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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1206**

In the Matter of the Welfare of the Children of:
L. M. H. and T. D. M., Parents.

**Filed February 8, 2021
Affirmed
Frisch, Judge**

Becker County District Court
File No. 03-JV-20-396

Joshua E. Haugen, Detroit Lakes, Minnesota (for appellant T.D.M.)

Brian W. McDonald, Becker County Attorney, Lisa Tufts Frederick, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent Becker County Human Resources)

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Considered and decided by Reilly, Presiding Judge; Florey, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant challenges the district court's decision terminating his parental rights, arguing that the record lacks clear and convincing evidence that he caused egregious harm to a child in his care. We affirm.

FACTS

L.M.H. (mother) is the biological mother of five children: Child 1, Child 2, Child 3, Child 4, and Child 5. Appellant T.D.M. (father) is the biological father of Child 3, Child 4, and Child 5, who are the subjects of this appeal. In February 2020, respondent Becker County Human Resources (the county) petitioned the district court for an order terminating father's parental rights to Children 3, 4, and 5.¹ The county alleged in relevant part that father had sexually abused Child 2—his stepdaughter—and that the sexual abuse constituted egregious harm to a child in his care such that termination of his parental rights to Children 3, 4, and 5 was necessary. *See* Minn. Stat. § 260C.301, subd. 1(b)(6) (2018).

In separate criminal proceedings, the state charged father with first-degree criminal sexual conduct for his alleged sexual abuse of Child 2. On July 9, 2020, the county attorney's office notified father of its intent to proceed to trial in the termination case before the criminal case given its determination that pursuing termination first was in the best interests of Children 3, 4, and 5. *See* Minn. Stat. § 260C.503, subd. 2(c) (2018). On July 17, 2020, father moved the district court to continue the termination hearing, requesting that he be allowed to try his criminal case first and explaining that his criminal proceedings had been delayed due to pandemic-related issues. The district court denied the motion, explaining that father contributed to delays in his criminal proceedings, that it was within

¹ The county also petitioned to terminate the parental rights of mother with respect to all of the children and of the biological father of Children 1 and 2. The termination of those parties' parental rights is not at issue here.

the county attorney's discretion to choose which matter proceeded first, and that it agreed with the county attorney's best-interests determination.

In August 2020, the district court conducted a contested termination hearing, where it received the following evidence relevant to the issue on appeal. In 2012, mother and father began their relationship while living in Colorado. Near the end of 2012, they moved to Minnesota together and lived with their joint and non-joint children. In August 2019, mother and father separated temporarily, and father traveled back to Colorado. Around that time, Child 2 gave mother a note claiming that father had abused her. Mother testified that Child 2 refused to elaborate and merely told mother that she did not feel safe and did not want to talk further.

On September 8, 2019, the Becker County Sheriff's Office received a report that a friend of mother's had sexually assaulted Child 2. Father was in Colorado at the time. During a forensic interview conducted on September 19, 2019, Child 2 mentioned that father was physically abusive toward her. She described various concerns regarding alcohol abuse, neglect, and domestic violence in the home. But she did not report any sexual abuse by father.

Near the end of September 2019, father returned home to Minnesota. Shortly thereafter, Child 2 reported to a social worker that father had sexually abused her. A forensic interviewer conducted a recorded interview of Child 2. The district court received the recording into evidence. In relevant part, Child 2 told the interviewer that father raped her in his bedroom during the summer of 2019. She elaborated that father "tried to put his tongue on [her] middle part" and "made [her] put [her] mouth on his middle part." She

stated that father “grabbed [her] by [her] hair and made [her] do it” then later lied to mother about it. Child 2 also recalled various details about the sexual abuse: (1) father was watching YouTube videos in the bedroom when she arrived; (2) father was wearing black and silver shorts and a red t-shirt; (3) Child 2 was wearing her swimsuit; (4) father pulled up the front leg of his shorts to force Child 2 to engage in oral sex; (5) Child 2 was scared at the time; and (6) when father tried to engage in oral sex with Child 2, he tried to pull her swimsuit up. Father was subsequently arrested.

Child 2 testified at the hearing and claimed that father sexually assaulted her. She testified that she had been swimming in the pool with her family when she returned to go inside the family’s home to bring her little sister downstairs. At first, she testified that father “put[] his hands all over [her]” while she was inside and that he “tried to lick [her] middle part.” But after a break in her testimony, Child 2 testified that father had “mess[ed] with his shorts . . . pulled out his middle part,” then “pushed [her] head down and made [her] suck on it.” Child 2 estimated she was upstairs with father for approximately ten minutes. She testified that father “told [her] that every night when everyone is sleeping that [she] was his” before he permitted her to return downstairs.

