

Child Protection Case Summaries

September 1, 2017 – September 5, 2018

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CHIPS AND PERMANENCY CASES

Matter of Welfare of Child of T.R., No. A17-0801, 2017 WL 3977534

Minn. Ct. App. / Sept. 11, 2017 / Not Reported in N.W.2d

Appellant parents challenge the termination of their parental rights. Appellants argue that the district court should have applied a less-restrictive alternative to termination of their parental rights, and father argues that termination of his parental rights is not in the children's best interests. The permanency statute does not require the district court to consider any option other than termination, if statutory grounds for termination exist. The court also rejected father's argument that termination was not in the children's best interest. Court affirms.

Matter of Welfare of Child of R.K., 901 N.W.2d 156

Supreme Court of Minnesota / Sept. 13, 2017 / Reported in N.W.2d

Father's parental rights were terminated and appealed. The Court of Appeals dismissed appeal as untimely, and father appealed. This appeal presents the question of how to calculate the filing deadline for an appeal in a juvenile protection proceeding when a party is served with notice of the filing of the district court's order by two different forms of service that result in two different deadlines for the filing of a notice of appeal - the district court administrator *electronically* served L.A.'s attorney with notice of the filing of the district court's order. L.A. was separately served on the same date, by *mail*, with the same notice. Based on the plain language of the relevant rules, the Supreme Court held that limitations period governing father's appeal from order terminating parental rights expired 20 days after he was served with order by U.S. mail, plus additional three days allowed for mailing. Because the appeal was filed by that deadline Judgment of Court of Appeals is vacated; remanded.

Matter of Welfare of P. S., No. A17-0648, 2017 WL 4582817

Minn. Ct. App. / Oct. 16, 2017 / Not Reported in N.W.2d

P.S. argues that the district court erred by granting the county's motion to find her in default and by denying her post-trial motion for a new trial. P.S. did not appear for the beginning of trial. P.S. arrived 2 hours late. The county attorney called P.S. as a witness and questioned her. The district court recessed for the day at 4:25 p.m. and stated that the trial would resume the next day at 9:00 a.m. P.S. did not appear. The county renewed its motion to proceed by default. The district court stated that if P.S. were not present when the county's first witness finished testifying, the district court would allow the county to proceed by default. P.S. still was absent when the county's first witness finished testifying. The district court stated that the county could proceed by default. P.S. arrived at about 10:30 a.m., but left the courtroom approximately 10 minutes later and did not return. Nine days later, the district court terminated a mother's parental rights. In accordance with Minn. R. Juv. Prot. P. 18.01 and 18.02 the district court did not err by granting the county's motion to find P.S. in default. Court affirms.

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Matter of Welfare of N. J. G., No. A17-0515, 2017 WL 4582811

Minn. Ct. App. / Oct. 16, 2017 / Not Reported in N.W.2d

Appellant challenges the district court's entry of default judgment terminating his parental rights and denial of his motion to vacate judgment. Appellant argues that he received insufficient notice that his parental rights could be terminated if he failed to appear and that he satisfied the standard for vacating a default judgment. The district court found that J.H. received the notice of the January 26 pretrial hearing before he left the December 20 hearing. The notice of the hearing properly advised J.H. that his parental rights could be terminated if he failed to appear at the hearing, and the district court did not err by proceeding with a default hearing. Court affirms.

Matter of Welfare of Child of S.P., No. A17-0757, 2017 WL 4767000

Minn. Ct. App. / Oct. 23, 2017 / Not Reported in N.W.2d

Appellant challenges the termination of her parental rights, arguing that she rebutted the presumption that she is a palpably unfit parent and that the record does not show that termination is in the child's best interests. Respondent-county petitioned to terminate appellant's parental rights to H.P., alleging that she was presumed to be a palpably unfit parent because her parental rights to her older children were involuntarily terminated. To meet her burden of rebutting the palpably unfit presumption, a parent must produce evidence showing that she is suitable to be entrusted with the care of the child. A parent must produce evidence of improved parenting skills that "if believed, would justify a finding contrary to the assumed fact" that she is palpably unfit. Court affirms.

Matter of Welfare of Children of L.B., No. A17-0865, 2017 WL 4767104

Minn. Ct. App. / Oct. 23, 2017 / Not Reported in N.W.2d

On appeal from the termination of her parental rights, mother argues that the record does not support the district court's order because she substantially complied with her case plan. The court concluded that the district court did not abuse its discretion by determining that there was clear and convincing evidence that L.B. substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent and child relationship. Court affirms.

Matter of Welfare of Children of I. C. G., No. A17-0672, 2017 WL 4872781

Minn. Ct. App. / Oct. 30, 2017 / Not Reported in N.W.2d

Appellant-father T.A.T. argues that the district court erred in determining that clear and convincing evidence supported three statutory grounds to terminate his parental rights. T.A.T. also argues that termination was not in the best interests of his children. The district court weighed the credibility of the witnesses and noted T.A.T.'s efforts, but determined they were insufficient to establish that he was able to parent his children, either presently or in the foreseeable future. Court affirms.

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Matter of Welfare of Child of M. J. H., No. A17-0918, 2017 WL 5077571

Minn. Ct. App. / Nov. 6, 2017 / Not Reported in N.W.2d

Appellant-mother M.J.H. challenges the district court’s order terminating her parental rights to her child, C.M.M. Because a statutory ground for termination exists and termination is in the child’s best interests, court affirms. Additionally, on appeal, the mother raised an ICWA claim for the first time. The district court had no “reason to believe” that C.M.M. was an Indian child and found that ICWA did not apply—findings that mother did not contest during the pendency of this case in district court. The court declined to consider it.

