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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A24-1045**

In the Matter of the Welfare of the Children of: G. U. T., Parent.

**Filed January 13, 2025  
Affirmed  
Schmidt, Judge**

Hennepin County District Court  
File No. 27-JV-23-268

Brooke Beskau Warg, Hennepin County Adult Representation Services, Minneapolis, Minnesota (for appellant G.U.T.)

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Michael P. Berger, Fourth District Public Defender, Amanda Johnson, Assistant Public Defender, Minneapolis, Minnesota (for children)

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Considered and decided by Schmidt, Presiding Judge; Smith, Tracy M., Judge; and Frisch, Judge.

**NONPRECEDENTIAL OPINION**

**SCHMIDT**, Judge

Appellant argues the district court abused its discretion by terminating his parental rights. Because the district court properly exercised its discretion, we affirm.

## FACTS

Respondent Hennepin County Human Services and Public Health Department (Department) filed a petition to terminate appellant G.U.T.'s (father's) parental rights to three children. At the time of trial, the children were ages 14, 13, and 12. The children's mother has sole legal and physical custody.

At trial, the district court heard testimony from father, mother, the oldest child, a guardian ad litem, and a social worker who supervised the Department's management of the case. Except for the social worker, all witnesses opposed terminating father's parental rights. The two younger children did not testify but also opposed termination.

After trial, the district court filed an order<sup>1</sup> terminating father's parental rights. In a 55-page single-spaced order, the court recounted testimony and evidence, made detailed findings of fact, rendered credibility findings, and provided thorough conclusions of law.

In the order, the district court reviewed father's criminal history. For sexually assaulting a 14-year-old-girl in 2001, father was convicted for third-degree criminal sexual conduct. Father was later convicted for failing to register as a sex offender. In 2013, father choked mother in front of one of their children. Father was also convicted and incarcerated for third-degree criminal sexual conduct after he assaulted a 15-year-old girl in 2021.

The district court found that father's psychosexual evaluation listed him as a Level IVa sex offender and at an "above average" risk of reoffending. The district court also found that father had not completed sex-offender treatment.

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<sup>1</sup> Father filed a posttrial motion for a new trial and amended findings. The district court granted the motion in part and issued an amended order from which father appealed.

The district court recounted mother’s testimony, including that the three children were not aware of father’s convictions or why he was incarcerated. Mother testified that she did not plan to prohibit father from seeing the children upon his release. Mother has multiple other children, several of whom had been sexually abused by different men, including one of the children subject to these termination proceedings.

The district court made several credibility findings. The district court gave limited weight to mother’s testimony because, in part, several of her children had been victims of sexual abuse yet she allowed father—an unregistered, un-treated sex offender—to live with her children. The district court also found father not credible and noted that his testimony “demonstrated a profound lack of insight about his behavior and the damage it caused[,]” including a lack of remorse and failing to “take any serious action to seek treatment for this behavior.” The district court found the social worker’s testimony credible, including that father poses a risk of harm to the three children and that terminating father’s parental rights will increase the safety of the children. The district court found the eldest child’s testimony and the guardian ad litem’s testimony to be credible but did not find their testimony opposing termination persuasive given the totality of the evidence.

In its legal conclusions,<sup>2</sup> the district court thoroughly analyzed the children’s best interests and determined that they favored termination. The district court acknowledged

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<sup>2</sup> In a prior order, the district court relieved the Department of its obligation to make reasonable efforts toward reunification prior to termination because father has been convicted of an offense that requires registration as a predatory offender. *See* Minn. Stat. § 260.012(a)(6) (2022). In the termination order, the district court determined that two statutory bases supported terminating father’s parental rights. *See* Minn. Stat. § 260C.301, subd. 1(b)(4), (9) (2022). Father does not challenge these rulings on appeal.

that the children and father had an interest in preserving their relationship, but determined that the competing interests of the children favor termination because father “is not a stable, safe, or appropriate caregiver.” The district court provided several reasons for its determination, including that (1) father is incarcerated from a conviction for sexually assaulting a 15-year-old; (2) father has a previous conviction for sexually assaulting a 14-year-old; (3) father has failed to register as a sex offender; (4) father has failed to “take any serious action to seek” sex-offender treatment; (5) the three children will be within the age range of father’s two sexual assault victims when he is released; (6) father has “demonstrated a profound lack of insight” and remorse for his prior abuse and sexual criminal conduct; and (7) father previously abused mother in front of one of their children.

The district court explained why it rejected the testimony opposing termination. The district court gave little weight to mother’s preference given that she has failed to protect her children from multiple sexual assaults. The district court rejected the children’s desire to keep their father’s parental rights intact because, without knowledge about the specifics of his criminal history, they were unaware of the risks he poses to them. Finally, the district court did not find the guardian ad litem’s testimony persuasive given its deep concern about the children’s safety and the potential for father to gain greater access to and control over the children without termination, such as by seeking custody or parenting time.

