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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0553**

In the Matter of the Welfare of the Children of:
D. W. E. T., Parent

**Filed August 14, 2017
Affirmed
Bratvold, Judge**

Isanti County District Court
File No. 30-JV-16-14

Carrie A. Doom, McKinnis & Doom, P.A., Cambridge, Minnesota (for appellant D.W.E.T.)

Jeffery R. Edblad, Isanti County Attorney, Timothy C. Nelson, Assistant County Attorney, Cambridge, Minnesota (for respondent Isanti County)

Cynthia Bell, Pine City, Minnesota (guardian ad litem)

Considered and decided by Hooten, Presiding Judge; Bratvold, Judge; and J. Smith, Judge.*

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant challenges the district court's order terminating his parental rights to his three children. Because the district court did not abuse its discretion when it determined that appellant was palpably unfit to parent and termination is in the best interests of the children, we affirm.

FACTS

Respondent Isanti County Family Services (county) filed a Child in Need of Protection or Services (CHIPS) petition on behalf of appellant D.W.E.T.'s (father) three children in December 2014. Father and mother were married in 2008 and are the parents of three children: M.T. (born in 2008), J.T. (born in 2011), and R.T. (born in 2014). The facts necessitating the petition are laid out in this court's decision of *In re Welfare of the Children of S.M.T.*, A16-1096, 2016 WL 7439097, *1 (Minn. App. Dec. 27, 2016), and we do not repeat them in detail here. The family has a history of child protection matters dating back to the birth of their oldest child; the substance of the CHIPS petition included "feces on the floor and on the walls of the girls' bedroom," "a potty-chair overflowing with urine and feces in a bedroom closet," "mattresses were soiled and without blankets or pillows," and "cigarette lighters and prescription medication bottles were accessible to the children." *Id.* at *1. The two older children reported that mother "would lock them in their bedroom." *Id.* The county also noted parental drug use, anger management, and mental health problems. *Id.* at *1–2.

The record establishes that the father has at all times lived in the family home, including when the county had open child protection cases with the family. Until the December 2014 report, father had not participated in services offered by the county. After the December 2014 report, the district court granted the CHIPS petition, the county placed the children in foster care and, by court order, father completed a parenting assessment.

Father's parenting assessment noted that father acknowledged the home conditions and responded that when mother was sick, she did not clean. Father stated that he and

mother turned the bedroom door handle so the lock faced out, but he did not remove the lock after the county asked them to do so. Father also stated that the children were lying about mother locking them in their bedroom. Because father disputed the home conditions and attempted to justify or defend mother's harmful parenting conduct, the psychologist recommended that the district court not reunify father with the children.

Mother left the home and had supervised visits with the children. The county initiated a trial home visit with father. During the visit, which started in August 2015, father kept the home clean and was able to meet the children's needs. In December 2015, the county learned that father was allowing the children to have unauthorized and unsupervised contact with mother, including that father allowed mother to contact the children via video-messaging and father and the children spent at least one overnight during Christmas at mother's home in Wisconsin. Due to the unauthorized contact and father's inability to protect the children from conditions that led to their removal, the county terminated the trial home visit and again placed the children in foster care.

On February 5, 2016, the county filed a termination of parental rights (TPR) petition against both parents. At the consolidated trial on the petition, father testified that he was aware of the home conditions and that he should have helped to keep it clean. Father also denied that he could smell the urine or feces. While father testified that he knew the children were not supposed to have unsupervised contact with mother, he also claimed that the children were lying about having had unsupervised contact with mother. Father admitted that he "somewhat" understood that he may not be able to keep his family together because of the danger mother posed to the children. But father also testified that he did not

believe the district court should terminate mother's parental rights because it would be "unhealthy" for the children.

After trial, the district court granted the petition, terminating both parents' parental rights. Both parents appealed. We affirmed as to mother and reversed as to father, remanding to the district court for findings regarding the statutory ground for termination. *S.M.T.*, 2016 WL 7439097 at *3. On remand, the district court scheduled a hearing and issued two amended orders concluding that father was palpably unfit to parent under Minn. Stat. § 260C.301, subd. (1)(b)(4). Father appeals.

