August 2008, appellant was scheduled to provide a hair sample for controlled-substance testing, but the testing could not be conducted because appellant had removed his body hair. In October 2008, he was dismissed from domestic abuse treatment because he denied having a domestic-abuse problem. And, on several occasions, he revoked or refused to sign

information releases. Due to appellant's failure to comply with the ordered case plan, the district court relieved the county of further reunification efforts on November 21, 2008.

Meanwhile, the child began to exhibit odd and concerning behavior in foster care. He had persistent nightmares and would awake with night terrors, frequently hid from others by crawling between a bed and the wall or digging a hole in the yard, and drew pictures depicting violence. He also had difficulty controlling his anger and would occasionally act out against other children.

The child also demonstrated an extraordinary preoccupation with sexual behavior and engaged in inappropriate sex acts. He sexually assaulted two younger boys by anally penetrating them with his penis; peeped on his foster sisters several times while they changed their clothes; stated that he enjoyed receiving hugs from a female personal-care attendant because he could feel her breasts against his neck; indicated that he had "sexual thoughts" about other children; pulled on the testicles of the foster-family's puppy; and made references to viewing pornographic materials. The county also learned that the child had been suspended from school as a first-grader because he had demanded that a younger boy perform oral sex on him or he would not be invited to the child's birthday party.

Since being placed in foster care, the child has been diagnosed with reactive attachment disorder (RAD), oppositional defiant disorder, and attention-deficit-hyperactivity disorder and has received therapy to address his behavior. The child is currently enrolled in special education at school and receives one-on-one assistance.

On November 7, 2008, the county filed a petition seeking termination of appellant's parental rights on the bases that (1) appellant had substantially, continuously, or repeatedly refused or neglected to comply with his parental duties; (2) appellant was palpably unfit to parent the child; (3) reasonable efforts by the county had failed to correct the conditions leading to the out-of-home placement; and (4) the child is neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2008). A termination-of-parental-rights trial was subsequently held.

At trial, the county offered testimony from Dr. James Gilbertson, who had performed a psychological assessment of appellant. Dr. Gilbertson diagnosed appellant with Axis I: schizoaffective disorder in fair remission, posttraumatic stress disorder; polysubstance abuse/dependency in current and fair remission; and Axis II: personality disorder with paranoid and antisocial traits. According to Dr. Gilbertson, appellant's schizoaffective disorder manifests itself in appellant's chronic hallucinations, delusions, and disordered thinking, while the personality disorder causes paranoid thoughts and antisocial tendencies. He noted that, although the schizoaffective disorder was in remission because appellant was receiving psychiatric treatment and taking antipsychotic medication at the time, appellant's personality disorder is "more static, enduring, and unchangeable," and can only be addressed through extensive therapy. Accordingly, Dr. Gilbertson expressed concern that appellant's personality disorder might create instability in appellant's life that could cause him to discontinue his medication for the schizoaffective disorder. Dr. Gilbertson also gave appellant a Global Assessment of Functioning (GAF) score of 40, which indicates moderately severe mental impairment.

Due to appellant's diagnosis and treatment history, Dr. Gilbertson concluded that appellant "would need to demonstrate at least a year of regulated, stable living to reach a threshold where he would be available for overall parenting demands," and opined that appellant would not achieve a level of stability necessary to parent the child before a permanency determination would need to be made.

Deena McMahon, an independent clinical social worker who performed a parenting assessment of appellant, also testified on behalf of the county. McMahon testified that the child suffers from RAD, the most severe form of attachment disorder, which is caused by a lack of consistent nurturing during the early stages of a child's life. According to McMahon, a child suffering from RAD is often noncompliant, has difficulty trusting adults, maintains unhealthy boundaries, is anxious and fearful, and can become violent toward self or others. McMahon believes that the child will require long-term care from a stable, consistent, mentally healthy, and emotionally appropriate adult to learn to develop close relationships with others. McMahon opined that appellant is "extremely unprepared and ill equipped to parent successfully" and noted that his "ability to function in typical fashion ebbs and flows and thus has a slippery feel to it."

McMahon cited several aspects of appellant's life that may prevent him from being a stable caregiver, including his (1) history of mental health problems, criminal behavior, substance abuse, and domestic violence; (2) previous abandonment of the child; (3) serious impairment in his ability to think logically and coherently; (4) lack of stable employment, housing, relationships, and support systems; (5) willingness to blame others for the child's special needs; and (6) avoidance of his case plan.

