

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1917**

In the Matter of the Welfare of the Child of:
M. Z., Parent.

**Filed May 20, 2019
Affirmed
Rodenberg, Judge**

Hennepin County District Court
File No. 27-JV-17-5407

Max A. Keller, Keller Law Offices, Minneapolis, Minnesota (for appellant-father M.Z.)

Michael O. Freeman, Hennepin County Attorney, Elizabeth R. Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

Deaundres Diez Wilson, Wilson Law Office, P.A., Minneapolis, Minnesota (for respondent-mother K.Z.)

Sandy Zarembinski, Minneapolis, Minnesota (guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant M.Z. appeals from the district court's termination of his parental rights (TPR), arguing that the record is insufficient to support the district court's finding that termination of his parental rights is in the best interests of the child. We affirm.

FACTS

Appellant and K.Z. (mother) are the biological parents of T.Z. (daughter). Appellant and mother were married at the time of daughter's birth and remain married.

In October 2017, officers from the Minnesota Bureau of Criminal Apprehension (BCA) executed a search warrant to obtain evidence of child pornography stored on appellant's cell phone and laptop computer. The BCA located several stored images of sexually explicit child pornography. Officers interviewed appellant, who admitted to viewing child pornography. He denied that he knew he had ever stored or downloaded the pornographic images. Appellant told the officers he spent time on an internet website that served as a platform to chat about sexual fantasies, including father/daughter incest. Appellant told the officers that one of his chats involved a conversation about sex acts that another male would perpetrate on daughter. Appellant had other conversations that concerned his then-17-year-old daughter (A.Z.), wherein he discussed A.Z. engaging in sexual activity with other men.¹ Appellant admitted that he had provided photos of A.Z. to other men more than ten times and at one point provided another individual with the physical location where A.Z. worked and provided him with A.Z.'s phone number.

Appellant left the family home at the request of child protective services shortly after the BCA executed the search warrant. Appellant voluntarily began sex-addiction therapy and treatment. Appellant's initial intake took place on November 3, 2017, with Michael Kogan-White, M.A. Appellant reported that he knows he has a pornography

¹ A.Z. is no longer a minor, and this appeal does not concern appellant's legal relationship with A.Z. "Daughter" as used herein refers to T.Z., the subject of the TPR.

addiction and that his viewing child pornography was an escalation of his addiction. Appellant denied pedophilia. Appellant reported that he began viewing pornography as a child but his addiction worsened and became more compulsive in the last five years.

Appellant returned to see Mr. Kogan-White after completing a “Sex Addiction Evaluation Packet.” Mr. Kogan-White determined that appellant meets the diagnostic criteria for sexual addiction and recommended further treatment, including sex-offender treatment if required by the court or if further evaluation indicates that appellant has pedophilia.

Hennepin County filed a petition to terminate appellant’s parental rights on November 16, 2017, alleging that appellant is palpably unfit to parent and had committed a crime that would require his registration as a predatory offender if he were to be convicted.

In December of 2017, appellant underwent therapy with Sharri Rogers, LMFT. Appellant recounted to Ms. Rogers that he has had a pornography problem since the age of five. Ms. Rogers noted on February 7, 2018, that he actively participates in therapy, he appears to be very amenable to treatment, and that she believes appellant does not currently pose a threat by having contact with daughter.

Appellant completed his first psychosexual evaluation in February 2018 with Dr. Stefan Bailis. Appellant took a polygraph that supported his denial of having inappropriate sexual contact with minors under the age of 15. Dr. Bailis confirmed appellant’s sexual addiction and ruled out pedophilic disorder.

Appellant was charged on March 12, 2018, with multiple counts of possessing pornographic works involving a minor in violation of Minn. Stat. § 617.247, subd. 4(a) (2016). Appellant pleaded guilty in May 2018. A presentence investigation (PSI) report was prepared. Appellant completed a second psychosexual evaluation, this one with Dr. Mary Marth, in August 2018. Dr. Marth could not rule out pedophilia without more information. Dr. Marth recommended that appellant complete sex-offender treatment and that appellant not live with any minors or be in a supervisory/direct care role of minors until approved by his treatment team.

In the course of the PSI, appellant reported that he became numb to the pornography he was viewing and began seeking material such as bestiality, S&M, and rape. Appellant admitted viewing child pornography, fantasizing about then-17-year-old A.Z., and that his target interest age is 11 to 14 years, including both males and females. When asked if he was aroused by pictures of A.Z., appellant said, “[a] little bit. She is a beautiful girl with a beautiful body.” He expressed bizarre curiosity about A.Z.’s anatomy.² Appellant admitted to being aroused by the likes of an online chat session involving other men’s fantasies of sexually violating appellant’s wife and daughter.

The PSI commented that Dr. Bailis did not have a complete picture of appellant’s behavior. Dr. Bailis did not have any collateral information detailing appellant’s purposeful engagement in sexual chatting that progressed from his spouse, to his teen

² We abridge the details of appellant’s expressions of sexual interest in minors as unnecessary for purposes of this opinion.

daughter, to his pre-pubescent child. Without this insight, Dr. Bailis concluded that appellant's use of child pornography was merely a need for novel stimuli.

