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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1157**

In the Matter of the Welfare of the Child of:
P. K. S. and K. J. L., Parents.

**Filed December 18, 2017
Affirmed
Kirk, Judge**

Winona County District Court
File No. 85-JV-17-95

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Considered and decided by Johnson, Presiding Judge; Halbrooks, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant-county challenges the district court's denial of its petition to terminate respondent-father's parental rights, arguing that the district court abused its discretion

when it found that termination of father's parental rights is not in the child's best interests. We affirm.

FACTS

The county filed a petition to terminate father K.J.L.'s parental rights to E.M.L. (the child) on April 17, 2017. Mother previously had two children with different fathers, and father previously had a child with a different mother. Further, in September 2016, the district court denied a prior petition to terminate father's parental rights. Thereafter, the underlying child-protection matter remained open. A trial on the second petition was held on June 21 and 29, and July 11, 2017. The parties do not dispute the district court's findings of fact, which are summarized below.

The child was born in April 2015. The child's mother voluntarily placed the child in foster care three months later. On October 20, after a child-protection case was opened, the district court formally ordered the child's placement in foster care. Mother voluntarily terminated her parental rights. Father was present at the child's birth and had contact with her prior to her placement in foster care. Father's contact with the child after the child-protection case was opened was inconsistent due to his volatile relationship with the child's mother and because child's mother did not want father to be involved. Father's first contact with the social worker in the child-protection case apparently occurred in December. Father served time in jail on a probation violation during January and February 2016.

The child's foster family provides care for her two older maternal siblings.¹ The child's paternal sibling (a brother) resides with father every weekend from Friday through Sunday, and often visits father during the week. Father has always been present in his son's life and exercised parenting time with him. Father also provided full-time care to him until he was almost four years old. The child has strong relationships with father, the foster mother, her maternal and paternal siblings, and her paternal cousins.

In March 2016, father started having supervised visits with the child at a parenting-time center. The center's staff did not have concerns regarding father's visits, and the interactions between father and the child were positive and appropriate. Father's visits eventually transitioned to unsupervised visits at father's home and increased in frequency from once per week to twice per week. Unsupervised visits would have started sooner, but there was confusion regarding whether the conditions of father's probation prohibited unsupervised contact with the child.

Father complied with, and actively engaged with, the case plan. Father is able to provide a safe and permanent home, basic care, and adequate nutrition for the child. Father has maintained stable employment for the past two and a half years and can provide insurance for the child. As father's visits have expanded and become unsupervised, the child's familiarity with father has increased. The child knows father as "Daddy," seeks him out for support and comfort, and is comfortable with him and in his home. The observed interactions between father and the child have always been positive. Father loves

¹ One of the child's maternal siblings was adopted by the foster family, and the foster family is in the process of adopting the other sibling.

the child and has made significant efforts to make it in the child's best interest to live with him. There is a parent-child relationship between father and the child.

Father has actively participated in the child's child-parent psychotherapy to treat an adjustment order. These therapy sessions have strengthened father's relationship with the child. The child's therapist is not concerned about the child's safety when she is with father and did not express an opinion regarding whether it would be in her best interests to be in father's custody or in the foster mother's custody. The child's social worker and the guardian ad litem (GAL) agree that father's interactions with the child have been positive, and neither has concerns regarding the child's safety when she is with father.

On July 21, 2017, the district court denied the county's second petition to terminate father's parental rights to the child, finding that:

It is not in the best interests of the [c]hild to terminate [f]ather's parental rights. It is in the [c]hild's and [f]ather's interest to preserve the strong parent-child relationship that clearly exists. The fact that the [c]hild has been in foster care for much of her life and has a good relationship with her foster mother does not negate the strong bond she has with her [f]ather. The [c]hild appears to know that [f]ather will comfort her when she is distressed and knows that [f]ather loves her. The transition to [f]ather's care will definitely be an adjustment. However, there are already many things that have been done to help the [c]hild reconcile the changes in her routine and to adapt to those changes, including [f]ather's dedication to parent education, counseling and his case plan, and [f]ather and the [c]hild's active participation in child-parent psychotherapy in preparation for the possibility of such a transition.

The county appeals.

DECISION

An involuntary termination of parental rights is proper if clear-and-convincing evidence supports: (1) at least one statutory ground for termination; and (2) that termination of parental rights is in the child's best interests. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014). “[An appellate court] defer[s] to the district court’s decision to terminate parental rights.” *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). “[I]f at least one statutory ground alleged in the petition is supported by clear-and-convincing evidence and termination of parental rights is in the child’s best interests, [an appellate court] will affirm.” *Id.* Here, father’s 2007 third-degree criminal-sexual-conduct conviction provided the statutory ground for termination of his parental rights. Minn. Stat. §§ 260.012(g)(5), 260C.301, subd. 1(b)(9) (2016). There is a notable lack of information in the record regarding the nature of father’s criminal-sexual-conduct conviction and how or whether father’s criminal history will impact the child, but the county only challenges the district court’s best-interests finding.