McMahon also reported her observations from a supervised visitation session between appellant and the child. McMahon noted that, during the session, appellant was "focused on his own emotional needs," failed to read the child's verbal and nonverbal cues, directed the child rather than engaging in a give and take, was not attuned to the child's feelings, seemed more interested in impressing McMahon than in interacting with the child, and ignored the county's request that he refrain from bringing gifts to the visit. McMahon also noticed a role reversal in that the child tended to act as appellant's caregiver. Based on her observations, McMahon concluded that it was unlikely that appellant could effectively parent the child in the foreseeable future and recommended that the child not be returned to appellant.

The child's therapist, Jennifer Russell, testified that the child struggles with abandonment, violence, and sexual themes, is extremely averse to change, and will likely need years of intensive individual and sex-specific counseling. Russell testified that the child's fascination with sex likely resulted from being exposed to pornography by appellant and observing sex acts between appellant and his girlfriend. Russell opined that the child requires "[s]ecurity, stability, consistency, someone who has shown that they can parent difficult situations, difficult kids," and indicated that a caregiver suffering from mental illness would have difficulty fulfilling the child's needs.

The guardian ad litem, Monique Bergan, supported the county's efforts to terminate appellant's parental rights and recommended that the child remain in foster care. Bergan testified that appellant's parental rights should be terminated because he (1) suffers from serious mental illness and has failed to consistently take prescribed

medication; (2) is a self-described sex addict whose numerous romantic relationships have had an adverse effect on the child; and (3) severely lacks the parenting skills necessary to parent the child. Bergan acknowledged that appellant had begun to address some of these issues, but she believed that the child could not wait for appellant to stabilize his mental health and improve his parenting skills.

Appellant presented testimony from his therapist, Carolyn Parsons, and Donald Rasemius, an adult-rehabilitative social worker. Parsons testified that she convinced appellant to resume his antipsychotic medication, and by October 2008, she began to see improvement in his mental health. Due to the progress appellant has made, Parsons concluded that appellant is now mentally capable of participating in his case plan and working toward reunification. But she also acknowledged that appellant still maintains a distorted view of reality, is uncomfortable dealing with his emotions, and has a tendency to react without thinking. Parsons ultimately concluded that "parenting a high needs child . . . will require huge responsibility which is beyond [appellant]'s ability to handle."

Rasemius identified himself as an "advocate" who assists appellant to achieve certain life skills and goals. With the help of Rasemius, in December 2008, appellant developed a list of goals that included (1) staying mentally stable; (2) developing relationships, connections, and roots; (3) finding housing; and (4) obtaining custody of the child. Rasemius testified that appellant has made "great progress" with each of his goals and is one of his "more proactive clients."

On April 17, 2009, the district court issued an order finding that termination of appellant's parental rights was in the best interests of the child. The court terminated

appellant's parental rights on the statutory bases that (1) appellant is palpably unfit to parent the child; (2) reasonable efforts have failed to correct the conditions leading to the out-of-home placement of the child; (3) the child is neglected and in foster care; and (4) appellant has refused or neglected to comply with parental duties. Appellant moved for a new trial, but the district court denied the motion. This appeal followed.

D E C I S I O N

I.

Appellant challenges each of the statutory grounds relied upon by the district court in terminating his parental rights. A district court may, upon petition, terminate all rights of a parent to a child on one or more statutory grounds and a finding that termination of parental rights is in the child's best interests. Minn. Stat. § 260C.301, subds. 1(b), 7 (2008). This court's review of the district court's decision to terminate parental rights is "limited to determining whether the findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether they are clearly erroneous." *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997). "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." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). However, "parental rights may be terminated only for grave and weighty reasons." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). Thus, this court will "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998).

Neglected and in foster care

First, appellant claims that there is insufficient evidence to support termination under Minn. Stat. § 260C.301, subd. 1(b)(8), which provides that parental rights may be terminated when a district court finds "that the child is neglected and in foster care." A child is neglected and in foster care when the child: (1) has been placed in foster care by court order; (2) the parents' circumstances, condition, or conduct are such that the child cannot be returned to them; and (3) the parents, despite the availability of rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition, or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child. Minn. Stat. § 260C.007, subd. 24 (2008).

To determine if a child is neglected and in foster care, the district court shall consider, among other factors: (1) the length of time the child has been in foster care; (2) the effort the parent has made to adjust circumstances, conduct, or conditions that necessitated removal of the child; (3) whether the parent has visited the child in the three months preceding the filing of the petition; (4) the maintenance of regular contact or communication with the agency or person responsible for the child; (5) the appropriateness and adequacy of services provided; (6) whether additional services would be likely to bring about lasting parental adjustment; and (7) the nature of efforts made by the responsible social-services agency to rehabilitate and reunite the family. Minn. Stat. § 260C.163, subd. 9 (2008).