The PSI summarized that appellant's "decision to violate society's most sacred bond of protecting one's own children as a means to arousal is difficult to reconcile." It opined that appellant's clear sexual interest in incest-themed material jeopardized the safety of his family. The PSI also stated that appellant's objectification and sexualization of his spouse and daughters requires intervention greater than a sexual-addiction program. The report recommended a five-year stayed sentence with a ten-year conditional release period. Recommended conditions of probation included that appellant have no contact with minors except as authorized by probation and treatment, and have contact with daughter only if supervised as authorized by probation and/or child protection.

Appellant was convicted on September 17, 2018, of four counts of possessing pornographic works involving a minor in violation of Minn. Stat. § 617.247, subd. 4(a). The district court sentenced appellant to 30 months in prison, stayed for five years, on probation conditions including that appellant serve 180 days at the workhouse and complete a sex-offender-specific treatment program and other conditions required by probation. The district court restricted appellant's contact with minors as the PSI recommended.

Kimberly Trembley, the social worker assigned to appellant's child-protection case, testified at trial in favor of terminating appellant's parental rights. Ms. Trembley testified about appellant's psychosexual evaluations. Ms. Trembley was concerned that the first evaluation did not appear to have many collateral contacts, and it stated that appellant was

not attracted to teenagers, but further testing demonstrated that appellant still was so attracted. Ms. Trembley testified that the conversations appellant had with other men about his daughters that came out in the second evaluation were also concerning, in addition to what she perceived as appellant's failure to acknowledge the gravity of the safety risk his behaviors created for his family. Appellant shared the location of his eldest daughter and photos of his family to men on the internet, and engaged in sexual fantasies about his own family members with men who are also offenders. Ms. Trembley testified that the largest factor in moving forward to terminate appellant's parental rights is the PSI, which recommended that appellant not live with or have any direct supervisory contact with minors and noted that appellant has not completed treatment to address his specific addictions and fantasies.

Ms. Trembley testified that appellant has had supervised visits with his daughter, including at mother's home. Ms. Trembley testified that the visits went well and there were a few reports that daughter is confused about why appellant was not in the home. Ms. Trembley took into account the bond that daughter has with appellant when making her ultimate recommendation in favor of terminating appellant's rights.

The guardian ad litem (GAL) also testified at trial and supported terminating appellant's parental rights. The GAL testified that she was familiar with the chats in which appellant engaged. She said that appellant's characterization of the chats as fantasies minimizes the nature of the chats; appellant used the internet to inform a man who is sexually interested in minors where A.Z. works, and when that man told appellant that she was not there, appellant responded by identifying the days when A.Z. would be at work.

The GAL testified that, while appellant has a good relationship with daughter, it would not be safe for daughter if appellant returned home.

Appellant's brother-in-law testified at trial and opposed terminating appellant's parental rights. He testified generally to the positive bond that appellant and daughter have and that appellant is a good father. Appellant's mother-in-law also testified at trial and opposed termination of appellant's parental rights. She testified that she has known appellant to be a good father and that appellant has a special bond with daughter. Neither witness has concerns about daughter's safety with appellant.

Appellant testified at trial and acknowledged that he came into possession of child pornography that was sent to him by a man appellant encountered in an incest-fantasies chatroom. Appellant testified that he sent photographs of A.Z.—in a bathing suit and in her volleyball uniform—to others in the chatroom on at least ten occasions. Appellant testified that he had several conversations about other men having sex with his youngest daughter. Appellant acknowledged viewing pornography on his cellular device on a couple of occasions since the BCA raid of his home and seizure of his computer. Appellant expressed remorse for his actions and his resolve to do whatever it takes to be a good father, including sex-offender treatment.

Mother testified at trial that she believes daughter would be safe if appellant returned to the home. But mother also acknowledged that appellant's second psychosexual examination did not rule out pedophilia. She agreed that, if she were to discover that appellant meets the criteria for pedophilia, she would concede that it is not safe for him to return home.

The district court terminated father's parental rights to daughter.

This appeal followed.

DECISION

Appellate courts review the termination of parental rights “to 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). A factual finding is clearly erroneous “if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted). We review the district court’s ultimate decision to terminate parental rights for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900-01 (Minn. App. 2011), review denied (Minn. Jan. 6, 2012); see *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136-37 (Minn. 2014) (stating that whether there is sufficient evidence to conclude that the termination of parental rights is in the child’s best interests is a discretionary matter with the district court).

Parental rights may only be terminated for grave and weighty reasons. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). A juvenile court may terminate the parental rights of a parent when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child’s best interests. *R.D.L.*, 853 N.W.2d at 137.

The district court concluded that two statutory grounds for termination were met. Appellant was convicted of a crime listed in Minn. Stat. § 260.012(g)(5) (2018)—

possession of child pornography in violation of Minn. Stat. § 617.247, subd. 4(a), requiring that appellant register as a predatory offender—that satisfies a statutory basis for termination under Minn. Stat. § 260C.301, subd. 1(b)(9) (2018). The district court also concluded that appellant is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct directly relating to the parent and child relationship 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) (2018).

