

**CHAPTER 38**

**CASE LAW SUMMARY**

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**CHILD IN NEED OF PROTECTION SERVICES (CHIPS)**

**A. CHIPS Definitions**

Listed below are the 16 statutory reasons a child can be adjudicated as a child in need of protection or services (CHIPS)<sup>1</sup>. Minn. Stat. § 260C.007, subd. 6. "The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2; *see* Minn. Stat. § 260C.001, subd. 3, § 260C.301, subd. 7 (making similar statements). And "[i]n proceedings involving an American Indian child, as defined in section Minn. Stat. § 260.755, subd. 8, the best interests of the child must be determined consistent with Minn. Stat. § 260.751 to 260.835 and the Indian Child Welfare Act, 25 U.S.C. § 1901 to 1923." Minn. Stat. § 260C.001, subd. 2.

**1. Child is Abandoned or Without Parent Guardian or Custodian**

Minn. Stat. § 260C.007, subd. 6(1)

*A child may be adjudicated CHIPS if the child is abandoned or without parent, guardian or custodian. Minn. Stat. § 260C does not define the term "abandoned." However, the term "abandoned" is defined in Minn. Stat. § 260C.301, subd. 2, related to evidence necessary to terminate parental rights.*

- *In re Welfare of C.M.K.*, 552 N.W.2d 768, 770 (Minn. Ct. App. 1996) (rejecting argument that child involved in deportation proceedings was abandoned under state law where (a) the Immigration and Naturalization Service was child's legal custodian; (b) child lived with foster parents; (c) child's parents had not abandoned child, child had left his parents; and (d) foster parents' petition that child be deemed in need of long-term foster care contained no allegation that INS was not performing adequately as legal custodian).
- *In re Custody of M.A.L.*, 457 N.W.2d 723, 726 (Minn. Ct. App. 1990) (statutes define "custodian" as someone with legal duty to care for a child or someone who is actually caring for child, that child in question was being cared for (albeit by persons who had not been awarded custody), and that child's paternity had not been adjudicated, and holding child was not "abandoned").

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<sup>1</sup> Before 1988, the juvenile-protection statutes did not include the classification "Child in need of protection or services." *See* Minn. Stat. § 260.015 (1986, Supp. 1987). The statutes did, however, include the classifications "Dependant child" and "Neglected child." Minn. Stat. § 260.015, subsd. 5, 10 (1986) (respectively). In 1988, the legislature amended the juvenile-protection statutes to create the classification of "Child in need of protection or services" and to eliminate the classifications "Dependant child" and "Neglected child." 1988 Minn. Laws ch. 673, § 3 (enacting definition of "Child in need of protection or services"), 40 (repealing classifications "Dependant child" and "Neglected child"). This court noted that the CHIPS classification "include[ed] all children formerly within the 'dependent' and 'neglected' classifications[.]" *In re Welfare of S.A.C.*, 529 N.W.2d 517, 519 (Minn. Ct. App. 1995). The inference drawn in *S.A.C.*, is consistent with the preamble to 1988 Minn. Laws ch. 673, which states that the act "eliminate[ed] statutory references to 'dependency' and 'neglect' and substitute[ed] the term 'child in need of protection or services.'" *See generally Carlson v. Lilyerd*, 449 N.W.2d 185, 190-91 (Minn. Ct. App. 1989) (noting language in preamble, though not dispositive, may be considered in construing legislative intent), *review denied* (Minn. Mar. 8, 1990). Thus, because of the evolution of the juvenile-protection statutes, certain cases in this outline involve children who were adjudicated "dependent" or "neglected" rather than CHIPS.

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2. **Child is Victim of Physical or Sexual Abuse or Domestic Violence**

Minn. Stat. § 260C.007, subd. 6(2)

*A child may be adjudicated CHIPS as an abused child where the child "(i) has been a victim of physical or sexual abuse, (ii) resides with or has resided with a victim of domestic child abuse as defined in [Minn. Stat. § 260C, subd. 5], (iii) resides with or would reside with a perpetrator of domestic child abuse or child abuse as defined in subdivision 5, or (iv) is a victim of emotional maltreatment as defined in subdivision 8[.]"*

- *In re Welfare of H.M.S.*, 541 N.W.2d 301, 304 (Minn. 1995) (holding district court did not abuse its discretion when it did not alter permanent custody of children based on a single occurrence of abusive discipline)
- *Uhl v. Uhl*, 413 N.W.2d 213, 217 (Minn. Ct. App. 1987) (affirming award of custody to parent who abused child, noting abuse was not "egregious," was non-repetitive, abuser was under stress and from different culture, and abuser was open and amenable to therapy, willing to undergo additional therapy, and willing to change her habits).
- *In re Welfare of M.E.W.*, 400 N.W.2d 375 (Minn. Ct. App. 1987) (affirming determination that child's "environment or associations are such as to be injurious or dangerous to [the child]" where stepfather had sexual relationship with twelve-year-old child, and stating mother's lack of knowledge of the relationship was immaterial to determination that the child's environment endangered the child).
- *In re Welfare of J.K.M.*, 397 N.W.2d 14, 16-17 (Minn. Ct. App. 1986), *review denied* (Minn. Feb. 13, 1987) (affirming determination that child's "occupation, behavior, condition, environment or association are such as to be injurious or dangerous to himself or others" and that there was a serious risk of future injury to the child where child had sustained several serious injuries while in presence of either or both parents, including fractured skull, and parents lacked a credible explanation for injuries).
- *In re Welfare of S.G.*, 390 N.W.2d 336, 341 (Minn. Ct. App. 1986) (affirming determination that two daughters were neglected where father sexually abused one daughter and psychologist indicated that second daughter, who witnessed the abuse, was a "a secondary victim of the abuse").
- *In re Welfare of S.G.*, 390 N.W.2d 336, 342 (Minn. Ct. App. 1986) (noting sexual abuse of child is a reason grave enough and weighty enough to deprive parents of custody).
- *In re Welfare of V.R.*, 355 N.W.2d 426, 430-31 (Minn. Ct. App. 1984), *review denied* (Minn. Jan. 11, 1985) (involving physical and sexual abuse of child).

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3. **Child Lacks Adequate Food, Clothing, Shelter, Education, or Care**

Minn. Stat. § 260C.007, subd. 6(3)

*A child may be adjudicated CHIPS as lacking adequate care where the child "is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care[.]"*

- *In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. Ct. App. 1994), *review denied* (Minn. Nov. 24, 1994) (affirming CHIPS adjudication where there was a history of chemical abuse by mother and one of the fathers, two youngest children suffered malnutrition ("failure to thrive"), mother and children experienced domestic abuse by one of the fathers, abuse had not been addressed in counseling, and mother had not completed parenting training).
- *In re Welfare of T.K.*, 475 N.W.2d 88, 93 (Minn. Ct. App. 1991) (where parents refused to let their children take required standardized testing and the children were removed from home as children in need of protective services for parents' failure to provide necessary education, this court reversed and remanded, noting Minnesota statutes mandate certain "remedies in the context of a child taking the test and failing to score at the 30th percentile" and stating "we can discern no rationale" allowing "harsher sanctions [i.e., removal of the child from the home] for failure to take the test than it would for taking and failing it")
- *In re Welfare of B.A.B.*, 572 N.W.2d 776, 779 (Minn. Ct. App. 1998) (noting holding of prior case law that "a 'severe deprivation of education' is necessary 'to warrant a CHIPS determination and *removal* of children from a parent's home under Minn. Stat. § 260.015 and 260.191 [prior statutes]," noting district court did not order child at issue to be removed from her home, and stating neither prior case law nor Minn. Stat. § 260.015 require a showing of 'severe deprivation' of education to support a CHIPS adjudication when disposition does not involve "drastic step" of removing the child from the home).
- *In re Welfare of R.A.*, 375 N.W.2d 578, 580 (Minn. Ct. App. 1985) (affirming neglect determination where father "admitted often getting 'carried away' once he started spanking and acknowledged frequent abuse," and where testimony showed child was verbally abused, but reversing neglect determination as to mother where "only testimony of neglect" was child had "severe diaper rash on one occasion," mother, after consulting with a physician, fed child cereal at an early age so that she would sleep longer, and child "was observed in her crib when she was awake").
- *In re Welfare of Children of C.*, 348 N.W.2d 94, 97 (Minn. Ct. App. 1984) (affirming neglect determination regarding certain children where their mother passively accepted several instances of husband's inappropriate conduct toward children creating situation where children's welfare could not be guaranteed, but reversing determination that certain other children were neglected, stating that children are not neglected "merely because a parent is a harsh disciplinarian[.]"

and that the record lacked both evidence that parents' behavior "was or would be injurious to all of these boys[,]” and lacked expert testimony addressing the issue).

- *In re Welfare of V.R.*, 355 N.W.2d 426, 430-41 (Minn. Ct. App. 1984), *review denied* (Minn. Jan. 11, 1986) (affirming determination of neglect and dependency where record supported finding child had been physically and sexually abused).

#### 4. **Child Lacks Adequate Care for Special Needs**

Minn. Stat. § 260C.007, subd. 6 (4)

*A child may be adjudicated CHIPS if the child is "without the special care made necessary by a physical, mental, or emotional condition because the child's parent, guardian, or custodian is unable or unwilling to provide that care, including a child in voluntary placement due solely to the child's developmental disability or emotional disturbance[.]”*

- *In re Welfare of V.R.*, 355 N.W.2d 426, 430-41 (Minn. Ct. App. 1984), *review denied* (Minn. Jan. 11, 1986) (affirming determination of neglect and dependency where record supported finding that child had been physically and sexually abused).

#### 5. **Child is Medically Neglected**

Minn. Stat. § 260C.007, subd. 6(5)

*A child may be adjudicated CHIPS if the child "is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition. The term 'withholding of medically indicated treatment' means the failure to respond to the infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment other than appropriate nutrition, hydration, or medication to an infant when, in the treating physician's or physicians' reasonable medical judgment:*

- (i) *the infant is chronically and irreversibly comatose;*
- (ii) *the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or*
- (iii) *the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane[.]”*

#### 6. **Parent Wants Relief**

Minn. Stat. § 260C.007, subd. 6(6)

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*A child may be adjudicated CHIPS if the child "is one whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody, including a child in placement according to voluntary release by the parent under section 260C.212, subdivision 8[.]"*

**7. Child Placed for Illegal Adoption**

Minn. Stat. § 260C.007, subd. 6(7)

*A child may be adjudicated CHIPS if the child "has been placed for adoption or care in violation of law[.]"*

**8. Child Lacks Care Because of Parent's Condition**

(Minn. Stat. § 260C.007, subd. 6(8))

*A child may be adjudicated CHIPS if the child "is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian[.]"*

- *In re Welfare of J.W.*, 391 N.W.2d 791 (Minn. 1986) (reinstating district court's determination that children were neglected under Minn. Stat. § 260.015, subd. 10(b) (1984) [predecessor statute] because they were without proper parental care due to the faults and habits of their parents where there was an unexplained homicide of a child in parents' care, a history of family violence, and the children were young and vulnerable).
- *In re Welfare of V.R.*, 355 N.W.2d 426, 430-41 (Minn. Ct. App. 1984), *review denied* (Minn. Jan. 11, 1986) (affirming determination of neglect and dependency where record supported finding that child had been physically and sexually abused).

**9. Child is Dangerous to Self or Others**

Minn. Stat. § 260C.007, subd. 6(9)

*A child may be adjudicated CHIPS if the child "is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others. An injurious or dangerous environment may include, but is not limited to, the exposure of a child to criminal activity in the child's home[.]"*

**10. Child Experiences Growth Delays**

Minn. Stat. § 260C.007, subd. 6(10)

*A child may be adjudicated CHIPS if the child "is experiencing growth delays, which may be referred to as failure to thrive, that have been diagnosed by a physician and are due to parental neglect[.]"*

- *In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. Ct. App. 1994), *review denied* (Minn. Nov. 24, 1994) (equating "malnutrition" with "failure to thrive" and affirming that determination where mother and children experienced domestic

abuse by one of the fathers, abuse had not been addressed in counseling, mother had not completed parenting training, and while she had completed the first phase of chemical dependency treatment and sought further counseling, the record supported the CHIPS adjudication).

**11. Child Engaged in Prostitution**

Minn. Stat. § 260C.007, subd. 6(11)

*A child may be adjudicated CHIPS if the child "has engaged in prostitution as defined in section 609.321, subdivision 9[.]"*

**12. Child is Delinquent before Age 10**

Minn. Stat. § 260C.007, subd. 6(12)

*A child may be adjudicated CHIPS if the child "has committed a delinquent act or a juvenile petty offense before becoming ten years old[.]"*

- *In re Welfare of S.A.C.*, 529 N.W.2d 517, 519 (Minn. Ct. App. 1995) (stating a child under age ten cannot be a "delinquent child" under the Juvenile Court Act because legislature intended to remove children under age ten who have violated laws from delinquency jurisdiction by including them in the CHIPS definition).

**13. Child is a Runaway**

Minn. Stat. § 260C.007, subd. 6(13)

*A child may be adjudicated CHIPS if the child "is a runaway[.]" "Runaway" means an unmarried child under the age of 18 years who is absent from the home of a parent or other lawful placement without the consent of the parent, guardian, or lawful custodian." Minn. Stat. § 260.007, subd. 6(28)*

**14. Child is a Habitual Truant**

Minn. Stat. § 260C.007, subd. 6(14)

*A child may be adjudicated CHIPS if the child "is a habitual truant[.]"*

- *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. Ct. App. 1998) (citing Minn. Stat. § 260.015, subd. 19 (1996) to define "habitual truant" as "a child under the age of 16 years who is absent from attendance at school without lawful excuse for seven school days if the child is in elementary school or for one or more class periods on seven school days if the child is in middle school, junior high school, or high school"). See Minn. Stat. § 260C.007, subd. 19 (2006) (current definition of "habitual truant").
- *In re Welfare of B.A.B.*, 572 N.W.2d 776, 779 (Minn. Ct. App. 1998) (addressing the relationship between "educational neglect" and "habitual truancy," stating "educational neglect and habitual truancy provisions are not in *pari materia* because the statutes address different child protection issues. Truancy implies

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volitional conduct on the part of the child for which the child is responsible. But when the child is absent from school because of the actions of the parent, the appropriate basis for extending protection or services is Minn. Stat. § 260.015, subd. 2a(3) [now 260C.007, subd. 6(3)]. Because habitual truancy focuses on the behavior of the child, whereas educational neglect focuses on the behavior of the parent, the threshold requirement for a finding of habitual truancy that an elementary school child be absent from school for seven school days without lawful excuse does not apply to an educational neglect determination.”).

