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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1342**

In the Matter of the Welfare of the Child of: R. L. S.-G., Parent.

**Filed May 8, 2023
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-JV-20-3987

Anne Morris Carlson, Anne M. Carlson Law Office, PLLC, St. Paul, Minnesota (for appellant father R.L.S.-G.)

Mary Moriarty, Hennepin County Attorney, Mary Lynch, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Health and Human Services Department)

Ellen Murphy-Fritsch, White Bear Lake, Minnesota (for respondent mother, J.L.S.B.)

Andrew Lloyd, Minneapolis, Minnesota (guardian ad litem)

Laura Baldwin, Hennepin County Public Defender's Office, Minneapolis, Minnesota (for respondent child)

Considered and decided by Larson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant-father challenges a district court order terminating his parental rights to his minor child. Because the record supports the district court's determination that a

statutory ground for termination exists, the district court's findings addressed the statutory criteria, and the district court did not clearly err in its factual findings, we affirm.

FACTS

Appellant R.L.S.-G. is the father of a child born in November 2011. After the child was born, father's relationship with the child's mother, J.L.S.B., deteriorated. Father moved out of the shared residence and the child remained mainly in mother's care. Mother and father had an informal agreement that allowed father to have custody of the child during Christmas, winter break, and some summers.

Relevant Custody History

In June 2018, mother brandished a gun and threatened a carwash employee while the child was in the backseat of her car. Mother contacted father about the incident and requested that the child stay with father and his former fiancé, A.C., who were living in Waukegan, Illinois. Father agreed, picked the child up, and enrolled her in school in Illinois. Mother was charged with second-degree felony assault and child endangerment. Respondent Hennepin County Human Services and Public Health Department (Hennepin County) opened a child protection investigation but was unable to meet with the child while she was living with her father.

At the end of the summer, mother and grandmother had not heard from father or the child and did not know where they were living. Mother and maternal grandmother contacted law enforcement and the National Center for Exploited and Missing Children (NCEMC) for assistance in locating the child. Hennepin County closed its child protection investigation due to NCEMC's involvement. NCEMC was unsuccessful in contacting

father. Consequently, mother filed an ex parte motion for custody in a family court file and was awarded temporary custody of the child pending a motion hearing. Mother managed to contact the child and find out where father was living. Ultimately, the child's school informed father that mother had traveled to Illinois and picked up the child to bring her back to Minnesota.

In November 2018, father and A.C. relocated to Minnesota to live with father's sister. Father sought custody of the child through proceedings in the family court file. During the custody hearing, mother exhibited strange behavior when she repeatedly ran barefoot out of the courtroom without permission from the court. The court granted father temporary sole legal and temporary sole physical custody of the child. In May 2019 after an evidentiary hearing, the court granted full custody to father, finding that mother often sent the child to live with maternal grandmother and needed to demonstrate stability to be an appropriate caregiver to the child. After acquiring additional charges for criminal conduct, mother was incarcerated from May to November 2019.

During this period, the child lived with father and A.C. in various residences including father's sister's home in Pine City, A.C.'s home in Bloomington, and a residence in North Minneapolis. After mother was released from prison and appeared to be doing well, father allowed mother to have contact with the child. In July 2020, father dropped the child off at mother's home for a weekend visit. During this visit, the child disclosed to mother instances of physical and sexual abuse perpetrated by father. Mother brought the child to the hospital for an evaluation and Dakota County Social Services (Dakota County)

investigated the allegations. Mother sought an emergency ex parte order for protection from father on behalf of the child and for herself.

Physical and Sexual Abuse Investigations

A child protection investigator from Dakota County conducted a forensic interview of the child. The child reported father pulled down her pants and underwear to “whoop” her with his hand or a belt on several occasions. The child also reported, on multiple occasions, father “whooped” her and used his finger to press on her vagina. This occurred at least once in Pine City at father’s sister’s home. The child stated father made her pull down her pants and underwear, held open her legs, and stared at her vagina at A.C.’s home in Bloomington. She also reported father was angry about a pen that did not have ink and scratched her stomach with the pen, drawing blood. The child stated that she did not feel safe with father. The investigator spoke to father, who believed mother forced the child to fabricate the allegations against him. The investigator had trouble contacting mother for more information. Mother shared that she had text messages from father admitting his abuse, but mother refused to provide them to the investigator because she was purportedly working with law enforcement. The Dakota County investigator ultimately determined that physical and sexual abuse did not occur and closed the investigation in August 2020.