Matter of Welfare of Child of L. N., No. A17-0850, 2017 WL 5077444

Minn. Ct. App. / Nov. 6, 2017 / Not Reported in N.W.2d

Appellant-father challenges the district court’s termination of parental rights. Appellant argues the district court abused its discretion in determining that clear and convincing evidence establishes the respondent-county made reasonable efforts to rehabilitate father and reunite the family, a statutory basis for termination exists, and termination is in the best interests of the child. Here, the county continued to provide services throughout the termination trial, the district court’s finding that father failed to comply with his parental duties is supported by clear and convincing evidence, the district court’s findings that father could not meet S.O.’s needs now or in the foreseeable future and concluded that S.O.’s needs outweigh father’s interest in preserving the parent-child relationship are supported by clear and convincing evidence and are not clearly erroneous. Court affirms.

Matter of Welfare of S.M.H., No. A17-0841, 2017 WL 5077441

Minn. Ct. App. / Nov. 6, 2017 / Not Reported in N.W.2d

Appellant S.M.H. appeals from the district court’s decision to terminate her parental rights. Clear and convincing evidence in the record supports the district court’s termination of her rights for neglecting the duties imposed on her by the parent-child relationship, and we affirm on that statutory basis.

Matter of Welfare of B.C., No. A17-0972, 2017 WL 5244366

Minn. Ct. App. / Nov. 13, 2017 / Not Reported in N.W.2d

Appellant-mother challenges the termination of her parental rights, arguing that the record does not support the district court’s determinations that (1) she failed to satisfy the duties of the parent-child relationship, (2) she is palpably unfit to be a party to the parent-child relationship, (3) reasonable efforts failed to correct the conditions leading to her children’s out-of-home placement, and (4) termination of her parental rights is in her children’s best interests; she also argues that the district court abused its discretion in denying her motion for a continuance. Because the record supports the district court’s determinations and we see no abuse of discretion, court affirms.

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Matter of Welfare of Child of G.R., No. A17-0995, 2017 WL 5661606

Minn. Ct. App. / Nov. 27, 2017 / Not Reported in N.W.2d

In an interlocutory appeal from the district court's denial of her motion to dismiss for lack of subject-matter jurisdiction, appellant-mother argues that the district court erred by (1) placing the burden of proving domicile on her when determining subject-matter jurisdiction under the Minnesota Juvenile Court Act, (2) concluding appellant-mother and the child have significant connections to Minnesota for purposes of the Minnesota Uniform Child Custody Jurisdiction and Enforcement Act, and (3) failing to address her motion to dismiss on the ground that Minnesota is an inconvenient forum. The county established, and mother conceded, that Minnesota was her domicile during the ten years preceding D.D.R.'s birth; application of the presumption assumes that Minnesota remains her current domicile until she establishes a new domicile. The district court gave mother an opportunity to rebut the county's showing that Minnesota was mother's domicile when the county petitioned to terminate her parental rights to the child. But mother failed to overcome the presumption because she did not introduce sufficient evidence to counter the allegation of residency. Court affirmed.

Matter of Welfare of C. P. S., No. A17-1020, 2017 WL 5985488

Minn. Ct. App. / Dec. 4, 2017 / Not Reported in N.W.2d

The district court terminated C.P.S.'s parental rights to D.S. and E.S. on the grounds that she did not comply with the duties of the parent-child relationship, that she is a palpably unfit parent, and that reasonable efforts have failed to correct the conditions that led to the children's out-of-home placement. The district court also found that termination of C.P.S.'s parental rights is in the children's best interests. Court affirmed.

Matter of Welfare of Child of N.L., No. A17-0899, 2017 WL 5985478

Minn. Ct. App. / Dec. 4, 2017 / Not Reported in N.W.2d

Appellant-mother challenges the district court's termination of her parental rights to her child, arguing that reasonable efforts were not made to reunify her family, that a statutory ground for termination was not established by clear and convincing evidence, and that termination is not in the child's best interests. In addition to treatment, the department's rehabilitation and reunification efforts included ensuring that appellant was receiving counseling/therapy and trying to include her in A.J.L.'s school events. The department's priority among services was rightly chemical-dependency treatment, as it was appellant's alcohol abuse that created an unsafe environment for A.J.L., not her parenting skills. Court affirmed.

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Matter of Welfare of Children of S. R. K., No. A17-1194, 2017 WL 6273152, rev'd [see SC of MN] *Minn. Ct. App. / Dec. 11, 2017 / Not Reported in N.W.2d*

In this appeal challenging the termination of their parental rights, appellants-parents argue that the evidence does not support beyond a reasonable doubt the district court's finding that appellants' continued custody of the children is likely to result in serious emotional or physical damage to the children. The record demonstrates that these children suffered emotional damage at the hands of these parents, and there is no indication in the record that either parent corrected the issues that existed prior to the children's removal, or that they would in the reasonably foreseeable future. Court satisfied that the county has proved beyond a reasonable doubt that the parents' continued custody of the children is likely to result in serious emotional or physical damage to the children. Court affirmed.

