

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1326**

In the Matter of the Welfare of the Children of
S. S., Custodial Parent,
A. S., Stepparent, and J. D. J.

**Filed March 22, 2021
Affirmed
Klaphake, Judge ***

Fillmore County District Court
File No. 23-JV-19-806

Lee Novotny, Novotny Law Office, Ltd., Chatfield, Minnesota (for appellant father J.D.J.)

Alexandra R. Griffin, Danielle L. DiFiore, Anderson Law Firm, Rochester, Minnesota (for
respondent mother S.S. and respondent stepparent A.S.)

Considered and decided by Hooten, Presiding Judge; Slieter, Judge; and Klaphake,
Judge.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant-father J.D.J. challenges the district court's order terminating his parental rights to children R.J. and E.J. The district court found that appellant abandoned the children, neglected them, was palpably unfit to parent the children, and that it is in the best interests of the children to terminate appellant's parental rights. Because we conclude that

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

appellant neglected and abandoned his children and that termination is in the children's best interests, we affirm.

DECISION

A child's natural parent is presumed to be fit and suitable to be entrusted with the care of the child. *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). Parental rights are terminated only for "grave and weighty reasons" and "when the evidence clearly mandates such a result." *In re Welfare of Children of B.M.*, 845 N.W.2d 558, 563 (Minn. App. 2014) (quotation omitted); *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996).

The district court may terminate parental rights (TPR) if it finds that one or more statutory bases has been met. *See* Minn. Stat. § 260C.301, subd. 1(b) (2020). The standard of proof for proceedings concerning termination of parental rights is "clear and convincing evidence." Minn. R. Juv. Prot. P. 58.03, subd. 2(a). That burden is on the petitioners. *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980). The petitioners must show that the conditions justifying termination exist at the time of trial and will continue for an indeterminate period of time. *Id.*

Ultimately, we review the district court's factual findings for clear error and its determination that a statutory basis is present for 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 "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). "A district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are

unsupported by the record, or if it misapplies the law.” *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (quotations and citations omitted). We defer to the district court’s “determinations of witness credibility and the weight to be given to the evidence.” *In re Welfare of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007).

1. Abandonment

The juvenile court may terminate parental rights if the parent has abandoned the child. Minn. Stat. § 260C.301, subd. 1(b)(1). Abandonment may be established absent any presumption of abandonment if the parent “has actually deserted the child and has an intention to forsake the duties of parenthood.” *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004) (quotation omitted). Abandonment that is intentional, and not due only to misfortune and misconduct, is an important factor favoring termination. *In re Staat*, 178 N.W.2d 709, 713 (Minn. 1970). Sporadic visitation history alone cannot support TPR. *In re Welfare of Solomon*, 291 N.W.2d 364, 368 (Minn. 1980); *see also In re Welfare of J.K.*, 374 N.W.2d 463, 467 (Minn. App. 1985) (noting that father’s “prior abandonment” had been “terminated by his vigorous defense of his parental rights”), *review denied* (Minn. Nov. 25, 1985). The evidence relating to termination must address conditions existing at the time of the hearing. *Chosa*, 290 N.W.2d at 769.

Here, the district court found that appellant abandoned the children for approximately six years “while allegedly dealing with his chemical dependency.” Even after achieving sobriety, appellant “failed to take the steps set forth in the family court order to regain his parenting time and made no indication as to when he would do so. . . .” The district court found that he did not use the supervised parenting time available to him, even

throughout the proceedings. Thus, the district court found that appellant had intentionally forsaken the children, that it was not due to misfortune or misconduct, and that it will continue into the foreseeable future.

The record supports the district court's finding. The district court ordered that while J.D.J. completed conditions before re-commencing his parenting time, J.D.J. "shall be entitled" to one hour per week visitation with the children, supervised by his mother or another mutually agreeable responsible adult. On cross-examination, appellant admitted that he did not exercise this supervised visitation. He did not ask his mother to serve as a third-party supervisor to his visits. He also did not pursue any non-physical ways to communicate with the children, such as writing letters, birthday cards, or checking up on their milestones through the children's custodial parent. Accordingly, we conclude that the district court did not abuse its discretion in finding that appellant abandoned the children.

2. Neglect

Another statutory ground for termination is if "the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(2). Such duties may include providing "food, clothing, shelter, education, and other care and control necessary" for healthy child development. *Id.* The district court must "determine that, at the time of termination, the parent is not presently able and willing to assume [his] responsibilities and that the condition will continue for the reasonably foreseeable future." *In re Welfare of the Child of: A.M.C. and G.J.F.*, 920 N.W.2d 648, 655 (Minn. App. 2018).

Failure to comply with a court-ordered case plan is evidence of neglect of parental duties. *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003).

The district court found that appellant failed to comply with the duties and responsibilities imposed on him as a parent for around seven years. It also found that appellant's chemical dependency did not justify him never exercising his supervised visitation. Furthermore, appellant did not take the steps to comply with the order or to use the supervised visitation even once he reached sobriety. The district court also found that because appellant has not maintained his sobriety outside a controlled environment while living with his sponsor, "there is no indication he will be able to assume his responsibilities, which are more than just supervised parenting time, for a prolonged, indeterminate period of time."

The record supports the district court's finding. The guardian ad litem reported that appellant had an "all or nothing approach" to parenting while he was chemically dependent. As a result of this approach, appellant did not contact the children. Appellant testified that even after he was sober, he did not request contact with the children. Accordingly, we conclude that the district court did not abuse its discretion in finding that appellant neglected the children.

"Termination of parental rights will be affirmed as long as at least one statutory ground for termination is supported by clear and convincing evidence." *R.W.*, 678 N.W.2d at 55. The record supports by clear and convincing evidence that appellant abandoned and neglected the children, based on two statutory grounds for termination. Therefore, we need not address whether appellant is palpably unfit to parent the children.

3. Best Interests of the Children

Appellant also argues that the district court clearly erred in finding that termination of his parental rights was in the best interests of the children. We review a district court's best-interests determination for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905. When analyzing a child's best interests, the court must consider the child's interest in preserving the parent-child relationship, the parent's interest in preserving the parent-child relationship, and any competing interests of the child. *Id.* "Competing interests include such things as a stable environment, health considerations and the child's preferences." *Id.* (quotation omitted). In a case in which statutory basis to terminate parental rights exists, if the interests of the parent and those of the child compete, the child's interests are paramount. Minn. Stat. § 260C.301, subd. 7 (2020). "Because the best-interests analysis involves credibility determinations and is generally not susceptible to an appellate court's global review of the record, we give considerable deference to the district court's findings." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012) (quotation omitted).

The district court found that because the children have been raised by S.S. and A.S., and they do not remember or identify appellant as their father, termination of his parental rights is in the best interests of the children. We defer to the district court's best-interests determination because the record supports that determination. The children do not currently have an interest in preserving the relationship with appellant. Appellant testified to an interest in preserving the parent-child relationship, however he has taken no steps outside of appearing through this proceeding to learn about the children, express an interest in them, or fulfill the conditions in the court order to regain his parenting time. The children

wish to be adopted and have the same last name as S.S. and A.S., and to keep their current family intact as they know it. Accordingly, we conclude that the district court did not abuse its discretion in determining that termination of appellant's parental rights is in the children's best interests.

Affirmed.