DECISION

"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). We review a district court's findings to determine whether the findings addressed the statutory criteria and whether the findings are supported by clear and convincing evidence and are not clearly erroneous. Minn. R. Juv. Prot. P. 39.04, subd. 2(a); *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 249 (Minn. App. 2003). We review for abuse of discretion the district court's determination of whether a particular statutory basis for involuntarily terminating parental rights is present. *In re Welfare of the Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). A district court's termination decision must be "based on evidence concerning the conditions that exist at the time of termination." *In re Welfare of the Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007) (quotation omitted). This court defers to a district court's credibility determinations, because the "district court is in a superior

position” to judge witness credibility. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

I. Clear and convincing evidence supports the district court’s determination that father was palpably unfit to parent.

There is a “presumption that a natural parent is a fit and suitable person to be entrusted with the care of his or her child.” *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). “Ordinarily, it is in the best interest of a child to be in the custody of his or her natural parents.” *Id.* In a proceeding to terminate parental rights, the petitioner “bears the burden of producing clear and convincing evidence that one or more of the statutory termination grounds exists.” *In re Welfare of C.K.*, 426 N.W.2d 842, 847 (Minn. 1988).

A parent is palpably unfit when a pattern of conduct or conditions “directly relating to the parent and child relationship . . . renders the parent unable, for the reasonably foreseeable future” to care appropriately for the child. Minn. Stat. § 260C.301, subd. 1(b)(4). The petitioning party bears the burden of establishing “a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child.” *M.D.O.*, 462 N.W.2d at 377.

Father argues that six of the district court’s findings are unsupported by clear and convincing evidence, including that: (1) unauthorized visits with mother were harmful to the children; (2) father failed to intervene when mother exhibited inappropriate parenting conduct; (3) father continued to use drugs; (4) father will continue to have contact with mother; (5) father was living with mother’s father during trial; and (6) father had not

complied with services offered over several years. Father also argues that the conditions existing at the time of trial do not meet the county's burden of proof. We examine each challenge in turn.

First, the district court found that unauthorized contact had occurred and that father was unable "to protect the children from situations that are harmful to their well-being" and failed "to follow directives that would benefit the healthy development of his children." The record evidence established that father lived in the family home at the time of each report received by the county, he was aware of the home conditions, and he failed to assist in keeping the home clean and safe or to intervene when mother locked the children in their bedroom. Even after mother left the home and the county returned the children to father, he continued to defer to mother by allowing the children to have unsupervised contact with mother and claiming that the children were lying about the contact. We conclude that clear and convincing evidence supports this finding.

Second, the district court determined that father failed to intervene when mother exhibited inappropriate parenting conduct. Father correctly points out that the guardian ad litem (GAL) and the social worker testified that father sometimes interceded on behalf of his children. Other evidence established, however, that father continued to support mother's inappropriate parenting by allowing her to yell at an in-home skills worker and telling the skills worker to "leave before it gets worse." Father also "minimize[d] and ignore[d] problems and distress," lacked self-awareness and understanding, and defended his continuing relationship with mother. Thus, clear and convincing record evidence supports the district court's finding.

Third, the district court found that father continued to use drugs. Father tested positive for marijuana for two months after the county filed the CHIPS petition. The record is unclear whether father provided any other positive tests. Father accurately cites the social worker's testimony that she did not have ongoing concerns about father's drug use, but father omits her explanation. The social worker testified that father agreed to "safety plan" around his drug use. The record also establishes that father was present in February 2016 when police arrested mother for possession of marijuana and drug paraphernalia. Clear and convincing record evidence supports the district court's finding that father continued using drugs.

The fourth and fifth findings are related. The district court found that father will continue to have contact with mother based, in part, on findings that father appeared to have abandoned his dissolution petition and he lived with mother's father at the time of trial. Father does not deny that he stayed with mother's father. But father claims the dissolution file is outside the record. A court may take judicial notice of facts that are not reasonably open to dispute and "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Minn. R. Evid. 201(b). Also, a court may take judicial notice of facts and court orders "in any other court file involving the child or the child's parent." Minn. R. Juv. Prot. P. 3.02, subd. 3.

Here, the district court appropriately took notice of father's dissolution action, which was dismissed because of inactivity. Father does not dispute that the dissolution action was dismissed. More importantly, the status of the dissolution file and father's contact with mother's father are just two facts supporting the district court's conclusion

that father had continuing contact with mother up to and including the time of trial. Father facilitated unauthorized visits with mother and was present when police arrested mother in February 2016. Father traveled to court with mother each of the four trial days. Clear and convincing record evidence supports the district court's finding that father's ongoing relationship with mother displays a disregard for distancing the children from potentially harmful contact with mother.

