

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2182**

In the Matter of the Welfare of the Children of:
G. M. Parent

**Filed June 18, 2012
Affirmed
Ross, Judge**

Ramsey County District Court
File No. 62-JV-10-2469, 62-JV-11-1330

Patrick D. McGee, St. Paul, Minnesota (for appellant)

John J. Choi, Ramsey County Attorney, Kathryn M. Eilers, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Thomas J. Nolan, Jr., St. Paul, Minnesota (for Guardian ad Litem)

Considered and decided by Ross, Presiding Judge; Wright, Judge; and Muehlberg,
Judge.*

UNPUBLISHED OPINION

ROSS, Judge

The district court terminated G.M.'s parental rights as to his two daughters, C.M. and S.M., because it found that he substantially, continuously, and repeatedly refused and neglected his parental duties to his children; that he was palpably unfit to parent them;

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

that after the children's placement out of the home, reasonable efforts under the direction of the court had failed to correct the conditions that led to their out-of-home placement; that the children were neglected and in foster care; and that termination was in the girls' best interests. G.M. argues on appeal that the district court abused its discretion by terminating his parental rights. Because clear and convincing evidence supports the district court's conclusion that G.M. is palpably unfit to parent the girls and termination of his parental rights is in their best interests, we affirm.

FACTS

G.M. is the father, and D.S. is the mother, of two girls, C.M., born September 2001, and S.M., born July 2005. The girls have been in out-of-home placement since late July 2010 and were adjudicated to be in need of protection or services in November 2010. Ramsey County Community Human Services Department has been involved with G.M. and his children since April 2003 when a report was made by M.M., G.M.'s son by a different woman, that he was bruised from being "pushed" by G.M.

G.M. and D.S. lived together until the eleventh month of C.M.'s life, when D.S. moved out, taking C.M. G.M. had weekly contact with C.M. and paid child support to D.S. But when D.S. was incarcerated for six months and hospitalized for mental health issues, G.M. took custody of C.M. S.M. was born while D.S. was in prison and lived with D.S.'s mother until she was two and a half years old, when her grandmother died. She then lived with G.M. G.M. was the girls' primary caretaker from 2007 until the children were removed by Ramsey County in 2010. The district court terminated D.S.'s parental rights in May 2011.

G.M. has a history of criminal behavior, including chronic use of illegal drugs and alcohol. He has been convicted of impaired driving five times. In 2010, he claimed to spend \$1,500 daily on methamphetamine and \$50 weekly on cocaine. From 2005 to 2011, Maplewood police made 91 separate calls to G.M.'s home. His criminal record includes charges of drug possession, check forgery, trespassing, disorderly conduct, receiving stolen property, and fleeing police.

G.M.'s chemical abuse affected his children. In June 2007, police arrested five adults at G.M.'s house during a raid. Police discovered methamphetamine and marijuana. The home was unsanitary and condemned. A generator provided the home's only electricity because G.M. owed more than \$7,000 in utility bills. C.M. and S.M. were present. Both had lice and scabies. The county investigated and made a maltreatment determination against G.M.

In May 2009, C.M. reported to her school staff that she had no food in her house and that she was frequently paid five dollars by G.M.'s girlfriend's daughter to urinate in a cup. The school contacted the police, and C.M., then seven years old, told a detective that she recently smoked marijuana and drank alcohol with G.M. She felt responsible for G.M.'s girlfriend's daughter being jailed for failing a urinalysis because the urine C.M. had provided was "dirty" from her drug use with her father. Police spoke with G.M., who did not cooperate, and a pat-down search revealed a small bag of methamphetamine. The police and child protection workers also found drug paraphernalia in G.M.'s bedroom.

After maltreatment determinations in 2009, child protection case manager Teresita Young developed voluntary case plans requiring G.M. to remain sober, to provide

supportive parenting, to complete an anger management program, to work with an employment counselor to secure employment, to meet the children's medical needs, and to keep food in the home. G.M. signed the case plans. More than six months later, Young closed the case because G.M. had been cooperative, the house had been cleaned, the water and electrical service had been restored, G.M. had taken C.M. and S.M. to the dentist and the doctor, and G.M.'s urinalysis indicated no drug use.

