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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0244**

In re the Custody of
J. L. K.-K. Mamawa Kaisamba, et al., petitioners,
Respondents,

vs.

Bettee Baby J. Swarray,
Respondent Below,

Alpha Lalugba Kaisamba-Kanneh,
Appellant.

**Filed February 11, 2019
Affirmed
Halbrooks, Judge**

Dakota County District Court
File No. 19AV-FA-17-207

Mamawa Kaisamba, Apple Valley, Minnesota (pro se respondent)

Joseph Sormana, Apple Valley, Minnesota (pro se respondent)

Alpha L. Kaisamba-Kanneh, Atlanta, Georgia (pro se appellant)

Considered and decided by Halbrooks, Presiding Judge; Bratvold, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant-father challenges the district court's grant of sole physical and legal custody of his son to respondent-grandparents, arguing that the district court abused its discretion by granting respondents' petition for third-party custody. We affirm.

FACTS

J.L.K.-K. is the minor child of appellant Alpha Kaisamba-Kanneh (father). The child was born in January 2007 in Freetown, Sierra Leone. In October 2013, father relocated to Atlanta, Georgia. The child remained in Sierra Leone with his mother. In November 2013, respondent Mamawa Kaisamba (paternal grandmother), visited Sierra Leone. The child asked if he could return to the United States with her. Father, grandmother, and the child's mother executed a temporary custody agreement on March 21, 2014, and the child returned to the United States with grandmother. The child has lived in Apple Valley with grandmother and her husband, respondent Joseph Sormana, ever since. Father remained in Georgia and has had limited contact with the child.

In September 2016 after an incident with another student at school, the child was referred to a counselor by a school social worker. In response, father revoked the temporary custody agreement, effective December 2, 2016. Grandmother sought an order for protection (OFP) against father on behalf of herself and the child in December 2016. An ex parte order was granted on December 15, 2016, but the OFP petition was dismissed after an evidentiary hearing on February 1, 2017. On February 1, 2017, grandmother and Sormana commenced a third-party custody action as de facto custodians, or in the

alternative, as interested third parties, requesting sole legal and physical custody of the child.

The district court held a two-day evidentiary hearing on the petition for third-party custody. Grandmother testified extensively about bringing the child to live with her in Apple Valley, about their daily lives, her relationship with the child, and the child's well-being and adjustment to his community. Grandmother also testified concerning her future plans if she and Sormana were awarded third-party custody. Father, pro se, cross-examined grandmother at length and testified about his relationship with the child, the circumstances that led to the child relocating to the United States with grandmother, and his future plans if he were awarded custody of the child. G.S., a close family friend and neighbor of grandmother and Sormana, also testified, as did I.L., grandmother's cousin.

The district court granted grandmother and Sormana's petition for third-party custody, awarding them sole legal and physical custody of the child. This appeal follows.

D E C I S I O N

Father argues that the district court erred by granting grandmother and Sormana's petition for third-party custody. Father also challenges the district court's factual findings on the ground that they are unsupported by the record. We review third-party custody determinations for an abuse of discretion. *In re Custody of A.L.R.*, 830 N.W.2d 163, 166 (Minn. App. 2013). We do not set aside a district court's factual findings unless they are clearly erroneous. *Id.*

Upon petition, the district court may award third-party custody to a party who demonstrates by clear and convincing evidence that they meet the statutory definition of a

“de facto custodian,” and who demonstrates by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the de facto custodian. Minn. Stat. § 257C.03, subd. 6 (2018).

To establish that an individual is a de facto custodian within the meaning of Minn. Stat. § 257C.03, subd. 6, the individual must first demonstrate by clear and convincing evidence that they satisfy the statutory definition of a de facto custodian as set forth in Minn. Stat. § 257C.01, subd. 2 (2018). To be found to be a de facto custodian, an individual must be the child’s primary caretaker without a parent present and with a lack of demonstrated consistent participation by a parent for a period of one year or more. Minn. Stat. § 257C.01, subd. 2(a)(2), (c). The district court found that grandmother and Sormana established by clear and convincing evidence that they met the statutory definition. The record supports this determination.

The record reflects that the child has been living full-time with grandmother and Sormana since he arrived in the United States in 2014. Both grandmother and father testified that the intent of placing the child with grandmother and Sormana was so the child could acclimate to life in this country. The temporary custody agreement states that its purpose is so that the child can “travel with his grandmother, complete the remainder of this academic year, and have the summer months to become familiar [with] the school system and American culture.”

Grandmother testified that she and Sormana are the child’s primary caretakers and that they provide for all of his needs, including food and shelter. Grandmother testified that she and Sormana provide all of the child’s financial support and have not received any

financial assistance from father since the child moved to the United States in 2014. Grandmother and Sormana enrolled the child in school, help him with homework, and share a positive and affectionate relationship. The child's school and counseling records indicate that grandmother is active in the child's life and involved with his educational, behavioral, and mental-health development.

By contrast, father testified that he was last alone with the child in August 2016 and that he has spent a total of 11 days with the child since March 2014. Father stated that he did not retrieve the child from grandmother and Sormana after resettling in the United States in June 2014 because he was not stable enough to take care of the child. Grandmother testified that father could have reclaimed his child at any time after he settled in Georgia and that she believed that the temporary custody agreement expired when father resumed residence in Atlanta and chose not to retrieve the child.