Matter of Welfare of Children of S. J. Z. M., No. A17-0881, 2017 WL 6272943 *Minn. Ct. App. / Dec. 11, 2017 / Not Reported in N.W.2d*

S.M. lived with her father until she alleged he made sexual advances towards her and was removed from the home. While working with father toward reunification, child protective services located S.M.'s mother, living in Arizona, who was willing to parent S.M. The district court granted a petition to transfer permanent legal and physical custody of S.M. to her mother. S.M.'s father challenges the court's decision, acknowledging that S.M.'s immediate return to his custody was not in her best interest, but arguing the transfer to her mother was inappropriate as well. The district court's determination that mother is a suitable custodian and that immediate transfer to her care in Arizona is in S.M.'s best interest is supported by clear and convincing evidence in the record. Court affirms.

Matter of Welfare of Child of H.N.N., No. A17-1077, 2017 WL 6273149 *Minn. Ct. App. / Dec. 11, 2017 / Not Reported in N.W.2d*

In this appeal from the termination of his parental rights, appellant challenges the district court's determination that he is palpably unfit to be a parent and that his child was neglected and in foster care. While stating that a parent's incarceration cannot be the sole basis for terminating parental rights, the district court properly considered appellant's incarcerations in combination with other evidence supporting the TPR petition, citing *In re Child of Simon*, 662 N.W.2d 155, 162 (Minn. App. 2003). Court affirms.

Matter of Welfare of P. K. S., No. A17-1157, 2017 WL 6418877 *Minn. Ct. App. / Dec. 18, 2017 / Not Reported in N.W.2d*

County challenges the district court's TPR denial, arguing that the district court abused its discretion when it found that TPR as to father is not in the child's best interests. The county argues that father's limited contact with the child during her early life supports the conclusion that she has only a minimal interest in maintaining the parent-child relationship, and the child's strong bond with her maternal siblings in the foster home is crucial for development. The father followed through with all of the case-plan requirements. Social worker, GAL, and foster mother testified maintaining a relationship with father was in the child's best interests. Court affirms.

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[Matter of Welfare of Child of R.K.](#), No. A17-0497, 2017 WL 6567916

Minn. Ct. App. / Dec. 26, 2017 / Not Reported in N.W.2d

Appellant-father challenges the district court's order terminating his parental rights, arguing that the district court failed to make particularized findings necessary for appellate review of the decision. The district court's findings, as a whole, do more than merely recite or summarize the testimony. The district court found that L.A. was not fully compliant with the requirement to submit to random UA testing, citing missed and positive tests, noted L.A.'s criminal history and his longstanding issues with chemical dependency, emphasized that L.A. had missed several therapy and psychiatric appointments to the point of being suspended from therapy services, and found L.A. to have been untruthful with the parenting assessor about his mental-health history, his medications, his treatment history, his visitation history with S.K. and other matters. Court affirms.

[Matter of Welfare of A. K.](#), No. A17-1258, 2018 WL 414387

Minn. Ct. App. / Jan. 16, 2018 / Not Reported in N.W.2d

Appellant-mother challenges the district court's order terminating her parental rights. She argues that the district court abused its discretion when it determined that (1) respondent made reasonable rehabilitative efforts to reunite the family, (2) the statutory grounds for termination were supported by clear and convincing evidence, and (3) the termination of parental rights was in the child's best interests. The evidence supports the district court's conclusion that the efforts were reasonable and directed at the issues that led to the out-of-home placement. The most significant issues that appellant needed to address for reunification was her mental-health issues. The county required appellant to complete a mental-health assessment, take her prescribed medications, attend therapy for her mental health, and use the services of a mental-health case manager. Appellant denied that her behavior was a result of her mental-health issues, instead placing blame on third parties. Court affirms.

[Matter of Welfare of S.A.P.](#), No. A17-1289, 2018 WL 414389

Minn. Ct. App. / Jan. 16, 2018 / Not Reported in N.W.2d

Appellant mother argues that the district court abused its discretion by denying her motions (1) for a new trial on the grounds of irregularity in the proceedings, attorney misconduct, and the interests of justice, and (2) to vacate a default judgment. S.A.P. knew her date of trial and she failed to appear despite knowing the district court would enter a default judgment. Court affirms.

[Matter of Welfare of Children of C. L. C.](#), No. A17-1405, 2018 WL 414391

Minn. Ct. App. / Jan. 16, 2018 / Not Reported in N.W.2d

Appellant challenges the termination of her parental rights, arguing that the district court abused its discretion in concluding that she is palpably unfit to be a party to the parent-child relationship and that reasonable efforts have failed to correct the conditions leading to the out-of-home placement. Appellant's own testimony and her psychologist's reports support the district court's conclusion that her history of drug use renders her palpably unfit to be a parent. Additionally, the district court found that WCHHS made 13 separate initiatives to help appellant reunify with her. Appellant did not utilize the services provided and would lash out at WCHHS employees attempting to help appellant. Court affirms.

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Matter of Welfare of R.S.P., No. A17-1090, 2018 WL 414375

Minn. Ct. App. / Jan. 16, 2018 / Not Reported in N.W.2d

Appellants challenge the district court's determination that respondent county did not act unreasonably by refusing to place appellants' grandchildren with them for adoption following termination of parental rights. The children were placed in a pre-adoptive foster home approved by both mother and the county. The county was aware of grandparents' availability and willingness to care for the children. But mother had expressed a strong preference for placement with the foster parents. Court affirms.

Matter of Welfare of Children of R.L.W., No. A17-0958, 2018 WL 492652

Minn. Ct. App. / Jan. 22, 2018 / Not Reported in N.W.2d

Appellant S.F.M. appeals from the district court's order terminating his parental rights to two children. He challenges each of the four statutory grounds on which the district court relied in terminating his rights: that appellant inflicted egregious harm; that he is palpably unfit to parent; that the children are neglected and in foster care; and that reasonable efforts failed to correct the conditions leading to the children's out-of-home placement. Appellant failed to take responsibility for exposing child 1 to adult sexual activity. Appellant largely failed to comply with any of the psychosexual evaluation recommendations, attended therapy sessions only for a short time, and ultimately refused to attend further therapy, participate in medication management, or submit to a polygraph test. Additionally, although appellant wants to care for his children, their interests outweigh his. Court affirms.