- *In re Welfare of B.A.B.*, 572 N.W.2d 776, 779 (Minn. Ct. App. 1998) (noting holding of prior case law that “a ‘severe deprivation of education’ is necessary ‘to warrant a CHIPS determination and *removal* of children from a parent’s home under Minn. Stat. § 260.015 and 260.191 [prior statutes],” noting district court did not order child at issue to be removed from her home, and stating neither prior case law nor Minn. Stat. § 260.015 require a showing of ‘severe deprivation’ of education to support a CHIPS adjudication when disposition does not involve “drastic step” of removing the child from the home).
- *In re Welfare of T.K.*, 475 N.W.2d 88, 93 (Minn. Ct. App. 1991) (where parents refused to let their children take required standardized testing and the children were removed from home as children in need of protective services for parents’ failure to provide necessary education, this court reversed and remanded, noting Minnesota statutes mandate certain “remedies in the context of a child taking the test and failing to score at the 30th percentile” and stating “we can discern no rationale” allowing “harsher sanctions [i.e., removal of the child from the home] for failure to take the test than it would for taking and failing it”).
- *In re Welfare of L.Z.*, 396 N.W.2d 214, 218 (Minn. 1986) (stating to be truant, “child must (1) be absent from school for the requisite number of days, (2) without a lawful excuse, and (3) by his or her own choice or neglect”).
- *In re Welfare of L.Z.*, 396 N.W.2d 214, 220-21 (Minn. 1986) (noting that if proper foundation is laid, school attendance records are admissible over hearsay and confrontation-clause objections to establish school absences, and stating that proper foundation for admission of school-attendance records should include testimony of qualified person that the records were prepared in accordance with clear, adequate, and reliable policies and procedures consistent with legal definition of habitual truancy and that, upon proper foundation, records are admissible to show (a) child was absent on a particular day; and (b) what excuse, if any, was offered by parent, or fact that no excuse was received for absence from parent or guardian).

#### 15. **Child Found Incompetent**

Minn. Stat. § 260C.007, subd. 6(15)

*A child may be adjudicated CHIPS if the child “has been found incompetent to proceed or has been found not guilty by reason of mental illness or mental deficiency in connection with a delinquency proceeding, a certification under section 260B.125, an*

*extended jurisdiction juvenile prosecution, or a proceeding involving a juvenile petty offense[.]”*

**B. Adjudication**

Minn. R. Juv. Prot. P. 40.01-.02

*If the statutory grounds alleged in CHIPS petition are proven, the district court "shall" (a) adjudicate the child CHIPS and make a disposition of the child under RJPP 41; or (b) if it is in the child's best interest, withhold a CHIPS adjudication for up to 90 days, during which time the district court "may" enter a disposition plan. If an adjudication is withheld, a hearing "shall" occur within 90 days of the district court's withholding of the adjudication and, at the hearing, the district court "shall either" (a) dismiss the matter without an adjudication if the child and legal custodian have complied with the terms of the continuance; or (b) adjudicate the child CHIPS if either the child or the legal custodian has not complied with the terms of the continuance, and make a disposition under RJPP 41.*

**C. Disposition**

Minn. R. Juv. Prot. P. 41.01-.06

*After adjudicating a child CHIPS, the district court "may, upon its own motion or the motion of a party or the county attorney, order a pre-disposition report[.]" and "shall" hold a disposition hearing. RJPP 41.03, subd. 1 (pre-disposition report); RJPP 41.01 (requirement of hearing); see RJPP 41.03, subds. 2-5 (addressing advisory to parties that report is being done, filing of report, and ability to discuss report). The disposition hearing "shall be conducted [informally]" and the district court "may admit any evidence" relevant to the disposition of the matter. RJPP 41.04. "To the extent practicable," the district court shall hold the disposition hearing and order a disposition the same day as the CHIPS adjudication. RJPP 41.02. The dispositions available to the district court depend on the reason(s) the child was adjudicated CHIPS. See Minn. Stat. § 260C.201, subd. 1(a)-(c) (addressing children adjudicated CHIPS or neglected and in foster care, children adjudicated CHIPS because child is a runaway or habitual truant, and certain children over age 14 who were adjudicated CHIPS because of habitual truancy (respectively)).<sup>2</sup>*

*A disposition order "must be issued within" 10 days of the adjudication. RJPP 41.02. The various required findings and matters the order shall address are discussed in RJPP 41.05. The disposition order "shall" also set "the date or deadline for the permanent placement determination hearing." RJPP 42.01, subd. 1; see RJPP 42.01, subd. 2, 42.02-.03 (addressing purpose of permanent placement hearing and calculation of time for out-of-home placement purposes). A CHIPS disposition order must be served on "[a]ny person" who provides services to a child under a disposition order. Minn. Stat. § 260C.201, subd. 8. Also, review of dispositions involving an award of legal custody to the social services agency "shall" occur "at least" every 90 days, and review of dispositions involving*

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<sup>2</sup> Further, Minn. Stat. § 260C.201, subd. 1(d) addresses certain children who were adjudicated CHIPS because they committed domestic abuse and who were excluded from the home of the child's parent, but for whom the parent is willing or able to provide "an alternative safe living arrangement for the child" under 1997 Minn. Laws ch. 239, art. 10, § 2. But 1997 Minn. Laws ch. 239, art. 10, § 2 appears no longer to be effective. See Item I A (16) "Child found to have Committed Domestic Abuse," above.

*protective supervision "shall" occur "at least" every six months. RJPP 41.06, subd. 1; see RJPP 41.06, subds. 2-3, 5-6 (addressing procedures for review). When appropriate, the district court may modify the disposition. See RJPP 41.06, subds. 4, 7.*

*The procedures for a permanent placement hearing depend, in part, on whether the child who is the subject of the proceedings is less than age eight, or is age eight or older. Compare RJPP 42.02, subd. 1 (addressing child under age eight) with RJPP 42.04, subd. 2 (addressing child age eight or older). The permanent placement order "shall" be issued within 15 days of the close of the hearing, but the district court "may" extend this period for an additional 15 days if the district court finds it to be in the child's best interests to do so. RJPP 42.05, subd. 1. The contents of the order depend on the disposition ordered. See RJPP 42.05, subd. 2(a)-(f) (addressing orders returning child home, transferring permanent legal and physical custody of child, terminating parental rights, awarding guardianship and legal custody to Commissioner of Human Services, placing child in long term foster care, and placing child in foster care for a specific period of time). If a child is placed in long term foster care or foster care for a specific period of time, review of that foster care is required "at least" every 12 months. RJPP 42.05, subd. 2(g).*

- *In re A.R.M.*, 611 N.W.2d 43, 48-49 (Minn. Ct. App. 2000) (stating "[u]nder [Minn. Stat. § 260C.201, subd. 11(a) (2000)], the district court must 'conduct a hearing to determine the permanent status of a child not later than 12 months after the child is placed out of the home of the parent.' Minn. Stat. § 260C.201, subd. 11(a). At that point, unless the county is recommending that the child be returned to the custodial parent(s), the county must 'establish the basis for the juvenile court to order permanent placement of the child.' Minn. Stat. § 260C.201, subd. 11(b). After the hearing, the district court must either return the child home or put the child in 'a permanent placement in the child's best interests.' Minn. Stat. § 260C.201, subd. 11(c). If the district court determines that returning the child home is not in the child's best interests, the court 'must' order one of certain statutorily-listed dispositions, including 'permanent legal and physical custody to a *relative*.' Minn. Stat. § 260C.201, subd. 11(e) (emphasis added). The definition of 'relative' includes 'parent.' Minn. Stat. § 260C.007, subd. 14 (Supp. 1999). And the definition of 'parent' would include father here. Minn. Stat. § 260C.007, subd. 12 (Supp. 1999). Also, orders issued under Minn. Stat. § 260C.201, subd. 11, which transfer 'permanent legal and physical custody' of a child to a relative 'shall follow the standards and procedures applicable under this chapter, chapter 260, or chapter 518' and 'must be filed with the family court.' Minn. Stat. § 260C.201, subd. 11(e)(1) (emphasis added). Thus, the pre-existing custody award in the dissolution judgment does not preclude use of Minn. Stat. § 260C.201, subd. 11, to place custody with father.").
- *In re Welfare of G.S.*, 352 N.W.2d 511, 513 (Minn. Ct. App. 1984) (stating "[t]he trial court had a duty under Minn. Stat. § 260.191 [260C.201] to act in a fashion serving the best interests of the child").
- *In re Welfare of Children of C.*, 348 N.W.2d 94, 98 (Minn. Ct. App. 1984) (affirming transfer of custody to county with instructions to place children in current placement as a foster home, where children's best interests favored keeping children in their current home and in a familiar locale and school system until their parents were capable of

giving proper care, and rejecting parents' argument that 200-mile drive to visit children was too costly for parents).

- *In re Welfare of Children of C.*, 348 N.W.2d 94, 98 (Minn. Ct. App. 1984) (Vacating disposition of other children where underlying neglect adjudication was fatally defective).

#### D. Standard of Proof

**Generally -- CHIPS and TPR.** *To be proved at trial, the statutory grounds set forth in the petition must be proved by clear and convincing evidence. Minn. Stat. § 260C.163, subd. 1(a).*

**Indian Child – Foster Care Placement.** *In the case of an Indian child, "no foster care placement may be ordered in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child." 25 U.S.C. § 1912(e)*

**Indian Child – TPR.** *In the case of an Indian child, "no termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, as defined in Minnesota Rule 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child." 25 U.S.C. § 1912(f).*

- *In Re the Matter of M.S.S.*, 465 N.W.2d 412 (Minn. Ct. App. 1991), (in ICWA matters, standard of proof is beyond a reasonable doubt)

#### E. Standard of Review

- *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. Ct. App. 1998) (stating (a) "[f]indings in a CHIPS proceeding will not be reversed unless clearly erroneous or unsupported by substantial evidence. Under the 'clearly erroneous' portion of this court's review of the district court's findings, a district court's individual fact-findings will not be set aside unless the review of the entire record leaves the court 'with the definite and firm conviction that a mistake has been made'; and (b) appellate courts determine whether the record contains substantial evidence to support the district court's decision by taking into account that the clear-and-convincing burden of proof in the district court and closely inquiring into the sufficiency of the evidence to determine whether the evidence is clear and convincing).
- *In re A.R.M.*, 611 N.W.2d 43, 50 (Minn. Ct. App. 2000) (stating findings in CHIPS proceedings are not reversed unless clearly erroneous or unsupported by substantial evidence).

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## F. Case Plans

### 1. General Requirements

*The responsible social services agency, when it is the petitioner, is required to provide a case plan. RJPP 37.01. Within 30 days of filing a CHIPS petition, the responsible social services agency is also required to provide an out-of-home placement plan containing certain elements. RJPP 37.02, subds. 1-3. Court approval, court-modification, and court-ordered compliance with court-ordered out-of-home placement plans are addressed at RJPP 37.02, subds. 4-5, while court approval of out-of-home placement plan for voluntary out-of-home placements is addressed at RJPP 37.03, subd. 3. When a child is not in out-of-home placement, a services plan must accompany a CHIPS petition unless the responsible social services agency explains why a services plan does not do so. RJPP 37.04. Plans for disabled children, and children who are under protective supervision, in need of special care or services, allowed to live independently, or who are runaways or habitual truants are addressed at RJPP 37.05, and RJPP 37.06.*

*After an out-of-home placement plan or a case plan is approved by the district court, the responsible social services agency is required to provide the district court with periodic reports, the content, timing, and the objections to which are addressed at RJPP 38.01-.04. Similarly, guardians ad litem are required to provide periodic reports, those reports may be supplemented orally or in writing at or before a hearing, and their content, and timing, as well as objections to those reports are addressed at RJPP 38.05.*

### 2. Circumstances Under Which Case Plans Need not be Provided

- *In re Children of Vasquez*, 658 N.W.2d 249, 252 (Minn. Ct. App. 2003) (noting “[e]ach child in need of protection or services (CHIPS) intervention requires a case plan that reflects the reasonable efforts of a social services agency to facilitate reunification of the parent and child. Minn. Stat. § 260.012 (Supp. 2001) (outlining reasonable efforts for rehabilitation and reunification).
- *In re Children of Vasquez*, 658 N.W.2d 249, 252 (Minn. Ct. App. 2003) (stating that “[b]ecause of the clear futility of returning the children to appellant’s day-to-day care, the county was not required to provide appellant with a case plan or services for the purpose of reunification”); *see also In re P.T.*, 657 N.W.2d 577, 583-84 (Minn. Ct. App. 2003).
- *In re Children of Vasquez*, 658 N.W.2d 249, 253 (Minn. Ct. App. 2003) (stating “[t]his court has previously held that the failure to provide a case plan and the county’s lack of effort to reunite a parent with his child, where the incarcerated parent was in prison for battering the child, was ‘excusable under the circumstances.’ *In re Welfare of Udstuen*, 349 N.W.2d 300, 304 (Minn. Ct. App. 1984),” and holding “that when the futility of reunification efforts is irrefutable, as here where the father will be incarcerated until his children’s adulthood and efforts

at rehabilitation would be futile, the county need not provide the parent with a case plan.”).

- *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 250 (Minn. Ct. App. 2003) (stating “[a]fter a child has been alleged to be [CHIPS], the county must provide reasonable efforts to prevent placement and reunite the family. Minn. Stat. § 260.012(a). Reasonable efforts means that the county must exercise due diligence to ‘use appropriate and available services to meet the needs of the child and the child’s family \* \* \* to eliminate the need for removal and reunite the family.’ Minn. Stat. § 260.012(b). In determining whether reasonable efforts were made, ‘the child’s health and safety must be of paramount concern.’ Minn. Stat. § 260.012(a). In certain instances, however, the county need not provide reasonable efforts for ‘rehabilitation and reunification’ if the court determines that ‘a termination of parental rights petition or other petition according to section 260C.201, subdivision 11, has been filed alleging a prima facie case that the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances.’ Minn. Stat. § 260.012(a)(3).”).

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**TERMINATION OF PARENTAL RIGHTS (TPR)**

**A. Voluntary Termination**

Minn. Stat. § 260C.301, subd. 1(a)

*Upon petition, with the written consent of a parent who, for good cause, desires to terminate parental rights, the juvenile court may terminate all rights of a parent to a child. "good cause" for voluntary termination is not defined in the statute; under case law, good cause exists under a variety of circumstances usually related to the best interests of the child.*

**1. Voluntary Termination, Generally**

- See *In re Welfare of J.D.N.*, 504 N.W.2d 54, 56-57 (Minn. Ct. App. 1993) (stating good cause for purposes of voluntary termination of parental rights includes (1) to enable judicial system to legally remove child from destructive or unhealthy home environment and (2) to facilitate adoption). See also *In re Welfare of K.T.*, 327 N.W.2d 13, 16 (Minn. 1982).
- *In re Welfare of J.D.N.*, 504 N.W.2d 54, 56-57 (Minn. Ct. App. 1993) (stating requirement of good cause preserves the child's rights under legal relationship with parent, including right to receive social security benefits, to inherit through intestate succession, to recover in a wrongful death action, and to receive child support).
- *In re Welfare of W.L.P.*, 678 N.W.2d 703, 712 (Minn. Ct. App. 2004) (stating circumstances justifying involuntary termination do not necessarily justify voluntary termination and therefore admission to involuntary termination petition does not automatically create voluntary termination; parent must take affirmative steps to voluntarily terminate parental rights under the statute). See *In re Welfare of J.D.N.*, 504 N.W.2d 54, 56-57 (Minn. Ct. App. 1993).
- *In re Welfare of W.L.P.*, 678 N.W.2d 703, 712 (Minn. Ct. App. 2004) (stating, to convert involuntary termination petition to voluntary petition, parent may file new petition articulating good cause for voluntary termination and citing Minn. Stat. § 260C.301, subd. 1(a), or may formally seek to amend the original petition to cite Minn. Stat. § 260C.301, subd. 1(a), as basis for the petition).
- *In re Welfare of D.D.G.*, 558 N.W.2d 481, 485 (Minn. 1997) (stating (a) test for determining presence of good cause to voluntarily terminate parental rights is whether parent had sound reasons for consenting at the time of termination, a determination not restricted by existence of cause for involuntary termination; (b) sufficient good cause to voluntarily terminate parental rights existed where doing so would allow child to enter stable home with half-brother, it was unfair to make child wait years for father to become able to parent, father admitted parents' conduct (including yelling at each other, hitting each other, using drugs at home, and being arrested after a "police drug raid") could harm a child; and (c) fact that

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the child had spent 17 months with grandparents by time of father's consent was good reason to believe stability of child's environment and grandparents' adoption efforts would be served by voluntary termination); *see In re Welfare of K.T.*, 327 N.W.2d 13, 16 (Minn. 1982) (stating mother's lack of contact with her child and belief that she could not care for two children financially are sufficient to provide good cause for voluntary termination of parental rights).

