STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0865

In the Matter of the Welfare of the Children of: D. O. and L. P., Parents.

Filed December 12, 2022
Affirmed
Bryan, Judge

Pipestone County District Court
File No. 59-JV-22-6

Amie Ascheman, Runchey, Louwagie & Wellman, PLLP, Marshall, Minnesota (for appellant D.O.)

Damain D. Sandy, Pipestone County Attorney, Pipestone, Minnesota (for respondent Southwest Health & Human Services)

Sherri Smith, Luverne, Minnesota (guardian ad litem)

Considered and decided by Bryan, Presiding Judge; Segal, Chief Judge; and Cleary, Judge.*

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal from a termination of appellant's parental rights, appellant argues that the district court abused its discretion when it determined that he was palpably unfit to care for the children, when it ordered him to comply with an inadequate case plan, and when it

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

took judicial notice of reports filed in other child protection cases regarding appellant and the children. We affirm.

FACTS

Appellant D.O. (father) and L.P. (mother) have three children together: Child 1, born in 2016; Child 2, born in 2017; and Child 3, born in 2021.[1] Mother and father were not married when Child 1 and Child 2 (the children) were born, but they signed recognitions of parentage concerning the children, and mother was the sole legal and physical custodian of the children. In 2019, respondent Southwest Health & Human Services (the county) commenced a case in court case number 59-JV-19-17 alleging that the children were in need of protection or services (CHIPS). The children were ultimately returned to mother's care and the case was closed. However, in January 2022, the county again removed the children from mother's home after mother was arrested for a controlled substance offense and driving while impaired with Child 3 in the vehicle. After mother's arrest, the county filed a second CHIPS petition in court case number 59-JV-22-5, as well as a petition to terminate mother's and father's parental rights in court case number 59-JV-22-6. The district court adjudicated the children in need of protection or services, and the termination matter proceeded to a pretrial hearing and trial.

At the pretrial hearing on April 5, 2022, the county stated its intent to request that the district court take judicial notice of the two CHIPS case files in the termination trial. On the first day of trial, on April 18, 2022, the county made an oral motion for the district

[1] The termination petition relates to father's parental rights over Child 1 and Child 2 only.

court to take judicial notice of court case numbers 59-JV-19-17 and 59-JV-22-5, including the reports submitted by the guardian ad litem (GAL) and the social worker in those cases. Father opposed the motion in part, requesting that the district court only take judicial notice of the findings of fact and orders from the two CHIPS cases, but not any previous GAL or social worker reports. The district court granted the county's motion and admitted the GAL and social worker reports to "expedite litigation, eliminate costs, and delay by noticing readily verifiable facts without having to prove the facts in the current proceedings."

At the ensuing trial, a social worker testified on behalf of the county. She was assigned as the social worker on the current CHIPS cases as well as on the termination matter and knew the family's child protection history. She explained that the children were first removed from mother's home in 2019 because of mother's and father's use of methamphetamine. According to the social worker, during the pendency of that initial CHIPS case, the county offered the parents support and services and the children were eventually returned to mother. After mother's arrest in January 2022, the county again removed the children and again offered both mother and father services. The social worker testified that as of the date of the trial, both mother and father were in general compliance with their case plans, receiving mental health services, and maintaining sobriety. However, the county requested termination because mother and father have not shown an ability to maintain their sobriety, father has never been the custodial parent, and he had not shown an ability to parent the children on his own.

On the second day of trial, on May 19, 2022, mother voluntarily consented to the adoption of the children by a nonrelative third party. Mother also provided testimony

regarding the termination of father's parental rights. Mother believed father had a "very good bond" with the children and that the children love him. She testified that she would prefer the children to go to a family member, but she did not believe it best for the children to be placed with father at this time because the third party could provide the children with a life that father could not. Mother testified that she believed father could be a good parent but was concerned about his lack of support.

