

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1977**

In the Matter of the Welfare of the Child of
E. F. O. and J. A. D., Parents.

**Filed May 26, 2020
Affirmed
Slieter, Judge**

Olmsted County District Court
File No. 55-JV-19-4911

James McGeeney, Doda McGeeney, Rochester, Minnesota (for appellant mother E.F.O.)

Frederick S. Suhler, Jr., Rochester, Minnesota (for respondent father J.A.D.)

Mark Ostrem, Olmsted County Attorney, Michelle A.S. Barnes, Associate County Attorney, Rochester, Minnesota (for respondent Olmsted County Health, Housing & Human Services)

Vicki Duncan, Rochester, Minnesota (Guardian *ad litem*)

Considered and decided by Ross, Presiding Judge; Reyes, Judge; and Slieter, Judge.

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

SLIETER, Judge

Appellant E.F.O. challenges the district court's involuntary termination of parental rights (TPR) to her child. E.F.O. asserts that the district court (1) made clearly erroneous findings that a statutory basis exists to terminate her parental rights and (2) abused its discretion by finding that termination of E.F.O.'s parental rights was in the child's best interests. Because the district court did not make clearly erroneous findings or abuse its

discretion by concluding that termination of E.F.O.'s parental rights is the best interests of the child, we affirm.

FACTS

E.F.O. is the mother and J.A.D. is the father to C.F.D., a nine-year-old girl at the time of trial. J.A.D. voluntarily terminated his parental rights to C.F.D. before the start of the TPR trial. The only issue on appeal relates to the district court's involuntary termination of E.F.O.'s parental rights.

Beginning in April 2010, the Olmsted County Health, Housing, and Human Services (the county) started working with E.F.O. and J.A.D. after receiving a truancy report about a separate child of E.F.O. who is now an adult. C.F.D. was a baby during the county's initial contact with the family. The county stopped providing voluntary services to the family based on E.F.O.'s assertion that the family would be moving to the Twin Cities area.

In July 2018, the county received a report of potential child maltreatment of C.F.D. "related to threatened sexual abuse." The report alleged that from 2015 to 2016, E.F.O. sent pictures of C.F.D. sleeping with her underwear exposed to a man E.F.O. met online. The county investigated the allegations. E.F.O. admitted sending pictures of C.F.D. to the man but denied any of the pictures were inappropriate. E.F.O. did acknowledge that she stayed at the man's house at least once with C.F.D. Additionally, E.F.O. admitted that the male stayed late at night at E.F.O.'s residence several times as well. The child-protection workers never saw the pictures described by the reporter. Based on the investigation, the county provided ongoing case-management services to the family.

On October 24, 2018, C.F.D. was placed in foster care due to E.F.O.’s voluntary agreement. In December 2018, the county filed a child-protection petition, and the district court, following admissions by the parents, adjudicated the child in need of protection or services.

The county developed an out-of-home placement plan that E.F.O. accepted and the district court approved. The plan identified E.F.O.’s need to demonstrate that, among other things: (1) the child would reside in an environment without any sexual exploitation or threats of harm; (2) the child would “remain in a safe, stable, and consistent environment;” and (3) E.F.O. would develop a safety plan with the county for the child to be safe. The safety plan required that “[c]aregivers for [C.F.D.] must be . . . relatives and all others must be preapproved by [the county].” The county anticipated that the case could close when there is a “safety network of people” connected to C.F.D. that were “aware of reported concerns to ensure [C.F.D.] ha[d] consistent and safe caregivers.” Specific services provided to E.F.O. included referrals for low-income housing options, employment agencies, mental-health services, and family-group conferencing. These services were designed to develop E.F.O.’s ability to identify safe people for C.F.D. to be with and to increase E.F.O.’s awareness for proper supervision of C.F.D.

After four months and a purported lack of progress related to the case plan, the county petitioned to terminate E.F.O.’s parental rights involuntarily alleging, in part, that her parental rights should be terminated pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2) (2018). Following a trial, the district court terminated E.F.O.’s parental rights pursuant to that statute after finding that E.F.O. failed to complete the court-ordered case plan designed

to reunite E.F.O. with C.F.D., that the county provided services necessary for E.F.O. to correct the conditions leading to C.F.D.'s placement, and that further services to rehabilitate and reunify the family would be futile and therefore unreasonable under the circumstances. The district court found that C.F.D.'s best interests supported termination of E.F.O.'s parental rights based on C.F.D. experiencing "both harsh and unsafe living conditions while in [E.F.O.'s] care," and that C.F.D. was "thriving in the current placement," where C.F.D. "can develop physically and mentally in a safe environment." E.F.O. appeals.