- *In re Welfare of D.C.M.*, 443 N.W.2d 853, 854-55 (Minn. Ct. App. 1989) (stating once good cause for voluntary termination is established, child's best interests become paramount consideration, and affirming voluntary termination of parental rights where evidence supporting termination included recommendations of child's long-term therapist, a private psychologist, child's guardian ad litem, and child's attorney, where evidence opposing termination was limited to recommendations of persons who had minimal contacts with child, and where parents' rejection of child was complete and no evidence suggested it was reversible, meaning that subjecting child to additional reunification counseling was not in child's best interests), *review denied* (Minn. Sept. 21, 1989).

## 2. **Withdrawal of Voluntary Termination**

- *In re Welfare of A.M.P.*, 507 N.W.2d 616, 620 (Minn. Ct. App. 1993) (suggesting termination statute does not preclude parent from revoking voluntary consent to termination before court accepts consent and orders termination). *But see* RJPP 43.04 (enacted after *A.M.P.* and addressing voluntary termination of parental rights).
- *In re Welfare of D.D.G.*, 558 N.W.2d 481, 485 (Minn. 1997) (stating, generally, order granting voluntary termination of parental rights may be rescinded only on showing of fraud, duress, or undue influence and ruling that record did not show existence of one of these reasons to rescind order)
- *In re Welfare of K.T.*, 327 N.W.2d 13, 16 (Minn. 1982) (stating (a) termination of parental rights is a final adjudication of parental rights which can only be set aside upon a showing of fraud, duress, or undue influence; (b) at some point, permanence for child and adoptive parents becomes more important than natural parent's right to reconsider decision to voluntarily terminate parental rights; (c) it is not in child's best interests for parent-child relationship to be continually altered; and (d) only most serious circumstances justify tampering with this most fundamental relationship).
- *In re Welfare of K.T.*, 327 N.W.2d 13, 18 (Minn. 1982) (stating decision to voluntarily consent to termination of parental rights cannot be abrogated except for grave and weighty reasons, and that a parent who has consented to a termination order cannot have order set aside simply because parent changed her mind or her circumstances otherwise changed; a serious and compelling reason must exist to once again uproot the child and dramatically change his living environment).

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**B. Involuntary Termination**

Minn. Stat. § 260C.301, subd. 1(b)(1)-(9)

*A juvenile court may, upon petition, terminate all rights of a parent to a child on one or more of nine grounds list below.*

- *In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005) (if a single statutory basis for terminating parental rights is affirmable, the appellate court need not address any other statutory bases the district court may have found to exist).

**1. Abandonment**

Minn. Stat. § 260C.301, subd. 1(b)(1)

*A juvenile court may, upon petition, terminate all rights of a parent to a child if the court finds that the parent has abandoned the child.*

**(a) Presumption of Abandonment**

*Under Minn. Stat. § 260C.301, subd. 2(a)(1)(2), abandonment is presumed when (1) a parent has had no contact with a child on a regular basis, has not demonstrated consistent interest in the child's well-being for six months despite the social-service agency making reasonable efforts to facilitate contact, and unless the parent has established an extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause preventing the parent from making contact with the child (this presumption does not apply to children whose custody has been determined under chapter 257 or 518); or (2) a child is an infant under age two and has been deserted by the parent under circumstances showing an intent not to return to care for the child.*

- *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004) (stating presumption of abandonment arises if parent has had no regular contact with child and not has demonstrated a consistent interest in child's well-being for six months and social services has made reasonable efforts to facilitate contact, noting both that reasonable county efforts to facilitate parent-child contact are not required if county is not seeking to use the presumption of abandonment).
- The court is not prohibited from finding abandonment absent a presumption of abandonment. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004); *In re Children of Vasquez*, 658 N.W.2d 249, 254 (Minn. Ct. App. 2003)).
- *Matter of Welfare of A.Y.-J.*, 558 N.W.2d 757, 761 (Minn. Ct. App. 1997), *review denied* (Minn. Apr. 15, 1997) (affirming determination that first prong of abandonment presumption was met where evidence described in opinion showed father had limited irregular contact with child and that his actions did

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not “demonstrate a consistent interest in the child’s well-being” as required by what is now Minn. Stat. § 260C.301, subd. 2(a)(1)(2)).

- *In re Welfare of L.A.F.*, 554 N.W.2d 393, 397 (Minn. 1996) (stating that social-service agency’s efforts to facilitate parent’s contact with child are not required to involuntarily terminate parental rights unless petitioner seeks to show statutory presumption of abandonment, and that no prior judicial finding of dependency, neglect, or need for protection or services is necessary to terminate parental rights; thus efforts by private agency instead of social-service agency, did not preclude termination where record otherwise supported termination).

**(b) Abandonment Supported by Record**

- *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004) (holding finding of abandonment supported not only by fact that father was incarcerated, but also by record evidence that father “failed to maintain any direct contact with the children during incarceration, failed to inquire about their welfare after learning they had been placed in foster care, relied on the children’s mother to assume sole responsibility for having the children returned to her, failed to respond to the CHIPS petition,” and by father’s other “actions [that] indicated an intention to forsake the duties of parenthood”).
- *In re Children of Vasquez*, 658 N.W.2d 249, 254 (Minn. Ct. App. 2003) (noting (a) Juvenile Court Act does not preclude finding abandonment absent statutory presumptions; (b) imprisonment alone is not sufficient to constitute abandonment, but imprisonment combined with other factors, such as parental neglect and withholding parental affection, can support a finding that a parent has abandoned his child; and (c) abandonment existed where father had history of violence and domestic abuse, murdered the children’s mother, had been in frequent lock-down for his behavior in prison, threatened members of the maternal family, and continued to have inappropriate communications with oldest child).
- *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 57 n.4 (Minn. 2004) (noting father claimed he maintained a relationship via mail and telephone with a child other than the ones who were the subject of the petition, that a letter or phone call alone should not be seen as proof of a meaningful and legally recognizable relationship, and that the absence of such evidence regarding the children subject to the petition disposed of the inquiry).
- *In re Welfare of B.M.*, 496 N.W.2d 407, 408 (Minn. 1993) (stating a parent’s absolute disregard of his child’s interests demonstrates an intent to forsake the child and sever the parent-child relationship, supporting a termination of parental rights).
- *In re Welfare of L.L.N.*, 372 N.W.2d 60, 62, 63 (Minn. Ct. App. 1985) (stating sporadic visitation and child-support payments are insufficient to terminate

parental rights; a court must look to whether the inability to care properly for the child will continue indefinitely, and the issue is whether a parent is presently able and willing to assume his responsibilities and not whether he has from time to time in the past been derelict in his duties).

**(c) Abandonment Not Supported by Record**

- *In re Welfare of J.K.*, 374 N.W.2d 463, 467 (Minn. Ct. App. 1985), *review denied* (Minn. Nov. 25, 1985) (stating evidence was not clear and convincing that statutory ground for termination existed where district court made no finding father's misconduct would continue for indefinite future, any prior abandonment by father of child had been terminated by father's vigorous defense of parental rights, there was no evidence of current refusal by father to accept duties of parent-child relationship, and that, other than separation of the two children, county had no objection to father exercising his parental rights, and that county admitted father's interest was genuine).
- *In re Welfare of M.G.*, 375 N.W.2d 588, 590 (Minn. Ct. App. 1985) (holding father did not abandon child where he had not exercised any parental responsibilities in three years, his adoption-hearing testimony showed a willingness and ability to assume those responsibilities, the only deterrent to re-establishing father-child relationship was child's attitude toward father, and, while there were visitation problems, father stopped visiting daughter because he was unable to correct these problems).

**2. Failure to Abide by Duties of Parent-Child Relationship**

Minn. Stat. § 260C.301, subd. 1(b)(2)

*The juvenile court may, upon petition, terminate parental rights if it finds the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent-child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition, under Minn. Stat. § 260C.301, subd. 1(b)(4), or reasonable efforts would be futile and therefore unreasonable, under Minn. Stat. § 260C.301, subd. 1(b)(5).*

- *In re Welfare of M.M.D.*, 410 N.W.2d 72, 75 (Minn. Ct. App. 1987) (stating district court's decision to terminate parental rights must be based on parent's failure to care for and nurture child at time of hearing and into future; district court decision cannot reflect simple, obvious factors such as mental illness, or a low I.Q.).
- *In re Welfare of J.D.L.*, 522 N.W.2d 364, 367 (Minn. Ct. App. 1994) (affirming termination of father's parental rights, despite recent improvement in the parent-child relationships where that improvement did not show that father currently, or

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ever did, comply with parental duties, and where father had not been child's sole caretaker for longer than two hours, he consistently avoided parental burdens, he repeatedly failed to show up for, cancelled, or departed early from visitation, he often ignored the child during visitation, and when he did pay attention to child, he failed to recognize child's developmental limitations, act as a proper role model, and anticipate potentially dangerous situations).

- *In re Children of Vasquez*, 658 N.W.2d 249, 254-55 (Minn. Ct. App. 2003) (affirming both termination of parental rights for failure to satisfy parental duties and determination that reasonable efforts to correct conditions leading to the petition would be futile where father murdered children's mother and did not allow the children to attend the mother's funeral).
- *In re Welfare of J.S.*, 470 N.W.2d 697, 701-02 (Minn. Ct. App. 1991), *review denied* (Minn. July 24, 1991) (affirming termination of parental rights for failing to comply with parental duties where parents failed to obtain suitable housing, maintain weekly visitation, attend medical appointments or therapy sessions, and understand child's special needs, and where four years of social services included individual therapy and psychological evaluations, extensive services from child-protection worker, enrollment in a prenatal program, young mother's support group, parent education program, and independent living classes).
- *In re Welfare of A.J.C.*, 556 N.W.2d 616, 622 (Minn. Ct. App. 1996), *review denied* (Minn. Mar. 18, 1997) (affirming termination of parental rights for failure to comply with parental duties, despite parent's love for her children, where mother's problems included alcoholism, drug addiction, low self-esteem, and a tendency to involve herself in abusive relationships, where her circumstances repeatedly proved detrimental to children's physical, mental, and emotional welfare, and where county provided at least 25 social services to assist mother and her children, including six reunification attempts).
- *In re Welfare of Adams*, 352 N.W.2d 105, 107 (Minn. Ct. App. 1984), *review denied* (Minn. Nov. 8, 1984) (affirming termination of mother's parental rights, despite mother's promise to improve her behavior, where her prior promises were not fulfilled and she was provided with every possibly helpful service, none of which brought any lasting change in her behavior).
- *In re Welfare of Maas*, 355 N.W.2d 480, 483 (Minn. Ct. App. 1984) (affirming termination of parental rights where record showed mother's "demonstrated inability to care for her previous children," child's lack of "normal physical development," mother's history of chemical dependency, an admission that mother's boyfriend had physically abused the child, mother's continued defense of boyfriend's actions, and, despite fact that mother's behavior may have improved somewhat in the month preceding the hearing, that minimal improvement was not enough to overcome district court's view that mother's problems made her future performance as a parent uncertain).

- *In re Welfare of L.M.M.*, 372 N.W.2d 431, 433-34 (Minn. Ct. App. 1985), *review denied* (Minn. Oct. 18, 1985) (affirming termination of parental rights where record showed mother's history of "violent, unpredictable behavior toward her children," contained expert testimony that mother "was not psychologically able to raise children" and that she had a "long history of uncooperative and violent behavior" toward county services and improper behavior towards her children, and where this court rejected mother's attacks on the credibility to the expert witnesses).
- *In re Welfare of L.L.N.*, 372 N.W.2d 60, 63 (Minn. Ct. App. 1985) (affirming termination of parental rights based, in part, on implied finding father lacked current ability to carry out fatherly duties, regardless of how he behaved before trial).
- *In re Welfare of J.K.*, 374 N.W.2d 463, 466-67 (Minn. Ct. App. 1985), *review denied* (Minn. Nov. 25, 1985) (affirming termination of parental rights where father "kept the household in such a dirty condition and fed his child so haphazardly as to put the child's health in jeopardy[,] . . . viewed the county aid as an unnecessary and unjustified intrusion into his life, and completely failed to cooperate with the county's plans and instructions[,] . . . failed to attend the termination hearing, . . . had no contact with his minor child for almost one year, [and where father's] "whereabouts [were] unknown[,] " but reversing termination with respect to another child where district court made no finding that father's misconduct would continue for indefinite future, where any prior abandonment by father of that child had been terminated by father's vigorous defense of parental rights, where there was no evidence of current refusal by father to accept duties of parent-child relationship, and where other than separation of the two children, county had no objection to father exercising his parental rights, and county admitted father's interest was genuine).
- *In re Welfare of K.M.T.*, 390 N.W.2d 371, 372-73 (Minn. Ct. App. 1986) (affirming termination where mother was "dependent[,] " lacked self esteem and understanding of interpersonal relationships, had limited verbal and problem-solving skills making it difficult for her to think abstractly, denied needing assistance, and stated her family could get by "by keeping to themselves," and where there were expert concerns about mother's ability to manage her life, protect herself from manipulation and victimization, and provide emotionally and physically for her children).
- *In re Welfare of B.L.W.*, 395 N.W.2d 426, 430 (Minn. Ct. App. 1986) (affirming termination, despite efforts by mother to feed and properly clothe child, where record supported district court's finding that mother failed to understand child's special needs, failed to accomplish the objectives of her case plan and, failed to show a sincere desire to parent the child on a permanent basis).
- *In re Welfare of A.H.*, 402 N.W.2d 598, 603 (Minn. Ct. App. 1987) (stating appellant's long history of debilitating mental illness, her poor prognosis, and the

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children's special needs were clear and convincing evidence of cause for terminating parental rights.)

- *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. Ct. App. 2003) (affirming termination of parental rights based on parent's failure to abide by duties of parent-child relationship where parent failed to satisfy "key elements of the court-ordered case plan[,]" including failing to undergo psychological evaluation and parenting assessment, providing no meaningful parenting, and providing no evidence parent had the skill and knowledge to effectively parent).

