STATE OF MINNESOTA

IN SUPREME COURT

A19-1253

Court of Appeals

Chutich, J.
Dissenting, Thissen, J.

In re the Matter of the Welfare of the
Children of: J.D.T. and J.M.O., Parents.

Filed: July 15, 2020
Office of Appellate Courts

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S Y L L A B U S

A district court may grant a county's petition for involuntary termination of parental rights even when a parent petitions for voluntary termination of those rights because a parent's petition does not automatically supplant a county's petition.

Affirmed.

O P I N I O N

CHUTICH, Justice.

This case considers the effect of a parent's petition to voluntarily terminate parental rights on a county's petition for involuntary termination under Minnesota Statutes section 260C.301, subdivision 1 (2018). Appellant J.D.T. filed a petition under subdivision

1(a) to voluntarily terminate her parental rights to her two young children after Grant County filed a petition for involuntary termination under subdivision 1(b). The district court denied J.D.T.'s petition and granted the County's petition for involuntary termination of her parental rights. The court of appeals affirmed, concluding that a parent's voluntary petition does not automatically supplant a county's petition for involuntary termination, and that the district court did not err by denying J.D.T.'s voluntary petition. Because we conclude, as a matter of law, that a parent's voluntary petition does not supplant a county's petition for involuntary termination of parental rights, we affirm.

FACTS

J.D.T. and J.M.O.[1] are the biological parents of C.K.O. and B.R.O., who were about 3 years and 2 years old, respectively, at the time of trial.[2] J.D.T. is also the biological mother of two other children who are not the subject of this appeal, one of whom was in utero when this termination proceeding occurred.

In 2015, J.D.T. transferred custody of her oldest child to the child's biological father following a Child in Need of Protection or Services (CHIPS) proceeding in Pope County. In January 2016, J.D.T. gave birth to C.K.O., one of the children at issue here. Pope County removed C.K.O. from the home of J.D.T. and J.M.O. when he was 2 months old "due to the presence of drugs" in the home. Case plans were established, the parents complied

[1] The father, J.M.O., is not a party to the appeal.

[2] Neither the Indian Child Welfare Act, 25 U.S.C. §§ 1901–63 (2018), nor the Minnesota Indian Family Preservation Act, Minn. Stat. §§ 260.751–.835 (2018), apply.

with the case plans, and C.K.O. was returned to their home in September 2016. J.D.T. gave birth to the second child at issue here, B.R.O., in August 2017.

In May 2018, Grant County Social Services received a Child Protection Report when C.K.O. and B.R.O. were about 28 months and 9 months old, respectively. The report raised concerns that the parents were using drugs and inadequately supervising the children. The County investigated, and J.M.O. admitting to smoking methamphetamine while the children were in the home. J.D.T. stated that she would not comply with a case plan unless it was court ordered, and she also refused a drug test.

The County filed a CHIPS petition on May 16, 2018. Law enforcement officers removed the children from the parents' home after the district court ordered hair follicle testing and J.D.T., J.M.O., and B.R.O. all tested positive for methamphetamine. The district court held a pre-trial hearing on June 26, 2018, and J.D.T. admitted that her children were in need of protective services because of her methamphetamine use. The court ordered an out-of-home placement plan for J.D.T. that focused on maintaining sobriety; completing assessments of parental capacity, mental health, and chemical dependency and following the resulting recommendations; finding employment; and completing parental education courses.

The district court held three intermediate disposition review hearings to assess J.D.T.'s progress with her case plan. After the first hearing, the district court found that by October 1, 2018, J.D.T. had seen her children for "just 4 hours in 78 days." She had no contact with her children's case worker for the one-month period preceding the County's pre-hearing report. She refused or failed to show up for several drug tests, and of the tests

that she did complete, at least three had abnormal creatinine levels, "raising serious concerns" that the submitted samples had been altered. By the second hearing, J.D.T. had missed the last seven consecutive parenting time visits, despite her children's need for consistent contact with their parents based on the trauma that they had suffered.

