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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0481**

In the Matter of the Welfare of the Child of:
G. W., Adjudicated Father.

**Filed November 23, 2020
Affirmed
Bratvold, Judge**

Ramsey County District Court
File No. 62-JV-19-1698

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Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Kirk,
Judge.*

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant-father challenges the district court's decision to terminate his parental
rights to his son. Father argues that the district court erred when it found clear and

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

convincing evidence to support two statutory bases for termination. The district court found, first, that an older child experienced egregious harm while in father's care; and second, that father is palpably unfit to be a parent. Father also contends that termination is not in his son's best interests. Because the record evidence supports the district court's findings of fact and the district court did not otherwise abuse its discretion, we affirm.

FACTS

These facts summarize the district court's written findings following a five-day bench trial. L.H. is the biological mother of child 1, a 14-year-old daughter, and child 2, a three-year-old son. Appellant G.W. is child 2's adjudicated father. G.W. is not the father of child 1, although child 1 lived with L.H. and G.W. until 2015 when she moved in with her biological father and stepmother.¹

The district court found that, in November 2018, child 1 told her stepmother that G.W. had "touched her in a sexual manner" and she was "scared" to be around him. Child 1's stepmother testified that they were alone when child 1 made this disclosure and that child 1 "was aware" stepmother had suffered sexual abuse. Stepmother notified authorities about child 1's statements.

The county started an investigation and a sexual-abuse examiner interviewed child 1. During the interview, child 1 stated that when she was nine-years-old and L.H. was not home, G.W. removed their clothing, laid on top of her, and touched her "private areas" with his hand and his "private areas." Using a diagram, child 1 explained that G.W.

¹ In 2019, L.H. voluntarily transferred sole legal and physical custody of child 1 to child 1's biological father. L.H.'s parental rights are not at issue in this appeal.

squeezed her “boobs,” licked her vagina, placed his “private part” on her vagina, and ejaculated.² During a physical examination, child 1 more specifically described how G.W. touched her vagina with his hand and penis. The examiner made a clinical diagnosis of sexual abuse.

Following the sexual-abuse examination, respondent Ramsey County Human Services (the county) sought to establish a safety plan that required L.H. and child 2 to leave G.W.’s home. When L.H. stated that she was unable to leave, the county removed child 2 from the home. At a later emergency protective-care hearing, the county returned child 2 to the home, and the county and L.H. developed a safety plan that required L.H. to supervise all interactions between G.W. and child 2.

The county, with some involvement by G.W., developed an interim case plan, including requirements that G.W. complete mental-health and psychosexual evaluations, and follow all recommendations.³ G.W. at first refused to comply with the interim case plan, but he eventually completed a psychosexual examination in September 2019.

The district court found the psychosexual examiner concluded that G.W. had “a medium-high risk of future sexual offenses.” During the four-hour examination, G.W. “spoke loudly at times, yelled profanities and apologized, went on rants, [and] showed high

² Child 1 also described a second incident in 2017, stating that G.W. offered her twenty dollars to perform oral sex, and a third incident in June 2018, stating that G.W. showed child 1 a message on his phone saying that he wanted to be with her. Child 1 also stated that G.W. showed her pictures of naked people on his phone.

³ G.W. refused to sign both the initial case plan and a subsequent updated case plan, although the social worker discussed both case plans with G.W. in person on December 4, 2019. The updated case plan includes a note that G.W. refused to sign it.

distractibility and was impulsive.” The examiner confirmed G.W.’s prior diagnosis of bipolar disorder. The district court found that G.W.’s schizophrenia diagnosis was “less clear.” For example, G.W. denied symptoms typical of schizophrenia. But the examiner ultimately determined that schizophrenia was an appropriate diagnosis, given G.W.’s delusional thinking, lack of impulse control, and bizarre behaviors.

The psychosexual examiner also found that G.W.’s mental health may increase his risk of engaging in sexually abusive behaviors because “[a]n increased interest in sex (hyper-sexuality) is also a common feature of mania/hypomania and increases [G.W.’s] risk for exhibiting abusive or inappropriate sexual behaviors.” The examiner recommended that G.W. complete outpatient sexual-abuse treatment, have no unsupervised contact with children under the age of 18 (including child 1), abstain from mood-altering substances, and complete a medical evaluation. The examiner noted that G.W. “appear[ed] to be an individual with largely untreated serious psychiatric issues,” and stated that G.W.’s access to child 2 while they lived together was a “high risk environment.” The district court found that G.W. did not comply with the report’s recommendations and that G.W. testified he will never attend outpatient or sexual-abuse treatment.

