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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1050
A19-1051**

In re the Matter of the Welfare of the Child of:
T. T., Mother (A19-1050),

In re the Matter of the Welfare of the Child of:
T. T. and T. B., Parents (A19-1051).

**Filed December 16, 2019
Affirmed in part, reversed in part, and remanded
Worke, Judge**

Mower County District Court
File Nos. 50-JV-19-603; 50-JV-19-604

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appellant mother T.T.)

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Considered and decided by Cleary, Chief Judge; Worke, Judge; and Bratvold,
Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant challenges the termination of her parental rights. Because the record
supports the district court's determination that the county made reasonable reunification
efforts, and the district court did not abuse its discretion in ruling that reasonable efforts

failed to correct the conditions leading to the children's out-of-home placement, we affirm in part. But because the district court's findings on the children's best interests are insufficient, we reverse in part and remand.

FACTS

This termination-of-parental-rights (TPR) matter involves two children, F.B., born in 2011, and his half-brother, B.T., born in 2018. Appellant T.T. is the children's mother; T.B. is F.B.'s father.¹ B.T.'s father is unknown.

In December 2017, respondent Mower County Human Services (the county) filed a child-in-need-of-protection-or-services (CHIPS) petition on behalf of F.B. after controlled substances and drug paraphernalia were found within his reach in T.T.'s home. The district court appointed a guardian ad litem (GAL) in January 2018. Later that month, T.T. entered a denial of the petition. T.T. was ordered to cooperate with the county and ensure that F.B. attended school.

In March 2018, when T.T. failed to appear at the pretrial hearing, F.B. was adjudicated CHIPS by default. T.T. appeared for a hearing later that month and refused to inform the district court of F.B.'s location. T.T. eventually turned F.B. over to the county to avoid being held in contempt of court. At an initial disposition hearing near the end of the month, T.T. was ordered to maintain safe and secure housing.

T.T. signed a case plan for F.B. in April 2018 that required her to complete diagnostic, parenting, and chemical-dependency assessments. At a hearing in mid-April,

¹ The district court terminated T.B.'s parental rights to F.B. in May 2019.

T.T. stated that she was temporarily living with a cousin but was working on finding independent housing. The district court again ordered T.T. to maintain safe and secure housing. T.T.'s parenting assessment was completed in May 2018. The parenting assessment recommended that T.T. avoid associating with drug users and that she establish and maintain safe, adequate, and independent housing.

Several days after B.T.'s birth in June 2018, the district court held an emergency-protective-care hearing and found a prima facie showing that B.T.'s health, safety, and welfare would be endangered if he was returned to T.T. The district court appointed the same GAL appointed to F.B. T.T. entered an admission that B.T. was CHIPS later in June 2018 and was ordered to obtain and maintain safe and secure housing. T.T. signed a case plan for B.T. in early July 2018, which was substantially identical to F.B.'s case plan.

In March 2019, the county filed separate TPR petitions for each child, alleging that T.T. failed to correct the conditions leading to the children's out-of-home placement. T.T. attended the admit/deny hearing for the petitions in April 2019, was appointed counsel, and entered denials on the TPR petitions.

In May 2019, the district court held a TPR trial. Among the exhibits admitted were the district court's orders from the CHIPS proceedings, T.T.'s out-of-home-placement plans, and T.T.'s parenting-capacity assessment. Two mental-health practitioners, two social workers, the GAL, and T.T. testified.

The first mental-health practitioner testified about T.T.'s parenting-capacity assessment. She stated that she had recommended T.T. abstain from using non-prescription chemicals and avoid associating with individuals using or abusing them. She also testified

that she recommended T.T. obtain safe, adequate, and independent housing due to her concerns about the number of individuals living in the home and the reports of drug use.

When asked about her overall assessment of T.T.'s ability to safely parent, the mental-health practitioner expressed concern about F.B.'s school attendance and F.B.'s report that people residing in the home had physically abused him. She testified that she was also concerned about T.T.'s ability to "become independent and proactive on her own in order to parent [F.B.]" because she seemed dependent on others, had never lived on her own or demonstrated independent living skills, and lacked insight about how the living situation negatively affected F.B.