In December 2018, J.D.T. entered in-patient treatment. She was discharged in January 2019. J.D.T. tested positive for methamphetamine within 1 month of her discharge, when she was 4 months pregnant. She either failed to show up for a drug test or tested positive four more times before trial. Throughout the CHIPS proceeding, the County arranged several appointments, assessments, and courses for J.D.T. and made several referrals to help J.D.T. comply with her case plan.

The County filed a petition for involuntary termination of parental rights on March 11, 2019. The County asserted that its reasonable efforts at reunification failed to correct the conditions leading to the children's out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(5). Specifically, the County alleged that J.D.T. had not consistently participated in parenting time visits and failed to adequately engage with the services that the County provided. At the time of the County's petition, both children had been in an out-of-home placement for at least 272 days.

At a pre-trial hearing on April 22, J.D.T. offered to voluntarily admit to the allegations in the petition. The County asserted that if J.D.T. did so, her admission would be "on an involuntary petition." Three days before trial, J.D.T. filed a petition for voluntary termination of her parental rights to C.K.O. and B.R.O. for good cause, along with an affidavit of consent. *See* Minn. Stat. § 260C.301, subd. 1(a).

The County objected to J.D.T.'s petition, asserting that she had not established good cause for voluntary termination of her parental rights. The County also suggested that even if the district court granted J.D.T.'s petition, the court could simultaneously grant the involuntary petition.

After a 2-day trial, the district court denied J.D.T.'s voluntary petition, finding that she did not demonstrate good cause for termination. The district court granted the County's petition for involuntary termination of J.D.T.'s parental rights because J.D.T. failed to comply with her case plan and failed to correct the conditions that led to out-of-home placement despite the County's attempts at reunification. J.D.T. appealed.

On appeal, J.D.T. asserted that the district court abused its discretion by denying her petition. She also contended that, as a matter of law, her voluntary petition automatically supplanted the involuntary petition.

The court of appeals affirmed the district court on both issues. *In re Welfare of Children of J.D.T.*, No. A19-1253, 2020 WL 290507 (Minn. App. Jan. 21, 2020). First, the court of appeals concluded that the district court did not err in denying J.D.T.'s voluntary petition. *Id.* at *5. Second, the court of appeals concluded that a parent's voluntary petition does not automatically supplant a county's involuntary petition. *Id.* at *7. Instead, the court stated that a district court in that scenario may grant one or both of the petitions. *Id.* The court of appeals reasoned that J.D.T.'s proposed interpretation "would usurp the district court's authority to provide for the best interests of children." *Id.* (quoting *In re Welfare of Child of N.E.R.*, No. A17-1112, 2018 WL 492654, at *5 (Minn. App. Jan. 22, 2018)).

J.D.T. sought review, asking us to determine whether "the filing of a voluntary petition for termination of parental rights converts an existing action for involuntary termination of parental rights into a voluntary action."[3]

ANALYSIS

J.D.T. does not argue that the district court erred by terminating her parental rights. Rather, she asserts that the termination should have been voluntary rather than involuntary because, as a matter of law, her voluntary petition superseded the County's involuntary petition. This outcome matters in part because an involuntary petition affects future termination proceedings involving other children. If a district court involuntarily terminates a parent's rights, that parent faces a rebuttable presumption that he or she is "palpably unfit" to be a parent if a subsequent termination proceeding for another child should occur.[4] Minn. Stat. § 260C.301, subd. 1(b)(4) (2018). By contrast, a parent whose

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[3] Because J.D.T. did not raise in her petition for review the factual issue of whether the district court abused its discretion in denying her voluntary petition for failure to establish good cause, she forfeited the issue. *See In re GlaxoSmithKline PLC*, 699 N.W.2d 749, 757 (Minn. 2005) ("Generally, we do not address issues that were not raised in a petition for review."). Further, counsel for both parties conceded at oral argument that we do not need to reach the issue of J.D.T.'s good faith if we conclude that a parent's voluntary petition does not preclude a district court from granting a county's involuntary petition. Accordingly, we express no opinion about whether the district court correctly denied J.D.T.'s petition for failing to establish good cause for a voluntary termination.

