

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0791**

In the Matter of the Welfare of the Children of: A. L. S. and G. L. S., Parents.

**Filed November 29, 2021
Affirmed
Reilly, Judge**

Kanabec County District Court
File No. 33-JV-21-7

Anne M. Carlson, Anna M. Carlson Law Office, PLLC, St. Paul, Minnesota (for appellant A.L.S.)

Barbara McFadden, Kanabec County Attorney, Robb Hunter, Assistant County Attorney, Mora, Minnesota (for respondent county)

Neil Faegerstrom, Cambridge, Minnesota (for respondent children)

Laura Moore, Isanti, Minnesota (guardian ad litem)

Considered and decided by Johnson, Presiding Judge; Reilly, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant-mother challenges a district court order terminating parental rights to her three minor children, arguing that the district court failed to adequately address the children's best interests. Because the record supports the district court's determination that termination is in the children's best interests, we affirm.

FACTS

Appellant A.L.S. is the mother of three minor children, Child 1 born in 2006, Child 2 born in 2009, and Child 3 born in 2014. In January 2020, Kanabec County (the county) received reports that the children were living in an unsafe environment, were not being supervised, and were exposed to drug use. The county has had open cases with mother and the children for around fifteen years related to allegations of neglect and abuse in the home. The children's father had been the children's primary caretaker. However, he was diagnosed with terminal cancer in January 2020 and passed away five months later, heightening the county's concerns for the children.

Following its investigation, the county filed a petition alleging that the children were in need of protection or services (the CHIPS petition). The next day, law enforcement visited the home to conduct a safety check. The officers found garbage and feces throughout the home, no running water, and no edible food. The officers then removed the children from mother's care. The district court issued an ex parte order for emergency protective care and on June 25, 2020, the district court granted the CHIPS petition by default after mother failed to appear for two hearings. The district court placed all three children in the county's protective care.¹

¹ Child 1 had been living outside the family home with a friend's family even before the district court order granting removal of the children. He remains in the care of that family and wants to stay with them. Children 2 and 3 were placed in a temporary foster home in June 2020 and were later moved to another home together. The three siblings regularly see each other.

Mother began having supervised visits with the children in June 2020. During the visits, mother would look at her phone and not engage with the children, she sometimes fell asleep, and she had inappropriate conversations with the children. In July 2020, the county filed an out-of-home placement plan for each child, which mother signed. The county updated the out-of-home placement plans six months later, noting that mother had made little progress during that time. Both plans required mother to complete an updated chemical use assessment (CUA) and follow the CUA recommendations, reduce the number of animals in the home, and clean the home. Mother completed a CUA in July 2020 but did not follow the assessment's recommendations. From summer 2020 through April 2021, the district court ordered mother to follow the recommendations of her CUA at least seven times. At one point mother entered outpatient therapy but was discharged as unsuccessful because she failed to attend therapy sessions.

In February 2021, the county filed a petition seeking to involuntarily terminate mother's parental rights to all three children. The county alleged four statutory grounds pursuant to Minn. Stat. § 260C.301 (2020) in support of termination. The district court conducted a three-day trial beginning on May 10, 2021. The district court heard testimony from the county's child protection social worker, county sheriff's office investigator, the guardian ad litem (the GAL), mother, and Child 1. Both the county social worker and the GAL testified that, in their experience and professional opinions, termination of parental rights was in the best interests of the three children. The GAL also noted that the current placements adequately address the children's physical and emotional well-being.

On June 8, 2021, the district court issued an order terminating mother's parental rights to the three children. The district court found that the county proved by clear and convincing evidence four statutory bases for termination of parental rights and that reasonable efforts under the direction of the court failed to correct the conditions leading to the children's out-of-home placement. The district court agreed with the GAL's assessment that the children are doing exceptionally well in their out-of-home placements, and it is in the best interests of the children to terminate mother's parental rights. The district court found that mother could not provide a stable environment for the children and that their need for stability could only happen through the termination of mother's parental rights.

Mother appeals.

DECISION

Mother challenges the district court's termination of her parental rights. Mother's sole argument on appeal is that the district court failed to adequately address the children's best interests. Parental rights may be terminated "only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). The decision to terminate parental rights is discretionary with the district court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136-37 (Minn. 2014). A district court may not terminate a parent's parental rights unless the court finds, by clear and convincing evidence, that termination is in the child's best interests. *In re Welfare of Child. of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004).