Another child protection investigation began in June 2010 after C.M. and S.M. fled to their school to escape a dispute between G.M. and his girlfriend C.C. Police went to G.M.'s home but G.M. was gone, so they drove C.C. and the children to a friend's home. Police returned later that day after G.M. threw a brick at C.C.'s friend's car. G.M. ran from police, taking C.M. and S.M. with him into some woods. Police searched and later found the girls by themselves in a nearby street. Child protection workers went to G.M.'s home and found that the water had been turned off and there was drug paraphernalia in his bedroom.

A month later, after police went to G.M.'s home to arrest him on warrants, G.M. fled into the home. The officers entered and found only five functioning lights in the house, no running water, human excrement and urine in the inoperable toilet, a hatchet imbedded in a basement cabinet, rotting food in a bedroom, and little food in the refrigerator. C.M. and S.M. were then placed in a children's shelter and have since resided continuously outside G.M.'s home.

The district court issued an emergency protective care order on August 3, 2010. Young met with G.M. in October 2010 while G.M. was in jail on his fifth impaired

driving conviction. G.M. agreed to case plans that imposed the following requirements on him: cooperate with a comprehensive family assessment; complete a psychological and parenting assessment; abstain from drugs and alcohol; enter and successfully complete a chemical dependency outpatient treatment program; comply with all guidelines provided by court services and child protection; submit to random urinalyses; resolve legal issues and remain law abiding; pay the outstanding utility bills to restore water and electricity service; provide sufficient food; ensure the children have clean clothes; have the children bathe at least every other day; stop lying to the children; provide appropriate supervision; understand child development and parent accordingly; support the foster home; have at least weekly phone contact with the foster parent to receive updates on the girls; attend any medical, psychological, dental, and school appointments; visit the children on time; review case plans with the social worker; sign necessary releases of information; and attend court hearings and meetings to plan for the children's futures. The plans were filed with the district court.

The district court adjudicated C.M. and S.M. as children in need of protection or services and granted the county temporary legal custody. G.M. failed to appear at the hearing. The district court also approved the October 2010 case plans signed by G.M.

Young met with G.M. in December 2010 to develop a fifth set of out-of-home placement plans because G.M. had not complied with the requirements of the October plans. The prior requirements remained and it also included a psychological assessment. The district court approved the plans and reaffirmed them in January, February, and May 2011.

G.M. never attained sobriety. He did not show up for a single scheduled urinalysis from November 2, 2010, through March 31, 2011. He lost his rights to visit the girls. On March 7, 2011, G.M.'s girlfriend told Maplewood police that she "did meth" with G.M. the previous day. G.M. enrolled in treatment in late March 2011 when he learned that the county was planning to advocate to terminate his parental rights. But while he was in treatment, he tested positive for methamphetamine and marijuana, and he was later discharged for lack of success. In May 2011, G.M.'s mother reported that she had witnessed G.M. "huffing gasoline," presumably a mind-altering experience, and in September 2011 G.M. used methamphetamine with the girls' mother, D.S.

G.M. was assigned more case plans and he had more failures. He eventually completed a parenting assessment but G.M. did not follow all of the recommendations. He continued to use drugs, did not complete chemical dependency treatment and aftercare, did not receive sober support through AA, did not use an abstinence sponsor, and did not submit to urinalyses. He also did not complete anger management training, did not follow his probation conditions or remain law abiding, did not maintain his home in a liveable condition with utility services, did not maintain employment, and did not end his detrimental live-in relationship with C.C.

C.M. and S.M. have significant special needs that require skills that G.M. did not exhibit. They have mental health issues and have been exposed to a drug-abuse lifestyle, domestic violence, sexual abuse, and family chaos. C.M. has been diagnosed with disruptive behavior disorder and adjustment disorder with mixed disturbance of emotions and conduct. She also has a history of enuresis, urinary tract infections, bowel

disturbances, and constipation. Her foster parent observed that she was constantly scared, lied frequently, and hoarded food. S.M. has been diagnosed with adjustment disorder and possibly attention deficit hyperactivity disorder. She also had severe bowel and bladder problems. Both girls suffer from posttraumatic stress disorder.