G.W.’s case plan also required that he complete a mental-health assessment and follow all recommendations. He disclosed his mental-health records, which included a diagnosis of bipolar disorder and schizophrenia. G.W.’s records also show that he was placed on stayed orders of judicial commitment, or was civilly committed, at least five times, most recently in May 2017. G.W., however, did not otherwise comply with the requirement that he complete a mental-health assessment.

G.W. refused to cooperate with the social worker and the guardian ad litem. He asked the social worker not to contact him, and refused to meet with the social worker or allow her to visit the home without a court order. The social worker tried to review the case plan with G.W. while at the courthouse in December 2019. G.W. stated that he would not comply and left without signing the updated case plan.

G.W. hampered the social worker's contacts with L.H., only allowing meetings outside the home. The district court found that in January 2020, G.W. asked the social worker by text message if she had a "lesbian attraction" to L.H., and his message also stated that "if the social worker wanted to meet with [L.H.], the meeting must take place at the courthouse." G.W. allowed the guardian ad litem to visit the home twice. He told the guardian ad litem that she was not "welcome to come to their home again" after he learned of the psychosexual-evaluation recommendations.

In October 2019, the county petitioned to terminate G.W.'s parental rights to child 2. The petition alleged two statutory bases for termination: (1) while under G.W.'s care, child 1 experienced egregious harm of a nature, duration, or chronicity so that a reasonable person would believe it contrary to child 2's best interests to remain in G.W.'s care, and (2) G.W. was palpably unfit to parent child 2. *See* Minn. Stat. § 260C.301, subd 1(b)(4); (6) (2018).

The case went to trial. G.W. proceeded pro se after making a knowing, intelligent, and voluntary waiver of his right to counsel; L.H. and the county were represented by counsel. The district court received testimony from G.W., child 1, child 1's father and

stepmother, L.H., the psychosexual examiner, the sexual-abuse examiner, the guardian ad litem, and the social worker.

Child 1 testified about the abuse allegations, but “declined to provide some details.” G.W. and L.H. both testified that they believed child 1 was lying about the sexual-abuse allegations. L.H. testified that “160 minutes” for the sexual-abuse examination was “not sufficient to delve into the child’s entire history and unearth other possible reasons for [c]hild 1’s trauma.” L.H. also testified that the physical and verbal abuse she suffered by child 1’s biological father, sometimes in child 1’s presence, was a source of trauma. According to the district court, G.W. testified that child 1 “created the story as retribution after he and [L.H.] refused to buy shoes that [c]hild 1 had requested the night before she informed [her stepmother] of the sexual abuse.”

The district court found L.H.’s explanation did not rebut the sexual-abuse examiner’s conclusion, and that G.W.’s explanation was not credible. The district court also found that the sexual-abuse examiner’s testimony was “credible, and [gave] great weight to her testimony and report.” The district court found child 1 credible, despite “some minor discrepancies between her testimony in court and the information she provided” at the sexual-abuse examination. Child 1 “has suffered multiple forms of trauma throughout her life, including [her] allegations of sexual abuse.” The district court also found that child 1 has “maintained the same consistent allegations for more than a year at the cost of alienation from her mother.”

The district court found the psychosexual examiner credible, along with her written report. The district court specifically considered G.W.’s mental-health history. The district

court noted two incidents. In March 2017, L.H. reported that G.W. hit her “numerous times,” including once when child 2 was in her arms. Then, in May 2017, G.W. became irritated with a neighbor over shower use that changed the water temperature in G.W.’s apartment. G.W. asked the neighbor to step outside and fight, and when the neighbor refused, G.W. damaged the neighbor’s new car because he “felt disrespected.” Child 2 was in G.W.’s care during the May 2017 incident. Authorities found child 2 in the street while G.W. was naked and hugging a tree.

G.W. was not taking prescribed medications in May 2017. At the time of the trial, the district court found that G.W.’s medical providers recommended medication “to maintain stable mental health,” but that G.W. refused all medications and gave “multiple reasons” for his refusal, including staying alert and protecting his family. The district court found that G.W. has consistently refused to take recommended medications to maintain his mental health.