The district court determined that the Department presented clear and convincing evidence that it is in the best interests of the children that father’s parental rights be terminated. Father appealed.

## DECISION

In cases involving the termination of parental rights, we review a district court's findings of fact for clear error. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008). A district court's best-interests determination and its "ultimate decision whether to terminate parental rights" are reviewed for an abuse of discretion. *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 600 (Minn. App. 2021), *rev. denied* (Minn. Dec. 6, 2021). Being in the best position to assess witness credibility, we afford a district court's credibility findings considerable deference. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

If a district court rules that a statutory basis to terminate parental rights exists, to terminate parental rights, the district court must also rule that termination is in the child's best interests. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012); Minn. Stat. § 260C.301, subd. 7 (2022). To determine whether termination is in a child's best interests, a district court must analyze: "1. the child's interests in preserving the parent-child relationship; 2. the parent's interests in preserving the parent-child relationship; and 3. any competing interests of the child." Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). The Department must prove termination is in the children's best interests by clear and convincing evidence. *See id.* at 3-4.

Father raises several arguments on appeal. First, he challenges the district court's determination that the children's interests in safety and stability favored termination. Second, father argues that the district court improperly rejected the guardian ad litem's recommendation to preserve the parent-child relationship. Third, father asserts the district court abused its discretion by rejecting the children's preference against termination. We address each argument in turn.

**A. The district court did not abuse its discretion by determining that the children's interests in safety and stability favored termination.**

Father argues the district court abused its discretion by determining that the children's "interests in stability, health, and safety" favored termination. Father contends that the district court impermissibly imposed on him the obligations of a custodial parent by finding that he is unable to provide day-to-day care for the children for the foreseeable future. But even for noncustodial parents, "[t]he right of parentage . . . is subject to [a] correlative duty to protect and care for [a] child." *In re Adoption of Anderson*, 50 N.W.2d 278, 284 (Minn. 1951). Accordingly, the termination statute does not distinguish between custodial and noncustodial parents. *See* Minn. Stat. § 260C.301, subd. 1(b)(4) (providing that a person is palpably unfit to parent when they are "unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child"); *In re Welfare of Children of A.I.*, 779 N.W.2d 886, 892 (Minn. App. 2010) (noting that it is well established that "[i]ncarceration alone does not necessarily preclude a person from acting in a parental role"), *rev. dismissed* (Minn. Apr. 20, 2010); *In re Welfare of N.F.*, No. CX-92-1307, 1993 WL 19711, at \*4 (Minn.

App. Jan. 25, 1993) (“While development of a close, healthy parent-child relationship may be made more difficult when the parent does not have custody of the child, noncustodial status alone neither precludes nor supports termination of parental rights.”).<sup>3</sup> The district court acted within its discretion by considering father’s capacity to care for the children’s needs and determining that his lack of capacity supported termination.

Father also argues that the district court misapplied the law by failing to consider the individualized needs of the children. Father has not, however, identified considerations specific to any child that the district court failed to consider. Instead, the district court determined—and the record reflects—that the three children share the same need for a home that is safe, stable, and free from an increased risk of abuse. Given the children’s shared need for safety and stability, the district court did not abuse its discretion by evaluating that need collectively rather than individually. *See In re Welfare of Children of J.J.B.*, No. A22-0436, 2022 WL 9612781, at \*4 (Minn. App. Oct. 17, 2022) (affirming termination of parental rights where the district court did not consider each child’s individual needs, but the record reflected that the children “share the same need for a safe, sober, and stable home” and appellant failed to identify any “considerations specific to any of the children that the district court failed to consider”).

Father also disputes the district court’s finding that he posed a risk to the children’s safety and stability. But the record contains ample evidence related to father’s conduct and inactions to support the district court’s decision. Father has twice been convicted of

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<sup>3</sup> We cite nonprecedential cases in this opinion for their persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c).

criminal sexual conduct with minors and both victims were close to the ages that the three children will be when father is released from prison. Father has refused to complete sex-offender treatment. The district court found that father refuses to take responsibility for the crimes he committed. Father also physically abused mother in front of one of the children. Given the record evidence, the district court's finding that father posed a threat to the children's safety and stability was not clearly erroneous and had support from clear and convincing evidence.<sup>4</sup>