[4] A parent rebuts this presumption by producing "only enough evidence to support a finding that the parent is suitable to be entrusted with the care of the children," which is "determined on a case-by-case basis." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014) (citations omitted) (internal quotation marks omitted). We concluded in *In re Welfare of Child of R.D.L.* that this presumption "is easily rebuttable" and did not violate the equal protection provisions of the United States or Minnesota Constitutions. *Id.* at 137–38.

parental rights have been voluntarily terminated by a district court is not presumed to be unfit in subsequent proceedings.[5] *See* Minn. Stat. § 260C.301, subd. 1(a).

The relationship between petitions for voluntary and involuntary termination of parental rights—including whether a parent's involuntary petition supplants a county's involuntary petition—involves questions of statutory interpretation that we review de novo. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 54 (Minn. 2004).

The goal of statutory interpretation is to effectuate the Legislature's intent. Minn. Stat. § 645.16 (2018). First, we "determine whether the statute's language, on its face, is ambiguous." *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). A statute is unambiguous if it has only one reasonable interpretation. *See id.* "If the words are free of all ambiguity, we apply the statutory language." *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 73 (Minn. 2012). We "will not disregard a statute's clear language to pursue the spirit of the law." *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 123 (Minn. 2007).

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[5] The dissent suggests that this presumption is the only meaningful difference between a voluntary and an involuntary termination. We disagree. A petitioner must prove different criteria to support termination under subdivision 1(a) for voluntary termination—requiring good cause—than under subdivision 1(b) for involuntary termination—requiring that at least one of the nine enumerated factors be shown by clear and convincing evidence. Minn. Stat. § 260C.301, subd. 1. Facts that establish good cause to support voluntary termination *may* meet at least one of the nine enumerated factors for an involuntary termination. *In re Welfare of Child of R.D.L.*, 853 N.W.2d at 140 (Page, J., dissenting). But because the criteria are distinct, they may not always do so. As we observed in *R.D.L.*, "parents may seek to terminate their rights for any number of reasons that have nothing to do with their fitness to be parents." *Id.* at 135–36. A blanket rule that automatically converts an involuntary petition to a voluntary petition as a matter of law would therefore be illogical.

At the outset, we note that counsel for J.D.T. acknowledged at oral argument that no language in chapter 260C states that a parent may automatically convert a termination proceeding from involuntary to voluntary by filing a petition for a voluntary termination of parental rights. Counsel also conceded that no authority in the Rules of Juvenile Protection Procedure or our case law suggests that a parent may automatically convert a termination proceeding from involuntary to voluntary.

Instead, J.D.T. urges us to either adopt language from a published court of appeals opinion, *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703 (Minn. App. 2004), to accomplish this effect,[6] or to craft a new procedural rule that would do so. Given the plain language of the termination of parental rights statute, we decline to do so.

Section 260C.301, subdivision 1, governs both voluntary and involuntary terminations of parental rights. Subdivision 1 grants the district court broad discretion in determining these petitions, as it states:

> The juvenile court *may* upon petition, terminate all rights of a parent to a child:
>
> (a) with the written consent of a parent who for good cause desires to terminate parental rights; *or*

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[6] *In re Welfare of Child of W.L.P.* contains this phrase: "[T]here are at least two procedures parents can utilize to convert an involuntary termination petition into a voluntary one." 678 N.W.2d at 712. We do not read this language to support J.D.T.'s argument, however. In that case, the parent did not file a voluntary termination petition, so the court did not consider an attempt by a parent to supplant an involuntary petition by the filing of a voluntary petition. 678 N.W.2d at 711. Comments that are not necessary to a decision, such as the comments that J.D.T. relies upon, are non-binding dicta. *See, e.g.*, *State ex rel. Foster v. Naftalin*, 74 N.W.2d 249, 266 (Minn. 1956). But even assuming that this passage is not dicta, it merely describes the necessary—but not automatically sufficient—procedures for a district court to grant a parent's voluntary petition and to deny a county's involuntary petition.

> (b) if it finds that one or more of the following [nine enumerated] conditions exist.

