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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-830**

In the Matter of the Welfare of the Child of:
T.R.P.S. and M.I.C., Jr., Parents.

**Filed October 24, 2011
Affirmed
Wright, Judge**

St. Louis County District Court
File No. 69VI-JV-10-131

Patrick J. Roche, Trenti Law Firm, Virginia, Minnesota (for respondent T.R.P.S.)

M.I.C., Jr., Greenville, Illinois (pro se appellant)

Nacole Galatz, Virginia, Minnesota (Guardian ad Litem)

Considered and decided by Stauber, Presiding Judge; Wright, Judge; and Worke,
Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant-father challenges the district court's decision terminating his parental rights to his child. Appellant argues that the district court erred by finding that he abandoned the child, he is palpably unfit to be a party to the parent-and-child relationship, and he refused or neglected to comply with the duties imposed on him by the parent-and-child relationship. He also challenges the district court's finding that the termination of his parental rights is in the child's best interests. We affirm.

FACTS

J.L.P. was born in June 2002 to respondent T.R.P.S. (mother) and appellant M.I.C., Jr., who was adjudicated J.L.P.'s father in March 2004. M.I.C. has had personal contact with J.L.P. on one occasion, in August 2004; and he has not sought contact with J.L.P. since 2005. Except for one Christmas card that M.I.C. sent while the termination-of-parental-rights proceedings were pending in 2010, M.I.C. never sent J.L.P. a letter, card, gift, or token of affection. M.I.C. has been diagnosed with chemical-dependency and mental-health conditions for which he has received mental-health treatment in the past and is currently taking medication. Because he has four felony convictions, M.I.C. has been incarcerated several times since J.L.P.'s birth.

On May 12, 2010, mother petitioned the district court to terminate M.I.C.'s parental rights to J.L.P., alleging that M.I.C. abandoned J.L.P., neglected his parental duties, and is palpably unfit to be a party to the parent-and-child relationship. St. Louis County Public Health and Human Services declined to participate in these proceedings. The district court appointed a guardian ad litem (GAL) who recommended granting the petition to terminate M.I.C.'s parental rights for several reasons, including M.I.C.'s lack of involvement in J.L.P.'s life, his chemical abuse and mental-health problems, and the GAL's concerns about M.I.C.'s rehabilitation and future ability to provide for J.L.P. The district court subsequently terminated M.I.C.'s parental rights to J.L.P. on the three statutory grounds asserted by mother. In doing so, the district court concluded that each of the statutory grounds had been proved and that termination of M.I.C.'s parental rights is in J.L.P.'s best interests. This appeal followed.

DECISION

Our review of the district court's decision to terminate parental rights is limited to determining whether the district court's findings address the statutory criteria and whether they are supported by substantial evidence. *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997). Although the district court terminated M.I.C.'s parental rights on multiple statutory grounds, we will not disturb the district court's decision to terminate parental rights if there is clear and convincing evidence establishing at least one of the grounds for termination of parental rights set forth in Minn. Stat. § 260C.301, subd. 1(b) (2010), and if termination of parental rights is in the child's best interests. Minn. Stat. § 260C.301, subd. 7 (2010); *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

I.

M.I.C. challenges the district court's determination that there is clear and convincing evidence that he abandoned J.L.P. Under Minn. Stat. § 260C.301, subd. 1(b)(1), abandonment requires both actual desertion and an intention to forsake parental duties. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 398 (Minn. 1996). To satisfy this legal standard, the abandonment must be intentional rather than the result of misfortune or misconduct. *Id.* A parent's failure to have contact with the child, failure to show sincere interest in the child's well-being, and failure to provide emotional or financial support are factors that support a district court's conclusion that the parent has abandoned the child. *Id.* at 398-99. Inferences as to a parent's intentions are best made by the district court and will not be disturbed on appeal. *Id.* at 399. Absent the statutory presumption of

parental abandonment,¹ abandonment may be found when a parent has deserted the child and intends to forsake the duties of parenthood. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

A finding of abandonment may not be based solely on a parent's incarceration. *Id.* Factors that may support a finding of an incarcerated parent's abandonment include that parent's failure to maintain direct contact with the child during incarceration, failure to visit or inquire about the child when not incarcerated, violent history, current behavior, lack of financial support, and intent to forsake the duties of parenthood. *Id.* at 56; *In re Welfare of Staat*, 287 Minn. 501, 506, 178 N.W.2d 709, 713 (Minn. 1970); *In re Children of Vasquez*, 658 N.W.2d 249, 254 (Minn. App. 2003).

