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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1621**

In re the Matter of the Welfare of the Child of:
J. A. V. and N. F. S., Parents.

**Filed March 11, 2019
Affirmed
Halbrooks, Judge**

Renville County District Court
File No. 65-JV-18-43

J.A.V., Renville, Minnesota (pro se respondent)

John E. Mack, Mack & Daby, P.A., New London, Minnesota (for appellant N.F.S.)

David J. Torgelson, Renville County Attorney, Olivia, Minnesota (for respondent Renville County Human Services)

Jan Tonn, Wood Lake, Minnesota (guardian ad litem)

Considered and decided by Halbrooks, Presiding Judge; Rodenberg, Judge; and
Smith, John, Judge.*

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant-father challenges the district court's termination of his parental rights and the district court's denial of his petition to transfer permanent legal and physical custody to a relative. We affirm.

FACTS

This appeal arises from two child-in-need-of-protection-or-services (CHIPS) proceedings occurring between September 2015 and September 2018. The child, K.S., was initially removed from the custody of his mother, J.A.V., in September 2015 (CHIPS I) due to her methamphetamine use. K.S. was removed again in December 2016 (CHIPS II) and in March 2018. J.A.V. voluntarily terminated her parental rights at the beginning of trial in 2018 and is not part of this appeal.

In both CHIPS proceedings, appellant N.F.S., the non-custodial father of K.S., intervened as a party. The county made recommendations for N.F.S. in CHIPS I, including a mental-health assessment and chemical-dependency treatment and that he maintain sobriety and submit to random urinalysis (UA). But N.F.S. was either noncompliant or sporadic in his compliance with the county's recommendation throughout CHIPS I.

In the course of CHIPS II, the district court ordered N.F.S. to comply with the existing case plan from CHIPS I and to follow all recommendations of the county. N.F.S. obtained a parenting-capacity assessment in 2017. But he did not complete the other recommendations, which included parent education, a mental-health assessment, a chemical-health assessment, domestic-violence education, and anger management. N.F.S.

also violated an order for protection (OFP) by contacting J.A.V. throughout the CHIPS II proceeding.

N.F.S. remained noncompliant with the county's recommendations as of October 2017. He also engaged in a pattern of hostile, harassing, and threatening conduct toward county workers and the guardian ad litem (GAL) in voicemail, phone calls, and text messages. This conduct resulted in a court order prohibiting N.F.S. from contacting county service providers other than in writing.

N.F.S. completed a psychological assessment in December 2017. He was diagnosed with generalized anxiety disorder and narcissistic personality disorder. N.F.S.'s diagnosis of narcissistic personality disorder raised additional concerns about his ability to care for K.S. The county recommended that N.F.S. complete therapy.

In February 2018, the district court ordered N.F.S. to participate in supervised visits with K.S. at Harmony Visitation Center. N.F.S. did not arrange the visits as ordered. Instead, he had unsupervised contact with K.S. through J.A.V.

The county filed a permanency petition in March 2018, requesting that N.F.S.'s parental rights be terminated; alleging that (1) N.F.S. substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed by the parent-child relationship; (2) N.F.S. was palpably unfit to be a party to the parent-child relationship; (3) K.S. was neglected and in foster care; and (4) reasonable efforts had failed to correct the conditions leading to out-of-home placement. N.F.S. petitioned the district court to transfer permanent legal custody to his sister, K.G.

The district court conducted a four-day bench trial. Witnesses included the county social worker, the parental-capacity evaluator, the psychologist, a second social worker, the GAL, N.F.S., and K.G. Following trial, the district court ordered termination of N.F.S.'s parental rights, concluding that the county proved by clear and convincing evidence under Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2018), that (1) N.F.S. has substantially, continuously or repeatedly, refused or neglected to comply with the duties imposed upon the parent-child relationship; (2) N.F.S. is palpably unfit to be a part of the parent-child relationship; (3) reasonable efforts have failed to correct the conditions leading to out-of-home placement; and (4) K.S. is neglected and in foster care, and that termination is in the best interests of K.S. The district court denied N.F.S.'s petition to transfer legal custody of K.S. to his sister, K.G. This appeal follows.

D E C I S I O N

I.

In reviewing a district court's decision to terminate parental rights, we "determine 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 Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We review the district court's ultimate decision to terminate parental rights for an abuse of discretion. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136-37 (Minn. 2014).

We will affirm a termination of parental rights "as long as at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn.

2004). We therefore address the district court's determination of N.F.S.'s palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4).

A parent is deemed to be palpably unfit when the district court determines that “a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship” are 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.” Minn. Stat. § 260C.301, subd. 1(b)(4).

N.F.S. challenges the district court's determination that there is clear and convincing evidence that he is palpably unfit, arguing that his drug use alone does not render him palpably unfit to parent. But the district court's determination on this statutory ground was based on more than N.F.S.'s demonstrated lack of sobriety. The GAL's reports indicate that K.S. regressed in his behavior and stability after visits with N.F.S. According to the GAL, N.F.S.'s inconsistency in visiting K.S. was very difficult for the child. K.S.'s foster parents stopped telling K.S. about upcoming visits because N.F.S. would often not show up, causing K.S. to be angry and upset. The parenting-capacity assessment noted that N.F.S. does not have a healthy attachment with K.S. and that the bond between them is not strong. The parental-capacity evaluator testified that N.F.S. cannot “provide for his own basic needs let alone take care of a child.” She noted in her report that N.F.S.'s scores on the psychological tests are an indication that N.F.S. “is capable of committing acts of physical, emotional, and verbal abuse. [They] also indicate[] he harbors poorly repressed resentment and anger.”