In September, the child was interviewed at Midwest Children’s Resource Center (MCRC) about her sexual-abuse allegations.¹ While the child’s allegations against father were more numerous, many instances of abuse the child described were like those she

¹ MCRC is a child advocacy center and clinic within Children’s Minnesota Hospital that offers evaluations and services to victims of physical and sexual abuse or serious neglect.

described to the Dakota County investigator. The child reported father pulled down her pants and underwear, looked at her vagina, and rubbed her vagina two times in Bloomington and Pine City. The child reported father said, “If you love me, you’ll lick my private parts” while he was undressed. The child stated the last instance that father inappropriately touched her was at a residence in North Minneapolis.

Because the child indicated abuse took place in multiple locations, three law enforcement jurisdictions investigated whether father should be criminally charged. Ultimately, none of the jurisdictions charged father. And while Dakota County did not find that father maltreated the child, Hennepin County reviewed MCRC’s report and determined that a preponderance of the evidence supported a finding that maltreatment occurred, and child protective services were needed.

Petition to Terminate Parental Rights

In November 2020, Hennepin County petitioned to terminate father’s parental rights based on father’s palpable unfitness to be a party to the parent-child relationship and the child experiencing egregious harm while in father’s care. The district court held an emergency protective care hearing and found that the petition made a prima facie showing that father subjected the child to egregious harm. As a result, the district court determined Hennepin County was not required to provide reasonable efforts to reunify father and the child. The district court also ordered father to have no contact with the child and placed the child in mother’s custody.

Despite being relieved of reasonable efforts, Hennepin County offered father a case plan to work towards reunification, which included (1) completing a psychosexual

assessment and following recommendations; (2) abiding by all court orders, including no contact with child; and (3) cooperating with and remaining in contact with Hennepin County. Father refused to complete the psychosexual assessment and requested that the district court allow him to complete a parenting assessment instead. The district court and Hennepin County did not remove the psychosexual assessment from father's case plan, but Hennepin County made a referral for father for the parenting-assessment service. During the parenting assessment, father stated his relationship with mother "got physical a few times." Father informed the parenting assessor he pleaded guilty and served eight months in jail for fifth-degree assault after mother complained he threatened to kill her with a gun. Father stated he was innocent. The assessors recommended that father complete a psychological evaluation, pursue individual therapy, complete anger-management education, complete chemical-dependency treatment and submit random urinary analysis tests to show sobriety, attend parenting-education classes, participate in co-parenting and family therapy with the child, maintain stable housing, obtain financial assistance and food stamp resources, and support the child's individual therapy.

Termination of Parental Rights Trial

In July and August 2022, the district court held a trial on father's parental rights. The district court heard testimony from father, the child, the Dakota County investigator, Hennepin County's child protection investigator, the Hennepin County's child protection social worker, the medical director of MCRC, father's sister, and the guardian ad litem

(GAL). Mother did not appear or testify.² The district court granted an adverse inference against mother after being presented with evidence of her dishonesty.

Father testified that he did not physically or sexually abuse the child and believes mother told the child to make the allegations. Father stated he received a letter from mother forgiving him of approximately \$20,000 in past-due child support the day after the child disclosed the abuse. He admitted he had disciplined the child by spanking her but only spanked her around five times and only used his hand. Father expressed concern for mother's ability to care for the child and testified that the child arrived at his home in Illinois with a vertical scratch on her stomach and a cigarette lighter burn on her arm. Father acknowledged he was offered a case plan that required him to complete a psychosexual assessment, despite Hennepin County being relieved of the obligation to make reasonable efforts to reunify father and the child. He testified he did not want to participate in the psychosexual assessment because it is "extremely intrusive." Father stated he was in therapy, completed anger-management classes, and completed domestic-violence classes. In its order following trial, the district court made detailed credibility findings for each witness. The district court did not find father's testimony to be credible as it often conflicted with contemporaneous records and the testimony of other credible witnesses.

² In April 2022, arrest warrants were issued for mother based on first-degree aggravated robbery charges. Mother failed to appear before the district court for pretrial hearings and her whereabouts were unknown during the trial. The child was residing with her maternal grandmother.