In analyzing the best interests of a child, the district court should consider and evaluate “all relevant factors,” Minn. Stat. § 260C.511(a) (2020), including “a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact,” *id.* (b) (2020). The supreme court has identified three factors that must be considered in every analysis of a child’s best interests: (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 interests. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 399 (Minn. 1996); *see also* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). This court applies a clear-error standard of review to a district court’s findings of fact, *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995), and an abuse-of-discretion standard of review to a district court’s ultimate finding of a child’s best interests. *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012).

Mother argues that because the district court failed to address the three best-interests factors in its termination of parental rights (TPR) order the district court’s findings were inadequate. Thus, she argues, a remand of the district court’s decision is necessary. Mother acknowledges that the district court order addresses the children’s need for stability but argues the court order omits other necessary best-interests factors including mother’s interest in maintaining the parent-child relationship and the children’s preferences. Although the district court’s order does not explicitly articulate the three best-interests factors, we disagree that the district court failed to consider these factors.

In its order, the district court relied on the factors listed in Minn. Stat. § 260C.212

(2020) to make ten best-interests findings:

(1) The children's current functioning and behaviors are appropriately addressed by their foster placement; (2) the medical needs of the children are being met by their placement; (3) the educational needs of the children are being met by their current placement; (4) the developmental needs of the children are being met; (5) the children's history and past experiences are appropriately addressed within placement; (6) the children's religious and cultural needs are similar to their current foster parents beliefs and are adequately addressed within placement; (7) the children have sufficient community connections to their school and faith community within placement; (8) the children's interests and talents are appropriately addressed within placement; (9) the children's relationship to current caretakers, parents, siblings, and relatives are being addressed by regular visitation with relatives, their mother and siblings; (10) the reasonable preference of the children, are adequately addressed within placement.

But Minn. Stat. § 260.212, subd. 2(b), lists the factors the *agency* must consider when making its placement decision for the children. It is not the correct statute for the *district court* to reference when determining the best interests of the children in a TPR matter. See *In re Welfare of Child. of J.C.L.*, 958 N.W.2d 653, 657 (Minn. App. 2021), *rev. denied* (Minn. May 18, 2021). And while these factors may be informative, including the consideration of the children's placement preferences and needs, the district court should have explicitly cited and relied on Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) to make the best-interests findings for the children. Rule 58.04 is the appropriate standard for the district court to consider when analyzing the best interests of the children in a TPR proceeding.

Although the district court improperly cited the placement factors found in Minn. Stat. § 260C.212, the order implicitly analyzed the third factor, the competing interests of the children. The order made clear that “[m]other cannot provide a stable environment for the children.” A stable environment for the children is an important consideration in analyzing the competing interests of the children under best-interests factor three. *In re Welfare of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012). The district court found that the children are doing incredibly well in their placements where they can participate in activities they enjoy. The district court also found that mother does not currently have a home that would be safe or healthy for the children nor does she have stable employment. Thus, the district court found mother would have a “very difficult time supporting herself and the children in a stable and clean home where adequate food was available.”

The district court also implicitly analyzed the other two best-interests factors: the preferences of the children and mother’s interest in preserving the parent-child relationship. Both mother and the GAL testified that mother loves her children and wants to be reunited with them. Child 1 stated that he wanted to remain with his friend’s family. The GAL testified that Child 2 wants to be reunified with mother and that Child 3 is too young to express a preference. The district court found the GAL’s testimony persuasive. The GAL stated that she understood that mother “loves her children and very much wants to be reunified with them.” From that testimony it was clear that mother has a strong interest in maintaining the parent-child relationship. But the GAL testified that she did not believe that mother would be “able to provide consistency, stability, and safety for the children right now . . . or for the foreseeable future.” And the district court agreed with the GAL

that it is in the best interests of the children to terminate mother's parental rights because the children are stable and doing extremely well in their placements.

Based on the evidence and testimony presented at trial, the district court found that involuntary termination of mother's parental rights was in the children's best interests. While the district court did not include explicit findings on mother's interest or the children's interest, the order shows that the district court considered testimony from mother, Child 1, the county social worker, and the GAL on those factors. Reviewing the district court's order in its entirety, we conclude that the district court adequately addressed all three factors bearing on whether the termination of parental rights serves the best interests of the children. We therefore see no abuse of discretion.

In sum, because termination is in the child's best interests, the district court did not abuse its discretion by terminating mother's parental rights to the children.

Affirmed.