### 3. **Continuous Failure to Contribute to Support of Child**

Minn. Stat. § 260C.301, subd. 1(b)(3)

*The district court may, upon petition, terminate parental rights it finds that a parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has continuously failed to do so without good cause. This clause cannot be used to terminate parental rights of a noncustodial parent if that parent has not been ordered to, or cannot financially contribute to, the support of the child or aid in the child's birth.*

- *In re Welfare of J.D.L.*, 522 N.W.2d 364, 367 (Minn. Ct. App. 1994) (affirming termination of parental rights where father argued he was not financially able to support child but substantial evidence indicated father should have been able to do so, as demonstrated by amount he spent on cars, alcohol, and girlfriends).
- *In re Welfare of L.L.N.*, 372 N.W.2d 60, 62-63 (Minn. Ct. App. 1985) (stating infrequent visitation and sporadic child support payments are insufficient reasons to terminate parental rights; rather, court must look to whether an inability to care properly for child will continue indefinitely, whether parent is presently able and willing to assume his responsibilities and not whether he has from time to time in the past been derelict in his duties).
- *In re Petition of M.G.*, 375 N.W.2d 588, 591 (Minn. Ct. App. 1985) (affirming refusal to terminate parental rights where father was willing to begin making child support payments after failure to do so for three and one-half years).

### 4. **Palpably Unfitness to be a Parent**

Minn. Stat. § 260C.301, subd. 1(b)(4)

*A district court may terminate parental rights if it finds that a parent is palpably unfit to be a party to the parent-child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent-child relationship, either of which are determined by the court to be of a duration or nature rendering the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.*

#### (a) **Presumption of Palpable Unfitness**

Minn. Stat. § 260C.301, subd. 1(b)(4)

*It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that the parent's parental rights to one or more other children were involuntarily terminated or that the parent's custodial rights to another child have been involuntarily transferred to a relative under section 260C.201, subdivision 11, paragraph (e), clause (1), or a similar law of another jurisdiction.*

- *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. Ct. App. 2004) (holding that it is the parent's burden to prove rebuttal of presumption of palpable unfitness, and that mother failed to do so).
- *In re P.T.*, 657 N.W.2d 577, 584 (Minn. Ct. App. 2003) (discussing the presumption of palpable unfitness and noting that legislature substantially changed the "reasonable efforts" requirement when child has been subjected to egregious harm or the parent's rights to another child have been involuntarily terminated); see *In re Children of T.A.A.*, 702 N.W.2d 703, 709-10 (Minn. 2005).
- *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 249-50 (Minn. Ct. App. 2003) (noting that legal analysis for a parent whose parental rights have previously been terminated is different from one involving no prior termination and that presumption of unfitness relieves district court from establishing independent reasons for termination).

**(b) Circumstances Justifying Termination**

**(1) Generally**

- *In re P.T.*, 657 N.W.2d 577, 591 (Minn. Ct. App. 2003) (holding parent's inability to address child's physical, mental, and emotional needs now and in the reasonably foreseeable future justifies termination).

**(2) Incarceration**

- *In re Children of Vasquez*, 658 N.W.2d 249, 255 (Minn. Ct. App. 2003) (stating incarceration alone not sufficient to prove palpable unfitness, but if petitioner shows behavior is likely to be detrimental to children's physical or mental health or morals, a finding of palpable unfitness may be proper).
- *In re Welfare of R.T.B.*, 492 N.W.2d 1, 3 (Minn. Ct. App. 1992) (including incarceration as a factor for terminating father's parental rights).

**(3) Alcohol/Chemical Abuse**

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- *In re Welfare of R.T.B.*, 492 N.W.2d 1, 3 (Minn. Ct. App. 1992) (considering alcohol and drug abuse in determination of palpable unfitness).
- *In re Welfare of E.L.H.*, 356 N.W.2d 795, 797 (Minn. Ct. App. 1984) (noting that alcoholism that interferes with long-term ability to provide a stable home or to care for a child may justify termination).
- *In re Welfare of Maas*, 355 N.W.2d 480, 483 (Minn. Ct. App. 1984) (noting mother's chemical dependency).

**(4) Physical/Sexual Abuse**

- *In re Welfare of S.R.A.*, 527 N.W.2d 835, 838 (Minn. Ct. App. 1995) (basing termination of parental rights, in part, on domestic and sexual abuse), *review denied* (Minn. Mar. 29, 1995).
- *In re Welfare of C.D.*, 393 N.W.2d 697, 701 (Minn. Ct. App. 1986) (noting parent's repeated physical assault of protection workers and police), *review denied* (Minn. Nov. 26, 1986).
- *In re Welfare of B.M.*, 383 N.W.2d 704, 708 (Minn. Ct. App. 1986), *review denied* (Minn. May. 22, 1986).
- *In re Welfare of L.M.M.*, 372 N.W.2d 431, 433-34 (Minn. Ct. App. 1985), *review denied* (Minn. Oct. 18, 1985) (determining that parent is palpably unfit, in part, because of violent, unpredictable behavior toward children and history of uncooperative and violent behavior toward county services).
- *In re Welfare of M.A.*, 408 N.W.2d 227, 232 (Minn. Ct. App. 1987), *review denied* (Minn. Sept. 18, 1987) (noting a propensity for violence and sexual abuse is "permanently detrimental to the physical or mental health of the child").

**(5) Mental Illness or Impairment**

- *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996) (holding mental illness alone insufficient for termination of parental rights, but if parent's mental illness renders parent "permanently unable" to care for child, rights are to be terminated).
- *In re Welfare of R.T.B.*, 492 N.W.2d 1, 3 (Minn. Ct. App. 1992) (basing termination of parental rights, in part, on character disorder not amenable to treatment).
- *In re Welfare of N.C.K.*, 411 N.W.2d 577, 581 (Minn. Ct. App. 1987) (noting mental illness resulted in violent behavior).

- *In re Welfare of C.D.*, 393 N.W.2d 697, 701 (Minn. Ct. App. 1986), *review denied* (Minn. Nov. 26, 1986) (citing mental-health issues as factor for termination).
- *In re Welfare of P.J.K.*, 369 N.W.2d 286, 290 (Minn. 1985) (discussing mental illness and mental retardation).
- *In re Welfare of T.M.D.*, 374 N.W.2d 206, 211 (Minn. Ct. App. 1985), *review denied* (Minn. Nov. 25, 1985).
- *In re Welfare of A.V.*, 593 N.W.2d 720, 721-22 (Minn. Ct. App. 1999) (holding parent's mental condition, as opposed to conduct, can render a parent palpably unfit).

**(6) Denial of Problem**

- *In re Welfare of J.D.L.*, 522 N.W.2d 364, 368 (Minn. Ct. App. 1994) (affirming determination that parent is palpably unfit, in part, because parent has no understanding of parenting deficiencies and denies domestic abuse).
- *In re Children of T.A.A.*, 702 N.W.2d 703, 708-09 (Minn. 2005).
- *In re Welfare of J.K.*, 374 N.W.2d 463, 466 (Minn. Ct. App. 1985), *review denied* (Minn. Nov. 25, 1985) (noting that parent refuses to admit problem or use county services).
- *In re Welfare of B.C.*, 356 N.W.2d 328, 331 (Minn. Ct. App. 1984) (noting mother won't admit any parental shortcomings).
- *In re Welfare of B.C.*, 356 N.W.2d 328, 332 (Minn. Ct. App. 1984) (same).
- *In re Welfare of Maas*, 355 N.W.2d 480, 483 (Minn. Ct. App. 1984).

**(7) Failure to Maintain Relationship with Child**

- *In re Welfare of S.R.A.*, 527 N.W.2d 835, 838 (Minn. Ct. App. 1995), *review denied* (Minn. Mar. 29, 1995) (basing termination of parental rights, in part, on parent's lack of visitation or inquiry about child).
- *In re Welfare of R.T.B.*, 492 N.W.2d 1, 3 (Minn. Ct. App. 1992) (basing termination of parental rights, in part, on father's failure to maintain any relationship with his child for over three years).

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- *In re Welfare of J.K.*, 374 N.W.2d 463, 466 (Minn. Ct. App. 1985), *review denied* (Minn. Nov. 25, 1985) (noting that parent went a year without contacting children).
- *In re Welfare of W.R.*, 379 N.W.2d 544, 548 (Minn. Ct. App. 1985), *review denied* (Minn. Feb. 19, 1986) (noting father ignored court-ordered plan to maintain contact).

**(8) Miscellaneous reasons**

- *In re Welfare of S.R.A.*, 527 N.W.2d 835, 838 (Minn. Ct. App. 1995), *review denied* (Minn. Mar. 29, 1995) (basing termination of parental rights, in part, on parent's history of unstable residence and relationships).
- *In re Welfare of J.D.L.*, 522 N.W.2d 364, 368 (Minn. Ct. App. 1994) (noting that parent pays child no attention during visits, cut visits short, has no motivation to be parent, and that there is little chance of future improvement).
- *In re Welfare of C.D.*, 393 N.W.2d 697, 701 (Minn. Ct. App. 1986), *review denied* (Minn. Nov. 26, 1986) (determining that parent is palpably unfit, in part, because of parent's inability to provide adequate nutrition for children).
- *In re Welfare of Maas*, 355 N.W.2d 480, 483 (Minn. Ct. App. 1984) (noting mother's inability to care for her previous children and child's lack of normal physical development).
- *In re Welfare of J.K.*, 374 N.W.2d 463, 466 (Minn. Ct. App. 1985), *review denied* (Minn. Nov. 25, 1985) (determining that parent is palpably unfit, in part, because of unclean and unhealthy household).
- *In re Welfare of W.R.*, 379 N.W.2d 544, 548 (Minn. Ct. App. 1985), *review denied* (Minn. Feb. 19, 1986) (noting that children's symptoms almost disappeared while with foster parents and that children express fear of their father).

**(c) Termination not Justified**

- *In re Welfare of M.H.*, 595 N.W.2d 223, 227 (Minn. Ct. App. 1999) (holding that a parent is not palpably unfit when parent continued to make progress and had legitimate excuses for failure to comply with some of plan requirements).
- *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996) (noting that if parent will be able to care for child within a foreseeable time, district court should establish a supervised plan to give custody to the parent and decline to terminate rights).

**(d) Miscellaneous**

- *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996) (stating the county's reasonable efforts regarding parent and child must be evaluated even though

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provision allowing termination of parental rights for palpable unfitness does not mention reasonable efforts).

- *In re Welfare of M.D.O.*, 462 N.W.2d 370, 377 (Minn. 1990) (noting that proving that a parent is palpably unfit is an onerous burden).
- *In re Welfare of B.C.*, 356 N.W.2d 328, 332 (Minn. Ct. App. 1984) (holding that Minn. Stat. § 260.221(b)(4) is not unconstitutionally vague).

5. **Failure of Reasonable Efforts to Correct Conditions Leading to Placement**  
Minn. Stat. § 260C.301, subd. 1(b)(5)

*The juvenile court may terminate all rights of a parent to a child if it finds that, following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement. It is presumed that reasonable efforts under this clause have failed upon a showing that:*

- a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;*
- the court has approved the out-of-home placement plan required under section 260C.212 and filed with the court under section 260C.178;*
- conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan; and*
- reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.*

*This clause does not prohibit the termination of parental rights prior to one year, or in the case of a child under age eight, prior to six months after a child has been placed out of the home.*

*It is also presumed that reasonable efforts have failed under this clause upon a showing that:*

- the parent has been diagnosed as chemically dependent by a professional certified to make the diagnosis;*
- the parent has been required by a case plan to participate in a chemical dependency treatment program;*
- the treatment programs offered to the parent were culturally, linguistically, and clinically appropriate;*
- the parent has either failed two or more times to successfully complete a treatment program or has refused at two or more separate meetings with a caseworker to participate in a treatment program; and*

E. *the parent continues to abuse chemicals.*

(a) **In General**

- *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56-57 (Minn. 2004) (stating that “reasonable efforts” does not include efforts that would be futile and that the purpose of the child-protection laws is not to create relationships between children and their biological parents where none previously existed); *see In re Children of Vasquez*, 658 N.W.2d 249, 255 (Minn. Ct. App. 2003).
- *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. Ct. App. 1990), *review denied* (Minn. July 6, 1990) (stating that reasonable efforts are more than matters of form and must include real, genuine assistance in alleviating the conditions that gave rise to the dependency adjudication, and that review of reasonable efforts requires consideration of the length of time the county was involved and the quality of effort given).

(b) **District Court Findings**

- *In re Welfare of P.R.L.*, 622 N.W.2d 538, 544 (Minn. 2001) (holding that findings demonstrate clear and convincing evidentiary basis for termination despite fact that not all factors were addressed).
- *In re Child of E.V.*, 634 N.W.2d 443, 448 (Minn. Ct. App. 2001) (stating that a district court must do more than recite the requirements of the case plan, district court must explain “why certain case plan components were necessary to correct the conditions that first prompted public intervention”).

(c) **Reasonableness of Efforts**

- *In re Welfare of A.Y.-J.*, 558 N.W.2d 757, 759 (Minn. Ct. App. 1997) (addressing reasonable efforts to facilitate contact in abandonment proceeding), *review denied* (Minn. Apr. 15, 1997)
- *In re Welfare of D.T.J.*, 554 N.W.2d 104, 108 (Minn. Ct. App. 1996) (discussing whether the county made reasonable efforts to assist mother in complying with conditions of order).
- *In re Welfare of A.H.*, 402 N.W.2d 598, 603 (Minn. Ct. App. 1987).
- *In re Welfare of J.L.L.*, 396 N.W.2d 647, 652–53 (Minn. Ct. App. 1986).
- *In re Welfare of D.D.K.*, 376 N.W.2d 717, 721 (Minn. Ct. App. 1985) (holding that reunification plan was sufficient and that a more detailed plan would be futile because mother resisted rehabilitative efforts and denied parental inadequacies).

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- *In re Welfare of J.J.B.*, 390 N.W.2d 274, 281 (Minn. 1986) (stating that mental illness or mental or emotional disability that precludes a parent from providing proper parental care can render county's reasonable efforts futile).
- *In re Welfare of B.L.W.*, 395 N.W.2d 426, 430 (Minn. Ct. App. 1986) (noting that parent's "intellectual limitations required careful planning to fashion a program which would meet her special needs" and that the county's efforts were designed for appellant's intellectual limitations).
- *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 710 (Minn. Ct. App. 2004) (stating that reasonable efforts not required when court has previously terminated parental rights).
- *In re P.T.*, 657 N.W.2d 577, 585 (Minn. Ct. App. 2003) (noting that despite presumption obviating reasonable efforts, reasonable efforts were made but were unsuccessful).
- *In re Welfare of A.Y.-J.*, 558 N.W.2d 757, 759 (Minn. Ct. App. 1997), *review denied* (Minn. Apr. 15, 1997) (noting that it is presumed that reasonable efforts have failed upon a showing that the parent has been diagnosed as chemically dependent by a certified professional and discussing other provisions of the statutory presumption).

