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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1210**

In the Matter of the Welfare of the Children of S. F. S. and M. A. B., Parents.

**Filed February 16, 2021
Affirmed
Bryan, Judge**

Swift County District Court
File No. 76-JV-19-523

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Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this voluntary termination of parental rights (TPR) matter, appellant challenges the following two decisions of the district court: (1) the district court did not reopen the record after remand; and (2) the district court denied appellant's request to vacate the voluntary termination of his parental rights. We conclude that the district court did not abuse its discretion in making these two decisions.

FACTS

Appellant M.A.B. and S.F.S. are the parents of two minor children. Respondent Swift County Human Services (SCHS) removed the children from their parents' care in October 2019. In November 2019, SCHS petitioned the district court to involuntarily terminate both parents' parental rights under Minnesota Statutes section 260C.301, subdivision 1(b) (2020). Trial on this matter began on January 7, 2020. Before the end of trial, on January 8, 2020, both parents entered voluntary agreements to terminate their parental rights, submitted signed affidavits to that effect, and testified regarding their consent before the district court.

In his affidavit, M.A.B. waived his right to a contested trial and expressly stated that his decision did not result from any undue influence:

I have reviewed these terms with my attorney and I have been informed of the consequences of signing this affidavit. I understand that I am freely giving up my right to a trial and request to voluntarily terminate my parental rights. My consent to the voluntary termination of my parental rights is given of my own free will and is not given due to any duress or under any influence or fraud.

M.A.B. also made a second, similar statement in a separate paragraph of the affidavit: "I have been informed of the consequences of my signing this Stipulation and Consent for the Voluntary Termination of Parental Rights and state that my consent is given of my own free will and is not obtained under any duress or under any influence or fraud." In addition to these written statements, M.A.B. testified that he agreed to a voluntary termination of his own free will and that his consent was "not obtained under any duress or any influence or fraud." He also testified that he reviewed his rights with his attorney and understood

the consequences of waiving his trial rights and consenting to voluntary termination. He was asked a second time whether his consent was “given of [his] own free will and [was] not given due to any duress or under any influence or fraud.” M.A.B. again agreed that he made this decision of his own free will, without any undue influence.

On January 9, 2020, the district court issued its order granting a voluntary termination of M.A.B.’s parental rights. M.A.B. subsequently filed a notice of appeal to this court (No. A20-0154) and then filed a motion in district court to vacate its termination order. This court stayed the appeal in case number A20-0154 pending resolution of M.A.B.’s motion. In April 2020, the district court denied M.A.B.’s motion, and this court dissolved the stay. On August 20, 2020, in an order opinion, this court remanded the case to the district court based on our opinion in *In re Welfare of Child of J.R.R.*, in which we held that “if a district court orders a voluntary termination of parental rights, it must make a determination regarding the child’s best interests based on the best-interests factors listed in Minn. R. Juv. Prot. P. 58.04(c)(2)(ii), even if the termination petition is resolved without a trial.” 943 N.W.2d 661, 669 (Minn. App. 2020). Although the district court concluded that a termination of M.A.B.’s parental rights was in the children’s best interests, and although M.A.B. admitted that termination was in the children’s best interests, this court could not review the termination because the district court did not include the specific factual findings required by *J.R.R.* Therefore, we remanded the case to the district court “to make appropriate findings regarding the children’s best interests consistent with *J.R.R.* and the rules.” Our order stated that, “On remand, the district court may—but need not—

entertain arguments or reopen the record before making additional findings consistent with this order.”

The district court issued amended findings on September 1, 2020. The district court did not entertain arguments or reopen the record before doing so, and determined that termination of M.A.B.’s parental rights was in the best interests of the children. The court based this determination on several additional findings, including that the children had witnessed M.A.B.’s acts of domestic violence against their mother, usually in reaction to her drug use; that when the older child had been “flagged” for an autism diagnosis, M.A.B. rejected the idea of such a diagnosis entirely and later blamed the children’s mother; that M.A.B.’s actions had caused repeated disruption in his children’s lives; and that the children had experienced a traumatic home life with little stability, causing developmental delays.