Child 2 testified that she gave mother a note the next day informing mother that father had sexually abused her. Child 2 claimed that father “wouldn’t give [mother] the answer” when confronted, but that after mother and father left for a car ride together, mother “did nothing” about the situation. Child 2 testified that father meanwhile told her that “he would not touch [her], he would not tell [her] what to do, and he . . . wouldn’t even

talk to [her] if it wasn't an emergency." Child 2 claimed she never told mother about the details of the sexual abuse because she thought mother did not believe her.

A child-protection investigator testified that she contacted one of Child 2's relatives to ask about Child 2's allegations of sexual abuse by father. The relative stated that Child 2 had previously disclosed that father was sexually abusing her.

The same forensic interviewer conducted both forensic interviews of Child 2. She testified that false reporting occurred in only 5% of cases. She also testified that numerous factors could have explained Child 2's failure to disclose father's sexual abuse during the first forensic interview and that it was not uncommon for child victims to disclose different offenders at different times. She further explained that she had been trained to assess indicators of a child's truthfulness, such as the ability to recollect with specific sensory perceptions and an openness to admitting a lack of memory. The interviewer emphasized that Child 2's recollections included sensory-specific details, such as what she and father were wearing, the way in which father moved their clothing, the location of the sexual abuse, and how father forced her head.

Father was incarcerated while he awaited trial on criminal charges relating to Child 2's allegations but was present at the termination hearing. Father refused to testify at the termination hearing, informing the district court that he was asserting his Fifth Amendment privilege against self-incrimination.

The district court found Child 2's testimony to be "credible, consistent with her prior disclosures, and corroborated." It also found Child 2's statements during the second forensic interview credible and corroborated, explaining that: (1) false reporting is a rarity

occurring in approximately 5% of cases; and (2) Child 2 was able to recall specific details of the sexual abuse, such as what people were wearing, what time of day it happened, and her emotional state in the moment. Accordingly, the district court found that father “forced Child 2 to engage in oral sex with him,” and that he “pulled Child 2’s hair and forced her to put his ‘middle part’ in her mouth” (a term that the record shows the district court understood as a euphemism for father’s penis).

The district court determined that father “inflicted egregious harm on Child 2 by sexually assaulting her and committing Criminal Sexual Conduct.” It found:

The harm to Child 2 was of a nature, duration, or chronicity that indicates a lack of regard for [Child 2’s] well-being such that a reasonable person would believe it contrary to the best interests of [Child 2] or *any* child in the parent’s care. [Father] physically and sexually abused Child 2, evidencing a disregard for the child’s wellbeing. A reasonable and ordinarily prudent person would believe that sexual abuse of a minor by a parent, regardless of chronicity or duration, demonstrates a disregard for the wellbeing of *any* child. Therefore, a finding of egregious harm to Child 2 allows the termination of [father’s] parental rights to Child 3, Child 4, and Child 5.

Separately, the district court determined termination of father’s parental rights was in the best interests of Children 3, 4, and 5 because each of the children had demonstrated troubling behaviors, expressed little attachment to father, and needed a safe and permanent environment free of domestic violence and sexual abuse. The district court also found that the county made reasonable efforts to provide the family with resources.

The district court granted the county’s petition and ordered father’s parental rights to Children 3, 4, and 5 terminated. This appeal follows.

DECISION

The district court ordered father's parental rights to Children 3, 4, and 5 terminated based on its determination that father subjected Child 2 to egregious harm by committing criminal sexual conduct against her. Father contends that the record lacks clear and convincing evidence that he subjected Child 2 to egregious harm.

The district court may issue an order involuntarily terminating a parent's rights to their children if it finds the existence of a statutory ground for termination by clear and convincing evidence, that termination is in the children's best interests, and that the county either made reasonable efforts toward reunification or was excused of its obligation. Minn. Stat. § 260C.301, subds. 1(b), 7, 8, .317, subd. 1 (2018); *see also In re Child of P.T.*, 657 N.W.2d 577, 584 (Minn. App. 2003) (stating the petitioning party must prove "one or more of the statutory grounds by clear and convincing evidence"), *review denied* (Minn. Apr. 15, 2003). Father's argument on appeal concerns only the existence of a statutory ground for termination based on egregious harm.² Pursuant to Minn. Stat. § 260C.301, subd. 1(b)(6), the district court may terminate parental rights if it finds

that 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

² Father mentions that the district court did not address other statutory grounds for termination alleged in the petition. The county responds to the statement as an assignment of error, but we understand it as a recitation of fact. Regardless, the existence of a single statutory ground for termination is sufficient. *See In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 663 (Minn. App. 2018).

person would believe it contrary to the best interest of the child or of any child to be in the parent's care.[³]

“‘Egregious harm’ . . . includes, but is not limited to . . . conduct toward a child that constitutes criminal sexual conduct under sections 609.342 to 609.345.” Minn. Stat. § 260C.007, subd. 14(10) (2018); *see also* Minn. Stat. §§ 609.342-.345 (2018). “The statute does not require that the parent has inflicted egregious harm on his own child, but rather, that a child has experienced egregious harm in the parent’s care, which demonstrates the parent’s grossly inadequate ability to provide minimally adequate parental care to any child.” *In re Child of A.S.*, 698 N.W.2d 190, 197 (Minn. App. 2005), *review denied* (Minn. Sept. 20, 2005).