**(d) Failure to Correct**

- *In re Welfare of J.M.*, 574 N.W.2d 717 (Minn. 1998).
- *In re Welfare of P.J.K.*, 369 N.W.2d 286, 291 (Minn. 1985).
- *In re Welfare of McDonald*, 316 N.W.2d 19, 19-20 (Minn. 1982).
- *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. Ct. App. 2003) (affirming termination of parental rights because parent failed to correct conditions).
- *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 262 (Minn. Ct. App. 1996).
- *In re Welfare of J.D.L.*, 522 N.W.2d 364, 367 (Minn. Ct. App. 1994)
- *In re Welfare of G.B.N.*, 412 N.W.2d 415, 419 (Minn. Ct. App. 1987).
- *In re Welfare of M.J.L.*, 407 N.W.2d 714, 718 (Minn. Ct. App. 1987).
- *In re Welfare of B.M.*, 383 N.W.2d 704, 708 (Minn. Ct. App. 1986), *review denied* (Minn. May. 22, 1986).
- *In re Welfare of M.G.*, 407 N.W.2d 118, 122 (Minn. Ct. App. 1987) (suggesting that mere interest in being a better parent not enough to avoid termination).

- *In re Welfare of J.H.D.*, 416 N.W.2d 194, 199 (Minn. Ct. App. 1987) (stating that chemical dependency is not a defense to behavior harmful to the best interests of children), *review denied* (Minn. Feb. 12, 1988).
- *In re Welfare of D.C.*, 415 N.W.2d 915, 918–19 (Minn. Ct. App. 1987) (stating that minimal cooperation by parent and shortly before court hearing not enough to avoid termination).
- *In re Welfare of J.A.*, 377 N.W.2d 69, 73 (Minn. Ct. App. 1985), *review denied* (Minn. Jan. 23, 1986) (noting that parent’s unwillingness to complete any of her case plan goals provided clear and convincing evidence that the present conditions of neglect would continue for an indeterminate time).
- *In re Welfare of D.D.K.*, 376 N.W.2d 717, 721 (Minn. Ct. App. 1985) (stating that “conditions leading to the determination [of dependency]” includes psychological effects of the physical abuse).
- *In re Welfare of D.D.K.*, 376 N.W.2d 717, 721 (Minn. Ct. App. 1985) (noting that continued custody of child with no special needs was “not relevant to the correction of the conditions [leading to special-needs child’s] dependency, or the mother’s ability to care for a ‘special needs’ child”).

(e) **Miscellaneous**

- *In re Welfare of M.H.*, 595 N.W.2d 223, 227-28 (Minn. Ct. App. 1999) (noting that termination is inappropriate when parent substantially complies with plan and had legitimate excuse for not complying with all elements of plan).
- *In re Welfare of M.A.*, 408 N.W.2d 227, 235-36 (Minn. Ct. App. 1987) (holding that county’s efforts were not reasonable), *review denied* (Minn. Sept. 18, 1987).
- *In re Welfare of S.N.*, 423 N.W.2d 83, 88–89 (Minn. Ct. App. 1988) (holding that mother cooperated with case plan because plan called for counseling and services “as required”).

6. **Egregious Harm**

Minn. Stat. § 260C.301, subd. 1(b)(6)

- *In re Welfare of A.L.F.*, 579 N.W.2d 152, 155-56 (Minn. Ct. App. 1998) (reading ‘egregious harm’ under Minn. Stat. § 260.221, subd. 1(6) [now Minn. Stat. § 260C.301, subd. 1(b)(6)] consistent with definition of ‘egregious harm’ in Minn. Stat. § 260.015, subd. 29 [now Minn. Stat. § 260C.007, subd. 14], and to not require parent to inflict egregious harm on parent’s own child, only that a child in parent’s care suffer egregious harm showing parent’s “grossly inadequate ability to provide minimally adequate parental care to any child”).

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7. **No Entitlement to Notice of Adoption when Father Failed to Register**

Minn. Stat. § 260C.301, subd. 1(b)(7)

- *In re Children of Vasquez*, 658 N.W.2d 249, 255 (Minn. Ct. App. 2003) (applying Minn. Stat. § 260C.301, subd. 1(b)(7), to address termination of father's older two children, but not younger two children where father married mother after first two children were born).

8. **Neglected and in Foster Care**

Minn. Stat. § 260C.101, subd. 1(b)(8)

- *In re Children of Vasquez*, 658 N.W.2d 249, 256 (Minn. Ct. App. 2003) (noting neglected-and-in-foster-care factors listed in Minn. Stat. § 260C.163, subd. 9, are "non-exclusive").

(a) **Findings of Fact**

- *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 57 (Minn. 2004) (stating termination of parental rights because child is "neglected and in foster care" under Minn. Stat. § 260C.301, subd. 1(b)(8) is "appropriate" if (1) the child is in court-ordered foster care; (2) the parent's circumstances, condition, or conduct preclude returning the child to the parent; and (3) the parent, despite availability of needed rehabilitative services, failed to make reasonable efforts to adjust his situation or has willfully failed to meet reasonable expectations regarding visiting or providing financial support for the child).
- *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 57 (Minn. 2004) (affirming termination of parental rights because child was neglected and in foster care, where district court did not make "specific findings" on reasonable efforts parent could have taken, but where district court properly found that the efforts the parent made "were not sufficient and did not meet the reasonable expectations element of Minn. Stat. § 260C.007, subd. 24(c)").
- *In re Welfare of M.J.L.*, 407 N.W.2d 714, 720 (Minn. Ct. App. 1987) (affirming termination of parental rights despite findings not explicitly citing the statutory factors, noting findings explicitly tracking statutory factors are preferred, but the findings in the case were adequate because they addressed the factors in substance).
- *In re Welfare of J.S.*, 470 N.W.2d 697, 704 (Minn. Ct. App. 1991), *review denied* (Minn. July 24, 1991) (stating district court need not specifically mention neglected-and-in-foster-care factors of Minn. Stat. § 260C.163, subd. 9 (2006) if district court's findings showed consideration of those factors).

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**(b) Reunification Services**

- *In re Welfare of P.J.K.*, 369 N.W.2d 286, 292 (Minn. 1985) (reversing court of appeals' reversal of district court's termination of parental rights for child being neglected and in foster care, stating services provided for father were not "lavish" but were adequate, and detailing services and father's failure to take advantage of them).

**(c) Circumstances Justifying Termination**

- *Matter of Welfare of A.D.*, 535 N.W.2d 643, 649 (Minn. 1995) (affirming termination of parental rights for child being neglected and in foster care where child had been in foster care for over four years, county documented the extensive rehabilitative services offered parent, parent repeatedly refused services, parent's visitation was erratic, parent did not re-request services that social worker previously denied due to parent's threatening conduct, and parent had conflicts with county and frequently failed to make scheduled visits to see child).
- *Matter of Welfare of A.D.*, 535 N.W.2d 643, 649-50 (Minn. 1995) (affirming termination of parental rights where child was neglected and in foster care, noting that regardless of whether parent resolved conditions leading to CHIPS petition, parent's apparent inability or unwillingness to establish consistent visitation with child supported conclusion that parent's circumstances, condition, or conduct were such that child could not be returned to parent and evidence supported district court's determination that reunification was unlikely in foreseeable future).
- *In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. Ct. App. 2003) (affirming termination of parental rights because child was neglected and in foster care where child had been in stable foster-care environment for 17 months, could not be returned to parent, and whose parent had not corrected conditions leading to placement).
- *In re Children of Vasquez*, 658 N.W.2d 249, 256 (Minn. Ct. App. 2003) (affirming termination because children were neglected and in foster care where district court made detailed findings addressing neglected-and-in-foster-care factors and rejecting parent's argument that termination was defective for county's failure to make reasonable efforts to reunite family where reasonable reunification efforts would have been futile and lack of case plan was excusable).
- *Matter of Welfare of J.D.L.*, 522 N.W.2d 364, 367 (Minn. Ct. App. 1994) (affirming findings that parent failed to make reasonable efforts to change his circumstances and willfully failed to meet reasonable expectations for visiting or financially supporting child where parent's problem was not obtaining jobs but keeping them, and where substantial evidence supported finding that county provided extensive support to parent but parent failed to make reasonable efforts to

change his circumstances and failed to meet reasonable expectations regarding visitation and financial support of the child).

- *In re Welfare of J.S.*, 470 N.W.2d 697, 704 (Minn. Ct. App. 1991), *review denied* (Minn. July 24, 1991) (affirming determination that children were neglected and in foster care where (1) children had been in foster care or living outside of parents' home for almost two and one-half years before trial; (2) neither parent made reasonable efforts to improve parenting skills; (3) both parents failed to complete rehabilitative services offered; (4) both parents failed to maintain regular contact with case worker; (5) neither parent visited children regularly in three months before filing of termination petition; (6) county provided services to facilitate reunification and the failure of those services rendered it unlikely additional services would bring improvement; and (7) no previously unoffered services were available).
- *In re of Welfare of J.J.L.B.*, 394 N.W.2d 858, 862-63 (Minn. Ct. App. 1986), *review denied* (Minn. Dec. 17, 1986) (affirming termination of parental rights where children were in foster care for four years, in most recent nine months parent had phone conversations with children or visited them from time to time, parent did not spend much time with children during visits, made minimal efforts to adjust circumstances, refused most services and failed to stay in contact with county, often broke scheduled appointments, and blamed others for her problems).
- *Matter of Welfare of J.K.*, 374 N.W.2d 463, 466 (Minn. Ct. App. 1985), *review denied* (Minn. Nov. 25, 1985) (affirming termination of parental rights where child was neglected and in foster care because of condition of father's home and where father fed child so haphazardly as to put the child's health in jeopardy, viewed county aid as an unnecessary intrusion into his life, completely failed to cooperate with the county's plans and instructions, failed to attend termination hearing, had no contact with his minor child for almost a year, and his whereabouts were unknown).
- *Matter of Welfare of L.M.M.*, 372 N.W.2d 431, 433-34 (Minn. Ct. App. 1985), *review denied* (Minn. Oct. 18, 1985) (affirming termination of mother's parental rights because child was neglected and in foster care where record showed mother's history of violent, unpredictable behavior toward children, contained expert testimony mother was not psychologically able to raise children, and mother had long history of uncooperative and violent behavior toward county services and improper behavior towards her children).

**9. Conviction of Certain Crimes**  
**Minn. Stat. § 260C.301, subd. 1(b)(9)**

*Under Minn. Stat. § 260C.301, subd. 1(b)(9), parental rights may be terminated if "the parent has been convicted of a crime listed in section 260.012, paragraph (b), clauses (1) to (3)." Because Minn. Stat. § 260.012(b)(1)-(3) (2006) do not*

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refer to crimes, it appears that Minn. Stat. § 260C.301, subd. 1(b)(9) (2006)'s reference to "a crime listed in section 260.012, paragraph (b), clauses (1) to (3)" is a mistake. The 1998 version of the termination-of-parental-rights statute, (Minn. Stat. § 260.221, subd. 1(b)(9) (1998)) allowed termination of parental rights if "the parent [had] been convicted of a crime listed in section 260.012, paragraph (b), clauses (1) to (3)." At that time, Minn. Stat. § 260.012(b)(1)-(3) (1998) stated:

- (1) a violation of, or an attempt or conspiracy to commit a violation of, sections 609.185 to 609.20; 609.222, subdivision 2; or 609.223 in regard to another child of the parent;
- (2) a violation of section 609.222, subdivision 2; or 609.223, in regard to the surviving child; or
- (3) a violation of, or an attempt or conspiracy to commit a violation of, United States Code, title 18, section 1111(a) or 1112(a), in regard to another child of the parent.

*NOTE:* In 1999, the juvenile-protection statutes were reorganized. 1999 Minn. Laws ch. 139. Also, new provisions were added to what had been Minn. Stat. § 260.012(b) (1998), causing the references to the crimes that had been listed in Minn. Stat. § 260.012(b)(1)-(3) (1998) to be renumbered to Minn. Stat. § 260.012(b)(3)(i)-(iii) (Supp. 1999). 1999 Minn. Laws ch. 245, art. 8, § 42. The references to those crimes is still found at that numeration. See Minn. Stat. § 260.012(b)(3)(i)-(iii) (2006). Therefore, it appears that the crimes intended to be referred to by Minn. Stat. § 260C.301, subd. 1(b)(9) (2006) are actually those listed in Minn. Stat. § 260.012(b)(3)(i)-(iii) (2006).

### C. Best Interests

"The paramount consideration in all juvenile protection proceedings is the best interests of the child." See Minn. Stat. § 260C.001, subd. 2; Minn. Stat. § 260C.001, subd. 3, 260C.301, subd. 7. If the interests of a child and interests of a parent conflict, the child's interests prevail. Minn. Stat. § 260C.301, subd. 7. And "[i]n proceedings involving an American Indian child, as defined in section 260.755, subdivision 8, the best interests of the child must be determined consistent with sections 260.751 to 260.835 and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923." Minn. Stat. § 260C.001, subd. 2.

- *In re Welfare of M.D.O.*, 462 N.W.2d 370, 378 (Minn. 1990) (paramount consideration is the child's best interests).

#### 1. Best-Interests Presumptions

- *In re Welfare of Clausen*, 289 N.W.2d 153, 156 (Minn. 1980).
- *In re P.T.*, 657 N.W.2d 577, 583 (Minn. Ct. App. 2003) (noting (a) the presumptions that the natural parent is fit to care for his child, and that the child's

best interests entail remaining in parent's care; (b) the fundamental rights of parents include enjoying the custody and companionship of their children; and (c) that parents should not be deprived of that right absent "grave and weighty reasons").

**2. Best Interests Alone are Insufficient to Terminate Parental Rights**

- *In re Children of R.W.*, 678 N.W.2d 49, 51-52 (Minn. 2004) (holding (a) termination statute requires both statutory basis for termination and that termination be in child's best interests; and (b) court of appeals erred by affirming termination of parental rights based solely on fact that termination was in children's best interests).
- *In re Welfare of S.N.*, 423 N.W.2d 83, 91 (Minn. Ct. App. 1988) (stating fact that it is in child's best interests to terminate parental rights is not independently sufficient to justify decision to terminate parental rights).
- *In re Welfare of M.D.O.*, 462 N.W.2d 370, 378 (Minn. 1990) (stating although child's best interests cannot be sole justification for terminating parental rights, it is "an important factor to be considered by the trial court").

**3. Best Interests Alone are Sufficient to Refuse to Terminate Parental Rights**

- *In re Welfare of M.P.*, 542 N.W.2d 71, 74 (Minn. Ct. App. 1996) (noting child's best interests, if they favor retaining parent-child relationship, can preclude termination of parental rights despite presence of one or more of the statutory bases for termination).
- *Matter of Welfare of A.J.C.*, 556 N.W.2d 616, 620 (Minn. Ct. App. 1996), *review denied* (Minn. Mar. 18, 1997) (discussing how child's best interests could weigh against terminating parental rights).

**4. Best-Interests Analysis**

- *In re Welfare of M.D.O.*, 462 N.W.2d 370, 378 (Minn. 1990) (stating best-interests analysis must recognize that child's best interests are paramount and must balance child's best interests against parental rights).
- *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. Ct. App. 1992) (stating best interests analysis requires district court to balance (1) child's interest in preserving parent-child relationship, (2) parent's interest in preserving parent-child relationship, and (3) any competing interest of the child, where competing interests include things like stable environment, health considerations, and child's preferences, and that in the balancing process, interests of parent and child are not necessarily given equal weight).
- *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. Ct. App. 2004).