Minn. Stat. § 257C.01, subd. 2(d)(1), provides that a “de facto custodian” does not include an individual who has a child placed in their care through a custody consent decree as defined under Minn. Stat. § 257C.07 (2018). The district court analyzed the temporary custody agreement and determined that it was not a custody consent decree within the meaning of the statute because it does not contain an order for child support. By statute, a custody consent decree must contain an order for child support and an allocation of childcare costs subject to income withholding. Minn. Stat. § 257C.07(3). Because the temporary custody agreement does not contain such an order or allocation, the district court properly determined that it was not a custody consent decree. Based on the record, the district court was within its discretion in concluding that grandmother and Sormana

established by clear and convincing evidence that they meet the definition of a de facto caregiver under Minn. Stat. § 257C.01, subd. 2.

Pursuant to Minn. Stat. § 257C.03, subd. 6(a)(2), an individual must demonstrate by a preponderance of the evidence that it is in the best interests of the child to be in their custody. The district court must evaluate all relevant factors in determining the best interests of the child. Minn. Stat. § 257C.04, subd. 1(a) (2018). The factors include:

- (1) the wishes of the party or parties as to custody;
- (2) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;
- (3) the child's primary caretaker;
- (4) the intimacy of the relationship between each party and the child;
- (5) the interaction and interrelationship of the child with a party or parties . . . ;
- (6) the child's adjustment to home, school, and community;
- (7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) the permanence, as a family unit, of the existing or proposed custodial home;
- (9) the mental and physical health of all individuals involved . . . ;
- (10) the capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture and religion or creed, if any;
- (11) the child's cultural background[.]

Minn. Stat. § 257C.04, subd. 1(a)(1)-(11).

Here, both grandmother and father sought sole legal and physical custody. The child did not testify as to his preference, but G.S. testified that the child is very happy and talkative, but became withdrawn when discussing the possibility of moving to Georgia to

live with his father. G.S. stated that the child told her that he did not want to move. Similarly, records from the child's counselor indicate that the child reported that he did not want to live with father.

Grandmother and Sormana have been married since 1996. They live with the child in a townhome that they have owned since 2002. Grandmother, father, and G.S. testified that grandmother and Sormana have been the child's primary caretakers since March 2014 and that father has had little contact with the child. Grandmother testified that she is retired and able to provide childcare before and after school for the child. She stated that she is a "neighborhood grandmother" and cares for the child and his friends. She testified that she takes the child and his friends to the park, cooks for them, and pays for extracurricular activities and summer camp for the child. The child has been attending a Methodist church. Grandmother testified that the child enjoys attending church and often asks to go even when grandmother was not planning to attend.

School records show that the child is now in sixth grade and has been working with an ESL program to become fluent in English. Grandmother's testimony and the child's school records reflect that grandmother and Sormana are involved with the child's school, teachers, principal, and social worker. Grandmother takes an active role in helping the child succeed in school by monitoring the child's homework, attending parent-teacher conferences, and establishing a school-day routine for the child which includes a written schedule and reminders of behavioral expectations. The child's school records show that he is earning a "B" average. Grandmother testified that she lives in a helpful and supportive community and that she, Sormana, and the child benefit from the close relationships they

have with their neighbors and friends. Grandmother further testified that she and the child have a close relationship and that the child is openly affectionate with her and tells her that he loves her. G.S. testified that grandmother and Sormana are good at providing the child with structure and helping him work on his behavioral issues.

Upon the recommendation and referral of a school social worker, grandmother arranged counseling services for the child both at school and at home. Grandmother participates during a portion of the child's in-home therapy sessions. Grandmother and Sormana are supportive and active in addressing the child's mental-health needs.

Grandmother testified that she wants the child to respect and honor his father, and that she would like father to have parenting time whenever he is able to. She testified that she and Sormana would encourage the child to communicate with father.

Father, who continues to live in Georgia, testified that he has had little consistent contact with the child over the three and one-half years preceding the hearing. The child visited father in Georgia once in 2014 and once in 2016. Father testified that while the child is not familiar with Georgia, "he has his father." Father testified that grandmother and Sormana are not fit to meet the child's needs if they must rely on their community and friends in caring for the child. Correspondence in the record shows that father wrote to the school, stating that the child could no longer participate in school activities that were not part of the curriculum, including school trips, unless approved by him.

Father revoked the temporary custody agreement after learning that the child was enrolled in therapy. Father contacted the child's counselor and suspended therapy, threatening legal action if the child continued. Father also contacted the school and asked

that they suspend therapy. He testified that he would support the child attending therapy if the school in Georgia recommended it. Father testified that he believed the child's need for therapy was based on a lie made up by grandmother and Sormana to win custody of the child.

Father stated repeatedly that he had strong negative feelings toward grandmother and alleged that she is physically and emotionally abusive. The district court did not find father credible with respect to his negative statements toward grandmother, stating:

[Father] has allowed his personal feelings toward [respondents] [to] interfere with the actions necessary to re-establish and foster a relationship with his son. Rather than availing himself of the parenting time granted by this Court, instead he chose not to spend time with his son due to his animosity towards his mother. Likewise, he chose not to attempt telephone communication with his son.

Despite an order granting father telephone contact with the child at least two times per week, father testified that he did not call the child because he did not want to be supervised by grandmother and Sormana and because he believed grandmother would make up lies about him.

After evaluating the best-interests factors in light of the testimony and record evidence, the district court found that grandmother and Sormana proved by a preponderance of the evidence that it is in the child's best interests to be in their custody. After a thorough review of the record, we are satisfied that the district court was well within its discretion in granting grandmother and Sormana's petition for third-party custody.

Affirmed.