Matter of Welfare of V.V.B., No. A17-1171, 2018 WL 492658

Minn. Ct. App. / Jan. 22, 2018 / Not Reported in N.W.2d

In this appeal challenging the district court's termination of her parental rights, mother argues that the statutory grounds for termination are not supported by clear and convincing evidence. Mother refused to cooperate with the county to correct the conditions that led to C.L.'s out-of-home placement. Mother failed to satisfy any of the case plan's requirements that she work on her mental health, chemical health, parenting skills, and ability to meet C.L.'s needs. Compliance and contact were both part of the agency's reasonable efforts to correct the conditions that led to the child's out-of-home placement. Court affirms.

Matter of Welfare of Child of N.E.R., No. A17-1112, 2018 WL 492654

Minn. Ct. App. / Jan. 22, 2018 / Not Reported in N.W.2d

Father challenges the district court's order terminating his parental rights, arguing that the court erred by basing the order on both voluntary and involuntary grounds. The district court found that voluntary TPR was supported by father's admissions that his ability to parent B.R. was compromised by his cognitive limitations, mental- and physical-health issues, and limited parenting skills. The district court found that involuntary TPR was supported by evidence regarding father's cognitive limitations, mental-health issues, and limited parenting skills. The plain language of the TPR statute does not prevent the district court from terminating parental rights on multiple grounds, including both voluntary and involuntary grounds. Limiting a district court to an order for voluntary TPR even though grounds for involuntary TPR have been proved seems antithetical to the paramount best-interests consideration. Court affirms.

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Matter of Welfare of A. R. B., 906 N.W.2d 894

Minn. Ct. App. / Jan. 26, 2018 / Reported in N.W.2d

A county does not satisfy its obligation to make reasonable efforts to reunite a family before terminating a father's parental rights when the county fails to produce a written case plan, and the county is not excused of the obligation by a father's brief opposition to participating in developing a case plan. Court reversed the decision terminating parental rights and remand for the district court to direct the county to provide a case plan and allow a reasonable period for the father to complete it.

Matter of Welfare of J. A. K., 907 N.W.2d 241

Minn. Ct. App. / Jan. 26, 2018 / Reported in N.W.2d

In a proceeding for the termination of parental rights, a parent may rebut the presumption of palpable unfitness set forth in section 260C.301, subdivision 1(b)(4), of the Minnesota Statutes by producing evidence that would be sufficient to justify a finding of fact that the parent is not palpably unfit. If a parent introduces evidence in an attempt to rebut the statutory presumption, a district court must determine whether the evidence is sufficient to raise a genuine issue of fact as to whether the parent is palpably unfit. Reversed and remanded.

Matter of Welfare of T.H., No. A17-1359, 2018 WL 700261

Minn. Ct. App. / Feb. 5, 2018 / Not Reported in N.W.2d

After appellant mother gave birth to a son, E.H., she left the hospital to live with the baby in a Motel 6. Because mother's parental rights to other children were previously terminated, Ramsey County opened an investigation and removed E.H. from mother's care when he was only days old. The district court later terminated mother's parental rights to E.H. Mother appeals, challenging the district court's determination that the termination of her parental rights was in E.H.'s best interest. The district court properly considered mother's efforts in making its best-interest determination, alongside the serious concerns raised by credible witnesses who interacted with and investigated her. Mother had only just begun to address her extensive mental health challenges. There were significant parenting concerns. And mother had no way to support or house E.H. Court affirms.

Matter of Welfare of C.P.T., No. A17-1251, 2018 WL 817811

Minn. Ct. App. / Feb. 12, 2018 / Not Reported in N.W.2d

Appellant-county challenges the district court's denial of its petition to terminate respondent-father's parental rights. Here, the record contains conflicting evidence regarding father's present ability to parent the children and whether any such inability will be for a prolonged, indeterminate period. The district court did not abuse its discretion in concluding that the county did not prove a statutory basis for termination of parental rights by clear and convincing evidence. Court affirms.

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Matter of Welfare of L.M.O., No. A17-1485, 2018 WL 817874

Minn. Ct. App. / Feb. 12, 2018 / Not Reported in N.W.2d

Appellant-father challenges the transfer of permanent legal and physical custody of a child from his biological parents to relatives, arguing that (1) the record does not support the district court's findings regarding the transfer of custody, (2) the county failed to make adequate reunification efforts, and (3) the district court's determination regarding the child's best interests is flawed and insufficient. The record amply supports the district court's findings that father has substantial mental-health and chemical-dependency problems that have directly led to abusive and inappropriate parenting behaviors, and that father had taken only minimal steps to address those problems. The county established a court-approved case plan for father that specifically identified the problems that contributed to the child's removal from the home—chemical dependency, untreated mental illness, anger-management problems, unstable housing—and guided father toward correcting them. Court affirms.

Matter of Welfare of S.S., No. A17-1472, 2018 WL 817865

Minn. Ct. App. / Feb. 12, 2018 / Not Reported in N.W.2d

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. 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 such as the need for a parent who can provide financially for him and can meet his basic needs, the need for stability and permanency, and the need to reside with a parent who will not expose him to drugs, violence, anger and criminal behavior. Court affirms.