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- *In re Welfare of M.P.*, 542 N.W.2d 71, 74 (Minn. Ct. App. 1996) (noting consideration of child's best interests requires consideration of past as well as future).
- *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 57-58 (Minn. 2004) (stating district court's best interests analysis need not consider long-term foster care as alternative to adoption, particularly if record supports determination that adoption is in the children's best interests, because children need immediate permanent home with a family "capable of providing for their welfare").

#### 5. **Best-Interests Findings**

- *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. Ct. App. 2003) (stating, in termination proceeding, district court must consider child's best interests and address those interests in its findings of fact and conclusions of law, and failure to do so requires a remand); *see In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990).
- *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. Ct. App. 2004) (holding district court's best interests findings were adequate and supported terminating parental rights where they did not go into great detail, but concluded child's immediate need for permanency and stable, nurturing, drug-free caretakers outweighed competing interests).
- *In re Child of E.V.*, 634 N.W.2d 443, 447, (Minn. Ct. App. 2001) (stating district court's conclusory findings failed to address whether full compliance with case plan's requirements was necessary to correct conditions leading to the out-of-home placement and whether parent's efforts were insufficient to correct those conditions).

#### 6. **Circumstances Showing Termination was in Child's Best Interests**

- *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 251-52 (Minn. Ct. App. 2003) (rejecting parent's argument that passivity in interacting with agency failed to support finding that termination of parental rights was in child's best interests when findings showed parent's conduct included her continuing problems with improving her parenting skills, her mental health and drug abuse, and her other substantial personal issues).
- *In re Welfare of J.L.L.*, 396 N.W.2d 647, 652 (Minn. Ct. App. 1986) (holding child's best interests supported termination where child had immediate and special needs and where parent wanted to provide a home for child, but parent had history of chemical abuse and violent behavior, lacked parenting skills, and made relatively few steps to address these problems, making it impossible to determine when parent would be able to assume parental responsibilities).
- *In re Welfare of D.I.*, 413 N.W.2d 560, 564 (Minn. Ct. App. 1987) (holding child's best interests supported termination where record showed ten years of

unsuccessful interventions with family, and that parent still lacked present ability or willingness to develop a relationship beneficial to his children and was unwilling to change behavior patterns contributing to their neglect).

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**OTHER**

**A. Procedural**

**1. Timelines**

- *In re Welfare of J.R., Jr.*, 655 N.W.2d 1, 4-5 (Minn. 2003) (rejecting idea that there is a “good cause” exception to the rules of juvenile procedure regarding appeals, noting reasons juvenile protection cases need to be expeditiously handled, and stating that while strict application of the rules “may result in some cases not being heard on appeal, equally true is that injustice may result to the children by not enforcing the deadlines set forth in the rules. The dismissal of an untimely appeal does not occur in a vacuum. Each delay in the termination of a parent’s rights equates to a delay in a child’s opportunity to have a permanent home and can seriously affect a child’s chance for permanent placement. . . . This simple but alarming truth is widely recognized in literature and has propelled courts across the nation to improve the administration of justice for children”).
- *In re Welfare of S.N.T.R.*, 403 N.W.2d 293, 297 (Minn. Ct. App. 1987) (holding failure to comply with timing requirement for holding a new trial can deprive district court of jurisdiction to hear a child protection matter and require dismissal of amended petition).

**2. Jurisdiction**

- *In re Welfare of S.N.T.R.*, 403 N.W.2d 293, 296-97 (Minn. Ct. App. 1987) (procedural irregularities violating Minnesota child-protection statutes and rules stripped district court of jurisdiction over child-protection matter, requiring dismissal of findings of neglect and dependency).
- *In re Welfare of Children of S.C.*, 656 N.W.2d 580, 583 (Minn. Ct. App. 2003) (ineffective service robs juvenile court of personal jurisdiction, and any resulting juvenile-protection decision is void).

**3. Notice**

- *In re Welfare of L.W.*, 644 N.W.2d 796, 797 (Minn. 2002) (holding proper notice was provided in summons served with petition to terminate parental rights when summons required parent’s appearance at hearing and stated failure to appear would not delay hearing and juvenile court might terminate parental rights).
- *In re Paternity of J.A.V.*, 547 N.W.2d 374, 378 (Minn. 1996) (holding illegitimate father’s right to receive notice of future proceedings affecting his child was eliminated by father’s failure, within time required under adoption statute, to file an affidavit stating his intention to retain parental rights of his minor child).

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- *In re Welfare of J.H.D.*, 416 N.W.2d 194, 198 (Minn. Ct. App. 1987) (stating when petition sets forth allegations against mother and against the parents, but not specifically against father, allegations may be sufficiently specific to notify the father of the claims against him), *review denied* (Minn. Feb. 12, 1988).

#### 4. **Service**

- *In re Welfare of Children of S.C.*, 656 N.W.2d 580, 583 (Minn. Ct. App. 2003) (stating (a) whether service of process was proper is a question of law, which is reviewed de novo; and (b) ineffective service robs a juvenile court of personal jurisdiction).
- *In re Welfare of J.R., Jr.*, 655 N.W.2d 1, 5-6 (Minn. 2003) (holding guardian ad litem is a party to juvenile protection proceedings and stating failure to serve guardian ad litem violates rules and “truly compromises the system’s ability to serve the best interests of the children”).
- *In re Welfare of T.D.*, 631 N.W.2d 806, 808-09 (Minn. Ct. App. 2001) (noting (a) a judgment is void if district court lacked personal jurisdiction over parties through a failure of service that was not waived; (b) district court must obtain personal jurisdiction over all persons who had the right to attend through service of notice; (c) service by publication can confer personal jurisdiction if it is not reasonably possible to give more adequate warning; and (d) in termination proceedings, rules require initial service by certified mail and publication for three weeks before the hearing).

#### 5. **Parties**

- *In re Welfare of J.R., Jr.*, 655 N.W.2d 1, 5-6 (Minn. 2003) (holding guardians ad litem are parties to juvenile-protection proceedings, are appointed by court “to protect the interests of the minor,” and stating guardian ad litem speaks for the child)
- *In re Welfare of G.S.*, 352 N.W.2d 511, 512 (Minn. Ct. App. 1984) (addressing distinctions between rights of parents and rights of stepparents in juvenile protection proceedings).

#### 6. **Petitions**

- *In re Welfare of S.F.*, 482 N.W.2d 500, 502 (Minn. Ct. App. 1992) (stating (a) to be adequate, petition to terminate parental rights must satisfy the rules; and (b) when petition’s allegations, if shown to be true, would support finding that statutory ground for termination exists, juvenile court must allow filing of petition).
- *In re Welfare of A.K.K.*, 356 N.W.2d 337, 340 (Minn. Ct. App. 1984) (stating petitioner bears burden of proving termination is proper, and that burden is

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“subject to the presumption that a natural parent is a fit and suitable person to be entrusted with the care of a child”).

**7. Hearings**

- *In re Welfare of L.W.*, 644 N.W.2d 796, 797 (Minn. 2002) (holding default judgment terminating parental rights did not violate parent’s due process rights when district court conducted an evidentiary hearing on termination petition and decision to terminate parental rights was based on statutory factors, not parent’s failure to appear).
- *In re Welfare of Children of Coats*, 633 N.W.2d 505 (Minn. 2001) (addressing due process necessities of proceeding by default in proceedings to terminate parental rights).

**8. Trials**

- *In re Welfare of J.B.*, 698 N.W.2d 160, 171 (Minn. Ct. App. 2005) (holding district court did not abuse its discretion in bifurcating parents’ termination of parental rights proceedings where father initially chose to avoid participating in proceedings).
- *In re Welfare of L.W.*, 644 N.W.2d 796, 797 (Minn. 2002) (holding default judgment terminating parental rights did not violate parent’s due process rights when district court conducted an evidentiary hearing on termination petition and decision to terminate parental rights was based on statutory factors, not parent’s failure to appear).
- *In re Welfare of Children of Coats*, 633 N.W.2d 505 (Minn. 2001) (addressing due process necessities of proceeding by default in proceedings to terminate parental rights).
- *In re Welfare of J.M.G.*, 376 N.W.2d 494, 497 (Minn. Ct. App. 1985) (stating “[t]he opportunity to cross-examine the author [of a document] is waived if not exercised in a timely manner”), *review denied* (Minn. Jan. 17, 1986).

**B. Decisions**

**1. Dispositions**

- *In re Welfare of P.R.L.*, 622 N.W.2d 538, 544 (Minn. 2001) (addressing stays of permanency determinations and noting “[w]hile the courts must exhibit caution in severing family bonds, they should not merely delay what is demonstrated to be inevitable”).

**2. Termination Decisions**

- *In re A.K.*, 633 N.W.2d 65, 70 (Minn. Ct. App. 2001) (holding district court has authority under Minn. Stat. § 260C.325, subd. 4, to place child under age 12 in long term foster care if parental rights to child have been terminated).

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- *In re Welfare of R.M.M.*, 316 N.W.2d 538, 540-41 (Minn. 1982) (stating findings supporting decision to terminate parental rights must be clear and specific and must conform to statutory requirements).
- *In re Welfare of Welfare of P.J.K.*, 369 N.W.2d 286, 290 (Minn. 1985) (stating juvenile court need find only one statutory termination condition to terminate parental rights).
- *In re Welfare of P.R.L.*, 622 N.W.2d 538, 545 (Minn. 2001) (noting, to terminate parental rights, district court need find existence of only one statutory basis to terminate parental rights, finding existence of one statutory basis, and declining to address other alleged bases to terminate parental rights).
- *In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005) (same).
- *In re Welfare of R.M.M.*, 316 N.W.2d 538, 541 (Minn. 1982).
- *In re Welfare of Maas*, 355 N.W.2d 480, 483 (Minn. Ct. App. 1984) (same).
- *In re A.K.*, 633 N.W.2d 65, 70 (Minn. Ct. App. 2001) (holding district court has authority under Minn. Stat. § 260C.325, subd. 4, to place child under age 12 in long term foster care if parental rights to child have been terminated).
- *In re Welfare of J.M.*, 574 N.W.2d 717, 721-22 (Minn. 1998) (discussing long-term foster care statute); *see In re Child of E.V.*, 634 N.W.2d 443, 449-50 (Minn. Ct. App. 2001).
- *In re Welfare of P.R.L.*, 622 N.W.2d 538, 544 (Minn. 2001) (addressing stays of permanency determinations and noting “[w]hile the courts must exhibit caution in severing family bonds, they should not merely delay what is demonstrated to be inevitable”).

### 3. Post-Trial Motions

- *In re Welfare of S.N.T.R.*, 403 N.W.2d 293, 297 (Minn. Ct. App. 1987) (holding failure to comply with timing requirement for holding a new trial can deprive district court of jurisdiction to hear a child protection matter and require dismissal of amended petition).
- *In re Welfare of C.R.*, 355 N.W.2d 426, 430 (Minn. Ct. App. 1984), *review denied* (Minn. Jan. 11, 1985) (affirming denial of new trial).
- *In re Welfare of Children of S.C.*, 656 N.W.2d 580, 583 (Minn. Ct. App. 2003) (stating that a juvenile court’s determination whether to vacate a judgment will not be reversed absent an abuse of discretion).
- *In re Welfare of J.M.G.*, 360 N.W.2d 403 (Minn. Ct. App. 1985) (addressing vacation of neglect and dependency determination).

## C. Appeal

### 1. Procedure

- *In re Welfare of L.M.M.*, 372 N.W.2d 431, 433 (Minn. Ct. App. 1985), *review denied* (Minn. Oct. 18, 1985) (stating order terminating parental rights is an appealable order).
- *In re Welfare of J.R. Jr.*, 655 N.W.2d 1, 2-3 (Minn. 2003) (stating “the Rules of Juvenile Protection Procedure should control over [Minn. Stat. § 260C.415] in juvenile protection cases” and that notice of appeal must be served on county attorney and all parties, including the guardian ad litem, within 30 days after the filing of appealable order and failure to abide by rules of procedure, including failures to timely file and to timely serve adverse parties, deprives appellate courts of jurisdiction to hear the appeal).
- *In re Welfare of R.A.*, 375 N.W.2d 578, 580 (Minn. Ct. App. 1985) (stating, despite burden of proof requiring clear and convincing evidence to support dependency or neglect adjudication, appellate courts review juvenile court’s findings to determine whether they are supported by substantial evidence and are not clearly erroneous).
- *In re Welfare of M.A.*, 408 N.W.2d 227, 231–32 (Minn. Ct. App. 1987) (stating, when case involves multiple children, appellate courts review sufficiency of the evidence to support the juvenile court’s findings regarding each child), *review denied* (Minn. Sept. 18, 1987). *See In re Welfare of R.A.*, 375 N.W.2d 578, 580 (Minn. Ct. App. 1985).
- *In re Children of R.W.*, 678 N.W.2d 49, 58 n.1 (Minn. 2004) (stating appellate courts must use initials of children and parents in juvenile-protection decisions).
- *In re Welfare of J.R., Jr.*, 655 N.W.2d 1, 3 (Minn. 2003) (stating “[w]e have consistently held that the supreme court has the primary responsibility under the separation of powers doctrine to regulate matters of trial and appellate procedure. Therefore, the Rules of Juvenile Procedure should control over the statute [addressing appeals] in juvenile protection cases”).

### 2. Preservation of Issues

- *In re Welfare of K.T.*, 327 N.W.2d 13, 16-17 (Minn. 1982) (stating “[i]t is well settled that a party may not raise for the first time on appeal a matter not presented to the court below”).
- *In re Welfare of J.B.*, 698 N.W.2d 160, 171 (Minn. Ct. App. 2005).
- *In re Welfare of T.M.D.*, 374 N.W.2d 206, 212 (Minn. Ct. App. 1985), *review denied* (Minn. Nov. 25, 1985).

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- *In re Welfare of Children of C.*, 348 N.W.2d 94, 97 (Minn. Ct. App. 1984) (holding evidence received by the court of appeals as a result of exigent circumstances arising during appeal process may support juvenile court's disposition despite record that otherwise lacked support for juvenile court's ruling and stating appellate court is to give priority to child custody matters "to avoid damage to the welfare of the child by delays in the appeals process").

### 3. Stays Pending Appeal

- *In re Welfare of Children of C.*, 348 N.W.2d 94, 99 (Minn. Ct. App. 1984) (stating (a) appeal does not stay juvenile court's order, but reviewing court may do so in its discretion and upon application stay the order; (b) "[j]uvenile courts have continuing jurisdiction over matters not directly involved in or essential to the appeal" and "retain[] a residuum of jurisdiction to handle issues involving the child's welfare"; and (c) juvenile courts retain jurisdiction in neglect cases to modify dispositions pending appeal, but a neglect adjudication may not be altered once an appeal of that determination has been perfected).
- *In re R.L.A.*, 431 N.W.2d 152, 153 (Minn. Ct. App. 1988) (citing *In re Welfare of Children of C* and construing authorities in the juvenile-delinquency context with language similar to that in RJPP 47.03 and recommending that "requests to stay juvenile court orders be made, in the first instance, to the trial court").
- *In re Welfare of J.R. Jr.*, 655 N.W.2d 1, 3 (Minn. 2003) (stating, regarding appeal of juvenile-protection cases, "the Rules of Juvenile Protection Procedure should control over [Minn. Stat. § 260C.415] in juvenile protection cases").