The child testified that she was happy when she first went to live with father in 2018, but later felt uncomfortable living with him. She stated it was not unusual for father to “whoop” her with a belt or his hand and leave marks on her body. The child testified that when she was in trouble, father pulled her pants down, hit her with a belt, and inserted his finger into her vagina. She stated she also witnessed her father having sex, hitting A.C. on multiple occasions, and taking drugs when he put a “smashed up pill” in his nose. The child testified the only event her mother told her to make up was the allegation that father scratched her stomach with a pen. She affirmed that she did not fabricate her other allegations, nor did mother or maternal grandmother ask her to lie about any other event. The child stated she did not feel safe returning to her father’s care, felt scared of her father, and would not like to see him “even if things could be different.” The district court found that the child’s testimony was generally credible and persuasive.

The Dakota County investigator testified about her inquiry into the child’s allegations and the forensic interview. The investigator testified she only investigated the scar on the child’s stomach as an instance of physical abuse and did not consider any allegations of hitting or corporal punishment. The investigator described mother’s emotional state as “disappointed” after the child’s interview and believed mother to be uncooperative. The district court found the Dakota County investigator’s testimony credible but did not afford her determinations great weight because they were based on insufficient investigation and general impressions of the parties to the proceeding.

Hennepin County’s child protection investigator testified that her investigation began after receiving a report from MCRC about the child’s sexual-abuse allegations. She

testified she had access to the Dakota County investigation notes and conclusions through a shared system but completed her own independent investigation into the child's allegations. Hennepin County was not bound by the findings of Dakota County and the Hennepin County investigator independently determined father maltreated the child.

Hennepin County's child protection social worker testified she was assigned to the case in November 2020 and met with the child monthly. The social worker testified that father's completion of the psychosexual assessment was important to determine any future risk to the child. Hennepin County referred father to Project Pathfinder to aid him in completing the assessment, but father cancelled his appointment and made no attempts to reschedule after Hennepin County continued to facilitate father's participation in the program. The social worker testified father completed anger-management and chemical-dependency programming to comply with the terms of criminal probation, not as part of Hennepin County's case plan or recommendations from the parenting assessment. The social worker acknowledged father has consistently denied the allegations and acknowledged mother has been convicted of crimes of dishonesty, such as check forgery, pawning someone else's property, giving a police officer a false name, and identity theft. The social worker testified that she believed termination of father's parental rights was in the best interests of the child based on in-depth conversations with the child and the seriousness of the allegations.

The GAL testified that he was assigned to the case in November 2021 and met with the child monthly. The GAL indicated he regularly spoke with father and believed him to be "open and transparent" with "great potential to parent [the child]." The GAL testified

he was concerned mother influenced the child to fabricate the allegations and believed termination of father's parental rights was not in the child's best interests because father participated in the case plan, was present at hearings, and was honest. Nor did the GAL believe mother could offer the stability the child needs. He believed the child had a positive relationship with her maternal grandmother but expressed some concern for the number of children maternal grandmother was caring for together with the child. The GAL testified the child told him she was open to possibly communicating with father in the future, but indicated she did not want to live with him. The district court found the GAL's testimony credible but unpersuasive, observing that the GAL focused exclusively on reunification and disregarded the child's testimony and evidence contrary to reunification.³ The district court noted the GAL may have doubted the child's allegations but did not know for certain whether they were fabricated. The district court was troubled that the GAL refused to consider what would be in the child's best interests if the allegations were true.

In September 2022, the district court filed an order terminating father's parental rights to the child. The district court found, by clear and convincing evidence, that father (1) repeatedly hit the child with her pants and underwear removed with his hand or belt and left marks; (2) put his finger in the child's vagina while "whooping" her on at least one occasion; (3) ordered the child to remove her pants and underwear, stared at her vagina, and restrained the child's legs; (4) assaulted mother during their relationship and hit or

³ We note that Minnesota law requires GALs to carry out particular responsibilities to protect and advocate for the best interests of the child. Minn. Stat. § 260C.163, subd. 5 (2022). Among those responsibilities, a GAL must "conduct an independent investigation" which must include "considering the child's wishes." *Id.*, subd. 5(b)(1).

slapped A.C. in the child's presence; (5) used drugs in the child's presence; and (6) monitored and restricted the child's contact with her maternal relatives. The district court determined father was palpably unfit to be a party to the parent-child relationship, the child experienced egregious harm while in father's care, and it was in the child's best interests to terminate father's parental rights.

Father appeals.

