

*This opinion is nonprecedential except as provided by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
A21-0438**

In the Matter of the Welfare of the Child of: M. L. H., Parent.

**Filed October 18, 2021
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-JV-19-2365

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Considered and decided by Smith, Tracy M., Presiding Judge; Bjorkman, Judge;
and Hooten, Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

On appeal from the termination of his parental rights, father argues that the record does not support the district court's conclusion that termination is in the best interests of the child and that the district court failed to address the circumstances existing at the time of trial. We affirm.

FACTS

On March 12, 2018, the state charged appellant father with promoting the prostitution of a minor after it received a tip from an informant that he was involved in the posting of commercial sex ads for a 17-year-old victim. The informant provided police with the victim's phone number and officers later discovered the number in multiple prostitution ads on commercial sex websites.

Leading up to the charge, an undercover officer had contacted the phone number listed in the commercial sex ad and negotiated a meeting with the victim for \$700 on or about March 8, 2018. The victim directed the officer to a hotel and, when he arrived, a surveillance team of other officers observed father at the hotel and found messages related to the commercial sex ad on father's phone. Police also spoke with a witness who stated that the victim was involved in "commercial sex and that she had been selling herself since she met" father. The witness further maintained that father ordered the victim to post ads on the commercial sex ad website and that both father and the victim would communicate to people who responded to the ads. But father demanded half of the money the victim earned. Other statements indicated that father "was slaving [the victim] and making her stay up for days without eating." Based upon this information, father was arrested and placed in jail.

On August 8, 2018, father pleaded guilty to the charge and a conviction was entered on September 9, 2018. The district court sentenced father to 78 months in prison for the promotion of prostitution offense to be served with a concurrent sentence of 29 months for

an unrelated aggravated robbery offense. Father is currently incarcerated and is scheduled to be released in July 2022.

Because the victim in the promotion of prostitution offense was a minor, Hennepin County Social Services opened a child protection investigation related to the victim of that offense. On August 23, 2018, just a few weeks after he had pleaded guilty to the charge of promoting prostitution, county staff interviewed father. He acknowledged that he had previously dated the victim and he claimed that he was aware that she had been prostituting herself. But he denied the allegations in the criminal complaint that he had been promoting prostitution and claimed no involvement in the victim's commercial sex activities. He alleged that she would arrange her own dates, often through social media websites, and that "he would just take her [to] the places that she told him to go." He denied that he was "pimping [the victim out]," stating that the victim took his phone and posted commercial sex ads online and arranged her own hotel rooms. And he stated that he only pleaded guilty to the charge "because he did not want [the victim] to lie about him while testifying because that would make him look worse." But he admitted that he was at the same hotel as the victim and argued that he was leaving to sell marijuana to a third party. As a result of its investigation, the county made a finding of maltreatment, concluding that there was a preponderance of evidence to support a finding of sexual exploitation of the minor, but found that there was no need for child protective services.

Following the conviction, the county opened an additional child protection investigation regarding father's five-year-old daughter, N.M. A social worker assigned to the case spoke with the child's mother who explained that she was aware father was

prostituting girls at the time the two started dating and “told him to be careful and to stop.” She stated that father and N.M. did not have much of a relationship and that he was not around often. She also explained that when she would bring N.M. over to visit with father and his family, he would leave her in the care of his mother and that N.M. would later say that she did not want to go to her father’s home. And she claimed that she had no plans to allow N.M. and father to have contact once father was released from prison.

The social worker also spoke with father. He explained that he had not seen N.M. for approximately two years but had sporadic phone calls with her. He denied that he was prostituting a minor contrary to his August 2018 guilty plea and claimed that he was instead in a relationship with a woman “that was selling her body.”

The county both initiated a CHIPS proceeding and filed a petition to terminate father’s parental rights on June 7, 2019. The district court relieved the county of reasonable efforts to reunify N.M. with father because it concluded that the county’s petition to terminate father’s parental rights made a prima facie case that father had committed an offense that requires registration as a predatory offender. Despite this, and father’s incarceration, the county voluntarily developed a case plan for father. The district court held a trial on the petition on February 5, 2020 and February 1, 2021. Father, mother, a social worker, a child protection investigator, and N.M.’s guardian ad litem testified during the trial.