Matter of Welfare of Children of S.C.D., No. A17-1269, 2018 WL 944669

Minn. Ct. App. / Feb. 20, 2018 / Not Reported in N.W.2d

Appellant-father challenges the district court's decision to terminate his parental rights on the grounds that the district court judge abused her discretion by not recusing herself for circumstances constituting bias and by determining that reasonable efforts to correct the conditions leading to the children's out-of-home placement have failed. Father's bias claim reflects his dissatisfaction with the district court's adverse rulings against him. It is well-established that adverse rulings do not constitute an affirmative showing of prejudice. Court affirms.

Matter of Welfare of M.C.R., No. A17-1465, 2018 WL 1040742

Minn. Ct. App. / Feb. 26, 2018 / Not Reported in N.W.2d

Appellant-father makes several assertions challenging the district court's decision to terminate his parental rights. The assertions are not supported by argument or authority and appellant's brief fails to state the facts with completeness and candor or provide references to the record. Court affirms.

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Matter of Welfare of B.K., No. A17-1513, 2018 WL 1145899

Minn. Ct. App. / Mar. 5, 2018 / Not Reported in N.W.2d

In this consolidated juvenile-protection appeal, appellant-father argues that the district erred by terminating his parental rights because the record lacks clear and convincing evidence that he is a palpably unfit parent, that he failed to correct the conditions leading to the out-of-home placement, that he failed to satisfy his parental duties, and that termination of his parental rights is not in the child's best interests. Appellant-mother argues that the district court abused its discretion by denying her motions for a new trial because she received ineffective assistance of counsel. She also argues that the district court clearly erred by finding that the county made reasonable efforts to place one of the children with a relative. In light of father's continued methamphetamine abuse, and the activity connected to father and mother's drug use, the record supports the district court's finding that father is unable to provide a safe and stable home for B.I.K. that is free from chemical use and crime. Court affirms.

Matter of Welfare of Child of L.M.W., No. A17-1000, 2018 WL 1145882

Minn. Ct. App. / Mar. 5, 2018 / Not Reported in N.W.2d

Appellant L.M.W. (mother) challenges the district court's decision terminating her parental rights to her infant and denying her motion for new trial. The district court determined that mother did not overcome the presumption of palpable unfitness as a result of a prior order involuntarily terminating her parental rights to two other children. Mother argues that she received ineffective assistance of counsel, therefore, she is entitled to a new trial. Mother did not demonstrate that her trial counsel's performance fell below an objective standard of reasonableness. Court affirms.

Matter of Welfare of Children of J.L.G., No. A17-1323, 2018 WL 1145894

Minn. Ct. App. / Mar. 5, 2018 / Not Reported in N.W.2d

In this consolidated appeal, appellant-mother challenges the district court's order terminating her parental rights to her three youngest children and transferring permanent legal and physical custody of her oldest child to the child's father. Appellant-father challenges the district court's order terminating his parental rights to the three children he has in common with mother. The parents' arguments are not properly before this court because they invite the court to assess witness credibility and reweigh the evidence. In addition, the findings show that reasonable efforts were made to reunify the family and that termination of parental rights is in the best interests of the three youngest children. Court is not persuaded that reunification efforts were unreasonable simply because the county did not offer to increase visitation on its own initiative prior to the start of the TPR trial. Court affirms.

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Matter of Welfare of Children of L.M.P., No. A17-1543, 2018 WL 1247061

Minn. Ct. App. / Mar. 7, 2018 / Not Reported in N.W.2d

Appellant mother challenges the district court's order terminating her parental rights, arguing that the district court erred by permitting her attorney to stipulate to a document at trial without assuring that she understood the stipulation. L.M.P. fails to refer to any relevant authority which demonstrates that the district court's acceptance of this document constituted an abuse of discretion under these circumstances. L.M.P. also fails to demonstrate how she suffered prejudice. Additionally, even if the district court committed clear error with this factual finding, the error is relatively minor and did not affect the decision as a whole. Court affirms.

Matter of Welfare of J.L.I., No. A17-1663, 2018 WL 1462209

Minn. Ct. App. / Mar. 26, 2018 / Not Reported in N.W.2d

Appellant J.L.I. challenges the district court's termination of her parental rights. The county never provided her with a court-approved case plan defining the steps that she needed to take to address the conditions that led to the out-of-home placement; therefore, it was not clear to her what was required for reunification. Because respondent-county failed to make reasonable efforts to reunite mother and the children, we reverse the decision terminating mother's parental rights and remand for the district court to direct the county to provide a case plan and allow a reasonable period for mother to complete it.

Matter of Welfare of Child of W.L., No. A17-1815, 2018 WL 1461987

Minn. Ct. App. / Mar. 26, 2018 / Not Reported in N.W.2d

A father appeals from a district court's determination that his nine-year-old daughter is a child in need of protection or services. We conclude that four of the district court's findings of fact are clearly erroneous but that the remaining findings are not clearly erroneous. We also conclude that the evidence supports one of the district court's legal conclusions that the child is in need of protection or services. Because one statutory basis is sufficient, the court concludes that the district court did not err by adjudicating M.L.R. a child in need of protection or services. Court modifies the district court's order and affirms.