DECISION

"Parental rights are terminated only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). A district court may involuntarily terminate a parent's parental rights when (1) a statutory basis for terminating parental rights under Minn. Stat. § 260C.301, subd. 1(b) (2022), exists; (2) reasonable efforts towards reunification were made or not required; and (3) the termination is in the child's best interests. *See In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). The county must prove the statutory basis for termination by clear and convincing evidence. Minn. R. Juv. Prot. P. 58.03, subd. 2(a); *In re Welfare of Child of H.G.D.*, 962 N.W.2d 861, 873 (Minn. 2021).

We review the district court's "findings of the underlying or basic facts for clear error," but we review its determinations of whether a particular statutory basis for termination exists and whether termination is in a child's best interests for an abuse of discretion. *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). A factual 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 Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (quotation omitted). On clear error review, we do not “engage in fact-finding anew” or “reconcile conflicting evidence.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted); see *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* in a juvenile-protection appeal), *rev. denied* (Minn. Dec. 6, 2021). “When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Kenney*, 963 N.W.2d at 223 (quotation omitted). We will not conclude the district court clearly erred “unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed.” *Id.* at 221 (quotation omitted).

I. The district court did not abuse its discretion by determining father was palpably unfit to be a party to the parent and child relationship and made adequate findings to address the statutory criteria.

A district court may terminate parental rights to a child if clear and convincing evidence shows

that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4). Termination on this statutory ground requires a “consistent pattern of specific conduct or specific conditions existing at the time of the [trial] that appear 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) (quotation omitted). There must be a connection between the parent’s behavior and the parent’s inability to care for the child. *Id.* at 662-63.

Father argues the district court’s analysis failed to conform to the statutory criteria outlined in section 260C.301, subdivision 1(b)(4), because the district court did not specify the condition or specific pattern of conduct that rendered father unable to care for the child. We disagree. Indeed, the district court must make clear and specific findings that conform to the statutory requirements. *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980); *see also S.E.P.*, 744 N.W.2d at 385 (holding appellate courts generally review orders terminating parental rights “to determine whether the district court’s findings address the statutory criteria”). Here, the district court addressed the palpable unfitness statutory criteria in a thorough and detailed 50-page order with extensive factual and credibility findings.

While the district court did not expressly articulate that it considered certain acts by father to be a “consistent pattern of specific conduct” or “specific conditions,” the district court found father “hit [the child] repeatedly when [her] pants and underwear were removed” with his hand or a belt and “frequently” disciplined her in this way. The district court also found that two acts of sexual abuse occurred where father put his finger in the child’s vagina while disciplining her and ordered her to remove her pants and underwear to stare at her vagina. These facts address and satisfy the first statutory criteria. Father’s

repeated physical and sexual violence against the child in his care are “specific conditions” detrimental to the child’s safety.⁴

Moreover, these findings are supported by substantial evidence. The district court is in a “superior position to assess the credibility of witnesses.” *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009) (quotation omitted). The district court carefully evaluated the testimony of the child and father. Even though the child admitted mother asked her to fabricate the allegation that father scratched her stomach with a pen, the district court found the rest of the child’s testimony credible as it largely aligned with the statements she gave to Dakota County and MCRC. The child was forthright when she could not recall something at trial. The district court did not find father’s testimony credible as his testimony often conflicted with evidence in the record or the testimony of credible witnesses. Before making its findings, the district court also weighed the fact father was never criminally charged for the child’s sexual-abuse allegations and the disparate findings of maltreatment by Dakota County and Hennepin County. On these facts, the district court did not clearly err.

⁴ To the extent father contends the district court erred by not drawing on statutory language when making findings for the palpable unfitness analysis, any resulting error is harmless when a review of the “files, the record, and the [district] court’s findings” show “on remand the [district] court would undoubtedly make findings that comport with the statutory language” and reach the same result. *Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand in a child-custody matter); see *In re Welfare of D.J.N.*, 568 N.W.2d 170, 176 (Minn. App. 1997) (refusing to reverse termination of parental rights for harmless error); see also *In re Welfare of Child of A.D.B.*, 970 N.W.2d 725, 730-31 (Minn. App. 2022) (citing *D.J.N.*). Between the record and the district court’s detailed and well-reasoned order, we are satisfied that the district court would no doubt reach the same result on remand for more findings under the palpable-unfitness statutory ground.