The child protection investigator and the social worker both recommended that father’s parental rights be terminated. They testified that father’s conviction for prostitution of a minor shows a “disregard for women” and that father views women “as a

financial gain.” They relied on father’s failure to accept responsibility for the actions that led up to his conviction to support their belief that N.M. was at risk for physical harm or potential sexual exploitation by father once he was released from prison and N.M. got older. They also explained that even if father completed the programming provided by the state as a part of his case plan, their recommendations for termination of father’s parental rights would not change because of the nature of father’s conviction.

Testimony from N.M.’s guardian ad litem echoed the testimony of the social worker and the child protection investigator. She explained that it was in N.M.’s best interests to terminate father’s parental rights because of his significant criminal activity and his dismissive view of women. She testified that she believed father viewed women as “sexual objects that are saleable to men to use as they see fit,” and worried that N.M. “could become a victim of sexual exploitation or assault by her father if he [was] allowed to continue [to have] contact with her.”

Mother testified during the termination proceeding and denied any knowledge of father’s prostitution of girls. She retracted the statements she gave to the county in August 2018 and claimed that she did not find out that father was involved in the prostitution of minors until his arrest in 2018. She further stated that she did not have any concerns about father abusing N.M. and retracted her earlier statements that father and N.M. did not have a relationship. She testified that while father had never provided any financial support for the child, father spoke to N.M. on the telephone between once a week and once a month and gave her two gifts.

During his testimony, father indicated that he had a good relationship with N.M. He reiterated mother's testimony that he spoke with N.M. often and sent her gifts for her birthday and the holidays. He also stated that while he was in prison, he did his best to comply with the county's case plan. He completed his GED and programming related to anger management and character building and was waitlisted for chemical dependency and parenting class programming.

Father also addressed his alleged chemical dependency. Both the Department of Corrections and the county recommended father participate in chemical dependency programming because of his claims that he smoked and sold marijuana. Father claimed that he did not have a chemical dependency issue but conceded that he started smoking marijuana at the age of 18 or 19, smoked marijuana on a daily basis and selling the drug as well. But he denied that he "had a problem with drugs" and testified that he believed he did not need treatment.

Following the two-day trial, the district court terminated father's parental rights. The district court found that while father was remorseful for the lack of a relationship with his daughter due to his conviction, father's testimony regarding his parenting of the child was "self-serving and minimally credible." The district court also found that mother's testimony was not credible, noting the inconsistencies between her testimony and her earlier statements to county staff. The district court relied on testimony from the social worker, the child protection investigator, and the guardian ad litem and determined that father had a minimal relationship with N.M. And the district court acknowledged father's attempts to reach out to N.M. with phone calls and gifts and his completion of his GED

and other programming. But the district court concluded that father's minimal contact with the child and his partial completion of his case plan did not outweigh the risks he posed to N.M. as a result of the conduct that led to his conviction. Father now appeals.

DECISION

Father challenges the district court's termination of his parental rights. This court reviews the district court's findings in a termination order for clear error and reviews for an abuse of discretion "its determination of whether a particular statutory basis [exists] for involuntarily terminating parental rights." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012); *see also In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014) ("[T]ermination of parental rights is always discretionary with the [district] court."). "This court gives deference to a [district] court's decision to terminate parental rights but closely inquires into the sufficiency of the evidence to determine whether it is clear and convincing." *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005).

The legislature has established nine criteria that support termination of parental rights. Minn. Stat. § 260C.301, subd. 1(b) (2020). A district court may terminate parental rights when only one criterion is proven, but when a statutory basis to terminate parental rights exists, the primary consideration in every termination case is the child's best interests. Minn. Stat. § 260C.301, subds. 1(b), 7 (2020). Here, the district court relied on Minn. Stat. § 260.012, subd. (g)(5) (2020) and terminated father's parental rights because he was convicted of an offense which requires him to register as a predatory sex offender. *See* Minn. Stat. § 260C.301, subd. 1(9) (2020) (explaining that a district court may

terminate an individual's parental rights if "the parent has been convicted of a crime listed in" Minn. Stat. § 260.012, subd. (g)(1)-(5) (2020)). The district court also concluded that the best interests of the child analysis support the termination of father's parental rights.

Father does not dispute that the district court had an adequate basis under Minn. Stat. § 260C.301, subd. 1(9) to terminate his parental rights but claims that the termination was not in N.M.'s best interests. We review a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008).

