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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1472**

In the Matter of the Welfare of the Child of:
S.S. and S.W., Parents

**Filed February 12, 2018
Affirmed
Smith, Tracy M., Judge**

Ramsey County District Court
File No. 62-JV-17-165

Patrick D. McGee, Forest Lake, Minnesota (for appellant-father S.W.)

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

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant-father appeals from the district court's decision terminating his parental
rights, challenging only the determination that termination is in the child's best interests.

We affirm.

FACTS

S.S., mother, gave birth to A.W. in March 2015. S.W., father, is the adjudicated father of A.W. Father was present at his son's birth and lived with A.W. and mother at the maternal-grandmother's house in Mankato for around two months after A.W. was born. Father then moved to St. Paul. Mother and father disagreed about who should care for A.W., and father eventually brought A.W. to live with him in St. Paul later that summer. A.W. stayed with father for about a month. At the end of August, father allowed mother to bring A.W. back to Mankato.

On September 3, Ramsey County Social Services Department (the department) received a police report that A.W., then 5 months old, had been placed on a 72-hour protective hold after being abandoned at the maternal grandmother's house in Mankato. On September 9, the department ordered that A.W. be put in out-of-home placement.¹ The following day, A.W. was adjudicated as a Child in Need of Protection or Services (CHIPS).

A child-protection worker met with father, and father was given a case plan requiring that he be more involved in his son's well-being, have consistent and timely visitation, work and communicate with the social worker and guardian ad litem (GAL), and identify a safe and appropriate housing environment for the child. Father's compliance with his initial case plan was limited to his having two visits with A.W.

In late September, father, believing mother was cheating on him, committed a violent domestic and sexual assault against her. After the assault, mother called 911 and

¹ From this point on, A.W. remained in out-of-home placement. Mother voluntarily terminated her parental rights to A.W.

father was arrested. He remained incarcerated from the time of his arrest through his termination-of-parental-rights trial; he was scheduled to be released on November 27, 2017. At the time of his arrest, father also had a pending charge for the sale of a controlled substance. In December 2015, father pleaded guilty to felony domestic assault by strangulation and third-degree sale of narcotics. In connection with the assault, father was also charged with third-degree criminal sexual conduct (forced penetration) and thus was required to register as a predatory offender. *See* Minn. Stat. § 243.166 (2014).

On January 18, 2017, the department filed a petition for termination of parental rights (TPR), alleging five statutory grounds for termination, including (1) refusal or neglect to comply with parental duties under Minn. Stat. § 260C.301, subd. 1(b)(2) (2016); (2) palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4) (2016); (3) the failure of reasonable efforts to correct the conditions that led to out-of-home placement under Minn. Stat. § 260C.301, subd. 1(b)(5) (2016); (4) the child being neglected and in foster care under Minn. Stat. § 260C.301, subd. 1(b)(8) (2016); and (5) S.W. had been convicted of an offense that requires registration as a predatory offender under Minn. Stat. § 260C.301, subd. 1(b)(9) (2016).

Near the time the TPR petition was filed, father sent his social worker a letter requesting a case plan. Father was given a new case plan and met with the social worker and GAL that spring. The social worker and GAL explained the case plan and discussed A.W.'s best interests with father. This was father's first contact with the social worker

since his incarceration approximately 19 months earlier.² In summer 2017, father began seeking treatment options and got on the waiting lists for various classes. Father participated in the Changing Faces program and took domestic-violence prevention classes. Father also signed up for anger-management classes, although he had not yet begun them at the time of trial.

A termination trial was held in August 2017. At the trial, father, father's probation officer, a family counselor, the social worker, two visitation supervisors employed by the department, and the former GAL³ testified. Father acknowledged that at that time he was not in a position to care for A.W. but maintained that A.W. was very important to him. While father agreed that he had "a lot of things to work on," including overcoming his pattern of domestic violence, securing housing, and finding employment, he testified that he wants to be in a position in which he is able to provide and care for his son.

The child-protection social worker testified that A.W. has not had an opportunity to bond with anyone and that this is very important for a child's emotional development. The former GAL also believed termination was in A.W.'s best interests, testifying that "permanency is good for his brain formation, for his developmental needs, the sense of belonging, healthy attachments to adults. Right now, he doesn't have that. He has attachments to his foster parents, but there is some uncertainty." The GAL also noted

² Because father was ordered to register as a predatory offender, the department was relieved of its obligation to undertake reasonable efforts to reunify father and A.W. *See* Minn. Stat. § 260.012(a)(6) (2016).

³ This GAL was appointed on October 21, 2015 and remained on the case until May 31, 2017 when she took new employment. No new GAL was appointed after her departure.

father's "very minimal contact" with A.W. and observed that "[father is] not in the position to parent his child, and I don't see him being in the position in the reasonably foreseeable future. He has a lot of things to work on individually, and we do not know how much time that will take."