Matter of Welfare of A.G., No. A17-1735, 2018 WL 1787710

Minn. Ct. App. / Apr. 16, 2018 / Not Reported in N.W.2d

The district court terminated appellant-father's parental rights following a court trial. On appeal, he argues that there is no statutory basis to terminate his parental rights and that termination is not in the best interests of his daughter. The caselaw is clear that the presence of a parent's mental illness or intellectual disability does not alone support termination of parental rights, but termination has been found to be appropriate when the mental illness or intellectual disability was likely to be detrimental to the child or directly affect the ability to parent. In this situation, the logic that applies to parents with mental illnesses or intellectual disabilities also applies to parents with physical disabilities or ailments. Accordingly, S.H.'s physical ailments, on their own, do not provide a sufficient basis to terminate his parental rights, but that his inability to provide a safe environment for K.H. controls. Court affirms.

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Matter of Welfare of S.L.K.-S., No. A17-1570, 2018 WL 1787969

Minn. Ct. App. / Apr. 16, 2018 / Not Reported in N.W.2d

Appellant-mother challenges a district court's denial of her motion for a new trial, arguing that her consent to the termination of her parental rights was coerced and procedurally defective. Mother argues that the district court abused its discretion by denying her motion to set aside the TPR because the record and her affidavit contain sufficient facts to warrant an evidentiary hearing on the issues of coercion and misrepresentation. But mother's affidavit lacks any specific, factual allegations to support her motion. She does not state who threatened her, with what statements or actions, or why she felt threatened. And in the county's responsive affidavits, each of the affiants specifically denies making any promises to induce or coerce mother's TPR consent. Court affirms.

Matter of Welfare of R.M.S., No. A17-1453, 2018 WL 1787967

Minn. Ct. App. / Apr. 16, 2018 / Not Reported in N.W.2d

In this consolidated juvenile-protection appeal, appellants argue that the record does not support a termination of parental rights, that termination is not in the children's best interests, and that the county failed to make reasonable efforts. Both parents also raise individual arguments. The district court found that the parents lack of progress on the most basic components of the case plan indicate that they did not acquire the tools necessary to fully address their methamphetamine abuse and parenting deficiencies. The district court acknowledged that the parents love the children, but found that neither parent demonstrated a consistent ability to hold the children's needs above their own needs. Court affirms.

Matter of Welfare of S.R.K., 911 N.W.2d 821

Supreme Court of Minnesota / May 16, 2018 / Reported in N.W.2d

In a proceeding to terminate parental rights that is governed by the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act, a district court cannot terminate parental rights unless it determines that evidence shows, beyond a reasonable doubt, that continued custody of the child is likely to result in serious emotional or physical damage to the child. Such determination must be supported by qualified expert witness testimony. There was sufficient evidence, including qualified expert witness testimony, to support the district court's determination that continued custody of the children by the mother would likely result in serious emotional or physical damage to her children. There was insufficient qualified expert witness testimony to support the district court's determination that continued custody of the children by the father would likely result in serious emotional or physical damage to his children. Affirmed in part and reversed in part.

Matter of Welfare of S.E.M., No. A17-2067, 2018 WL 2293536

Minn. Ct. App. / May 21, 2018 / Not Reported in N.W.2d

On appeal from an order terminating their parental rights, appellant mother and appellant father argue that the district court abused its discretion by terminating their parental rights. Appellants also argue that respondent county failed to make reasonable efforts to reunify them with their child. Both case plans, which primarily focused on visitation, therapy, and chemical assessments, included general guidelines with respect to domestic violence services. The evidence in the record is clear that neither S.E.M.

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(mental health) nor R.B.L. (chemical use) adhered to the essential elements of their respective case plans. Unlike in *A.R.B.*, in which the county failed to create a case plan for the incarcerated parent, ICFS did develop a case plan specific to R.B.L. And even though R.B.L. did not agree to the case plan until late March 2017, ICFS began providing services to the family as early as May 2016. Court affirms.

Matter of Welfare of R. L. H., No. A17-1826, 2018 WL 2293419

Minn. Ct. App. / May 21, 2018 / Not Reported in N.W.2d

R.L.H. challenges TPR arguing the district court erred by proceeding by default because he was present in court. The district court simply misused “default” in its order. It was harmless error. Court affirms.

Matter of Welfare of Children of S.E.M., No. A18-0177, 2018 WL 2407268

Minn. Ct. App. / May 29, 2018 / Not Reported in N.W.2d

In this juvenile-protection matter, unmarried appellant-father challenges the district court’s order adjudicating his child as a Child in Need of Protection or Services (CHIPS), arguing that: (1) the county did not show by clear and convincing evidence that the child is CHIPS, and that the district court’s findings do not support the CHIPS adjudication; (2) the district court violated father’s constitutional rights to parent his child by preventing him from pursuing custody of the child in family court; and (3) the CHIPS adjudication and disposition order are not in the child’s best interests. Where, as here, the CHIPS and permanency matters remain pending, the family court must defer to the juvenile court’s exclusive jurisdiction over the child and over the relevant issues. Court affirms.

In the Matter of the Welfare of the Children of S.S.H. & B.W.R., No. A18-0038, 2018 WL 3097729

Minn. Ct. App. / June 25, 2018 / Not Reported in N.W.2d

Appellants-parents challenge the district court’s termination of their parental rights after respondent-county provided over six years of protective services, during which time parents were sometimes compliant, but repeatedly relapsed into methamphetamine use. Parents argue that we must reverse for four reasons: (a) the district court erred in determining that additional services by respondent-county would be futile and therefore unreasonable under the circumstances; (b) the district court erred in its determination that clear and convincing evidence established mother and father failed to satisfy the duties of the parent-child relationship; (c) the district court abused its discretion in receiving hair-follicle evidence without proper foundation; and (d) the district court erred in its determination that clear and convincing evidence established termination of mother and father’s parental rights was in the children’s best interests. While son is doing well in grandmother’s care, daughter continues to struggle with her mental health, including threats of self-harm, and has been removed from grandmother’s home and placed in a group home. On August 21, 2017, the district court appointed an attorney for daughter. While we recognize that daughter waived legal representation before the termination trial commenced, she is older now and her circumstances have changed substantially. We affirm the termination of mother and father’s parental rights, but remand for the district court to review daughter’s waiver of legal counsel.