The district court also discussed M.A.B.’s interest in maintaining the relationship with his children, relying primarily upon a parental capacity evaluation originally written in 2017 but updated in January 2020. The district court determined that while M.A.B. had an interest in preserving the relationship, M.A.B. failed to demonstrate empathy towards the children as he repeatedly “downplayed or denied his own culpability in creating an unsafe home environment.” Ultimately, the district court found that the children’s interest in being raised by caregivers who were able to meet their developmental needs and nurture them without additional trauma outweighed their existing interests in maintaining their parent-child relationship.

After the district court issued the September 1, 2020 amended findings, M.A.B. then moved for additional amended findings, a new trial, and to rescind his consent to the voluntary termination of his parental rights. The district court denied M.A.B.’s motions on September 9, 2020, and M.A.B. subsequently appealed that decision to this court.¹

DECISION

I. Decision Not to Reopen the Record after Remand

M.A.B first argues that the district court abused its discretion by failing to reopen the record after remand.² Because M.A.B.’s argument is contrary to the law and because the record contained sufficient evidence for the district court to make amended findings without receiving additional evidence, we affirm the district court’s decision.

¹ This court questioned jurisdiction because the time to file a petition for further review of this court’s August 20, 2020 opinion had not yet expired when the district court issued the September 1, 2020 amended order. We accepted jurisdiction over this appeal after determining that M.A.B. appealed from the September 9, 2020 order.

² M.A.B. also raises two other arguments that we need not independently address. First, M.A.B. argues that the district court was biased against him. Because M.A.B. made no motion to remove the judicial officer, there is no decision for us to review. See Minn. R. Juv. Prot. P. 7.06 (stating that, in juvenile protection cases, removal of a judge or referee is to occur under the procedures and standards set out in Minn. R. Civ. P. 63); Minn. R. Civ. P. 63.03 (governing removal of a judicial officer). In addition, M.A.B. raises this issue for the first time on appeal, and we need not consider matters not raised before the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981). Second, M.A.B. argues that the district court erred in denying his motion for a new trial. We need not independently review the denial of M.A.B.’s new-trial motion because no such relief was available to M.A.B. See *Johnson v. Johnson*, 439 N.W.2d 430, 431 (Minn. App. 1989) (“A motion for a new trial is an anomaly where there has been no trial and the denial of such a motion is not appealable.”). The district court granted the termination petition based on M.A.B.’s voluntary admissions and waiver of trial. In the absence of an initial trial, there can be no new trial, and M.A.B. may proceed only by requesting to vacate the voluntary termination order. Therefore, we do not address either of these two issues.

We previously remanded the case to the district court because the initial order did not include specific findings regarding the best interests of the children consistent with our holding in *J.R.R.* Our remand explicitly granted the district court the discretion to reopen the record before making the required additional findings: “the district court may—but need not—entertain arguments or reopen the record before making additional findings consistent with this order.” In addition, we review a district court’s compliance with appellate instructions on remand for an abuse of discretion. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005). We will find that a district court abused its discretion if “it act[ed] against logic and the facts on record.” *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (quotation omitted).

We are not convinced by M.A.B.’s arguments for three reasons. First, we disagree that in child protection cases, district courts are required to reopen the record after remand. No Minnesota case imposes such a requirement, and the cases from the foreign jurisdictions cited by M.A.B. do not stand for the proposition that additional evidence should be required after remand. They instead grant the district court discretion to reopen the record, just as this court did when it remanded the case.

Second, the rules of appellate procedure prohibit M.A.B. from raising this challenge at this time. In essence, M.A.B. argues that this court erred as a matter of law in making its remand instructions in the previous appeal (A20-0154), which provided the district court discretion to reopen the record. Under the appellate rules, such a challenge should have been made by petitioning the Minnesota Supreme Court to review the August 20, 2020

order opinion, Minn. R. Civ. App. P. 117, and M.A.B. cannot obtain a rehearing with this court, Minn. R. Civ. App. P. 140.01.

Third, given the detailed evidence presented to the district court prior to M.A.B.'s admission, we conclude that the record contained sufficient evidence for the district court to make the additional findings. After remand, the district court subsequently issued detailed findings on the children's best interests in its amended order.³ As noted by the district court, the record before it at the time that M.A.B. agreed to the voluntary termination contained evidence that M.A.B.'s domestic violence caused repeated disruptions in the children's home life. In addition, the record contained evidence that the family's instability caused the children to experience trauma and exhibit developmental delays. Moreover, the evidence presented showed that M.A.B. lacked remorse and did not appreciate the impact that his actions had on the children. Given the sufficiency of the evidence in the record prior to the initial appeal, the district court did not abuse its discretion when it decided not to reopen the record.