On appeal, we afford “considerable deference to the district court’s decision to terminate parental rights.” *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). “[W]e closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing.” *Id.* “We review the district court’s findings to determine whether they address the statutory criteria for termination of parental rights and are not clearly erroneous.” *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008). “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.” *Id.* at 660-61 (quotation omitted).

³ Father challenges the district court’s finding that he caused egregious harm to Child 2, but he does not contest the district court’s conclusion that the egregious harm was of such a nature that a reasonable person would believe it contrary to Children 3, 4, and 5’s best interests to remain in his care. *See* Minn. Stat. § 260C.301, subd. 1(b)(6).

Father's argument that the record lacks clear and convincing evidence of egregious harm is, in essence, a challenge to the district court's finding that Child 2 testified credibly about the sexual abuse. He contends that the district court should have discredited Child 2's version of events because her testimony contained inconsistencies and ambiguities and was doubted by members of Child 2's family.

We begin by recognizing that we must 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); *see also In re Welfare of Children of S.W.*, 727 N.W.2d 144, 148 (Minn. App. 2007) ("Considerable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." (quotation omitted)), *review denied* (Minn. Mar. 28, 2007). Here, the district court made thorough, reasoned findings regarding Child 2's credibility. Father invites us to impermissibly substitute our judgment for the district court's credibility determinations despite the district court's superior position to make such determinations.

None of father's various arguments demonstrate that the district court clearly erred by finding Child 2 credible. Father emphasizes that Child 2 failed to report that father sexually abused her during the investigation regarding sexual abuse by mother's friend. But the district court was not required to discredit Child 2 based on the omission, and the forensic investigator testified that it was not uncommon for child victims to disclose different offenders at different times.

Father insists that various inconsistencies in Child 2's testimony and recorded statements should have led the district court to discredit her allegations. For instance,

father emphasizes that Child 2 initially testified that father *attempted* to force her to engage in oral sex but, after a break in the hearing, testified that father *actually* forced her to engage in oral penetration. Father cites numerous other inconsistencies, such as changes in the sequence of events or the location of Child 2's siblings. But "inconsistencies in testimony go to witness credibility, which is an issue for the factfinder, not [an appellate] court." *State v. Juarez*, 837 N.W.2d 473, 487 (Minn. 2013). The district court, aware of these inconsistencies, was in the best position to judge Child 2's credibility and to determine *which* portions of her testimony were most credible.

Father also contends that Child 2's recollections of specific details were too vague to support the district court's credibility determination. But Child 2's recollections included details about how she came to be in father's bedroom, what he was doing before the abuse, how she felt at the time of the abuse, what stopped the abuse, and how her parents behaved following the abuse. Further, even if Child 2's testimony lacked a high degree of sensory-specific details, her ability to recollect with specificity was merely one factor among many the district court was free to consider in assessing her credibility.

We reject father's contention that the district court should have discredited Child 2's testimony because mother and Child 1 did not believe her account. According to father, "[t]hese two individuals lived in the home . . . and [were] in the best position to determine credibility." But it is the role of the district court to determine credibility. See *T.D.*, 731 N.W.2d at 555.

Finally, father suggests that his ability to rebut Child 2's testimony was impaired because the termination hearing preceded his related criminal trial, requiring him to assert

his Fifth Amendment privilege. Father fails to develop the suggestion into an actual assignment of error, so any potential argument on this basis is forfeited. *See Christie v. Estate of Christie*, 911 N.W.2d 833, 837-38 n.4 (Minn. 2018). Regardless, we agree with the district court's conclusion that the county attorney was statutorily authorized to determine whether the termination matter or criminal matter would proceed first. *See* Minn. Stat. § 260C.503, subd. 2(c).

In conclusion, the district court's finding of egregious harm is supported by sufficient clear and convincing evidence. Child 2 testified that father forcibly penetrated her mouth with his penis. The district court fully examined the evidence before it and thoroughly explained why it found Child 2's testimony credible. Based on its credibility determination, the district court found that father engaged in criminal sexual conduct prohibited by statute and defined as egregious harm pursuant to Minn. Stat. § 260C.007, subd. 14(10). Because we defer to the district court's credibility determination, reversal is not warranted.

Affirmed.