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In Re the Welfare of the Children of: M. J. K. & J. O., Parents, No. A18-0222, 2018 WL 3213656 *Minn. Ct. App. / July 2, 2018 / Not Reported in N.W.2d*

Appellant-grandparents challenge the district court's determination that respondent agency did not act unreasonably when it did not place grandchildren with appellants for adoption. The district court made a number of best interest findings that supported the agency's placement with the foster parents. There were two major areas of concern that supported the agency's decision not to place the children with appellants: first, the combination of the parents' continuing use of marijuana and access to appellants' home, and second, appellants' inability to fulfill the role of parents. Court affirms.

In the Matter of the Welfare of the Children of: M. Z., J. P. B., S. C. D. & D. S., Parents, No. A18-0155, 2018 WL 3520864 *Minn. Ct. App. / July 23, 2018 / Not Reported in N.W.2d*

On February 28, the county filed petitions alleging that the children needed protection or services (CHIPS). Mother retained counsel. In August, mother's counsel moved the district court for permission to withdraw, citing "no communication and no payment of fees." The district court reserved a ruling on the withdrawal motion "to allow [mother] to speak to the attorney regarding payment issues." Mother subsequently dismissed counsel. A TPR petition was filed on September 12, 2018. Subsequently, mother twice applied for court-appointed counsel. The district court denied both applications, each time finding that mother was "not financially eligible." The district court granted the petition after determining that the county made reasonable but unsuccessful efforts to reunify the family and that termination of mother's parental rights serves the children's best interests. Court affirms.

Matter of Welfare of C. R. P., No. A18-0477, 2018 WL 3716381 *Minn. Ct. App. / Aug. 6, 2018 / Not Reported in N.W.2d*

Appellant-father challenges the district court's transfer of legal and physical custody of the minor child to respondent-mother, arguing the transfer was not in the child's best interest. The Court found the father merely makes assertions of error. He does not cite supporting facts, makes no legal arguments, and provides no citations to relevant legal authorities, and, therefore the case was not properly before the Court. At any rate, the Court still found there was no abuse of discretion in the district court's best-interests determination. Court affirms.

Matter of Welfare of T.K.U., No. A18-0387, 2018 WL 3826487 *Minn. Ct. App. / Aug. 13, 2018 / Not Reported in N.W.2d*

Appellant-father T.D.K. appeals his termination of parental rights by arguing that the record does not support the district court's determinations that: (1) he failed to satisfy his parental duties and failed to correct the conditions leading to R.K.U.'s placement; (2) termination is in the child's best interests; and (3) the agency's reunification efforts were adequate. District courts are vested with broad discretion in deciding child protection cases. Clear and convincing evidence supports the district court's order terminating father's parental rights. Additionally, the District court did not abuse its discretion in its best-interest or reasonable reunification efforts determination. Court affirms.

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In the Matter of the Welfare of the Children of: G. H.-G., Parent., No. A18-0495, 2018 WL 4201190

Minn. Ct. App. / Sept. 4, 2018 / Not Reported in N.W.2d

Appellant mother appeals the termination of her parental rights arguing that the district court erred by determining that the county made reasonable efforts to reunite the family and that termination is in the children's best interests. To determine if the county has made reasonable efforts, a district court considers whether the services offered to the family were: (1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Additionally, the court must consider "the length of time the county was involved and the quality of effort given. While there were ten social workers that were assigned to mother's case, RCSSD made many attempts over two years to assist mother in completing her case plan by providing multiple referrals to mental health professionals and offering transportation to the appointments. When analyzing the best interests of the children, the 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. Evidence supports the district court's determination that it is not in the children's best interests to preserve the parent-child relationship. Court affirms.

In the Matter of the Welfare of the Children of: A. D. S., D. L. B. & J. J. J., Parents., No. A18-0575, 2018 WL 4201192

Minn. Ct. App. / Sept. 4, 2018 / Not Reported in N.W.2d

On appeal from the involuntary termination of her parental rights, appellant mother argues that the record does not support the district court's conclusions that: (1) mother is palpably unfit to be a party to the parent-child relationship, (2) reasonable efforts by the county failed to correct the conditions leading to the children's placement, (3) the children are neglected and in foster care, and (4) it is in the best interests of the children to terminate mother's parental rights. In this case, the district court found that appellant has a pattern of being involved with unhealthy living arrangements, including many partners and other individuals who abused her, used drugs, or engaged in criminal activity. The district court specifically noted appellant's continued involvement with J.J.J. and B.W., despite serious questions about their lifestyles. The district court also noted appellant's continued inability to set proper priorities, like paying rent. The record reflects that appellant repeatedly provided the children with gifts, but did not pay anything toward rent for five months and was on the verge of eviction. Court affirms.