The county filed a petition seeking the termination of G.M.'s parental rights to C.M. and S.M. on April 15, 2011. The petition alleged four statutory grounds for termination: (1) G.M. had substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed on him by his relationship with his children; (2) G.M. was palpably unfit to be a party to the parent-child relationship; (3) following the county's determination of neglect and the children's need for protection or services, reasonable efforts under the direction of the court had failed to correct the conditions leading to the county's determination; and (4) C.M. and S.M. were neglected and in foster care.

The district court conducted a trial on the petition in October 2011. It found that during G.M.'s 14 months to resolve the issues that led to the girls' removal and the 27 months he agreed to work under six case plans for each girl, he "did nothing" to address the problems. It terminated his parental rights on all four grounds alleged.

G.M. appeals.

DECISION

G.M. challenges every ground on which the district court terminated his parental rights. We review the termination of parental rights to determine whether the district court addressed the statutory criteria and whether its findings reflect clear error. *In re*

Welfare of Children of S.E.P., 744 N.W.2d 381, 385 (Minn. 2008). We review the district court's decision to terminate for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). If at least one of the four statutory grounds is supported by clear and convincing evidence and termination is in the children's best interests, we will affirm. *See id.* at 906.

We need to consider only whether the district court abused its discretion by concluding that G.M. is palpably unfit to parent his daughters. The district court may terminate parental rights for palpable unfitness, which includes

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) (2010). A parent's substance or alcohol use that is of such a nature and duration that it renders the parent unable, for the reasonably foreseeable future, to care appropriately for the child's needs demonstrates palpable unfitness to parent. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 663 (Minn. 2008).

The record supports the district court's conclusion that G.M. is palpably unfit to parent C.M. and S.M. and belies G.M.'s argument that he "did everything he could to provide a life for them." Despite knowing that his chemical abuse is at the center of his every apparent parental failure, he has refused to overcome it. The record overwhelmingly supports the district court's finding that he has "failed to follow the recommendations of numerous social service professionals directed towards addressing

his drug dependence and improving his ability to provide a safe and secure home for his daughters.” He refused to address his drug addiction even after his daughters were removed. He failed more than 80% of his required urinalyses either by positive results or failing to appear. He tested positive for methamphetamine even while in the treatment program and was discharged for lack of success. Just weeks before trial, fully aware that his drug abuse would be a central factor in the trial, he used methamphetamine with the girls’ mother. The record supports the finding that G.M.’s substance abuse interferes with his ability to provide for, care for, and be present for his daughters, and this factor alone supports the district court’s conclusion that he is palpably unfit to parent them.

The relationship between G.M.’s drug use and his parental failure is certain. The district court found that the substance abuse has led to criminal behavior, unsafe housing, domestic violence, instability, and chaotic living. G.M. has been incarcerated numerous times for drug-related offenses, and he cannot meaningfully parent from jail. He owed the utility company \$12,000 in outstanding electricity bills at the time of trial, with his electricity shut off at his home, but he managed to sustain his drug habit.

His drug use renders him a contributor to the girls’ physical and psychological impairments rather than a source of aid to overcome them. The girls’ therapist testified that C.M. and S.M. told her that their father hurts them; S.M. said that he hits her with a rope and C.M. said that her father smacks her; the girls arrived in foster care suffering from severe bowel and bladder problems; in G.M.’s care the girls had not regularly brushed their teeth and C.M. had nine cavities; they had no clothes and hoarded food.

G.M. was on notice why he lost the girls and what to do to reunite with them. The record supports the district court's findings regarding G.M.'s palpable unfitness as a parent under section 260C.301, subdivision 1(b)(4). We need not address the other three factors but observe that the district court also did not err in its analysis of them.

We also affirm the district court's conclusion that the termination of G.M.'s parental rights is in the girls' best interests. The "paramount consideration" in a termination-of-parental-rights case is the best interests of the children. Minn. Stat. § 260C.301, subd. 7 (2010). In determining the children's best interests, the district court must analyze: (1) the children's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interests of the children. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(5); *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child[ren]'s preferences." *R.T.B.*, 492 N.W.2d at 4.

The district court made twelve separate findings of fact regarding the best interests of C.M and S.M. and balanced the three *R.T.B.* factors. We have carefully considered those findings and the record, and we conclude that the findings are very well supported.

Affirmed.