N.F.S. exhibited difficulty managing his anger throughout the proceedings when he repeatedly engaged in hostile, harassing, and threatening contact with county workers. This conduct resulted in a court order prohibiting him from contacting county service providers except in writing. The district court also noted that the police reports and the testimony of the GAL, social workers, and K.G. discuss N.F.S.’s anger problems and his inability to control his temper. Based on the witness testimony and record evidence, the district court concluded that N.F.S. is palpably unfit to be a party to the parent-child relationship. We conclude that the district court’s findings are supported by substantial evidence and are not clearly erroneous.

II.

Even when there is a statutory basis for terminating a parent’s rights, a child’s best interests are the paramount consideration. Minn. Stat. § 260C.301, subd. 7 (2018); *In re Children of Vasquez*, 658 N.W.2d 249, 254 (Minn. App. 2003). The best-interests analysis considers “(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.” Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). “Competing interests include such things as 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). The district court’s order terminating parental rights must explain its “rationale for concluding why the termination is in the best interests of the child[.]” *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003). “[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) (quoting *Tanghe*, 672 N.W.2d at 625). We apply an abuse-of-discretion standard to a district court’s determination concerning the children’s best interests. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

The district court made detailed factual findings on the best-interests factors set forth in Minn. Stat. § 260C.212, subd. 2 (b)(1)-(10) (2018), and determined that termination of N.F.S.’s parental rights is in the best interests of K.S. The district court found that K.S. “has minimal interests in maintaining a parent child relationship with [N.F.S.]” and that N.F.S. “is not capable of recognizing the depth of [K.S.]’s needs for security and stability.” The district court found that while N.F.S. “claims he wants to maintain the parent child relationship . . . he has had four years to demonstrate that desire and ability” and that his actions “speak louder than [N.F.S.]’s verbal assertions at trial.” The district court also stated that “[N.F.S.] has only a superficial and fanciful interest in maintaining the parent child relationship. He has no real appreciation for what it means to be a parent.” The district court noted that K.S. is “not bonded” with N.F.S. and that spending time with N.F.S. is “a source of distress and discomfort for K.S.” The district court also found that N.F.S. and K.S. have “competing interests” and that it is in K.S.’s best interests to have a permanent and stable environment.

We defer to the district court’s determination regarding N.F.S.’s credibility. The district court’s findings are well supported by clear and convincing evidence, including the

testimony of the GAL, the parenting-capacity evaluator, and the psychologist and are not clearly erroneous. We conclude that the district court did not abuse its discretion in determining that termination of N.F.S.’s parental rights is in the best interests of K.S.

III.

N.F.S. contends that the district court erred by denying his petition to transfer custody of K.S. to his sister, K.G. We review a district court’s decision regarding whether to transfer legal custody for an abuse of discretion. *In re Welfare of Children of A.I.*, 779 N.W.2d 886, 895 (Minn. App. 2010), *review dismissed* (Minn. Apr. 20, 2010).

The district court determined that “there is not clear and convincing evidence” that his petition to transfer custody to K.G. should be granted. N.F.S. contends that the district court utilized an improper burden of proof and therefore erred. We disagree. The standard of proof for permanent transfer of custody upon petition to the district court is identical to the standard for termination of parental rights. “Consistent with the level of proof generally required in child protection proceedings,” a permanent-placement determination must be supported by “clear and convincing evidence.” *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996). A district court “may order permanent legal and physical custody to a fit and willing relative in the best interests of the child.” Minn. Stat. § 260C.515, subd. 4 (2018). Another party to the proceeding “may file a petition to transfer permanent legal and physical custody to a relative.” *Id.*, subd. 4(6). A district court may only order transfer of custody to a relative after it has “reviewed the suitability of the prospective legal and physical custodian.” *Id.*, subd. 4(1).

The district court made thorough best-interests findings, including credibility determinations to which we defer. *D.L.D.*, 771 N.W.2d at 545. The district court noted that K.G. “admitted that [N.F.S.] currently lives with her” and that when she became aware that N.F.S. was having unsupervised visits with K.S. and J.A.V. in violation of the district court’s order, she did not inform the county social worker because the social worker “already knew about it.” The district court found that K.G. “is enmeshed in her brother’s problems and that [N.F.S.] is her priority, not [K.S.]” and that K.G. “admitted during her testimony to allowing her loyalty to her brother [to] overcome any protection toward [K.S.]. She knew that [K.S.] was unsafe, but decided that [J.A.V. and N.F.S.] should have a chance to parent.” The district court found that it is in K.S.’s best interests “to have a permanent and stable environment” and that K.G. “has not demonstrated previously that she will provide a safe environment for [K.S.].” We are satisfied that the district court’s denial of N.F.S.’s petition to transfer custody to K.G. is supported by clear and convincing evidence. The district court did not abuse its discretion in determining that it is not in K.S.’s best interests to transfer permanent legal and physical custody to K.G.

Finally, N.F.S. argues that the county did not satisfy its obligation to conduct a relative search pursuant to Minn. Stat. § 260C.221 (2018) and that the district court erred in its determination that the search was satisfactory. But N.F.S. did not raise an objection to the county’s relative search in district court, nor did he bring a motion for a new trial. We do not generally consider an argument raised for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that appellate courts generally will not

consider matters not argued to and considered by the district court). Accordingly, we decline to address it.

Affirmed.