Appellant claims that, although the child is in foster care, the evidence does not support the district court's findings that his circumstances, condition, or conduct prevent reunification or that he failed to make reasonable efforts to improve. Appellant claims that he was in compliance with the court ordered case plan before the conclusion of the termination trial on March 20, 2009. He asserts that, by that time, he was prepared to parent the child because he had been taking prescribed medications and living in stable housing for approximately nine months, had tested negative for controlled-substance use for eight months, had participated in a parenting assessment, and had undergone a psychological evaluation.

The district court recognized that appellant "has demonstrated some short term stability for himself," but found that the child cannot be returned to appellant because he (1) "is still mentally precarious and is in a position where he must attend to his own mental health full time with little available time to parent his son"; (2) "has a history of not following his medical prescriptions and most likely will discontinue again at some future date"; and (3) does not understand the needs and fragility of the child.

With respect to appellant's efforts to comply with his case plan, the district court concluded that appellant failed to comply with the ordered conditions despite reasonable efforts by the county. Specifically, the court found that appellant had "flatly refused to follow aspects of the plan that he did not like," had revoked information releases on several occasions, had failed to maintain contact with county social services for months at a time, "actively resisted" assistance from service providers, did not complete the

domestic-abuse class, and was untruthful at times regarding his use of controlled substances.

The record supports the district court's finding that the child is neglected and in foster care. Dr. Gilbertson, McMahon, Russell, Bergan, and Parsons collectively testified that appellant is unable to parent the child because he (1) has ongoing mental-health problems and a history of criminal behavior, substance abuse, and domestic violence; (2) previously abandoned the child; (3) is unable to think logically and coherently; (4) lacks stable relationships and support systems; and (5) is unable to understand and provide for the child's special needs. Dr. Gilbertson's prognosis was probably the most optimistic, yet he still concluded that appellant would need to demonstrate at least one year of stable mental health before he could begin to parent the child. McMahon and Bergan both testified that the child could not wait that long for appellant's condition to improve.

Appellant has made some recent efforts to improve, but those efforts did not begin until long after the child had been placed in foster care. Appellant waited almost a year after the case plan was ordered to participate in a parenting assessment and undergo psychological testing, and the requirements that he participate in domestic abuse training and learn to appreciate the impact of his mental illness on the child remain unfulfilled. Appellant's failure to appreciate the effects of his mental illness on the child was one of the primary reasons for the court's conclusion that appellant was unable to parent the child. Moreover, appellant's continued denial of domestic abuse and failure to complete the court-ordered training is troubling because the county presented evidence that appellant physically abused the child and engaged in domestic violence against his

deceased wife, a recent ex-wife, and an ex-girlfriend. Accordingly, we conclude that the district court did not clearly err in terminating appellant's parental rights on this basis.

Refusal or neglect to comply with parental duties

A district court may terminate parental rights if

> the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable[.]

Minn. Stat. § 260C.301, subd. 1(b)(2).

Appellant does not dispute that he refused or neglected to comply with his parental duties, but claims that his parental rights could not be terminated on this basis unless the district court made a finding that he was mentally capable of parenting the child. We disagree. The statute only requires that a parent be physically and financially able to care for the child. *See id.* There is no explicit requirement that the parent have the *mental* stability to parent the child. Accordingly, the district court did not err in terminating appellant's parental rights for refusal or neglect to comply with parental duties.

Reasonable efforts by the county

Appellant next argues that the district court erred in terminating his parental rights because reasonable efforts by the county failed to correct the conditions that caused the child's out-of-home placement. A district court may terminate a party's parental rights if,

"following the child's placement out of the home, reasonable efforts, under the direction of the [district] court, have failed to correct the conditions leading to the child's placement." Minn. Stat § 260C.301, subd. 1(b)(5).

Appellant does not dispute that the county made reasonable efforts, but claims that the record does not support the district court's finding that those efforts have failed to correct the conditions that resulted in the child's out-of-home placement. Appellant contends that he is in compliance with the majority of the conditions imposed by the case plan and has stabilized his mental health.

Despite appellant's recent attempts to comply with his case plan, there is sufficient evidence that the conditions that led to the child's out-of-home placement have not been corrected. The testimony of the county's witnesses reflects that appellant is unable to appreciate the seriousness of the child's mental health needs and has not sufficiently improved his own mental health or made efforts to address his propensity toward violence. Appellant also acted in a manipulative, defiant manner toward the county throughout the majority of the proceedings, which caused the county to terminate further efforts to reunify appellant and the child. Thus, the district court did not clearly err in terminating appellant's parental rights on this basis.