The first social worker testified that he developed a case plan for F.B. in April 2018 and recommended that T.T. maintain safe and secure housing, complete a parenting assessment, complete parenting classes, and undergo urinalysis testing. He testified that while T.T. completed most of the recommendations in her case plan, she had not maintained safe and secure housing.

The social worker testified that T.T. eventually moved into an apartment with her mother, Y.T., and a man, S.R. He testified that he observed the apartment and discussed with T.T. her need for independent housing due to individuals coming to the apartment who should not have been present. The social worker noted that while T.T. was advised to contact an agency to begin the process of establishing independent living, that process was hampered by her prior eviction and legal troubles.

The social worker also testified that F.B. told him that he was scared of individuals who were coming into the apartment. The social worker testified that while he did not

personally observe these individuals, he heard of people who had been there. The social worker also stated that an overnight visit was cancelled because of reports of an individual known to the county through a separate CHIPS case being present outside of the apartment building. The social worker stated that T.T. had not obtained independent housing and that he was concerned about the type of people the county heard were coming to the apartment.

The other social worker testified that her main concern about T.T.'s case plan was the housing requirement. She stated that she had discussed the importance of independent housing with T.T. due to concerns about chemical use by others living in the apartment. The social worker also stated that when she requested Y.T. and S.R. complete urinalysis testing, they did not do so. When she informed T.T. of the need for Y.T. to have a urinalysis test, T.T. told her that it was unnecessary because Y.T. did not reside at the apartment.

The social worker testified that she had told T.T. about the importance of independent housing multiple times and that T.T. had agreed that she needed more appropriate housing. The social worker also stated that during her visit to the apartment the week prior to the TPR trial, an individual later identified as a sex offender and suspected drug user had requested access to the apartment. When T.T. said that she did not know the man and did not allow him into the apartment, the man said that he knew T.T. and was seen waiting outside of the apartment when the social worker left.

The social worker testified that F.B. told her that T.T. did not play with him during his visits and he was scared of the people who entered the apartment. She stated that F.B. had also told his foster parent that he was afraid of a dog that was in the apartment and that

Y.T. had pointed a Taser at him. When the social worker asked F.B. how he knew it was a Taser, he told her that there was “electrical stuff” coming out of it.

The social worker testified that she was concerned about individuals coming to any location where T.T. lived and about Y.T.’s and S.R.’s purported drug use. She acknowledged that while S.R. had moved out, Y.T. was still in the apartment when she visited, even though T.T. had stated Y.T. had moved out. The social worker opined that while T.T. had completed the majority of her case plan, she had not developed the insight necessary to make a safe and stable environment for her children.

The GAL testified that he was concerned about individuals in the home who were dangerous. He also testified that he had noticed a change in F.B.’s behavior after he was removed from the home and F.B. became a “model citizen” in the foster home and at school. The GAL stated that when he observed T.T. with her children, she seemed overwhelmed and struggled to parent both of them simultaneously. He acknowledged that T.T. had completed a majority of her case plan with the exception of the housing requirement.

The GAL testified about an unscheduled visit where F.B.’s bedroom door was locked. When the GAL requested access to F.B.’s bedroom, T.T. had to crawl through a small half-door² located along the wall of the common area of the apartment so that she could access the bedroom and unlock the door from the inside. When the GAL entered the room, he encountered Y.T., who was sitting at a table, holding a dog, and “talking really

² The GAL described this door as a “cubby hole.”

fast.” At one point, Y.T. draped her body over the bed while she continued to speak with the GAL.