During trial, G.W. became agitated and argumentative. The district court found G.W. made “menacing statements” to others when he was “unhappy with the direction of the trial.” He commented about the county’s counsel: “[s]he’s definitely going down”; G.W. told L.H.’s counsel: “[y]ou’re chewing me out,” and “[y]ou’re kind of ruining my mood,” even though L.H.’s counsel tried to elicit favorable testimony. G.W. also testified that if his parental rights were terminated, someone “would have to pay.”

Child 2 was present during the trial because L.H. and G.W. could not obtain childcare, and while L.H. was testifying, child 2 ran up to the witness stand and became disruptive. When the district court asked child 2 to sit down, G.W. stated this request was

“verbal abuse” of his child. After a recess to arrange for someone to care for child 2, G.W. did not return and remained absent for the remaining day and a half of the trial. L.H. stated that she “tried to explain to him the magnitude and importance of him needing to continue,” but did “not [get] a response.”

In a 21-page written decision following the trial, the district court terminated G.W.’s parental rights to child 2 on both grounds raised by the petition. First, the district court found that while under the care of G.W., child 1 had suffered egregious harm; and second, the district court found that G.W. was palpably unfit to parent child 2. The district court also found that further reasonable efforts by the county would be futile, and it is in child 2’s best interests to terminate G.W.’s parental rights.

G.W. appeals.

DECISION

A parent’s right to custody of a child “should not be taken from them but for grave and weighty reasons.” *In re Welfare of the Child of K.L.W.*, 924 N.W.2d 649, 653 (Minn. App. 2019) (quoting *In re Welfare of P.J.K.*, 369 N.W.2d 286, 290 (Minn. 1985)), *review denied* (Minn. March 8, 2019). Minnesota has long recognized a parent’s fundamental right to enjoy the custody and companionship of his or her own child. *In re Welfare of Rosenbloom*, 266 N.W.2d 888, 889 (Minn. 1978). That right, however, is subject to the state’s compelling interest in protecting a child from abuse. *In re Child of P.T.*, 657 N.W.2d 577, 589 (Minn. App. 2003) *review denied* (Minn. April 15, 2003).

We therefore presume that a natural parent is fit and suitable to care for his or her child. *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). But we also recognize

that a district court may terminate a parent's rights if it finds, among other things, that the county has established a statutory basis for termination by clear and convincing evidence. *See* Minn. Stat. § 260C.301, subd. 1(b) (2018); *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). A district court's decision to terminate parental rights must turn on evidence of "conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period." *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001).

A district court is vested with broad discretion in deciding child-protection cases. *In re Booth*, 91 N.W.2d 921, 924 (Minn. 1958). When reviewing a decision to terminate parental rights, we review the district court's factual findings for clear error, and "we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "A 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 Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted). We will defer to the district court's "determinations of witness credibility and the weight to be given to the evidence." *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007).

To establish grounds for termination, the county must prove by clear and convincing evidence that (1) at least one statutory basis for termination has been met, (2) termination is in the child's best interest, and (3) the county has made reasonable efforts to reunite the family. *S.E.P.*, 744 N.W.2d at 385. Reasonable efforts are not required, however, if they

would be futile. *See In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). Here, the district court found that any additional efforts by the county would be futile, and G.W. does not contest that finding. Thus, we analyze the first two requirements for termination, both of which G.W. challenges in his brief to this court.

I. The district court did not abuse its discretion in determining that G.W. egregiously harmed child 1 and that the nature, duration, or chronicity of G.W.’s conduct is such that termination of G.W.’s parental rights is in child 2’s best interests.

G.W. argues that the district court erred in finding that he egregiously harmed child 1. Parental rights may be terminated if the district court finds “a child has experienced egregious harm in the parent’s care which is of a nature, duration, or chronicity that indicates a lack of regard for the child’s well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent’s care.” Minn. Stat. § 260C.301, subd. 1(b)(6). The parent need not have egregiously harmed the child in question; rather, the county’s petition may rely on “any child” in the parent’s care. *In re Child of A.S.*, 698 N.W.2d 190, 197 (Minn. App. 2005), *review denied* (Minn. Sept. 20, 2005). Egregious harm includes conduct toward a child that would establish criminal sexual conduct in the second degree. Minn. Stat. § 260C.007, subd. 14(10) (2018). Here, it is undisputed that G.W.’s alleged conduct would satisfy the definition of egregious harm.