On appeal, appellant does not challenge the district court’s determinations that statutory grounds for termination were met, and that the county was relieved of its duty to make reasonable efforts to reunify appellant and daughter. He makes no argument that he was entitled to reasonable efforts at reunification.³ Appellant argues only that the evidence is insufficient to support a finding that termination of appellant’s parental rights is in the best interests of daughter.

The child’s best interests are the paramount consideration in a termination proceeding. Minn. Stat. § 260C.001, subd. 2(a) (2018). The court balances three factors to determine the child’s best interests: (1) the child’s interest in preserving the parent and

³ As a general rule, the county must make reasonable efforts to reunify the parent and child if the parent will be able to care for the child within a foreseeable time. *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996) (noting that if a parent will be able to care for a child within a foreseeable time, the district court should establish a supervised plan to give custody to the parent and decline to terminate rights). But the county was relieved of its obligation to provide reasonable efforts to reunify daughter and appellant under Minn. Stat. § 260.012(a)(6) (2018), and appellant does not challenge that the county was improperly relieved of providing reasonable efforts.

child relationship; (2) the parent’s interest in preserving the parent and child relationship; and (3) any competing interests of the child. *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004); *see J.R.B.*, 805 N.W.2d at 905 (“Competing interests [of the child] include such things as a stable environment, health considerations and the child’s preferences.” (quotation omitted)); *J.K.T.*, 814 N.W.2d at 92 (stating that we give “considerable deference” to the district court’s best-interests findings).

The district court acknowledged the bond that appellant has with daughter and the interest in preserving the family unit, but found these factors to be outweighed by the compelling factor against reunification—daughter’s safety. The district court explained that, while it does not doubt the sincerity of appellant’s remorse for the harm he has caused, appellant mischaracterizes the facts. It found that appellant’s pattern of escalating predatory behavior—offering his first wife to strangers, then doing the same with his second wife, turning to incest when his second wife declined that fantasy, then turning to child pornography and offering information about A.Z. to other men, and even chatting with another man about that man performing sexual acts on daughter and mother at the same time—showed no signs of de-escalation, and only came to a stop when appellant was caught. The district court also noted appellant has demonstrated predatory behavior toward his own children. The district court explained, “[i]n light of this alarming escalating pattern of behavior it is clear that [daughter] is at risk with [appellant], today.” The record supports these findings.

The district court also referenced the GAL’s testimony that sex-offender treatment could take years to complete, with an uncertain outcome. The district court reasoned that

daughter will be in appellant's target 11-to-14-year-old age group at the time appellant is no longer under court supervision in his criminal case. The district court concluded, "[t]his is perhaps the gravest factor in terms of [daughter's] safety, [because] at the point at which she reaches the prepubescent developmental age, there will no longer be any supervisory agencies monitoring" appellant and therefore, "it is clear to this Court that it is in [daughter's] best interest to terminate parental rights of [appellant]." The record again supports these findings.

Appellant argues that the district court should not have terminated his rights without giving him more time to complete *sex-offender* treatment. At the time of the TPR trial, appellant had completed almost one year of *sex-addiction* treatment, but had not yet started sex-offender treatment because he was incarcerated. In other words, appellant argues that there was no rush to make a TPR determination. While providing time for appellant to complete sex-offender treatment could conceivably have provided a better result for all parties, we are deferential to the district court's best-interests findings. *J.K.T.*, 814 N.W.2d at 92. We see no clear error in the district court's factual findings and see no abuse of its discretion in determining daughter's best interests.

The district court's disposition relies on mother to closely monitor appellant's progress on probation and in treatment, because there is no ongoing child-protection case concerning daughter. When appellant's probation ends in the criminal case, and despite termination of appellant's parental rights in this proceeding, there will be no legal barrier to appellant having contact with daughter if mother permits it. As the district court noted, daughter will then be of an age where contact with appellant will be particularly risky,

given appellant's criminal sexual propensities. But our review is not to *determine* daughter's best interests. Instead, our review is limited to determining whether the record supports the district court's findings and the exercise of its discretion. It does.

Appellant also argues that the district court should not have credited the testimony of the social worker because of her lack of experience as a social worker, specifically as it relates to sex offenders.

Here again, the district court is in the best position to make credibility determinations.⁴ *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that appellate courts defer to district court credibility determinations). The district court credited the testimony while acknowledging that social worker has "less than two years of experience with the Department."

Ultimately, the determination of daughter's best interests is entrusted to the sound discretion of the district court. The record supports the district court's finding that daughter's safety would be at risk under appellant's care—Ms. Trembley's testimony, the GAL's testimony, the second psychosexual evaluation, and the PSI, all recommending that appellant not have unsupervised contact with minors. The district court did not abuse its discretion by determining that it is in daughter's best interests to terminate appellant's parental rights.

Affirmed.

⁴ Appellant also argues that the testimony of his brother-in-law, his mother-in-law, and mother support appellant and weigh against the district court's findings. But the district court was "not swayed" by their testimony because "all have a vested interest in preserving the . . . family unit."