In analyzing a child's best interests, "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." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); see Minn. R. Juv. Pro. P. 58.04(c)(2)(ii). "Competing interests include such things as a stable environment, health considerations, and the child's preferences." *R.T.B.*, 492 N.W.2d at 4. During this balancing process, the interests of the parent and child are not necessarily given equal weight. *In re Welfare of Udstuen*, 349 N.W.2d 300, 304 (Minn. App. 1984). Rather,

both the interests of the parent and child are considered along with the circumstances of the particular case in an effort to determine which of these interests is to predominate. Balancing, therefore, is an active process of determining the weight of two potentially opposing interests rather than a static attribution of an equal weight to each interest.

Id. (quotation omitted).

Relying on these factors, the district court concluded that it was in N.M.'s best interests to terminate father's parental rights. The district court acknowledged that both father and daughter had an interest in maintaining the parent-child relationship but determined that competing interests including the conduct that led up to father's conviction and his failure to change that behavior outweighed that interest. We agree.

The record establishes that father and N.M. had some interest in preserving their relationship, but the interest is minimal. Mother's statements to the county's social worker and child-protection investigator and their subsequent testimony indicate that father and N.M. had little to no relationship prior to his incarceration. Father saw N.M. sporadically when mother would drop her off at father's home, which he shared with his mother. But mother claimed that father would leave N.M. in the care of his mother and would leave the home often enough that N.M. stated that she did not want to visit her father anymore. Mother's testimony revealed that she was primarily raising N.M. and father did not provide mother with any financial or emotional support. Further, father had minimal contact with N.M., during his three years in prison, speaking to her over the phone sporadically and sending her two gifts.

The competing interests, however, weigh in favor of the conclusion that termination was in N.M.'s best interests. First, father's past chemical dependency issues provide support for the determination that father may not be able to provide N.M. with a stable environment. Father testified at the termination hearing that prior to his conviction, he smoked marijuana every day and sold the drug for "fast money." He denied that this substance use could have had a negative effect on N.M., maintaining that this could only

be the case if he was smoking “four or five blunts a day.” He also refused to attend chemical dependency programming despite recommendations from both the Department of Corrections and the county. Father claimed that he did not need treatment “because [he did not have] a problem with drugs.” But testimony from the guardian ad litem established that father had an alcohol-related incident in prison in May 2020 resulting in a 21-day disciplinary action.

Second, father’s conviction for a sexual offense involving a minor presents challenges to developing and continuing a relationship with N.M. Testimony from the social worker, the child protection investigator, and the guardian ad litem establishes that father continues to have a dismissive view of women and appears to view women as sexual objects that can be sold to men. Further, there is a concern that father might present a safety issue to the child if allowed to parent because of the nature of his conviction. *See In re Welfare of K.L.W.*, 924 N.W.2d 649, 657 (Minn. App. 2019) (explaining that a parent’s conviction for a sexual offense may be considered in the best-interests analysis if there is no evidence that the parent’s behavior has changed), *rev. denied* (Minn. Mar. 8, 2019). The district court relied on testimony from the county’s witnesses to conclude that father’s behavior toward women had not changed since his conviction. This coupled with father’s failure to address his chemical dependency issues provides adequate support for the conclusion that the risks to N.M.’s safety outweighed the interest that father and N.M. had in preserving the relationship.

Father asks us to conclude that the district court’s reliance on his failure to attend chemical dependency programming or parenting classes was erroneous because the

programming is not relevant to maintaining the parent-child relationship. But the district court did not rely on father's failure to attend chemical dependency treatment, but rather upon his continued denial of his issues with chemical dependency for which treatment was necessary. The district court concluded that father's "lack of insight into his chemical dependency issues raises further concerns about his future ability to parent" N.M. The district court also explained that the parenting program would have positively impacted his ability to parent N.M. We see no clear error in that conclusion.

And to the extent that the district court did consider father's failure to attend this programming, the reliance was appropriate. A district court may examine the behaviors of a parent to determine whether any change had occurred which would not support termination. *Id.* Father's failure to concede that he has a chemical dependency issue or has issues with his parenting of the child and participate in programming establishes an unwillingness or inability to change the behavior that supported the county's petition for termination. We conclude that the district court did not abuse its discretion by terminating father's parental rights based upon this balancing of the competing interests of father and the child with their interest in preserving the parent-child relationship.

Affirmed.