Although M.I.C. was incarcerated during portions of J.L.P.'s life, M.I.C. was not incarcerated during approximately six years of J.L.P.'s life.² The record reflects, however, that M.I.C. failed to maintain any contact with J.L.P. during his incarceration except for one Christmas card sent in 2010 after the commencement of these proceedings. M.I.C. lived near mother and J.L.P. from August 2004 to July 2007. But he made contact with J.L.P. only once when he accompanied J.L.P. and mother to the Minnesota State

¹ Parental abandonment is presumed when, without a showing of good cause, "the parent has had no contact with the child on a regular basis and [has] not demonstrated consistent interest in the child's well-being for six months and the social services agency has made reasonable efforts to facilitate contact." Minn. Stat. § 260C.301, subd. 2(a)(1) (2010). Here, the district court found that the requirements for this presumption were not met because the county social-services agency was not involved in making efforts to facilitate contact. Neither party disputes this finding on appeal.

² M.I.C.'s incarceration history includes a six-month period ending in May 2004 and several months in 2006. His current period of incarceration began in September 2009, when he was sentenced to 78 months' imprisonment in Illinois for a controlled-substance offense.

Fair. On that occasion, M.I.C. arrived late, did not interact with J.L.P., and showed no affection toward her. This is the only occasion during his daughter's life that M.I.C. spent with her. M.I.C. never sought parenting time, and the record reflects that he provided only \$95.80 in financial support for J.L.P. from her birth in 2002 until 2005 when his child-support obligation was reduced to zero. Since that time, he has not provided any financial assistance for J.L.P. In addition, the GAL's recommendation to terminate M.I.C.'s parental rights is founded in part on M.I.C.'s lack of involvement in J.L.P.'s life.

M.I.C. contends that the district court did not give proper weight to evidence that he has not intended to forsake his parental duties. But we neither reconcile conflicting evidence nor decide issues of witness credibility, as these questions are exclusively the province of the district court as factfinder. *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). Although M.I.C. presented evidence that he has attended voluntary parenting programs while in prison, the district court gave "little weight to these courses as evidence of [M.I.C.'s] interest in establishing a parent-child relationship." Moreover, although mother and M.I.C. gave conflicting testimony regarding M.I.C.'s efforts to contact J.L.P. before 2005, the district court credited mother's testimony that M.I.C.'s few contacts with mother did not focus on J.L.P.

M.I.C. argues that infrequent visitation and sporadic child-support payments are insufficient to terminate his parental rights without the district court's consideration of whether these circumstances will continue indefinitely. In support of this argument, M.I.C. relies on *In re Petition of Linehan*, 280 N.W.2d 29 (Minn. 1979), and *In re*

Welfare of Gillispie, 296 N.W.2d 878 (Minn. 1980). But the facts and circumstances present in *Linehan* and *Gillispie* are readily distinguishable from the quality of M.I.C.'s relationship with J.L.P. and the quantity of his contacts with her.

The father and mother in *Linehan* were married and resided together for approximately two and one-half years after their child was born. 280 N.W.2d at 30. The father had established a relationship with the child during the first five years of the child's life through contact with the child and mother, attempts at reconciliation, child-support payments, the establishment of visitation rights, and attempts to exercise those visitation rights. *Id.* The Minnesota Supreme Court affirmed the district court's decision not to terminate the father's parental rights to his child. *Id.* at 33. The father in *Gillispie* sporadically visited his two children before the mother began impeding his attempts to make contact; and the father mailed the children Christmas cards and money, which the mother returned to him. 296 N.W.2d at 879-80. The *Gillispie* court vacated the district court's order terminating the father's parental rights based on abandonment, observing that the father had begun to display greater maturity, to retain regular employment, and to make child-support payments. *Id.* at 881.