In every termination-of-parental-rights proceeding, “the best interests of the child must be the paramount consideration.” Minn. Stat. § 260C.301, subd. 7 (2016). Even if a statutory ground for termination exists, the district court must still find that termination of parental rights is in the child’s best interests. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005). Before terminating parental rights,

the court shall make a specific finding that termination is in the best interests of the child and shall analyze:

(i) the child’s interests in preserving the parent-child relationship;

- (ii) the parent’s interests in preserving the parent-child relationship; and
- (iii) any competing interests of the child.

Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012); *see also In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 668 (Minn. App. 2012) (“In considering the child’s best interests, the district court must balance the preservation of the parent-child relationship against any competing interests of the child.”).

“Competing interests include such things as a stable environment, health considerations and the child’s preferences.” *K.S.F.*, 823 N.W.2d at 668 (quoting *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992)). The district court can consider such things as “the children’s need for stability and predictability, [and a parent’s] limited bond with the children.” *Id.* “Typically, the natural parent is presumed fit and suitable to care for his or her child” *In re Child of P.T.*, 657 N.W.2d 577, 583 (Minn. App. 2003), *review denied* (Minn. Apr. 15, 2003). “[W]e presume that the child’s best interests entail remaining in [the natural] parent’s care” *Id.* “But parental rights are not absolute” and will not be “enforced to the detriment of the child’s welfare and happiness.” *Id.* (quotation omitted).

“We review a district court’s ultimate determination that termination is in a child’s best interest for an abuse of discretion.” *J.R.B.*, 805 N.W.2d at 905. The district court abuses its discretion when it misapplies the law. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). “[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)).

Here, the county argues that the district court failed to properly analyze and weigh the best interests of the child when it found that termination of father's parental rights is not in the child's best interests. The county does not dispute the district court's underlying factual findings, but argues that the court abused its discretion when it determined that, on those facts, the county failed to prove that termination of father's parental rights is in the child's best interests.

The county argues that father's limited contact and visitation with the child during her early life supports the conclusion that she has only a minimal interest in maintaining the parent-child relationship. The county asserts that the child knows father more like a child knows a child-care provider, babysitter, grandparent, or uncle, but not as a parent, so there is no parent-child relationship to preserve. The county argues that father has only a minimal interest in maintaining the parent-child relationship because he views parenthood as an “obligation” rather than a “privilege,” and “has demonstrated an ambivalence” toward parenting.

The county also argues that the district court abused its discretion because father's minimal interest in maintaining the parent-child relationship is outweighed by the child's competing interests. The county argues that maintaining the child's strong bond with her maternal siblings in the foster home is crucial for her emotional development. The county also argues that breaking the child's primary attachment to the foster mother in favor of

preserving father's parent-child relationship with the child poses a risk to the child's mental health and is not in her best interests.

Father argues that the child has a substantial interest in maintaining the parent-child relationship, noting that the social worker, the GAL, and the foster mother all testified that maintaining a relationship with father was in the child's best interests even if his parental rights were terminated. Father also argues that he has a substantial interest in maintaining the parent-child relationship, noting that he cooperated with, and followed through with, all of the case-plan requirements. Father further argues that the child's competing interests, namely her relationships with her maternal siblings and the foster mother, do not outweigh his interest in maintaining the parent-child relationship. Father notes that the social worker, the GAL, the foster mother, and the child's therapist all testified at the trial that they believe he sincerely intends to facilitate regular visits so that the child can maintain those relationships.

Ultimately, the county disagrees with the district court regarding the strength of the bond between father and the child, and asserts that it is in the child's best interests for father's parental rights to be terminated so the child can be adopted by the foster mother. In order for this court to conclude that the district court abused its discretion and to reverse its decision, this court would have to second-guess the district court's credibility determinations, engage in fact finding on appeal, and rebalance the facts found by the district court. The district court made clear findings, on undisputed facts, that "a strong parent-child relationship" exists between father and the child, and that it is not in the best interests of the child to terminate father's parental rights. On this record, we will not—and

have no basis to—rebalance those undisputed facts. Therefore, this record supports neither the county’s claim that the district court abused its discretion when it ruled that termination of father’s parental rights was not in the child’s best interests, nor when it denied the county’s petition to terminate father’s parental rights to the child.

Affirmed.