The GAL also testified, declaring that based on her "education, training, history, and all information," father "lacks the ability to parent [the children] on a consistent and daily basis on his own without significant assistance." She noted that father had a history of drug abuse and relapses, lacked consistency in his participation with Greater Minnesota Family Services, and was currently attending only one chemical dependency treatment session per week instead of the recommended two sessions. She testified that she did not believe it to be in the children's best interests to transfer custody to father. She testified that from 2019 to the time of the trial, father attended outpatient treatment for chemical dependency and saw a mental health therapist, but he had not made sufficient improvements or done what was necessary to have custody of the children.

Family members—including the children's maternal grandmother, a paternal aunt, and a paternal uncle—testified on behalf of father. The children's grandmother testified that father's parenting abilities have significantly improved since he started attending parenting classes and that she believed father could care for the children on his own. The children's aunt and uncle testified that father has a good support system and is a good

parent to the children. Uncle testified that he believed father could parent the children but expressed concerns that father would be unable to do so without help.

Father also testified on his own behalf. Father is currently living with his sister but testified that he planned to move into the children's maternal grandmother's home if he gained custody of the children. He also planned to get his driver's license reinstated and obtain a vehicle. He testified that he had been pursuing parenting classes with Greater Minnesota Family Services to work on assessing the children's feelings but stopped doing so and, around that time, started using drugs again. Father testified that he has addiction issues and detailed his history of drug abuse. He first used methamphetamine at age 19, used other drugs such as heroin in his 20s, and his most recent methamphetamine relapse occurred in January 2022 because he was tired from helping with the children and working. He also testified that in the past, he had tried unsuccessfully to complete treatment but did not take those programs or his addiction seriously enough.

Following the hearing, the district court issued an order terminating father's parental rights. The district court found that although father started helping mother care for the children in the past two years and has abstained from methamphetamine since January 2022, father cannot parent the children on his own and has been unable to maintain long-term sobriety. Specifically, the district court emphasized that at the time of the trial, father had been sober for less than three months, was only attending one of two chemical dependency sessions per week, and failed to show a consistent willingness to address his chemical abuse. The district court also found that the children had been exposed to drug use in the home and noted that the January 2022 hair follicle tests for the children were

positive for methamphetamine. The district court then explicitly found that father's substance abuse "has had a negative impact on his ability to parent the children" and identified father's ongoing inability to remain sober as a barrier to his ability to parent: "Father minimizes his use of chemicals and lacks insight into the effect the exposure to drug use has had on the children."

Apart from his substance abuse, the district court emphasized the brevity and uncertainty of father's mental health progress. Although the social worker testified that father's parenting assessment from 2019 recommended that he obtain mental health treatment and attend a domestic violence program, father started a mental health treatment program for his diagnosed antisocial personality disorder and generalized anxiety only one month before the trial and had yet to complete any domestic abuse program.

The district court also made several findings regarding father's inability to parent on his own, noting testimony from the social worker, the GAL, the children's uncle, and mother. Each expressed concerns about father's ability to parent the children on his own without help and support. Although father has never been the custodial parent and had limited parenting time with the children, the district court found that "[f]ather has not cooperated with services through [Greater Minnesota Family Services] to increase his parenting skills so that a transition to unsupervised visits could occur." In addition, the district court found that father did not demonstrate suitable residential or transportation stability because he has moved four times in the last three years and does not have a driver's license. More substantively, the district court acknowledged that the children have been diagnosed with post traumatic stress disorder and have experienced trauma. The district

court found that father lacked insight into the children's mental health needs: "Father recognizes the children have experienced trauma but attributes their trauma to being removed from the home by human services. Father lacks insight in his role in placing the children in situations that are traumatic for the children, such as exposure to drug use and domestic violence."

The district court also made specific findings regarding the following five goals that it summarized from father's case plan: (1) "[f]ather shall address his chemical dependency"; (2) "[f]ather will provide a safe and secure home for his children and meet the children's needs"; (3) "[f]ather will address his mental health"; (4) "[f]ather shall cooperate with [the county] and GAL"; and (5) "[f]ather shall maintain contact with his children." As noted above, the district court found that although father had not tested positive for drugs since January 2022, he was not attending all recommended chemical dependency treatment sessions. The district court also found that father was unable to provide adequate care for the children and meet the children's needs without help from others. Regarding the remaining three goals, the district court found that father was attending therapy, maintaining contact with the county and the GAL, and attending supervised visits with the children. The district court found that reasonable efforts were made by the county, but the efforts were unsuccessful. The district court also found that the county established a basis for termination under Minnesota Statutes section 260C.301, subdivisions 1(b)(2), (4), and (5) (2022). Father appeals.