The district court relied on the credible testimony of child 1 and the sexual-abuse examiner, and rejected G.W. and L.H.’s testimony. The district court determined that child 1 suffered egregious harm while in G.W.’s care. Thus, this court need only consider

whether the district court clearly erred in crediting the testimony of child 1 and the sexual-abuse examiner over G.W. and L.H.'s testimony.

First, G.W. contends that the district court erred when it “discounted the evidence and testimony that child 1 may have been coached by her stepmother.” We note that G.W.’s claim that stepmother coached child 1 lacks any support in the record. The district court observed that child 1’s statements to the sexual-abuse examiner differed from her testimony at trial, such as who removed her clothes. Still, the court found that child 1’s testimony was “consistent for more than a year,” and “[s]he has not wavered . . . in the key facts.” We defer to the district court’s finding that child 1 credibly testified about the sexual abuse. *See T.D.*, 731 N.W.2d at 555.

Second, G.W. argues that the district court did not consider child 1’s prior emotional disturbances, including self-harm and suicidal ideation, when making its credibility determination. We disagree. The district court stated that it “believe[d] [c]hild 1 has suffered multiple forms of trauma throughout her life, including [her] allegations of sexual abuse.”

Third, G.W. argues that the district court abused its discretion when it relied on the testimony of the sexual-abuse and psychosexual examiners, arguing that the district court failed to recognize that they had incomplete information. At the outset, we note that the district court did not refer to the psychosexual examiner’s testimony or report in its analysis of egregious harm and referenced it only in the best-interests analysis.

The district court found the sexual-abuse examiner’s testimony credible given her “20-year career in evaluating children alleging sexual abuse.” The district court noted that

the examiner “gains no personal benefit in the outcome of this matter” and has training specific to interviewing children alleging sexual abuse. We defer to the district court’s “determinations of witness credibility and the weight to be given to the evidence.” *See T.D.*, 731 N.W.2d at 555.

In sum, the district court weighed the testimony of child 1 and the sexual-abuse examiner along with all record evidence, including L.H and G.W.’s testimony that denied any sexual abuse occurred and claimed child 1 was lying. We conclude that the district court did not abuse its discretion by determining that child 1 suffered egregious harm while in G.W.’s care, given child 1’s credible and consistent testimony and the sexual-abuse examiner’s detailed testimony and diagnosis of sexual abuse.

G.W.’s brief does not contest the district court’s finding that the egregious harm experienced by child 1 was of a nature, duration, or chronicity that it would conflict with child 2’s best interests to be in his care. Generally, issues not argued in briefs are waived on appeal. *In re Adoption of T.A.M.*, 791 N.W.2d 573, 577 (Minn. App. 2010) (citing *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982)).

Even if we assume that G.W. has not waived the issue, the record supports the district court’s finding that the egregious harm found here was of a nature, duration, or chronicity so that it would conflict with child 2’s best interest to remain in his care. The district court found that G.W. consistently refused to take measures to remediate the risk that he might offend again. On this record, the district court did not err in determining that the egregious harm was of a nature, duration, or chronicity that it would conflict with the best interests of child 2 to be in his care.

Because we conclude that the district court did not err in determining that child 1 experienced egregious harm while in the care of G.W., we decline to address G.W.’s arguments on the district court’s determination that G.W. was palpably unfit to be a party to the parent-child relationship. *See* Minn. Stat. § 260C.301, subd. 1(b) (allowing termination of parental rights upon satisfaction of “one or more” statutory condition).

II. The district court did not abuse its discretion in determining that child 2’s best interests support the termination of G.W.’s parental rights.

A child’s best interests may preclude terminating parental rights even when a statutory basis for termination exists. *In re Tanghe*, 672 N.W.2d 623, 625-26 (Minn. App. 2003). In analyzing the best interests of the child, the court must balance three factors: (1) the child’s interest in preserving the parent-child relationship; (2) the parent’s interest in preserving the parent-child relationship; and (3) any competing interest of the child. Minn. R. Juv. Prot. P. 58.04(c)(2)(ii); *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). “[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) (quotations omitted). Thus we review a district court’s best-interests analysis for an abuse of discretion. *K.L.W.*, 924 N.W.2d at 656.