The district court made findings on the remaining statutory criteria for terminating father's parental rights under section 260C.301, subdivision 1(b)(4). While the district court did not state the conditions "directly relat[ed] to the parent child relationship" and were "of a duration or nature that renders [father] unable . . . to care" for the child, the district court made findings that linked father's physical and sexual abuse to instances when father was disciplining the child. Minn. Stat. § 260C.301, subd. 1(b)(4). Father's repeated sexual abuse is conduct of an inappropriate and violent nature that renders him unable to care for the "physical, mental, or emotional needs of the child." *Id.* Finally, palpable unfitness requires that the conditions will continue "for the reasonably foreseeable future." *Id.* The district court found father's "abusive conduct will continue for a prolonged, indeterminate period" because father did not engage in any services relevant to the child's allegations such as completing a psychosexual assessment or showing he completed domestic-violence programming. The district court acknowledged father engaged in anger-management courses, chemical-dependency treatment, individual therapy, and a home study. But the district court observed those services are not "professionally recognized forms of treatment for perpetrators of sexual . . . abuse." At the time of the trial, father had taken no steps to engage in assessing or treating the underlying condition giving rise to the petition: his physically and sexually-abusive behavior. As a result, the district court permissibly concluded that the continuing, untreated conditions render father unable to care for the child for a prolonged, indefinite period.

Father also contends his noncompliance with a "voluntary case plan" and refusal to complete a psychosexual assessment was given undue weight by the district court. Father

cites *In re Welfare of Child. of T.R.* and argues that the Minnesota Supreme Court considered case plan compliance “largely irrelevant” to the palpable unfitness analysis. 750 N.W.2d at 663. We are not persuaded. In *T.R.*, the parent’s noncompliance with a case plan’s requirement to establish sobriety was not evidence of his palpable unfitness when the parent’s alcohol and substance use was not shown to form a “consistent pattern of specific conduct” or “specific conditions” that rendered him unable to care for the child. *Id.* Although *T.R.* holds that case plan noncompliance is not dispositive to the palpable unfitness analysis, a district court may still consider a parent’s case plan compliance when the plan’s requirements are relevant to the pattern of conduct or conditions that bear on palpable unfitness. *Id.* Unlike *T.R.*, requiring father to complete a psychosexual assessment directly relates to a specific condition—sexual abuse, that is causally connected to his inability to care for the child. Father’s refusal to comply with that component of the case plan indicates the conditions giving rise to the petition to terminate parental rights are untreated and will continue for the reasonably foreseeable future. The district court correctly considered and gave weight to these facts in its determination.

Because the district court made the statutorily required findings supported by clear and convincing evidence, we conclude the district court did not abuse its discretion by determining that father is palpably unfit to be a party to the parent-child relationship.⁵

⁵ Because clear and convincing evidence supports the district court’s conclusion to terminate father’s parental rights on this statutory basis, we need not address whether the district court abused its discretion by determining another statutory basis to terminate parental rights existed under Minn. Stat. § 260C.301, subd. 1(b). *See S.E.P.*, 744 N.W.2d at 385 (holding at least one statutory basis must be proven to support termination of parental rights).

II. The district court's factual finding is not clearly erroneous.

Father argues a particular finding of fact made by the district court is clearly erroneous. “A finding is clearly erroneous only if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred.” *In re Welfare of J.H.*, 844 N.W.2d 28, 35 (Minn. 2014) (quotation omitted). The contested district court’s finding of fact states:

At trial, [father] testified he believes the psychosexual requirement was “reversed,” but he was not sure by whom. He did not recall whether this [c]ourt told him to complete a psychosexual evaluation. [Father] did not do a psychosexual assessment because he had already been “extremely uncomfortable” during the parenting assessment he chose to do, and he believed completing a psychosexual assessment would be worse. He also did not do a psychosexual assessment because it would be “extremely intrusive.” Notably, [father] did not say he refused to complete a psychosexual assessment because he did not sexually abuse [the child].

At oral argument, father’s counsel clarified father was troubled by the “tone” of the last sentence. Father argues the finding that his testimony about why he refused the psychosexual assessment did not include a defense that he never sexually abused the child contradicts father’s repeated denials of the allegations. We disagree. The finding, which accurately summarizes father’s trial testimony, is supported by the record. Other findings made by the district court acknowledge father’s repeated assertions of innocence and his belief that mother prompted the child to fabricate the allegations. The district court’s observation that father’s stated reason for refusing the psychosexual assessment was his

discomfort rather than a claim of innocence does not leave us “with the definite and firm conviction that a mistake occurred.” *Id.* As a result, the finding is not clearly erroneous.

Affirmed.