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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0970**

In the Matter of the Welfare of the Children of: M. L. P., Parent

**Filed January 6, 2009
Reversed
Peterson, Judge**

Hennepin County District Court
File No. 27-JV-07-10184

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Considered and decided by Shumaker, Presiding Judge; Peterson, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from the termination of her parental rights, appellant-mother argues that the district court erred when it adopted the county's proposed findings verbatim without independent review. Because our review of the record does not allow us to determine whether the district court's decision was independently made, we reverse.

DECISION

Appellant argues that the district court erred when it adopted the county's proposed findings verbatim. A district court's "verbatim adoption of a party's proposed findings and conclusions of law is not reversible error per se." *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993). But verbatim adoption may raise questions regarding whether the district court independently evaluated the evidence. *Id.* When a district court adopts a party's proposed findings of fact and conclusions of law verbatim, this court must "heed how the findings were prepared when . . . conduct[ing] a careful and searching review of the record." *Dukes v. State*, 621 N.W.2d 246, 258 (Minn. 2001).

The supreme court has stated, "We discourage district courts from adopting proposed findings of fact and conclusions of law verbatim because it does not allow the parties or a reviewing court to determine the extent to which the court's decision was independently made." *Lundell v. Coop. Power Ass'n*, 707 N.W.2d 376, 380 n.1 (Minn. 2006). In *In re Children of T.A.A.*, the supreme court stated:

[W]e take this opportunity to repeat that our preference is for a court to independently develop its own findings. We recognize the short deadline facing district courts in issuing an order on a petition to terminate parental rights. However, the district court's findings should reflect the court's independent assessment of the evidence and this is best accomplished by the district court exercising its own skill and judgment in drafting its findings.

702 N.W.2d 703, 707 n.2 (Minn. 2005) (quotations and citation omitted).

Here, the district court adopted the county's proposed findings of fact and conclusions of law verbatim. Appellant correctly argues that the findings contain inaccuracies and that the district court terminated appellant's parental rights under a statutory ground that was not alleged in the termination petition. The district court's findings of fact state that appellant's caseworker received "reports of criminal activity at the home." But, at trial, the caseworker testified that she was "not aware of any new police calls to the home since [the] case opened." The district court's findings also state that the county made reasonable efforts to offer appellant services to assist in correcting the conditions that led to the out-of-home placement, including "[p]sychological evaluations." But the testimony presented at trial established that the caseworker did not request a psychological evaluation of appellant because the caseworker "didn't feel it was necessary."

More significantly, the district court's findings conclude that "[t]here is clear and convincing evidence that parental rights should be terminated under Minn. Stat. § 260C.301, Subd. 1(b)(4), as the mother is palpably unfit to be a party to the parent and child relationship," but the termination petition did not allege Minn. Stat. § 260C.301, subd. 1(b)(4) (2006), as a statutory ground for terminating appellant's parental rights. Even if evidence presented at trial demonstrates that appellant is palpably unfit, the district court may not terminate appellant's parental rights on this basis because "the termination of parental rights cannot be based on a statutory ground that was not included in a petition to terminate parental rights." *In re Welfare of Child of B.J.M.*, 744 N.W.2d

669, 673 (Minn. 2008). This error raises the concern whether the district court conducted an independent review of the proposed findings before adopting them.

Furthermore, the district court had an opportunity to review the findings when appellant moved for a new trial. In the order denying appellant's motion, the district court stated

Upon the Court's finding that the petition had been proven, [the county] submitted proposed findings. The Court reviewed the proposed findings and found that they accurately reflected the facts of the case and the decision of the Court. The Court finds that signing the [county's] proposed findings did not deny [appellant] a neutral evaluation of the evidence.

But a careful review of the findings would have revealed that one of the grounds on which appellant's parental rights were being terminated was not alleged in the petition. Because our review of the record does not allow us to determine whether the district court's decision was independently made, we reverse.

Reversed.