G.W. contends that the district court erred when it found that termination is in child 2’s best interests. He argues that “the district court abused its discretion by giving too much weight to certain evidence in the record and not enough weight to other evidence in the

record.” Specifically, he argues that the court “abused its discretion by relying at all on the opinion of the guardian ad litem,” because she “did not do an independent investigation and explicitly agreed that in making her decision she relied upon the reports and allegations of the [county] and their contracted providers.”

To support his position, G.W. cites *In re Welfare of D.F.B.*, 412 N.W.2d 406, 412 (Minn. App. 1987), *review denied* (Minn. Nov. 18, 1987), where this court affirmed termination because the district court’s findings were supported by record evidence, even though the guardian ad litem had failed to meet her obligations. This court noted in its opinion that the guardian ad litem’s testimony failed to refer to her qualifications, she never saw the child, and she met the appellant once. *Id.*

We see no parallel between the guardian ad litem here and the facts in *D.F.B.* Here, the guardian ad litem testified about her qualifications; she visited L.H., G.W., and child 2 in September 2019 when they established a safety plan; and again visited in October 2019 to discuss the psychosexual examination. G.W. then told the guardian ad litem that she was no longer welcome in the home. Given these circumstances, the guardian ad litem’s limited access to child 2 is understandable. Nor did the district court rely on the guardian ad litem’s testimony in making its best-interests determination.

We discern no error in the district court’s best-interests analysis. First, the district court noted that child 2 and G.W. have an interest in preserving the parent-child relationship “stemming from their clear love for each other.” G.W. argues that the district court “gave little to no weight to the testimony and detailed descriptions of the rich home life that G.W. and [c]hild 2 share.” We disagree. The district court recognized the “loving

bond between [G.W.] and [c]hild 2, and that they enjoy significant, positive playtime together. These benefits for [c]hild 2 are significant.” It also noted that child 2 has an interest in preserving the relationship, in part because G.W.’s public housing assistance provides child 2 with stable housing.

The district court also found that child 2 has three competing needs: safety, a stable environment, and parenting that prioritizes his needs over the parent’s needs. The district court determined that child 2’s interest in safety competes with G.W.’s “risk of further sexual abuse [that] was determined to be moderate to high risk.” G.W.’s risk of reoffending is higher because he refuses prescribed mental-health medications and outpatient treatment, and G.W. testified that he cannot tell when he will suffer a mental-health episode.

As for child 2’s need for a stable environment, the district court found that “[f]or nearly a year, [c]hild 2 has lived with [G.W.] without incident.” But the district court also found that L.H.’s continuous supervision of G.W. and child 2 has been necessary to “maintain a stress-free environment to avoid any triggers for [G.W.]” G.W. argues that the district court gave no weight to evidence that he “has been a large part of maintaining a stable home environment by regularly addressing his mental-health needs and by adhering to a safety plan with [L.H.]” We disagree. In fact, the district court determined that “[p]lacing all responsibility for a stable environment on [L.H.] is not sustainable.”

The district court also determined that child 2 has a competing interest in an “environment that includes the ability to exercise his opinions, put his own needs first, and have rational disagreements. [G.W.] is not capable of providing that environment.” The district court found that G.W.’s refusal to engage in a case plan, refusal to take prescribed

medication, and refusal to follow other recommendations supports its determination that G.W. “places his own interests first.” The district court recognized that G.W. has a “right to refuse medication,” but gave greater weight to child 2’s competing interest in having his needs prioritized.

The district court did not abuse its discretion when, after recognizing the bond between G.W. and child 2, it determined that the benefits to child 2 “do not outweigh the child’s competing interests in safety, stability and prioritizing his basic needs over those of [G.W.].”

We also see no error in the district court’s careful consideration of child 2’s competing need for housing. While the public housing assistance secured by G.W. has advantages, the district court found that living with G.W. also has serious disadvantages because G.W. “has demonstrated a lack of impulse control, and a history of violence and irrational behavior when children are present.” The district court did not abuse its discretion by determining that “[c]hild 2’s current housing is not safe or stable.” For all of these reasons, the district court determined that termination is in child 2’s best interests.

In conclusion, the district court did not abuse its discretion when it found that child 1 suffered egregious harm while in G.W.’s care. The egregious harm was of a nature, duration, or chronicity so that a reasonable person would believe it contrary to child 2’s interests to be in G.W.’s care. Finally, the district court did not abuse its discretion in determining that termination of G.W.’s parental rights is in child 2’s best interests. We therefore affirm the district court’s termination of G.W.’s parental rights to child 2.

Affirmed.