D E C I S I O N

I. The record supports the district court's findings by clear and convincing evidence that a statutory basis exists to terminate E.F.O.'s parental rights involuntarily.

Appellate courts "review the [involuntary] termination of parental rights to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." See *In re Welfare of the Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). "A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of the Children of S.R.K.*, 911 N.W.2d 821, 830 (Minn. 2018) (quotation omitted). Appellate courts "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." See *S.E.P.*, 744 N.W.2d at 835. If the district court's findings of fact are not clearly erroneous, appellate courts review the district court's determination of whether the statutory basis to terminate parental rights exists for an abuse of discretion. *In*

re Welfare of J.R.B., 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012).

A district court's decision to terminate parental rights involuntarily must be supported by one of the statutory grounds listed in Minn. Stat. § 260C.301, subd. 1(b) (2018). “[W]e need only one properly supported statutory ground in order to affirm a termination order.” *In re Welfare of the Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012). Because the district court needs only one statutory basis to terminate parental rights involuntarily, we focus our analysis on the district court's finding pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2).

A district court may terminate parental rights if it finds “that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship.” Minn. Stat. § 260C.301, subd. 1(b)(2). Parental duties include, but are 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.” *Id.* In making this finding, the district court must consider “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 or reasonable efforts would be futile and therefore unreasonable.” *Id.* “Failure to satisfy requirements of a court-ordered case plan provides evidence of a parent's noncompliance with the duties and responsibilities under section 260C.301, subdivision 1(b)(2).” *In re Welfare of the Children of K.S.F.*, 823 N.W.2d 656, 666 (Minn. App. 2012).

E.F.O. argues that the district court's findings related to this statutory ground to terminate her parental rights are clearly erroneous. E.F.O. specifically asserts the district court made clearly erroneous findings that (1) E.F.O. placed the child at risk by having an unapproved caregiver take care of C.F.D. over a particular weekend; (2) E.F.O. failed to acknowledge that the topic of sexual abuse was important and E.F.O.'s failures put C.F.D. at risk; and (3) E.F.O. struggled to obtain stable housing for C.F.D. We address E.F.O.'s first two arguments together because the issues are closely related. We separately address her third argument.

Violating Safety Plan for C.F.D.

E.F.O. argues that the district court erred by findings that she left C.F.D. "with an unapproved caregiver during the long MEA weekend." The district court did not make such a finding in its termination order. However, the district court made findings which are supported by the record that E.F.O. failed to comply with an agreed-upon safety plan designed to ensure C.F.D.'s safety and, further, that E.F.O. failed to recognize the safety concerns.

The record supports the district court's finding that the county made a safety plan with E.F.O. in October 2018. The safety plan directed that C.F.D. be cared for only by relatives and individuals first approved by the county. The district court found—consistent with the record—that E.F.O. left C.F.D. alone with truck drivers whom E.F.O. transported as part of her employment for periods of time. The district court received testimony that this placed C.F.D. at risk because she "is a young child and it is the responsibility of the parent to decide what adults are safe to be around their children. [C.F.D.'s] development

[was] not where it need[ed] to be . . . to make those kinds of decisions.” The district court determined that it was not appropriate for E.F.O. to leave C.F.D. in these situations based on her age. The district court’s findings that E.F.O. left C.F.D. alone with individuals contrary to the safety plan is supported by the record.

E.F.O. also contends on appeal there was no evidence C.F.D. had been sexually abused or exploited, so she “had no reasons to believe this was a safety concern and the district court’s finding that these facts contributed to her failing to comply with her [out-of-home placement plan] are clearly erroneous.” The district court found that the county created its safety plan so that C.F.D. would be surrounded by “safe adults and receiving proper supervision.” As noted above, the district court determined that E.F.O. contravened the safety plan by leaving the child with men not approved by the county. The district court did not clearly err in finding E.F.O. had not successfully completed the out-of-home placement plan’s requirement to set boundaries to protect C.F.D. from risky contact. E.F.O. left the child alone with persons assuming C.F.D. could determine whether she was safe. The district court’s findings that E.F.O. left the child without proper supervision and that E.F.O. failed to ensure safe caregivers for C.F.D. are not clearly erroneous.