Palpable unfitness

Appellant next contends that there is insufficient evidence to support termination under Minn. Stat. § 260C.301, subd. 1(b)(4), which provides for termination if

> A parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly

> relating to the parent and child relationship either of which are determined by the [district] 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.

A parent is palpably unfit if his or her behavior "is likely to be detrimental to the children's physical or mental health or morals." *In re Children of Vasquez*, 658 N.W.2d 249, 255 (Minn. App. 2003). Mental illness, standing alone, is not a sufficient basis for termination of parental rights. *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). Instead, "the actual conduct of the parent is to be evaluated to determine his or her fitness to maintain the parental relationship with the child in question so as to not be detrimental to the child." *In re Welfare of S.Z.*, 547 N.W.2d 886, 891 (Minn. 1996) (quotation omitted).

Here, the district court found that appellant is palpably unfit to parent the child

> because he has an incurable mental illness that can only be controlled through a lifetime of anti-psychotic medication, which he has a history of not taking on a consistent basis, and the conduct toward the child engendered by the mental illness has been detrimental to the best interests of the child.

The district court further concluded that, even if appellant were mentally available to parent the child, "no evidence has been presented that [appellant] has or will have a stable living situation, stable employment, and parenting skills sufficient to handle the special needs of [the] child. . . ."

Appellant argues that the record does not support the conclusion that he is a palpably unfit parent. He again notes that he has stabilized his mental health and claims that Dr. Gilbertson testified that he would be ready to parent within a year.

We disagree. The record demonstrates that appellant has struggled with mental illness since childhood and has failed to consistently take prescribed medication. His mental illness has led him to neglect, abandon, and abuse the child for extended periods of time, which has resulted in the child developing RAD. The evidence also suggests that appellant is unlikely to remain compliant with his prescribed medication regimen. Dr. Gilbertson testified that appellant's personality disorder could create instability in his life that might cause him to discontinue his medication for the schizoaffective disorder. In addition to his mental health problems, several witnesses testified that appellant lacks parenting skills and is unable to appreciate the child's special needs.

Appellant also misconstrues Dr. Gilbertson's testimony. Dr. Gilbertson testified that appellant would require *a minimum* of one year of stable living before he would be mentally available to parent. Thus, one year is the absolute minimum amount of stable living appellant would need to demonstrate before he could begin the process of learning to become a stable caregiver. As the district court concluded, appellant would need significantly more time to create a positive, nurturing environment for the child. Therefore, we conclude that the determination of palpable unfitness is not clearly erroneous.

II.

In addition to finding one statutory ground for termination, a district court must base its termination decision on the best interests of the child. Minn. Stat. § 260C.301, subd. 7 (stating that child's best interests are "paramount" in termination proceedings). A best-interests analysis balances the child's interest in preserving the parent-child

relationship with the parent's interest in preserving the relationship and any competing interest of the child, including that of "a stable environment, health considerations and the child's preferences." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992).

Appellant argues that the district court erred in terminating his parental rights because, although it found that termination was in the best interests of the child, it failed to explain its rationale. We agree that the district court did not make explicit findings addressing each of the best-interests factors. But a district court must only make best-interest findings that are adequate "to facilitate effective appellate review, to provide insight into which facts or opinions were most persuasive of the ultimate decision, or to demonstrate the [district] court's comprehensive consideration of the statutory criteria." *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003).

Here, the district court demonstrated its consideration of the best interests of the child throughout its order by making numerous findings regarding appellant's mental-health problems, parenting deficiencies, and the amount of specialized care the child will need. The district court also provided insight into its weighing of the factors by adopting the testimony of the state's witnesses who offered several reasons for concluding that termination was in the best interests of the child. Although findings that specifically address each of the best-interests factors are preferable, the district court's order, as a whole, demonstrates that the district court weighed the relevant statutory criteria, and its determination is supported by the record.

Finally, appellant contends that termination is not in the child's best interests because the county failed to demonstrate that the child is adoptable and declined to

consider an alternative disposition such as long-term foster care. But, as appellant acknowledges, a district court need not consider the adoptability of the child in conducting a best-interests analysis. *J.M.*, 574 N.W.2d at 724. Moreover, appellant did not suggest that alternative placements were appropriate at the district court level. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (providing that arguments not raised and decided at the district court level are waived). Accordingly, the district court did not clearly err in concluding that termination of appellant's parental rights is in the best interests of the child.

Affirmed.