(Emphasis added.) Of course, a district court's "paramount consideration" in deciding whether to terminate parental rights under either subdivision 1(a) or 1(b) is the best interests of the child. Minn. Stat. § 260C.301, subd. 7 (2018).

The use of the terms "may" and "or" in subdivision 1 emphasizes that a district court has great discretion when considering termination petitions under subdivision 1(a), 1(b), or both. In using the term "may," instead of the mandatory term "must," the Legislature gave district courts the discretion to forego terminating parental rights in a particular case when termination is not in the best interests of a child, even though an adequate showing for termination may have been made. *See* Minn. Stat. § 645.44, subds. 15, 15(a) (2018) (defining "[m]ay" as a permissive term and "[m]ust" as a mandatory term).

Similarly, the disjunctive term "or" at the end of subdivision 1(a), describing voluntary terminations, gives a district court the discretion to nevertheless proceed under subdivision 1(b) if it finds, by clear and convincing evidence, that a county has proven at least one of nine factors enumerated there. *See In re Welfare of Children of R.D.L.*, 853 N.W.2d 127, 132 (Minn. 2014); *see also State v. Loge*, 608 N.W.2d 152, 155 (Minn. 2000) ("We have long held that in the absence of some ambiguity surrounding the legislature's use of the word 'or,' we will read it in the disjunctive and require that only one of the possible factual situations be present in order for the statute to be satisfied."). Alternatively, a district court may find that a parent has shown good cause for a voluntary termination notwithstanding the County's petition for involuntary termination of parental

rights, and thus grant the parent's petition. *See In re Welfare of D.D.G.*, 558 N.W.2d 481, 485–86 (Minn. 1997) (explaining that a parent may establish good cause "under a variety of circumstances" not limited to the statutory factors for involuntary termination).

As we have previously stated, the "termination of parental rights is *always* discretionary with the juvenile court." *In re Welfare of Child of R.D.L.*, 853 N.W.2d at 136 (emphasis added). If a district court is not required to grant or to deny *any* petition, it follows that a parent cannot unilaterally force a district court to consider only its voluntary petition when an involuntary petition has also been filed.[7]

Moreover, nothing in Minnesota Statutes section 260C.307 (2018), which describes procedures in terminating parental rights, authorizes a procedure for converting an involuntary petition into a voluntary petition.

In sum, the plain language of section 260C.301 shows that the Legislature did not contemplate that a parent's petition for voluntary termination would automatically supplant an earlier-filed involuntary petition. We cannot add words to a statute that the Legislature has omitted. *Cilek v. Office of Minn. Sec'y of State*, 941 N.W.2d 411, 415 (Minn. 2020). Nor can we create a procedural rule that contradicts express legislative intent. *See Axelberg v. Comm'r of Pub. Safety*, 848 N.W.2d 206, 212–13 (Minn. 2014) (declining to "prioritize a policy goal that is not expressed in the statute at the expense of one that is the clear focus

[7] In fact, counsel for both parties acknowledged at oral argument, and we agree, that no statutory prohibition exists that would prevent a district court from considering and granting both a petition for voluntary termination and a petition for involuntary termination. Moreover, this conclusion undermines J.D.T.'s assertion that a parent's due process rights are somehow violated if a voluntary petition does not automatically supersede an involuntary petition.

of the legislation," and deferring to the Legislature, not the courts, as the "reviser" of laws based upon public policy), *superseded by statute*, Minn. Stat. § 169A.53, subd. 3(h) (2018). A district court presented with petitions for both voluntary and involuntary termination of parental rights may therefore use its discretion to grant one, both, or neither under the termination statute, keeping the best interests of the child as the paramount consideration. *See* Minn. Stat. § 260C.301, subd. 7.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

D I S S E N T

THISSEN, Justice (dissenting).