Necessary Shelter

E.F.O. also asserts the district court made a clearly erroneous finding that she failed to obtain stable housing as part of the statutory basis to support termination. The district court found that E.F.O. has struggled with providing secure housing. The district court found that E.F.O. resisted disclosing her residence to the county despite the requirement to do so under the out-of-home placement plan. E.F.O. acknowledged living in her car, in a

trailer home with J.A.D., or living with various friends. The district court noted that in the child-in-need-of-protection-or-services matter, E.F.O. admitted the housing she shared with J.A.D. was in poor condition. The district court found that the residence had “cockroaches, holes in the flooring, chemicals that would be within reach of the child, dog feces, and a large amount of clutter everywhere.” Additionally, the trailer home had “boxes stacked up to the ceiling in places.” The district court noted that E.F.O. disclosed to the county—one month before trial—that she was living with a friend and sleeping on the couch. Yet E.F.O. continued to maintain a current mailing address at J.A.D.’s residence and did not want to change that. This left the district court unsure of where E.F.O. planned to reside. The district court found that, although E.F.O. was staying at a friend’s residence, she failed “to establish stable long-term housing since this case opened over a year ago.” Based on the record, the district court’s findings that E.F.O. lacked stable housing and continues to lack stable long-term housing for C.F.D. are not clearly erroneous.

The findings supporting the statutory basis for termination are not clearly erroneous. We therefore conclude that the district court did not abuse its discretion by invoking that statutory basis to terminate E.F.O.’s parental rights, and affirm the district court’s determination that the county met its burden to establish a statutory basis pursuant to Minn. Stat. § 260C.301, subd. 1(b)(2), to terminate E.F.O.’s parental rights.

II. The record supports the district court’s finding that termination of E.F.O.’s parental rights is in C.F.D.’s best interests.

Even if a district court properly finds a statutory ground to terminate parental rights involuntarily, the district court must also find that termination of parental rights is in the

best interests of the child. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). “[D]etermination of a child’s best interests ‘is generally not susceptible to an appellate court’s global review of a record,’ and . . . ‘an appellate court’s combing through the record to determine best interests is inappropriate because it involves credibility determinations.’” *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quoting *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003)).

A district court addresses the best interests of the child by considering three factors: “(1) the child’s interest in preserving the parent-child relationship; (2) the parent’s interest in preserving the parent-child relationship; and (3) any competing interest of the child.” *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). A child’s “[c]ompeting interests include such things as a stable environment, health considerations and the child’s preferences.” *R.T.B.*, 492 N.W.2d at 4. A district court “shall make a specific finding that termination is in the best interests of the child.” Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). A district court’s determination of whether its findings on these factors show that termination is in the child’s best interests is reviewed for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

E.F.O. argues that the district court abused its discretion by finding termination was in the best interests of C.F.D. Specifically, E.F.O. asserts that the district court improperly weighed C.F.D.’s claim that she liked her foster-care placement over E.F.O.’s interest in maintaining the parent-child relationship. E.F.O. also contends that the district court improperly considered J.A.D.’s voluntary termination against E.F.O.’s interest in maintaining the parent-child relationship. Finally, E.F.O. argues that the district court

improperly found that E.F.O. exposed C.F.D. to unsafe conditions. Based on the district court's consideration of the best-interest factors relevant in these types of proceedings, we conclude the district court did not abuse its discretion.

The district court considered the three best-interests factors in addressing whether to terminate E.F.O.'s parental rights. See Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). First, the district court found that C.F.D. misses her mother but C.F.D. "has expressed happiness and excitement for the current foster care placement." Second, the district court considered E.F.O.'s interests in maintaining the relationship. The district court noted that E.F.O. loved C.F.D., missed C.F.D., and wanted C.F.D. returned to her care. Third, the district court considered competing interests of C.F.D. The district court found that C.F.D. "experienced both harsh and unsafe living conditions while in [E.F.O.'s] care." Moreover, it considered that C.F.D. is in a placement where she "can develop physically and mentally in a safe environment." These findings follow the necessary considerations that a district court must weigh in deciding a child's best interests in the context of terminating parental rights.

Contrary to E.F.O.'s claims on appeal, the findings do not show that the district court improperly weighed J.A.D.'s voluntary termination against E.F.O.'s request for reunification. The district court made specific best-interest determinations about each parent, providing reasons why C.F.D.'s best interest supported terminating E.F.O.'s parental rights. In addressing C.F.D.'s competing interest justifying termination of E.F.O.'s rights, the district court specifically addressed C.F.D.'s interest in a stable environment established through her foster placement as overcoming E.F.O.'s interest in maintaining the relationship. Because the district court considered the required best-

interest factors and made specific findings addressing those factors that are supported by the record, the district court did not abuse its discretion in finding that termination is in C.F.D.'s best interests. We therefore affirm the termination of E.F.O.'s parental rights.

Affirmed.