### D. Constitutional Challenges

- *In re P.T.*, 657 N.W.2d 577, 583 (Minn. Ct. App. 2003) (stating "[i]n evaluating challenges to the constitutionality of statutes, this court recognizes that the interpretation of statutes is a question of law. . . . Minnesota statutes are presumed constitutional, and our power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary[,]" and noting appellants have burden of showing beyond a reasonable doubt that statute violates a claimed right).
- *In re Welfare of A.K.K.*, 356 N.W.2d 337, 343 (Minn. Ct. App. 1984) (stating (a) constitutionality of statutory provision "should not be determined by a court unless necessary to dispose of the particular facts of the case"; (b) party "may not question the constitutionality of a law which does not affect him personally"; and (c) party "may only raise the issue if the statutory provision has been applied to his disadvantage").

1. **Due Process**

(a) **Generally**

- *In re Welfare of A.K.K.*, 356 N.W.2d 337, 343 (Minn. Ct. App. 1984) (stating “[t]he rationale behind the due process clause is that rules which intrude upon a person’s rights and freedom as a citizen should be cast in language which is clear and unambiguous, and which gives notice of what conduct is prohibited”).

(b) **Right to Hearing**

- *In re P.T.*, 657 N.W.2d 577, 587-88 (Minn. Ct. App. 2003) (stating “[t]he due process standard in parental-termination proceedings embodies the notion of fundamental fairness. Fundamental fairness guarantees a parent facing termination proceedings a right to a meaningful adversarial hearing”); *see also In re Child of W.L.P.*, 678 N.W.2d 703, 713 (Minn. Ct. App. 2003); *In re Welfare of N.W.*, 405 N.W.2d 512 (Minn. Ct. App. 1987).
- *In re P.T.*, 657 N.W.2d 577, 586 (Minn. Ct. App. 2003) (stating “[t]he fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time in a meaningful manner’”).
- *In re Welfare of A.Y.-J.*, 558 N.W.2d 757, 759 (Minn. Ct. App. 1997), *review denied* (Minn. Apr. 15, 1997) (noting that due process does not compel physical attendance of a parent at termination proceedings, that due process in parental termination considers interests of parents and best interests of child, but does not mean those interests are weighed equally, and holding appellant’s presence was not necessary where counsel represented appellant during proceedings, district court allowed appellant opportunity to present deposition testimony at a later date allowing appellant opportunity to rebut county’s witnesses, and counsel for both parties went to prison and took deposition).

(c) **Fundamental Rights**

- *In re P.T.*, 657 N.W.2d 577, 588 (Minn. Ct. App. 2003) (stating “[t]here is a recognized substantive due process right to freedom from governmental interference in childrearing decisions. Parents have a fundamental interest in childrearing and in childbearing decisions. Parents have a fundamental right to the custody and companionship of their children. In general, deprivation of this fundamental right, like most other fundamental rights, is subject to strict judicial scrutiny, meaning that the state bears the burden of proving that such deprivation is narrowly tailored to a compelling state interest”).
- *In re Welfare of S.R.A.*, 527 N.W.2d 835, 839-40 (Minn. Ct. App. 1995) (noting courts must be conscious of the child’s substantive right to be raised in a

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secure home and stating “[c]ognizance of that right, in turn, requires a balancing of the child’s best interests against any procedural defects raised by the parent[,]” and indicating that child’s best interests may outweigh technical violation of a parent’s right to due process), *review denied* (Minn. Mar. 29, 1995).

(d) **Constitutionality of Statutory Presumption of Palpable Unfitness**

- *In re P.T.*, 657 N.W.2d 577, 588-89 (Minn. Ct. App. 2003) (rejecting argument that statutory presumption of palpable unfitness in section 260C.301, subdivision 1(b)(4), violates substantive due process, noting the state has a compelling interest to protect children from abusive parents, “the best evidence of how a parent will treat one child is how a parent has treated other children[,]” and “the statute is narrowly tailored to meet the state’s compelling interest in protecting children from abuse because it “applies only to parents who previously have had their parental rights involuntarily terminated”).
- *In re P.T.*, 657 N.W.2d 577, 586 (Minn. Ct. App. 2003) (stating “[b]ecause we conclude that the Minnesota Constitution does not guarantee a right to judicial review of a social service agency’s reasonable efforts at rehabilitation and reunification in parental termination cases, elimination of the reasonable efforts requirement in section 260C.001, subdivision 3, involving cases where there has been a prior involuntary termination, does not violate the Minnesota Constitution”).

2. **Equal Protection**

(a) **Generally**

- *In re P.T.*, 657 N.W.2d 577, 589 (Minn. Ct. App. 2003) (stating “[e]qual protection requires that persons similarly situated be treated similarly, unless a distinction serves a legitimate governmental interest”).

(b) **Voluntary vs. Involuntary Termination**

- *In re P.T.*, 657 N.W.2d 577, 589 (Minn. Ct. App. 2003) (noting parents who voluntarily terminate parental rights are not situated similarly to parents whose rights are terminated involuntarily, and stating equal protection clause does not preclude state “from according two parents different legal rights, where one parent has been adjudicated as failing to shoulder the responsibilities for the child’s `daily supervision, education, protection, or care”).

(c) **Fifth Amendment**

- *In re Welfare of J.W.*, 415 N.W.2d 879, 883 (Minn. 1987) (holding district court’s order violated parents’ Fifth Amendment rights and was unenforceable because it required parents to divulge details of their nephew’s death to

psychologists and therefore parents' refusal to comply with this part of order could not be used as grounds under Minn. Stat. § 260.221(5) (1986) to terminate parents' parental rights, nor for keeping their children in foster care).

- *In re Welfare of J.W.*, 391 N.W.2d 791, 795-96 (Minn. 1986) (where parents invoked Fifth Amendment rights at deposition where county sought information on parents' history of marital violence, intentional injury of a child in their care, and cover-up of child's injuries, and where the district court deemed those matters admitted for purposes of dependency and neglect petition, the supreme court determined this discovery sanction did not violate parents' due process rights and, because it was not constitutional error to deem these matters admitted, it was not constitutional error to limit further evidence and cross-examination regarding the established facts).
- *In re Welfare of Udstuen*, 349 N.W.2d 300, 305 (Minn. Ct. App. 1984) (rejecting argument that father was prevented from testifying on his own behalf in a termination proceeding without giving up Fifth Amendment right against self-incrimination where, "[a]t the time of the parental rights hearing, [father] had already testified at his criminal trial, waiving his privilege against compulsory self-incrimination and subjecting himself to appropriate cross-examination by the State about the criminal charges he was facing").

## **E. ICWA**

### **1. Enrollment**

- "In a [CHIPS] proceeding, when an Indian child is a ward of a tribal court with federally recognized child welfare jurisdiction, the Indian tribe retains exclusive jurisdiction notwithstanding the residence or domicile of an Indian child, as provided in [ICWA, 25 U.S.C. § 1911]." Minn. Stat. § 260C.101, subd. 5
- *In re Welfare of J.B.*, 698 N.W.2d 160, 165-66 (Minn. Ct. App. 2005) (holding if child is eligible for enrollment in two Indian tribes and is enrolled in a tribe during juvenile protection proceeding, that enrollment conclusively establishes child's tribal membership; rejecting father's argument that he should have been allowed to investigate unenrolling his child from mother's tribe and enrolling child in father's tribe where doing so would be contrary to child's best interests and to stated purposes of ICWA).

### **2. Expert Witness**

- *In re Welfare of J.B.*, 698 N.W.2d 160, 166-67 (Minn. Ct. App. 2005) (stating qualification of witnesses as experts in ICWA cases is "controlled in large part by the Tribal/State Agreement on Indian Child Welfare" and noting Agreement (a) defines a "qualified expert witness" as "a member of the Indian child's tribe, who is recognized by the tribal community as knowledgeable in tribal customs as they

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pertain to family organization and child rearing practices....”; and (b) states expert designation by Indian child’s tribe is not subject not challenge by DHS, tribes may qualify experts on a case-by-case basis or maintain a list of qualified experts, and tribes participating in Agreement must have a list of qualified experts).

- *In re Welfare of J.B.*, 698 N.W.2d 160, 167 (Minn. Ct. App. 2005) (stating qualifying a witness as an expert for ICWA purposes “does not require the district court to admit any and all testimony from that witness, nor does it require the court to find such testimony persuasive [because] [t]he weight to be given any testimony, including expert testimony, is ultimately the province of the fact-finder”).
- *In re Welfare of T.J.J.*, 366 N.W.2d 651, 655 (Minn. Ct. App. 1985) (stating “a witness’ background in Indian culture does not necessarily determine whether that witness qualifies as an expert under [ICWA]”).
- *In re Welfare of J.A.S.*, 488 N.W.2d 332, 335 (Minn. Ct. App. 1992) (holding determination Indian children were in need of protection or services was in effect an action removing them from their parent for temporary foster placement and therefore, testimony of qualified expert witness was necessary for state to meet its burden of proof at CHIPS hearing), *review denied* (Minn. Oct. 20, 1992).

### 3. Extended Family

- *In re Adoption of M.T.S.*, 489 N.W.2d 285, 287 (Minn. Ct. App. 1992) (stating “ICWA expresses the presumption that in an adoptive placement of an Indian child, the child’s interests are best served by placement with an extended family member”).
- *In re Welfare of J.B.*, 698 N.W.2d 160, 169-70 (Minn. Ct. App. 2005) (rejecting father’s argument that county failed to adequately consider placement of child with father’s extended family under 25 U.S.C. § 1912(d), where father intentionally avoided participation in proceeding).

### 4. ICWA & State Law

- *In re Adoption of M.T.S.*, 489 N.W.2d 285, 288 (Minn. Ct. App. 1992) (stating “[o]nly state or federal laws which give a higher standard of protection to the rights of the parent or Indian custodian of an Indian child are applicable to child custody proceedings under the ICWA”).
- *In re Welfare of T.J.J.*, 366 N.W.2d 651, 655 (Minn. Ct. App. 1985) (stating while “[t]he guidelines [in the Minnesota Department of Public Welfare Social Services Manual regarding Indian child custody proceedings] are appropriate[,] . . . they do not singularly control the trial court”).
- *In re Welfare of W.R.*, 379 N.W.2d 544, 549 (Minn. Ct. App. 1985), *review denied* (Minn. Feb. 19, 1986) (rejecting father’s reading of ICWA § 1912(f) to require

neglected Indian children be left in parental home while termination proceedings were pending where doing so “would require that the children be removed from their foster home and placed with their father before termination proceedings could properly begin, even though the children barely know him” and because “[p]ast cases in which the courts have analyzed section 1912(f) have not imposed a custodial requirement”).

**5. ICWA and BIA Guidelines**

- *In re Welfare of S.N.R.*, 617 N.W.2d 77, 81 (Minn. Ct. App. 2000), *review denied* (Minn. Nov. 15, 2000). (noting BIA Guidelines are often used to answer questions left open by ICWA and otherwise discussing ICWA).

**F. Evidentiary**

**1. Admissible**

- *In re Welfare of J.M.G.*, 376 N.W.2d 494, 497 (Minn. Ct. App. 1985), *review denied* (Minn. Jan. 17, 1986) (stating “[t]he opportunity to cross-examine the author [of a document] is waived if not exercised in a timely manner”).

**2. Errors**

- *In re Welfare of J.B.*, 698 N.W.2d 160, 172-73 (Minn. Ct. App. 2005) (declining to reverse termination of parental rights for various alleged evidentiary errors).
- *In re Child of Simon*, 662 N.W.2d 155, 160-62 (Minn. Ct. App. 2003).
- *In re Welfare of Children of C.*, 348 N.W.2d 94, 98 (Minn. Ct. App. 1984).

**3. Hearsay**

- *In re Welfare of J.M.G.*, 376 N.W.2d 494, 497 (Minn. Ct. App. 1985), *review denied* (Minn. Jan. 17, 1986) (stating “[t]he opportunity to cross-examine the author [of a document] is waived if not exercised in a timely manner”).

**4. Business Record Exception**

- *In re Child of Simon*, 662 N.W.2d 155, 160-62 (Minn. Ct. App. 2003) (stating business records exception to the hearsay rule (Minn. R. Evid. 803(6)) required testimony that record in question was made by person with knowledge of matter recorded and a duty to accurately record it or was a report from information transmitted by person with such knowledge, was made at or near time of recorded event, was made and kept in course of regularly conducted business activity, and was not prepared for litigation purposes, but record’s custodian need not testify if witness laying foundation for record is familiar with how record was compiled and can lay proper foundation).

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- *In re Welfare of J.K.*, 374 N.W.2d 463, 467 (Minn. Ct. App. 1985), *review denied* (Minn. Nov. 25, 1985) (stating “[u]nder Minn. R. Evid. 803(6), reports of social workers and psychologists are admissible as business records. It is accepted medical practice to use a team approach for psychological evaluations. The county had the reports prepared in the regular course of business by qualified personnel. . . [h]owever, where the county knew the deposition was to be used at the hearing, the county should have provided the reports to appellants within a reasonable time before the deposition in order for appellants to be able to question deponent fully”) (citations omitted).
- *In re Welfare of J.M.G.*, 376 N.W.2d 494, 497 (Minn. Ct. App. 1985), *review denied* (Minn. Jan. 17, 1986) (stating custody-evaluation reports were considered reliable hearsay under the business records exception to the hearsay rule and “court-ordered evaluations should be encouraged because they are an invaluable aid to the court in determining the issue of custody; however, care should be taken to give fair notice of the contents of such reports to the parties involved so as to afford them every opportunity to test the credibility of the reporter through cross-examination or otherwise and to meet or answer every adverse fact or inference therein”).

#### 5. **Expert Testimony**

- *In re Welfare of J.B.*, 698 N.W.2d 160, 168 (Minn. Ct. App. 2005) (affirming admission of certain expert testimony under Minn. R. Evid. 602 and 703 despite the fact that testimony was partially based on hearsay evidence).

#### 6. **Weight of Evidence**

- *In re Welfare of J.B.*, 698 N.W.2d 160, 167 (Minn. Ct. App. 2005) (stating “[t]he weight to be given any testimony, including expert testimony, is ultimately the province of the fact-finder”).
- *In re Welfare of J.M.G.*, 376 N.W.2d 494, 498 (Minn. Ct. App. 1985), *review denied* (Minn. Jan. 17, 1986).
- *In re Welfare of J.A.*, 377 N.W.2d 69, 73 (Minn. Ct. App. 1985) (stating appellate court does not substitute its judgment for that of the district court on conflicting evidence because the district court is in the best position to measure the weight of the evidence), *review denied* (Minn. Jan. 23, 1986).

#### 7. **Privileges**

- *In re Welfare of J.A.*, 417 N.W.2d 696, 698 (Minn. Ct. App. 1988), *review denied* (Minn. Mar. 23, 1988) (holding, even when abuse and neglect had not been found, exception to physician-patient privilege applies to dependency adjudications because evidence related to abuse and neglect).

#### 8. **Judicial Notice**

- *In re Welfare of D.J.N.*, 568 N.W.2d 170, 175 (Minn. Ct. App. 1997) (stating district court erred in termination-of-parental-rights proceeding by taking judicial notice of entire juvenile files or referring to files and records of prior child protection proceeding without giving parties prior notice of particular use of files and records expected to occur where considerable portions of files and records were beyond reach of judicial notice, and consideration of most of files would contradict rule that district court should give notice of evidence it plans to consider so that affected party has opportunity to cross-examine authors of materials or otherwise respond).