DECISION

Father challenges the termination of his parental rights, raising the following three arguments: (1) the district court abused its discretion when it determined that a statutory basis for termination existed; (2) the county did not develop an adequate case plan for him; and (3) the district court abused its discretion when it took judicial notice of the GAL and social worker reports from the two CHIPS cases. We address each argument in turn.

I. Statutory Basis: Palpable Unfitness

As a threshold matter, we acknowledge that although the district court determined that the county established three separate statutory bases, we may "affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence." *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). Because we conclude that the district court did not abuse its discretion when it determined that father is palpably unfit to be a party to the parent-child relationship, we need not address the other two statutory grounds for termination.

Under Minnesota Statutes section 260C.301, subdivision 1(b)(4), a district court may terminate parental rights if clear and convincing evidence shows that a parent is palpably unfit because of "specific conditions directly relating to the parent and child relationship . . . that render[] the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child." The county "must prove a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that, it appears, will continue for a prolonged, indefinite period

and that are permanently detrimental to the welfare of the child." *In re Welfare of Child. of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008).

Conditions such as substance abuse and mental illness can support a determination of palpable unfitness when those conditions have a "causal connection" to the parent's continued inability to care for the child. *Id.* at 662; *see also In re Welfare of Child of J.H.*, 968 N.W.2d 593, 603 (Minn. App. 2021) (affirming termination of parental rights despite recent progress in chemical dependency treatment program and present sobriety because of the parent's history of inconsistent sobriety), *rev. denied* (Minn. Dec. 6, 2021); *In re Welfare of J.L.L.*, 396 N.W.2d 647, 652 (Minn. App. 1986) (affirming termination of parent's rights despite parent's improvement because "minimal improvement is not enough to overcome the conclusion that appellant's past problems make his future performance as a parent uncertain"). We review the district court's factual findings for clear error, *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012), and we review the district court's ultimate determination of palpable unfitness for an abuse of discretion, *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 710 (Minn. App. 2004). The district court abuses its discretion when its decision is against logic or contrary to the factual findings of the district court. *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 660 (Minn. App. 2018).

Father argues that the district court abused its discretion when it concluded that he was palpably unfit to care for the children in the reasonably foreseeable future.[2] We are

[2] Father's argument concerns the sufficiency of the evidence presented regarding palpable unfitness and does not specifically assert error in or otherwise challenge any of the district

not convinced by father's argument because the district court's determination is consistent with logic and the underlying findings of fact. The district court found that father has been unable to maintain long-term sobriety, noting his recent methamphetamine relapse. Father testified that he relapsed because he was tired from helping with the children and working, and the district court noted that at the time of trial, father was not attending his treatment program as recommended. The district court also found that father's substance abuse was a barrier to his ability to parent now and in the future.

Apart from his substance use, the district court emphasized the brevity and uncertainty of father's present mental health progress, noting that father only began the recommended treatment one month before the trial and had yet to complete a domestic abuse program. The district court also cited testimony from the social worker, the GAL, the children's uncle, and mother, each of whom expressed concerns about father's ability to parent the children on his own. In addition, the district court also found that father did not demonstrate suitable residential or transportation stability and that father lacked insight into the children's mental health needs. Given these findings and the evidence in the record, we conclude that the district court did not abuse its discretion when it determined that specific conditions directly relating to father's relationship with the children will

---

court's underlying findings of fact. To the extent father's argument characterizes the record as containing a complete absence of evidence regarding his ability to parent the children in the reasonably foreseeable future, we disagree. The evidence presented included testimony from father and other witnesses as well as documentary evidence regarding father's ability to parent and the nature of his relationship with the children.

continue for an indefinite period of time and render father unable to care appropriately for the children's ongoing physical, mental, and emotional needs.