The next day, a social worker told the GAL she had been informed that a man had been hiding under the bed when the GAL spoke to Y.T. Later, without prompting, F.B. told the GAL he “was really scared that that man under the bed was going to get mad at you because he was really angry when he heard you were coming in the door.” When the GAL asked about the man, F.B. told him the man had driven him to school before. The GAL stated that he later had a conversation with the man, who he believed was a sex offender, and the man admitted that the dog Y.T. had been holding was his.³

The GAL also testified that he observed Y.T. and the man together at Walmart following the unscheduled visit. When the man saw the GAL, the man went and hid behind the pharmacy counter while Y.T. walked around the store. Eventually, Y.T. left the store, got into the man’s truck, and the two drove off. The GAL stated that it appeared they were trying to avoid being seen together.

The GAL also spoke of a counseling meeting that T.T., Y.T., and Y.T.’s mother attended. During the meeting, Y.T.’s mother stood up and said, “I am the matriarch of this family. I will just make the ruling right now. My daughter [Y.T.] is not a good influence on [T.T.]. She is leaving the apartment. T.T. will live on her own. End of story.”

The GAL testified that while T.T. cared about her children, she lacked the ability to make appropriate parenting decisions because she exposed her children to dangerous

³ This is the same man who the first social worker knew as having a CHIPS case with the county.

individuals. The GAL also stated he was concerned about T.T.'s ability to place the needs of F.B. before her own, because she never demonstrated an ability to protect her children from individuals coming and going from the residence. He testified that even if T.T. obtained more appropriate housing, it would not be enough to keep F.B. and B.T. safe because she lacked the ability to develop insight into the needs of her children.

A mental-health practitioner testified that she worked with T.T. on budgeting skills and obtaining housing. She testified that T.T. currently lived in her own apartment. The mental-health practitioner testified that she helped T.T. find alternatives to her living situation but that T.T. had a number of obstacles because of her pending criminal charge. She also testified that T.T. had an outstanding utility bill of around \$3,000-\$4,000 and she was working with her to obtain funds to pay off the bill. The mental-health practitioner stated that T.T. was also receiving Adult Rehabilitative Mental Health Services (ARMHS) to help her with everyday skills.

T.T. testified that she was currently living in her own apartment and that Y.T. had moved out in April 2018. She acknowledged that her mother visited her and she had trouble telling people not to come over. She testified that she did not know the man, known by the county as having a separate CHIPS case and who the GAL believed was a sex offender, whose dog had been at the apartment and who was seen with Y.T. T.T. also admitted that her mother had smoked marijuana with her when they lived at their old residence.

T.T. testified that she had told the mental-health practitioner during the parenting evaluation that she drank three times per week. She testified that "[i]t was basically like

when . . . [F.B.] was sleeping, and my friend wanted me to go over to her house. I would take a couple of shots and just basically go home and sleep. I wasn't really a big drinker." She clarified that she would leave the house to do this when F.B. had been around five years old.

T.T. acknowledged that she did not receive enough social security to cover her rent, but the Salvation Army had helped her pay one month's rent. When asked why she had not had a job in the last six years, T.T. stated that she "didn't really want to work while [she] was taking care of [F.B.]" despite being a single mother with no outside income. When asked about why F.B. had said a man had been hiding under a bed, T.T. stated that the man would not have been able to hide under the twin-size bed and "I highly doubt that my son would say that someone was under the bed."

In June 2019, the district court terminated T.T.'s parental rights to F.B. and B.T. The district court found that the county proved by clear and convincing evidence that reasonable efforts failed to correct the conditions leading to the children's out-of-home placement because T.T. had failed to obtain safe, secure, and independent housing. The district court found that T.T.'s testimony about not knowing the man hiding under the bed was not credible. The district court also found that the second female social worker's testimony indicated T.T. was not living independently the week prior to trial, and it doubted that Y.T. had permanently moved out. The district court further concluded that the county showed it made reasonable efforts to reunify the family and that TPR was in the children's best interests. This appeal followed.