Because M.A.B.'s argument lacks legal support and because of the sufficiency of the evidence in the original record, we affirm the district court's decision.

³ M.A.B. does not question the district court's analysis of the best-interests factors, challenge the district court's additional findings, or argue that the additional findings contradict the evidence in the record at the time of his voluntary termination agreement. Instead, he argues that the district court was required as a matter of law to reopen the record.

II. Denial of Motion to Vacate the Voluntary Termination of Parental Rights

M.A.B. next argues that the district court erred when it denied his request to vacate the voluntary termination of his parental rights.⁴ Because M.A.B. did not identify a valid ground to vacate the voluntary termination, the district court did not abuse its discretion when it denied M.A.B.’s motion to vacate.

“A parent who has consented to a termination order cannot have that order set aside simply because she has changed her mind or her circumstances have otherwise changed.” *In re Welfare of K.T.*, 327 N.W.2d 13, 18 (Minn. 1982). Instead, “a voluntary termination order may be rescinded only upon a showing of fraud, duress, or undue influence.” *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997). “Duress” means “coercion by means of physical force or unlawful threats which destroys the victim’s free will and compels him to comply with some demand of the party exerting the coercion.” *In re Welfare of N.M.C.*, 447 N.W.2d 14, 16 (Minn. App. 1989) (quotation omitted). “Undue influence” means “coercion, amounting to a destruction of one’s free will, by means of importunities, flatteries, insinuations, suggestions, arguments, or any artifice not amounting to duress.” *Id.* This court will not disturb a district court’s decision to deny a

⁴ On appeal both parties use the terms “withdraw” and “vacate” interchangeably. We agree with the district court’s decision to construe M.A.B.’s request as a motion to vacate rather than an attempt to withdraw from his agreement. See *In re Welfare of Child of J.L.L.*, 801 N.W.2d 405, 410 (Minn. App. 2011) (noting that after the district court has accepted the voluntary termination agreement and ordered termination, a parent can no longer revoke consent and must instead move to vacate the termination), *review denied* (Minn. July 28, 2011).

motion to vacate a judgment absent an abuse of discretion. *Nelson v. Siebert*, 428 N.W.2d 394, 395 (Minn. 1988); *J.L.L.*, 801 N.W.2d at 411.

The stated basis for M.A.B.’s request has changed. When he made his motion to vacate to the district court, M.A.B. asked that the voluntary termination be “withdrawn” because he was drug free, he had sought and received treatment, and his “head [was] in a much better place.”⁵ None of these stated reasons is a basis for vacating a voluntary termination because none is an assertion of “fraud, duress, or undue influence.” On appeal, however, M.A.B. now claims that the voluntary termination agreement resulted from coercion. We do not consider issues or theories raised for the first time on appeal. *Thiele*, 425 N.W.2d at 582. In addition, M.A.B.’s argument on appeal directly contradicts two separate paragraphs of his affidavit and two separate statements that he made to the district court under oath. In these statements, M.A.B. stated that his consent was given of his own free will and was not the result of any duress or under any influence or fraud. M.A.B. was represented by an attorney and informed of his rights. Given the stated basis for the motion to vacate before the district court claiming a change in circumstances—not fraud, duress, or undue influence—and given M.A.B.’s sworn statements to the district court at the time

⁵ M.A.B. also made a motion to vacate the voluntary termination in February 2020, while the initial appeal was pending. Because the current appeal does not relate to the district court’s denial of the February 2020 motion to vacate, we need not address the basis for that motion in this appeal. Nevertheless, we note that the affidavit in support of the February 2020 motion complained of the district court’s admission of a report into evidence at trial, the district court’s denial of a motion for an extension of time, and the county’s refusal to allow M.A.B. to have trial home visits with the children. None of these stated reasons can be properly characterized as alleging fraud, duress, or undue influence.

that he consented to the voluntary termination, the district court did not abuse its discretion when it denied M.A.B.'s motion to vacate.

Affirmed.