II. Adequacy of the Case Plan[3]

Father also challenges the adequacy of his case plan. However, father does not challenge any factual findings or identify specific deficiencies in the case plan. Instead, he argues that the case plan must have been inadequate because the county believed he was unfit to parent even though he was in compliance with the case plan. We conclude that father has forfeited this argument.

Upon adjudication in the CHIPS proceeding, the district court shall order the parents to comply with the plan. Minn. Stat. § 260C.201, subd. 6 (2022).[4] Court-approved case plans are "presumptively reasonable." *S.E.P.*, 744 N.W.2d at 388. "A party has a right to request a court review of the reasonableness of the case plan upon a showing of a substantial change of circumstances," Minn. Stat. § 260C.201, subd. 6(d), and "the appropriate action for a parent who believes some aspect of the case plan to be unreasonable is to ask the court to change it, rather than to simply ignore it," *S.E.P.*, 744 N.W.2d at 388. In this case, the district court ordered father to comply with the case plan, and nothing in the appellate record shows that father requested review of the case plan or

[3] This argument appears under a heading regarding reasonable efforts, but father does not actually challenge the district court's determination of reasonable efforts. Accordingly, despite the heading, we need not address the reasonableness of the reunification efforts.

[4] We cite the most recent version of section 260C.201 because, although subdivisions 1 and 2 of that statute have been amended from the version that applied at the time of trial, the relevant part cited here has not been amended. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

requested any changes to the case plan. Thus, he cannot make this argument for the first time on appeal.[5]

III. Judicial Notice

Finally, father argues that the district court abused its discretion by taking judicial notice of the social worker and GAL reports filed in the two CHIPS cases. Father has also forfeited this argument.

Under the Minnesota Rules of Juvenile Protection Procedure, a district court may take judicial notice as allowed by the rules of evidence. Minn. R. Juv. Prot. P. 3.02, subd. 3. Consistent with rule 3.02, this court has recognized that a district court may take judicial notice of "[c]ourt records and files from prior adjudicative proceedings." *See In re Welfare of D.J.N.*, 568 N.W.2d 170, 174 (Minn. App. 1997). We review a district court's evidentiary decision to take judicial notice for an abuse of discretion. *Fed. Home Loan Mortg. Corp. v. Mitchell*, 862 N.W.2d 67, 71 (Minn. App. 2015) ("A district court's decision whether to take judicial notice of proffered facts is an evidentiary ruling that we review only for abuse of discretion."), *rev. denied* (Minn. June 30, 2015).

---

[5] We also note that father's argument misstates the district court findings and misunderstands the significance of compliance with portions of a case plan. Contrary to father's argument, the district court did not find that he was in complete compliance, but instead made several findings that would indicate a lack of specific compliance, including findings that father was not attending his treatment program as recommended, was not able to parent the children on his own, had not found stable housing or transportation, and lacked insight into the children's mental health needs. As noted above, father does not challenge any of these findings and the record supports these findings of fact. In addition, we have previously concluded that completion of a case plan does not necessarily equate with being presently able to assume the responsibilities of caring for the children. *In re Welfare of Child. of K.S.F.*, 823 N.W.2d 656, 667 (Minn. App. 2012). Given father's forfeiture of this argument, however, we need not determine the merits of this argument.

In this case, although father opposed the motion to take judicial notice of the previous court findings, father did not move for a new trial or for amended findings following the district court's order. In juvenile cases, appellate courts may only review evidentiary rulings "if there has been a motion for a new trial in which such matters have been assigned as error." *In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. App. 1994) (quoting *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986)), *rev. denied* (Minn. Nov. 29, 1994).

In addition, father offers no explanation about how the district court's decision prejudiced him, especially in light of the fact that the social worker and the GAL testified at trial regarding their experience with the family during the pendency of the CHIPS cases. *See D.J.N.*, 568 N.W.2d at 176 (declining to reverse termination of parental rights where appellants failed to demonstrate that a district court's error caused prejudice); *In re Welfare of Child. of A.D.B.*, 970 N.W.2d 725, 731 (Minn. App. 2022) (citing this aspect of *D.J.N.*); *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (stating that "on appeal error is never presumed," and placing the burden of showing prejudice on appellant (quotations omitted)). Therefore, father has forfeited this argument.

Affirmed.