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OTHER CASES INVOLVING CHILD PROTECTION

Yule v. Kehlenbeck, No. A17-0211, 2017 WL 3866406

Minn. Ct. App. / Sept. 5, 2017 / Not Reported in N.W.2d

Appellant Jan Kehlenbeck appeals from the district court's grant of a harassment restraining order (HRO). She argues that the district court abused its discretion by allowing testimony regarding an event not noticed in the petition for the HRO and by limiting her cross-examination of respondent Sarah Yule, and argues that the record does not support the district court's decision. In the petition for the HRO, respondent described appellant's harassing behavior, claiming, among other things that appellant had reported respondent to child-protection authorities multiple times and stated that respondent was using drugs. Court affirms.

Tami Juberian obo Minor Children, petitioner, Respondent (A16-2061), Tami Juberian, petitioner, Respondent (A16-2062), v. Nancy Hail, Appellant., No. A16-2061, 2017 WL 3863129

Minn. Ct. App. / Sept. 5, 2017 / Not Reported in N.W.2d

In these consolidated appeals, appellant challenges the district court's grant of harassment restraining orders (HROs) sought by respondent social worker on her own behalf and on behalf of children involved in a CHIPS proceeding, arguing that the district court (1) failed to make findings necessary to support the grant of the HROs and (2) made findings that were unsupported by the record. Court reverses.

Asfeld v. Asfeld, No. A17-0680, 2017 WL 5244363

Minn. Ct. App. / Nov. 13, 2017 / Not Reported in N.W.2d

Appellant-father challenges the district court's order granting respondent-maternal-grandmother and respondent-maternal-step-grandfather visitation with his child following the dissolution of his marriage to mother and termination of mother's parental rights to the child. Because maternal grandmother had standing to request grandparent visitation under the plain language of the statute, and the district court did not abuse its discretion in ordering maternal grandmother's visitation schedule, we affirm in part. But because maternal step-grandfather did not have standing to request grandparent visitation under the statute, we reverse in part.

State v. Garza, No. A16-2070, 2017 WL 5560040

Minn. Ct. App. / Nov. 20, 2017 / Not Reported in N.W.2d

While Cassie Garza awaited trial for domestic abuse by strangulation and malicious punishment of a child, the district court deemed evidence of Garza's alleged previous child abuse inadmissible to prove her guilt. But the prosecutor's closing argument urged the jury to believe that Garza was guilty specifically because of the prior "substantiated allegations of abuse" against her. The jury found Garza guilty of malicious punishment. Because the prosecutor's argument constituted misconduct and the state does not establish that the prosecutor's improper argument did not prejudice Garza's right to a fair trial, we reverse her conviction and remand for a new trial.

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State v. Collier, No. A16-0268, 2017 WL 5985377

Minn. Ct. App. / Dec. 4, 2017 / Not Reported in N.W.2d

Appellant argues that the predatory-offender-registration statute violates his right to substantive and procedural due process as well as the separation-of-powers doctrine. Collier argues that since *Boutin*, the legislature has substantially expanded the predatory-offender-registration requirements, including corrections agencies supervising offenders must notify a child-protection agency before authorizing the offender to live in a household with children. Collier has not demonstrated that he has been or is likely to be deprived of housing as a result of the child-protection agency notification. Court affirms.

State v. Moos, No. A17-0816, 2018 WL 1370579

Minn. Ct. App. / Mar. 19, 2018 / Not Reported in N.W.2d

Appellant Jason Moos challenges the sufficiency of the evidence to support his conviction of first-degree criminal sexual conduct. He argues that the victim's testimony required corroboration because her testimony and her reports before trial were inconsistent and contradictory and that no corroboration was provided. Moos points to M.F.'s widely different ranges on how long the sexual abuse lasted, varying from her early report to her boyfriend of the abuse ending at age eight to a later report to the child-protection investigator of it ending when she was five or six years old. Court affirms.

State v. Goulet, No. A17-0452, 2018 WL 1462202

Minn. Ct. App. / Mar. 26, 2018 / Not Reported in N.W.2d

Appellant Brett Allen Goulet was convicted of first-degree criminal sexual conduct for sexually penetrating his minor step daughter. On appeal, he argues that the only evidence of penetration was the victim's own testimony which—he contends—was so contradictory and inconsistent that it could not lead a reasonable juror to find him guilty. Goulet also claims the district court's erroneous decision to allow prosecutors to question him about being on probation caused him not to testify in his own defense. He argues that either error requires this court to reverse and remand for a new trial. Court affirms.

Jackson v. Comm'r of Human Servs., No. A17-1135, 2018 WL 2470681

Minn. Ct. App. / June 4, 2018 / Not Reported in N.W.2d

Relator appeals respondent's denial of his request for reconsideration or to set aside his disqualification from providing direct-care services. Relator argues that respondent acted arbitrarily, capriciously, and without sufficient evidence in refusing to rescind the disqualification. He also argues the Minnesota Department of Human Services Background Studies Act, and respondent's actions under the act, violate his due-process rights, the separation-of-powers doctrine, and the rules of evidence. As part of a background study, respondent requested records related to a termination of relator's parental rights. Based on the information contained in the records, respondent concluded that relator was disqualified from positions allowing direct contact with persons receiving services from programs licensed by respondent. Court affirms.

Child Protection Case Summaries

September 1, 2017 – September 5, 2018

Current as of September 5, 2018

State of Minnesota v. Robert Howard Nordquist, No. A17-1135, 2018 WL 2470681

Minn. Ct. App. / Aug. 6, 2018 / Not Reported in N.W.2d

Among other things, Appellant argues that his convictions must be reversed because he was denied his constitutional right to present a defense when the district court excluded evidence of the complainant's (C.N.) prior false allegations of sexual abuse. The Court of Appeals found the district court did not abuse its discretion in excluding evidence of C.N.'s prior false allegations. Court affirms.