Sixth, the district court determined that father was noncompliant with services offered over several years. Although the record establishes that father complied with many of the case plan goals, it also shows a long and repeated history of noncompliance. Since 2008, the county repeatedly opened files that documented deplorable home conditions. Father lived in the home at the time of each report, failed to keep the home clean, and deferred to mother's parenting. Each time the county opened a file, the home conditions would improve; however, when the county closed the file, the home conditions and the parenting skills would deteriorate again. The district court also found that father refused to acknowledge that unsanitary conditions "had been recurring over the past many years." Thus, clear and convincing record evidence supports the district court's determination that father was noncompliant with county services.

Finally, father argues that the district court abused its discretion because the county did not meet its burden to prove that conditions existing at the time of trial supported a termination of his rights. In determining whether to terminate parental rights, the district court must determine whether the parent currently is unable, and "for the reasonably foreseeable future" will remain unable to appropriately care for the child. Minn. Stat.

§ 260C.301, subd. 1(b)(4). Thus, a district court must assess “the projected permanency of the parent’s inability to care for his or her child.” *A.D.*, 535 N.W.2d at 649 (quotation omitted). Projected permanency of the inability to care for a child includes consideration of the parent’s historical conduct. *See In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) (reviewing parent’s mental-health and chemical-abuse history); *see also* Minn. Stat. § 260C.301, subd. 1(b)(4) (allowing district court to consider “a pattern of specific conduct” in termination proceedings).

The district court found that, during the trial home visit, father kept the home clean and was able to meet his children’s needs. But the district court concluded that father was palpably unfit to parent because he continued to allow unsupervised contact with mother, despite the potentially harmful consequences, and continued to refuse responsibility for his role in the county’s involvement with the family. The district court also determined that father would be unable to maintain “appropriate safe levels of contact [with mother] in the foreseeable future” and, once services were to terminate, “the old patterns would resurface for the family.”

The record includes clear and convincing evidence of circumstances at the time of trial that support the district court’s determinations. First, father testified that he was hesitant to sever contact with mother and believed that terminating her parental rights was “unhealthy” for the children. Second, the district court found that father’s testimony denying unauthorized contact with mother was not credible and established that father will continue to minimize problems. Credibility findings are the exclusive province of the factfinder and will not be disturbed on appeal. *M.D.O.*, 462 N.W.2d at 374–75. Third, at

the time of trial, father was staying with mother's father and traveling to court with mother on a daily basis. Because the district court must rely on projections of a parent's inability to care for a child, and that projection includes consideration of the parent's historical conduct, the district court did not abuse its discretion when it concluded that father was palpably unfit to parent the children.

II. The district court considered the best interests of the children.

Father argues that the district court abused its discretion because it did not consider the best-interest factors required in termination proceedings. A court must make specific findings that terminating parental rights is in the best interests of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). In making this determination, the court "shall" analyze "(i) the child's interests in preserving the parent-child relationship; (ii) the parent's interests in preserving the parent-child relationship; and (iii) any competing interests of the child." *Id.* "The absence of district court findings on the best interests of the children in a [TPR] proceeding precludes effective appellate review because we are unable to determine whether the district court adequately considered the statutorily mandated best-interests factor." *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). To affirm a district court's order terminating parental rights, the best-interests findings must show which facts or opinions informed the decision and demonstrate the courts consideration of the best-interest factors. *Id.*

The district court found that father minimized problems in the home and continued to support mother's inappropriate parenting. The district court also found that father failed to consistently intervene on behalf of the children. Moreover, the district court found that

father allowed unsupervised contact with mother, ignoring potential harm to the children's well-being. Relying on reports by the social worker and GAL, the parenting assessment, and the family history, the district court concluded that "[the evidence] all bear out that it is not in the best interests of the minor children to continue the parental relationship with their father. It is in the best interest[s] of the minor children to terminate [father's] parental rights." The district court also considered the children's interest in maintaining a relationship with their foster family. At the time of trial, the children were "thriving" in foster care and reaching developmental milestones. Because it is clear which facts and opinions the district court relied on when it determined that termination was in the children's best interests, it did not abuse its discretion.

Affirmed.