## 9. Burden

- *In re Welfare of A.J.C.*, 556 N.W.2d 616, 622 (Minn. Ct. App. 1996), *review denied* (Minn. Mar. 18, 1997) (stating county does not have the burden to negate considerations that have not been established by the evidence in the case).
- *In re Welfare of J.H.D.*, 416 N.W.2d 194, 199 (Minn. Ct. App. 1987), *review denied* (Minn. Feb. 12, 1988) (stating “[a]bsent a showing by the parents that chemical dependency caused all the problems leading to termination, and that treatment of the chemical dependency would lead to improved parenting skills in a reasonable and ascertainable period of time, the petitioner here had no duty to disprove the allegation of chemical dependency offered as a defense in the termination proceeding”).

## 10. Evidence Required for Terminating Parental Rights

### (a) Generally

- *In re Welfare of R.M.M.*, 316 N.W.2d 538, 542 (Minn. 1982) (stating evidence regarding termination of parental rights must “address conditions which exist at the time of the hearing and [show] that ‘the present conditions of neglect will continue for a prolonged, indeterminate period’”).
- *In re Welfare of D.D.K.*, 376 N.W.2d 717, 721 (Minn. Ct. App. 1985) (noting that court does not examine the conditions leading to the finding of neglect or dependency).
- *In re Welfare of J.K.*, 374 N.W.2d 463, 466 (Minn. Ct. App. 1985), *review denied* (Minn. Nov. 25, 1985) (concluding that there was no current evidence that mother would, in future, become fit and suitable parent).
- *In re Welfare of L.J.B.*, 356 N.W.2d 394, 396-97 (Minn. Ct. App. 1984) (noting that a prior neglect order alone does not justify termination of parental rights).
- *In re Welfare of Udstuen*, 349 N.W.2d 300, 304 (Minn. Ct. App. 1984).

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**(b) Incarceration**

- *In re Child of Simon*, 662 N.W.2d 155, 162 (Minn. Ct. App. 2003) (stating district court may not terminate parental rights merely because parent is incarcerated, but incarceration may be considered in conjunction with other factors when determining whether to terminate parental rights, and that there is no prohibition on terminating parental rights while parent is incarcerated).
- *In re Welfare of Udstuen*, 349 N.W.2d 300, 304-05 (Minn. Ct. App. 1984) (stating “[t]he trial court was justified in terminating appellant’s parental rights before the appeal [of his criminal conviction] was decided” where termination was not based solely on incarceration).

**(c) Chemical Dependency**

- *In re Welfare of J.H.D.*, 416 N.W.2d 194, 199 (Minn. Ct. App. 1987), *review denied* (Minn. Feb. 12, 1988) (stating “[a]bsent a showing by the parents that chemical dependency caused all the problems leading to termination, and that treatment of the chemical dependency would lead to improved parenting skills in a reasonable and ascertainable period of time, the petitioner here had no duty to disprove the allegation of chemical dependency offered as a defense in the termination proceeding”).
- *In re Welfare of L.J.B.*, 356 N.W.2d 394, 397 (Minn. Ct. App. 1984) (stating “[a]lcoholism which interferes with a parent’s ability to provide a stable home or to care for a child may justify termination”).

**(d) Other**

- *In re Child of Simon*, 662 N.W.2d 155, 164 (Minn. Ct. App. 2003) (affirming determination that termination of parental rights was in child’s best interests where parent never demonstrated he could parent child, child had been in out-of-home placement for about two years, parent had continued his criminal behavior, and child had “no meaningful relationship with her father”).
- *In re Welfare of L.L.N.*, 372 N.W.2d 60, 63 (Minn. Ct. App. 1985) (reversing termination of parental rights, stating “[a]s between the natural father and a stepfather seeking adoption, the test in determining whether or not parental rights should be terminated . . . is the present ability of the natural parent to develop a relationship beneficial to the child, and not merely whether it is in the child’s best interests to terminate those rights”).
- *In re Welfare of L.L.N.*, 372 N.W.2d 60, 63 (Minn. Ct. App. 1985) (stating “[s]poradic visitation and sporadic child support payments over a four-year period are not such ‘grave and weighty’ reasons” justifying the termination of parental rights).

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- *In re Welfare of V.R.*, 355 N.W.2d 426, 431 (Minn. Ct. App. 1984), *review denied* (Minn. Jan. 11, 1986) (finding of sexual abuse of child by adoptive father was supported by child maintaining the truth of her report of sexual abuse over many months, especially in light of restraining order precluding contact with adoptive father and ostracization from family, expert's belief child had been sexually abused, and lack of a "showing" that there was any inconsistency in child's testimony").
- *In re Welfare of V.R.*, 355 N.W.2d 426, 431 (Minn. Ct. App. 1984), *review denied* (Minn. Jan. 11, 1986) (reversing neglect and dependency determination for certain children who were not subject to abuse where basis for determination was abuse suffered by a half-sibling and where there was no indication that children in question had been abused and disposition for children was to leave them in their home).

### 11. Record/Exclusion from Record

- *In re Welfare of L.J.B.*, 356 N.W.2d 394, 397 (Minn. Ct. App. 1984) (stating decision to terminate parental rights "should have been based solely upon testimony received in court under due process safeguards"). *See In re Welfare of White*, 363 N.W.2d 79, 80 (Minn. Ct. App. 1985).
- *In re Welfare of Children of C.*, 348 N.W.2d 94, 97 (Minn. Ct. App. 1984) (stating "evidence in support of a motion to modify the dispositional order as to [the child], received by this court as a result of exigent circumstances arising during the appeal process, [was] sufficient to sustain the trial court as to that child [despite a record that otherwise would lack support for the district court's ruling]").
- *In re Welfare of J.A.*, 377 N.W.2d 69, 74 (Minn. Ct. App. 1985), *review denied* (Minn. Jan. 23, 1986) (refusing to reverse for exclusion of certain evidence where exclusion "did not harmfully encumber the process of finding facts" or "the future prospects for helping [the parent]"). *See In re Welfare of Children of C.*, 348 N.W.2d 94, 97-98 (Minn. Ct. App. 1984).
- *In re Welfare of K.T.*, 327 N.W.2d 13, 18 (Minn. 1982) (noting burden of informing district court of prior proceedings is on officers of the district court via language in Minn. Stat. § 260C.031, subd. 3 stating that upon conclusion of a hearing before a referee, "the referee shall transmit to the judge all papers relating to the case, together with his findings and recommendations in writing").

### 12. Case Plans

- *In re Welfare of R.M.M.*, 316 N.W.2d 538, 542 (Minn. 1982) (stating a written plan is required in every case and must describe the specific actions which the parent can take to eliminate or correct the problems which led to the child's placement, but that the absence of a case plan does not always require reversal).

- *In re Welfare of Copus*, 356 N.W.2d 363, 366-67 (Minn. Ct. App. 1984) (stating that “[i]n the absence of this written case plan . . . the clear and convincing evidence required to terminate a parent’s right will rarely be present”).
- *In re of Welfare of J.J.L.B.*, 394 N.W.2d 858, 863 (Minn. Ct. App. 1986), *review denied* (Minn. Dec. 17, 1986).
- *In re Welfare of A.K.K.*, 356 N.W.2d 337, 344 (Minn. Ct. App. 1984) (stating “[t]he legislature cannot be expected to provide specific plans for rehabilitation of a parent, or to explain within the confines of a general statute the exact efforts which must be made by a parent to correct conditions leading to a determination of dependency. Each case is unique, and the courts and social service agencies must have a certain amount of freedom to determine what is necessary in a particular fact situation”).
- *In re Welfare of G.C.*, 394 N.W.2d 830, 833-34 (Minn. Ct. App. 1986) (noting district court acted within its discretion to require father’s participation in sex-offender treatment as a condition to unsupervised visitation with his daughter where there had not been a determination that the child was abused, but where the father had expressed sexual attraction to young girls).
- *In re Welfare of A.K.*, 373 N.W.2d 821, 823 (Minn. Ct. App. 1985) (stating termination of parental rights for failing to correct conditions leading to dependency determination was justified where “[s]pecific goals were set by the reunification plan” but “[n]one of these goals were successfully accomplished”). *See In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 262 (Minn. Ct. App. 1996).
- *In re Welfare of White*, 363 N.W.2d 79, 80 (Minn. Ct. App. 1985) (reversing termination of parental rights in part because parents lacked input in to the case plan and no real evidence of neglect existed).

## **G. Custody Preferences**

- *In re Welfare of M.M.*, 452 N.W.2d 236, 238-39 (Minn. 1990) (stating “[t]oday there remains a strong preference to award the permanent care and custody of a child to a relative if either or both of the natural parents are unable to perform that responsibility[,]” and noting both that the designated order of preference be followed unless good cause exists to avoid preferential placement first with an available relative, and that the party seeking to avoid this placement must affirmatively show that the placement would be detrimental to the child).

### **1. Placement with Parent**

- *In re Welfare of P.J.K.*, 369 N.W.2d 286, 290 (Minn. 1985) (stating the law secures parents’ right to custody “only so long as they shall promptly recognize and discharge their corresponding obligations”).

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## 2. Child's preference

- *In re Welfare of D.J.N.*, 568 N.W.2d 170, 175 (Minn. Ct. App. 1997) (stating, in considering child's best interests, court is required to take into account both child's wishes and child's chances for adoption and, if a child is over age 14, that child's consent is required for adoption, but noting juvenile court might determine child's best interests would not be advanced by granting child's preferences) (citing *In re Welfare of M.P.*, 542 N.W.2d 71, 74 (Minn. Ct. App. 1996)).
- *But see In re Welfare of J.M.* 574 N.W.2d at 71, 723 (Minn. 1998) (stating "nowhere in the [parental termination] statute is imminent adoption an element of a termination proceeding. The court of appeals seems to have added a requirement not contemplated by the legislature").
- *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. Ct. App. 2003) (noting *J.M.* overruled part of *M.P.*).

## H. Continuances

- *In re Welfare of J.B.*, 698 N.W.2d 160, 173 (Minn. Ct. App. 2005) (affirming denial of continuance, noting father initially declined to participate in proceeding and refused services he was offered regarding his case plan).
- *In re Welfare of W.L.P.*, 678 N.W.2d 703, 710 (Minn. Ct. App. 2004) (affirming denial of continuance sought to allow mother to achieve stability in life, noting that record established that it could be years before mother has stability in her life).
- *In re Welfare of A.Y.-J.*, 558 N.W.2d 757, 759 (Minn. Ct. App. 1997), *review denied* (Minn. Apr. 15, 1997) (affirming denial of continuance, noting father's failure to appear for former hearings).
- *In re Welfare of V.R.*, 355 N.W.2d 426, 429-30 (Minn. Ct. App. 1984), *review denied* (Minn. Jan. 11, 1986) (affirming denial of continuance where case was continued despite denial of motion for continuance and noting parents failed to utilize time to prepare for hearing).

## I. Other

### 1. Balancing Interests

- *In re Welfare of Udstuen*, 349 N.W.2d 300, 304 (Minn. Ct. App. 1984) (stating that balancing interests of parent and child "does not mean that the interests of the parent and the child are weighed equally. Instead 'both the interests of the parent and child are considered along with the circumstances of the particular case in an effort to determine which of these interests is to predominate. Balancing, therefore, is an active process of determining the weight of two potentially opposing interests rather than a static attribution of an equal weight to

each interest”). See *In re In re Welfare of B.C.*, 356 N.W.2d 328, 332 (Minn. Ct. App. 1984).

- *In re P.T.*, 657 N.W.2d 577, 583 (Minn. Ct. App. 2003) (stating parental rights are not absolute and should not be enforced to detriment of child’s welfare and happiness; parental rights are in the nature of a trust and subject to parents’ duty to protect and care for child, and in termination of parental rights proceedings, child’s best interests must be paramount consideration).
- *Witso v. Overby*, 627 N.W.2d 63 (Minn. 2001) (affirming right of putative father to demand genetic testing, where child already had a presumed father).

## 2. **Adversarial Nature of Proceedings**

- *In re Welfare of A.K.K.*, 356 N.W.2d 337, 342 (Minn. Ct. App. 1984) (stating “the ‘adversarial’ nature of the actual termination proceeding (i.e. allowing testimony adverse to the natural parent) is recognized in the statutes which require a hearing and a court order based upon ‘clear and convincing evidence’”).

## 3. **Purpose of Termination/CHIPS Statutes**

- *In re Children of Vasquez*, 658 N.W.2d 249, 254 (Minn. Ct. App. 2003) (noting that child-protection statutes are to be liberally construed to carry out their purpose and that the purpose of termination of parental rights statutes is to (a) ensure that, when required and appropriate, reasonable efforts are made by social services agency to reunite parent and child in safe, permanent home; and (b) if placement with parent is not reasonably foreseeable, to secure safe, permanent placement for child, preferably with adoptive parents or a fit, willing relative through transfer of permanent legal and physical custody).
- *In re Welfare of A.K.K.*, 356 N.W.2d 337, 340 (Minn. Ct. App. 1984) (stating “because termination statutes are in derogation of the common law, they must be strictly construed in favor of the parental relationship”).
- *In re Welfare of White*, 363 N.W.2d 79, 80 (Minn. Ct. App. 1985) (noting the termination statute implicitly requires that the family relationship be strengthened if possible).
- *In re Welfare of P.J.K.*, 369 N.W.2d 286, 292 (Minn. 1985) (stating one purpose of termination of parental rights statute is to facilitate adoption, but imminent adoption is not an element of a termination proceeding).
- *In re Welfare of S.N.T.R.*, 403 N.W.2d 293, 296 (Minn. Ct. App. 1987) (stating the purposes of the laws relating to the juvenile courts “cannot be achieved unless the parties are given certain procedural safeguards”).

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#### 4. **Standard of Review**

- *In re Welfare of T.M.D.*, 374 N.W.2d 206, 211 (Minn. Ct. App. 1985) (stating “[t]he standard of appellate review [in termination cases] is something of a hybrid as on the one hand the findings should be respected unless clearly erroneous, but on the other hand the court will ‘exercise great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result in accordance with statutory grounds’”), *review denied* (Minn. Nov. 25, 1985).
- *In re Petition of M.G.*, 375 N.W.2d 588, 591 (Minn. Ct. App. 1985) (stating “[t]ermination of parental rights is a drastic measure . . . [t]he legislature wisely provided that such termination only occur upon a showing by clear and convincing proof that one of the statutory grounds has been met”).
- *In re Welfare of J.A.*, 377 N.W.2d 69, 72 (Minn. Ct. App. 1985) (stating “the law presumes the fitness of the parent” and “[t]he relationship of the parent and child must be preserved ‘whenever possible’”), *review denied* (Minn. Jan. 23, 1986).

#### 5. **Appointed Counsel**

- *In re Welfare of K.T.*, 327 N.W.2d 13, 18 (Minn. 1982) (stating where there is no evidence that mother was not competent to make a knowledgeable waiver of her right to counsel, juvenile court’s failure to appoint counsel for her was not error).