**B. The district court did not abuse its discretion by rejecting the guardian ad litem's recommendation.**

Father argues that the district court abused its discretion by determining that the children's best interests favored termination because the guardian ad litem recommended that father's parental rights remain intact. But father cites no authority for the proposition that a district court abuses its discretion if it fails to adopt the guardian ad litem's recommendation. Instead, we have held that a district court does not abdicate its discretion by failing to adopt the position of a guardian ad litem. *See Rutanen v. Olson*, 475 N.W.2d 100, 104 (Minn. App. 1991) (noting that a district court has discretion to reject a professional's custodial recommendation); *see also In re Child of Green*, No. C3-03-125, 2003 WL 21652472, at \*6-7 (Minn. App. July 15, 2003) (“[N]either caselaw nor statutory

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<sup>4</sup> Father argues that because the district court clearly erred by finding that father posed a risk to the children's safety and stability, it should not have weighed the children's interests in safety and stability against any financial support father would have been able to provide. But we discern no clear error in the district court finding a threat to the children's safety and stability, and the district court acted within its discretion by weighing that threat against the benefit of any financial support from father.



law mandates that the district court adopt the [guardian ad litem's] opinion. Because the guardian ad litem has no greater authority before the district court than does any other party, and because a party's opinion is not controlling on a district court's findings or determinations, the district court did not err by rejecting the guardian's opinion.”). The statute and caselaw requires a district court to independently exercise its own discretion when weighing the best interests factors. *See* Minn. Stat. § 260C.301 (2022); *see also* *J.H.*, 968 N.W.2d at 600 (reviewing district court's best interests considerations and decision to terminate parental rights for abuse of discretion).

Father contends that the district court gave inadequate weight to the guardian ad litem's testimony and evaluated it against concerns for safety and stability that lack support in the record. But the district court acknowledged this testimony, found it unpersuasive, and provided rationale for rejecting the opinion. As we already determined, the district court properly determined that father threatened the children's safety and stability, and given those dangers, the district court noted that if his parental rights were not terminated, father retained “the right to seek custody or parenting time[,]” could withhold his consent to an adoption, and could become the legal custodian if something happened to mother. We have previously held that a district court's consideration of such circumstances is valid when a noncustodial parent's rights were terminated. *In re Welfare of Child of A.S.R.*, No. A15-0419, 2015 WL 4994676, at \*3-4 (Minn. App. Aug. 24, 2015) (affirming termination of noncustodial parent's rights even though father was unlikely to be awarded custody or parenting time due to criminal history). The district court appropriately exercised its discretion by rejecting the guardian ad litem's recommendation.

**C. The district court did not abuse its discretion by ordering termination despite the children’s preference to the contrary.**

Father argues that the district court abused its discretion by rejecting the children’s preference that his parental rights remain intact. A district court “is required to take into account [a] child’s wishes[,]” *In re Welfare of D.J.N.*, 568 N.W.2d 170, 177 (Minn. App. 1997), but the preferences of a child are not dispositive. *See In re Welfare of Child of K.K.*, 964 N.W.2d 915, 923 (Minn. 2021) (noting, in a termination of parental rights appeal, that “a child’s testimony may carry considerable weight in a district court’s decision, particularly with respect to preference as to custody,” but not saying that the child’s preference is dispositive); *see also In re Welfare of M.S.*, No. A06-0828, 2006 WL 2947652, at \*2 (Minn. App. Oct. 17, 2006) (“A child’s preference is not dispositive . . . .”)

The district court individually weighed all three children’s preferences. For the oldest child, the district court—as required by caselaw—gave her testimony significant weight. *See In re Welfare of M.P.*, 542 N.W.2d 71, 75 (Minn. App. 1996), *overruled in part on other grounds by In re Welfare of J.M.*, 574 N.W.2d 717, 722-24 (Minn. 1998); *In re Welfare of M.M.B.*, 350 N.W.2d 432, 435 (Minn. App. 1984). The district court, however, found her stated preference to not be in her best interests. The district court noted that it was unclear whether the eldest child knew the specifics of father’s criminal history and the risk “he poses to her safety.” The district court agreed with the social worker’s opinion that father’s parental rights should be terminated despite the child’s wishes.

The district court noted the middle child did not testify, but mother and guardian ad litem both noted the child’s preference that father’s parental rights not be terminated. The

district court, again, gave significant weight to the child's testimony. Nonetheless, the district court found that it was also unclear whether the child knew about the nature of father's criminal conduct and his safety risks.

Mother informed the district court that the youngest child—who also did not testify—wished for father's parental rights to remain intact. But to the extent mother testified about the child's wishes, the district court did not find her testimony credible because she provided little detail about the child's wants and needs and, instead, focused on her own wishes. In addition, like the older children, the district court found that the child's preference was entitled to limited weight because there was a lack of evidence about the child's understanding of father's criminal history and his threats to safety. The district court appropriately gave weight to the children's preferences and, within its discretion, determined that their best interests favored termination.

**Affirmed.**