DECISION

T.T. argues that the district court abused its discretion by terminating her parental rights. This court reviews a district court's TPR decision for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). In doing so, this court determines whether the district court's findings address the statutory criteria and whether they "are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). A factual finding is clearly erroneous if it is manifestly contrary to the evidence or not reasonably supported by the evidence. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008). This court will affirm a TPR order when "at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child[ren]'s best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

Reasonable reunification efforts

T.T. first argues the district court erred by determining that the county made reasonable efforts to reunify the family. "Whether the county has met its duty of reasonable efforts requires consideration of the length of time the county was involved and the quality of effort." *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). In order to determine if efforts were reasonable, the district court must determine whether the services offered were: "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under

the circumstances.” Minn. Stat. § 260.012(h) (2018). Whether the county made reasonable efforts is an underlying factual finding that is reviewed for clear error. *S.E.P.*, 744 N.W.2d at 387.

The district court made numerous findings regarding the county’s efforts to reunify the family, as follows. The county became involved with T.T. and F.B. in September 2017 when T.T. sought voluntary services. The district court ordered T.T. to obtain safe and secure housing beginning in March 2018. T.T. and the county then developed a case plan for F.B. in April 2018, and for B.T. in July 2018, which included the requirement that she obtain safe and suitable housing. The social workers testified that they had discussed the housing requirement with T.T., and in her case plan had provided her with contact information of agencies that could assist her. T.T. was also receiving ARMHS, which was assisting her “with finding housing, budgeting her finances, and developing skills to manage[] her mental health issues.”

Based on a review of the record, the district court’s finding that the county made reasonable efforts to rehabilitate T.T. and reunite the family is supported by substantial evidence, and thus is not clearly erroneous.

Reasonable efforts to correct out-of-home placement conditions

Next, T.T. argues that the district court erred by determining that her reasonable efforts failed to correct the conditions leading to the children’s out-of-home placement and that she had not substantially complied with the court’s orders and her case plan because she failed to obtain safe and secure housing.

A district court may terminate parental rights if reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the out-of-home placement. Minn. Stat. § 260C.301, subd. 1(b)(5) (2018). Reasonable efforts are presumed to have failed upon a showing that: (1) the child has resided out of the home for a cumulative period of 12 months within the preceding 22 months or, if the child is under the age of eight, has resided out of the home for six or more months unless the parent maintained regular contact with the child and complied with the out-of-home placement plan; (2) the district court approved the out-of-home placement plan; (3) the conditions have not been corrected; and (4) the county made reasonable efforts toward reunification. *Id.*, subd. 1(b)(5)(i)-(iv).

“It is presumed that conditions leading to a child’s out-of-home placement have not been corrected upon a showing that the parent . . . [has] not substantially complied with the court’s orders and a reasonable case plan.” *Id.*, subd. 1(b)(5)(iii). However, “[r]easonable efforts encompass more than just a case plan” and the required services “must be aimed at alleviating the conditions that gave rise to out-of-home placement.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 88 (Minn. App. 2012). “The critical issue is not whether the parent formally complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child.” *Id.* at 89.

The district court found that while the county and the GAL agreed that T.T. had completed most of her case plan, she had not found safe and secure housing, which was a primary component of the plan. The district court found that T.T. had

continually failed to find or provide safe, secure, and independent housing. The [district] [c]ourt has ordered [T.T.] to obtain adequate housing since at least March of 2018. [T.T.] was still not living independently as of a week before the [c]ourt [t]rial. In addition, the safety of [T.T.]’s home is still in question because of the potentially dangerous visitors that continue to come to her apartment.

The district court concluded that T.T. “has failed to correct the conditions leading to [her children’s] placement. [She] has failed to adequately comply with both the [c]ourt’s orders and the case plan by failing to obtain safe, secure, and independent housing.”

On this record, the district court’s underlying findings of fact are supported by the record, and those findings address whether a parent has failed to correct the conditions leading to the out-of-home placement. Therefore, the district court did not abuse its discretion in concluding that this statutory basis for terminating parental rights exists in this case. The record indicates that the district court ordered T.T. to maintain safe and secure housing starting in March 2018. The housing requirement was also part of her children’s case plans. While T.T. made progress on other aspects of her case plan during the months leading up to the TPR trial, the district court found that she failed to obtain safe, secure, and independent housing.