The decision before the district court was whether the parental rights of appellant J.D.T. to two children, C.K.O. and B.R.O., should be terminated. Everyone agrees that a voluntary termination of parental rights under Minn. Stat. § 260C.301, subd. 1(a) (2018), and an involuntary termination of parental rights under Minn. Stat. § 260C.301, subd. 1(b) (2018), have an identical effect: J.D.T.'s parental rights to those two children are permanently terminated subject only to the provisions of Minn. Stat. § 260C.329 (2018) (providing for the reestablishment of a legal parent-child relationship). The only difference for preferring an involuntary termination over a voluntary termination is the effect that the termination decision will have on the parent's relationship with other children who are not subject to the proceeding. *Compare* Minn. Stat. § 260C.301, subd. 1(b)(4) (2018) (an involuntary termination of parental rights creates a rebuttable presumption that the parent is "palpably unfit to be a party to the parent and child relationship" including a parent-child relationship with children who are not subject to proceeding), *with* Minn. Stat. § 260C.301, subd. 1(a) (no presumption of unfitness following a voluntary termination).[1]

[1] In her Affidavit of Consent accompanying her petition for voluntary termination, J.D.T. stated as follows:

> I am now and in the foreseeable future unable to comply with the duties imposed upon me by the parent and child relationship with my minor children, [C.K.O. and B.R.O]. More specifically, I believe that the minor children have been in foster care for too long and need to be placed with a permanent family unit (preferably a family member), and I further believe that I am presently unable to provide the minor children with the care and stability that they need in order to focus on the impending birth of my new child, maintaining my sobriety, and obtaining gainful employment. I want

I see nothing in the statutory language to suggest that the Legislature intended to empower a district court to impose involuntary termination of parental rights to the children subject to the proceeding rather than grant a properly supported petition for voluntary termination of those parental rights based *solely* on the impact that an involuntary termination will have on the parent's relationship with children not subject to the proceeding. Yet that is the practical result of the court's decision.

The "best interests of the child" provision in Minn. Stat. § 260C.301, subd. 7 (2018), does not suggest a different result. The provision states that, "[i]n any proceeding under this section, the best interests of the child must be the paramount consideration." "The child" means *the* child that is the subject of the proceeding. *See Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 639 (Minn. 2019) (stating that "the" is an important word of limitation). Accordingly, the best interests of the child who is subject to the proceeding must be considered and is paramount; the provision does not provide that the court may consider the best interests of a child not subject to the proceeding.

> my children to have a safe, stable, and secure home and to protect their future welfare, and I believe that my Affidavit of Consent will achieve those goals and is in their best interests.

We have long held that such reasons provide good cause for voluntary termination under Minn. Stat. § 260C.301, subd., 1(a). *See In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997); *In re Welfare of K.T.*, 327 N.W.2d 13, 17 (Minn. 1982); *In re Welfare of J.M.S.*, 268 N.W.2d 424, 428 (Minn. 1978). The district court dismissed the obstacles to parenting that J.D.T. identified in her affidavit simply because it considered those obstacles to be common to parents with chemical dependency issues. That is not a proper basis to ignore our clear precedent. I conclude that the district court erred by denying J.D.T.'s petition for voluntary termination.

Nor does the "palpably unfit" provision in Minn. Stat. § 260C.301, subd. 1(b)(4), suggest legislative intent that the district court may consider the impact of its decision on a parent's relationship with children who are not subject to the proceeding. The language provides: "It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that the parent's parental rights to one or more other children *were* involuntarily terminated." (Emphasis added.) The use of the past tense "were" is a clear legislative indication that the court may consider the impact of an involuntary termination on a parent's relationship with children not subject to the instant proceeding but only in any future proceedings.

The parent-child relationship is among the most fundamental and important in our society. *See Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *SooHoo v. Johnson*, 731 N.W.2d 815, 820 (Minn. 2007). While mandating that the paramount consideration is the best interests of the child who is the subject of the proceeding, our Legislature has recognized the importance of the parent-child relationship, prioritizing reunification in permanency matters. Minn. Stat. § 260C.001, subd. 3. Consequently, without a more clear statement of legislative intent—more than the use of the words "may" and "or" in identifying that two types of parental termination exist—I cannot agree that a district court may prefer involuntary termination when a proper and supported petition for voluntary termination is before the court.

Therefore, I respectfully dissent.