Later that month, the district court filed an order terminating father's parental rights.

Father appeals.

D E C I S I O N

A district court's termination of parental rights requires clear and convincing evidence establishing that at least one statutory ground for termination exists and that termination is in the best interests of the child. *See In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). "We give considerable deference to the district court's decision to terminate parental rights," but we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing. *See id.* We review factual findings for clear error. *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 Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted).

Father does not dispute the district court's finding that at least one statutory ground for termination was met. Rather, he argues that the district court erred by concluding that termination was in the best interests of A.W. Even if a statutory condition for termination of parental rights is met, the "paramount" consideration in determining whether to

terminate parental rights is the best interests of the child. Minn. Stat. § 260C.301, subd. 7 (2016). To analyze the best interests of the child, the district 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). Such competing interests include “a stable environment [and] health considerations.” *Id.* The district court “must consider a child’s best interests and explain its rationale in its findings and conclusions.” *In re Termination of Parental Rights of Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). We review the district court’s ultimate determination that termination of parental right is in the child’s best interests for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

Father contests the district court’s findings on all three factors. Father argues that he has an interest in preserving the parent-child relationship because he has relationships with his other children and provides for them financially and he wants to do the same for A.W. The district court acknowledged father’s interest in preserving the parent-child relationship but observed that father’s claim that he wants to parent A.W. “derives from a focus on himself and not the child.” As the district court noted, father testified that he does not want it to be said that he “gave up” on his child and saw reunification with A.W. as fitting into his larger plan for self-betterment. The record supports the district court’s finding regarding father’s limited interest in preserving the parent-child relationship.

Father next argues that A.W. has an interest in preserving the parent-child relationship because it would allow A.W. to remain “part of a larger extended family” that

father will financially and emotionally support. He contends that A.W. has an interest in “the love and devotion of a parent and a connection to family” and reasons that he showed his son this devotion by reaching out to the child-protection worker on his own initiative for a case plan, even though the department had not contacted him for over a year and a half. The district court found that A.W. had little interest in preserving the parent-child relationship. As the district court noted, A.W. was too young to express a preference and could not reasonably prefer father because A.W. “does not know him.” As an infant, A.W. spent only a couple months with his father and, as of the time of trial, had not seen father in almost two years. The record supports the district court’s finding.

Finally, father argues that his and A.W.’s interests are not in conflict because:

To be able to safely parent the child [father] needs to finish treatment, remain sober, remain law abiding, continue therapy and stay in safe and sober, violence free housing and violence free relationships. . . . These interests coincide [with A.W.’s interests] as long as [father] stays on his path to recovery.

Yet, the district court made detailed findings related to several interests of A.W. that compete with the preservation of the parent-child relationship. The court found that A.W. “needs a parent who can provide financially for him and can meet his basic needs,” and that father “has no apparent ability to parent the child, either at the present time or in the reasonably foreseeable future.” The court also found that A.W. needs “stability and permanency” and needs to “reside with a parent who will not expose him to drugs, violence, anger and criminal behavior.” Ultimately the court concluded that A.W.’s needs outweighed father’s interest in preserving the parent-child relationship.

These findings are supported by the record. Father repeatedly neglected to meet A.W.'s parenting needs. Before A.W. was under child-protective custody, father left his infant with various caregivers, including mother, who father knew had chemical-abuse and mental-health issues and believed was not capable of being what he referred to as a "24/7" parent. A.W. was placed on an emergency-protective hold after being left at the maternal-grandmother's home in Mankato while father remained in St. Paul. Just weeks after this, father was incarcerated for violently assaulting A.W.'s mother. After the assault, an order for protection prevented contact with A.W.; thus, father has been unable to see, let alone care for, A.W. since his incarceration in September 2015.

Moreover, father acknowledged at trial that he was not in a position to care for A.W. He had not had steady employment since 2003 and would be living in a halfway house after his release from prison. Although father stated that he intended to find employment "as soon as possible" and was confident that many "felony-friendly" jobs with good pay would be available to him, he never identified any specific jobs or concrete plans for securing such a job after his release from prison. At the time of trial, father also had not identified safe housing where he could live with A.W., nor had he articulated a plan for how he would parent A.W. after his release from prison.

As to A.W.'s need for the stability that comes with permanency, both the GAL and social worker testified to the importance of attachment on A.W.'s emotional development and brain formation. They believed it was critical, especially given A.W.'s young age, that he have the opportunity to bond with an adult and be able to have "one person to call his parent." This is something A.W. cannot do while remaining in foster care.

While father may have an interest in preserving the parent-child relationship, the district court made detailed findings, supported by the record, about A.W.'s best interests to the contrary. The district court did not abuse its discretion in determining that the termination of father's parental rights was in A.W.'s best interests.

Affirmed.