Here, M.I.C. has never had a relationship with J.L.P. or made more than minimal efforts to establish contact with or provide support for her. M.I.C. has not demonstrated that the district court erred here. Rather, the district court's determination that clear and convincing evidence establishes M.I.C.'s abandonment of J.L.P. is well founded.

Accordingly, the record amply supports the district court's findings and conclusion that M.I.C. abandoned J.L.P.³

II.

M.I.C. next challenges the district court's determination that there is clear and convincing evidence that the termination of his parental rights is in the child's best interests. The best-interests analysis in a termination-of-parental-rights proceeding requires the district court to balance the child's interest in preserving the parent-and-child relationship, the parent's interest in preserving the parent-and-child relationship, and any competing interests of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). Such competing interests include the need for a stable environment, health considerations, and the child's preferences. *R.T.B.*, 492 N.W.2d at 4. In a termination-of-parental-rights proceeding, the child's best interests are the paramount consideration, provided that at least one statutory basis for termination of parental rights is present. Minn. Stat. § 260C.301, subd. 7. When there is evidence supporting the district court's best-interests determination, we shall not substitute our judgment for the district court's balancing of best-interests considerations. *See In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003) (citing *Schmidt v. Schmidt*,

³ Although the district court relied on two additional statutory grounds for terminating M.I.C.'s parental rights, we will not disturb the district court's decision to terminate parental rights if there is clear and convincing evidence establishing at least one of the grounds for terminating parental rights set forth in Minn. Stat. § 260C.301, subd. 1(b). Nonetheless, we observe that our careful review of the record establishes ample support for the district court's determination that M.I.C. also has refused or neglected to comply with the duties imposed on him by the parent-and-child relationship, Minn. Stat. § 260C.301, subd. 1(b)(2), and M.I.C. is palpably unfit to be a party to the parent-and-child relationship, Minn. Stat. § 260C.301, subd. 1(b)(4).

436 N.W.2d 99, 105 (Minn. 1989)) (stating that district court’s best-interests determination “is generally not susceptible to an appellate court’s global review of a record” and that “an appellate court’s combing through the record to determine best interests is inappropriate because it involves credibility determinations”).

M.I.C. argues that the district court failed to balance J.L.P.’s and M.I.C.’s interests in preserving the parent-and-child relationship against the competing interests of J.L.P. We disagree. When, as here, the district court finds that no relationship exists between the parent and child and that the child is in a stable family setting, there is a valid basis for concluding that termination of parental rights is in the child’s best interests. See *R.T.B.*, 492 N.W.2d at 4 (holding that termination of father’s parental rights was in child’s best interests based on district court’s findings that there existed no parent-and-child relationship to preserve and child was in stable two-parent family); see also *L.A.F.*, 554 N.W.2d at 399 (observing that although father did not challenge district court’s best-interests analysis, termination of father’s parental rights was in child’s best interests because father had seen child only once, there existed no parent-and-child relationship to preserve, and child was in stable two-parent home).

The district court made several critical findings in support of its best-interests analysis, which have ample support in the record. For example, the district court found that J.L.P. has known only her step-father as a father figure, and she calls him “daddy.” J.L.P. “has never met [M.I.C.], at least not at a time when she was old enough to remember.” And the district court found that “[t]o introduce a new and unknown parent into [J.L.P.]’s life at this stage of her development would likely be detrimental.” The

district court also found that terminating M.I.C.'s rights would be in J.L.P.'s best interests in light of M.I.C.'s demonstrated lack of interest in J.L.P., M.I.C.'s failure to provide past financial support and current inability to provide financial support, and the concerns that arise from M.I.C.'s criminal history, chemical dependency, and mental health.

Our careful review establishes that the district court properly addressed the competing interests of M.I.C. and J.L.P. and made ample findings in support of its conclusion that termination of M.I.C.'s parental rights is in J.L.P.'s best interests.

Affirmed.