During the TPR trial, the district court heard testimony and was able to assess the credibility of the witnesses.⁴ Specifically, a social worker testified that Y.T. had not moved out of mother’s apartment the week prior to the trial. The district court also heard the

⁴ We caution the district court to use care when writing orders and to include findings that indicate it made determinations about the amount of weight and credibility to afford the testimony of witnesses.

testimony of T.T., and found that “the [c]ourt doubts that [Y.T.] has permanently moved out, based in part on [the social worker]’s testimony” and because T.T. “answered evasively when asked if she would let [Y.T.] live with her again.” The district court also, presumably, found the testimony of the GAL and social worker credible when they stated that having T.T. move to a new apartment would not remedy the ongoing problem of the children’s exposure to dangerous individuals.⁵ Therefore, the district court did not abuse its discretion by determining T.T. continually failed to find and provide safe, secure, and independent housing.

Children’s best interests

Finally, T.T. argues that the district court erred by finding that TPR was in the children’s best interests. Even if a statutory basis for termination is present, the child’s best interests are the paramount consideration in a termination proceeding. *See* Minn. Stat. § 260C.301, subd. 7 (2018); *see also* Minn. Stat. § 260C.001, subd. 2(a) (2018). Even when a statutory ground for termination exists, “a child’s best interests may preclude terminating parental rights.” *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009). A best-interests analysis requires the district court to consider the children’s and parent’s interests in preserving their relationship and any competing interests of the children. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). “Competing interests include such things as a stable environment, health considerations[,] and the child[ren]’s preferences.” *J.R.B.*, 805 N.W.2d at 905 (quotation omitted).

⁵ While the only credibility determination the district court made in this case was that T.T. was not credible, we assume that the district court found the other witnesses credible.

Determination of the children’s best interests “is generally not susceptible to an appellate court’s global review of a record.” *D.L.D.*, 771 N.W.2d at 546 (quotation omitted). “Considerable deference is due to the district court’s decision because a district court is in a superior position to assess the credibility of witnesses.” *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). However, “the district court, in a termination proceeding, must consider a child’s best interests and explain its rationale in its findings and conclusions.” *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). In order to allow for appellate review, the findings must provide insight as to the facts or opinions most persuasive of the ultimate decision and to show the district court’s comprehensive consideration of the statutory criteria. *See id.*

Our review of the TPR orders indicates that the district court did not undertake the required best-interests analysis.⁶ While the district court found that TPR was in the children’s best interests, it did not explain its rationale in its findings and conclusions. Arguably, the district court considered F.B.’s and B.T.’s competing interests of whether T.T. would provide them with a stable environment throughout its orders. The district court’s order for F.B. also contained a finding about the difference in his behavior when he was in foster care when compared to his behavior while he was residing with T.T.

⁶ A district court is not required to make a specific finding on each factor set forth in Minn. R. Juv. Prot. P. 39.05, subd(b)(3). However, it appears that the district court did not consider, either explicitly or implicitly in its findings or conclusions, the preservation of the relationship factor.

While the record in this case reflects the nature of T.T.'s relationship with her children,⁷ it is not clear that the district court considered the interests of T.T. in preserving the relationship with F.B. and B.T., or vice versa, as is required by Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). Because the district court's findings and conclusions lack the required rationale as to why TPR was in the children's best interests, it does not allow for meaningful appellate review of T.T.'s best-interests claim. While it appears the district court gave due consideration to this case as a whole, it abused its discretion by not conducting the proper analysis about preserving the parent-child relationship. Therefore, we reverse and remand for the district court to make the proper best-interests findings in accordance with this opinion. On remand, the district court, at its discretion, may reopen the record to permit consideration of the children's best interests.

Affirmed in part, reversed in part, and remanded.

⁷ The record reflects that T.T. made an effort to visit her children often, including multiple in-person visits every week for much of the time F.B. and B.T. were placed in foster care, that she loves her children, and that F.B. loves her.