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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0500**

In the Matter of the Welfare of the Children of: M. D. J., L. W., and R. L., II, Parents.

**Filed October 29, 2018
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-JV-16-5024

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

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

FLOREY, Judge

Appellant-mother, M.D.J., challenges the district court's order transferring legal and physical custody of the minor children to respondent-father, R.L., II. She argues that the district court abused its discretion when it determined that (1) respondent-county made

reasonable efforts to reunite the family; (2) M.D.J.'s compliance with her case plan did not correct conditions which led to the out-of-home placement; (3) the transfer of legal and physical custody was supported by clear and convincing evidence; and (4) the transfer of legal and physical custody was in the children's best interests. We affirm.

FACTS

M.D.J. is the mother of Child One, born in 2006, and Child Two, born in 2009, who are the subjects of this appeal. The children were removed from M.D.J.'s care following reports by the children of physical and sexual abuse.

In December 2014, it was reported to the Hennepin County Human Services and Public Health Department (the department) that M.D.J. whipped Child Two with a belt, leaving marks that were observed and photographed by police. Child Two stated in an interview with the department that M.D.J. had hit him on multiple occasions and had also attempted to choke him during this latest incident of abuse. Child One independently corroborated Child Two's statement in an interview to the department. In November 2015, Child Two told the department that M.D.J. had again choked him.

The children also reported being physically abused by M.D.J.'s relatives. In January 2013, M.D.J. left Child Two with her sister who whipped Child Two with a belt, leaving marks on his neck. In February 2013, Child One reported to a child-protection investigator that a maternal uncle had punched him in the stomach and thrown him against a wall. Child One stated that he told M.D.J. of this incident, but she did not believe him.

In October 2015, Child Two reported to his paternal grandmother, his teacher, and in subsequent interviews with the department, that he had been sexually abused by another

maternal uncle. He stated that, in separate incidents, the uncle had exposed his penis to Child Two, pushed his clothed pelvis in Child Two's face and told him to "suck his stuff," and that his uncle "dug into his butt and tried to make [Child Two] smell his finger." In November 2015, Child Two reported that his maternal aunts and uncles discussed this conduct with him and instructed him to tell everyone that the allegations of sexual abuse were false. M.D.J. denies that any abuse occurred at the hands of her brother.

Both Child One and Child Two have special needs as a result of the abuse they have witnessed and experienced. Child Two acts out sexually in school, while Child One has been suspended for fighting and struggles with conflicting claims of abuse from Child Two and from M.D.J. and her family who told him Child Two was lying. Further, both children have been diagnosed with post-traumatic-stress disorder as a result of the abuse they have witnessed and experienced.

A child-in-need-of-protection-or-services (CHIPS) petition was filed in November 2015 by the department, and the children were removed from M.D.J.'s care. In February 2016, the children were adjudicated CHIPS, and legal custody was transferred to the department. A court-ordered case plan was developed, which called for M.D.J. to address her mental health, the mental health of the children, and her parenting skills.

In September 2016, the department filed a petition to Transfer Permanent Legal and Physical Custody. In August 2017, the department filed a Termination of Parental Rights (TPR) petition. The transfer of permanent legal and physical custody (TLC) petition alleged that it was in the best interests of the children to be permanently transferred to the custody of R.L., II, father of Child Two and foster father of Child One, in order to aid

reunification efforts by allowing the children to rebuild relationships with M.D.J. when it was emotionally safe for them. The TPR petition alleged five statutory grounds for termination of M.D.J.'s parental rights: (1) M.D.J. abandoned the children; (2) M.D.J. substantially, continuously, or repeatedly refused or neglected her parental duties; (3) M.D.J. is palpably unfit; (4) reasonable efforts failed to correct the conditions that led to the children's out-of-home placement; and (5) the children are neglected and in foster care. See Minn. Stat. § 260C.301, subd. 1(b)(1), (2), (4), (5), (8) (2016).

A court trial was held on September 11, 12, and 13, 2017, October 26 and 30, 2017, December 13, 2017, January 17, 2018, and February 7, 2018. On March 19, 2018, the district court filed an order dismissing the county's petition for termination, but granting the petition for transfer of legal and physical custody of the children to R.L., II.

M.D.J. appeals.

DECISION

On appeal of a juvenile-protection order transferring custody, this court applies a two-part standard of review. See *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321-22 (Minn. App. 2015), *review denied* (Minn. July 21, 2015). First, we review the district court's factual findings for clear error. *Id.* "A finding is clearly erroneous only if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred." *Id.* at 322 (quotation omitted). Second, we review a district court's ultimate determination that there was a statutory basis for a permanency disposition under an abuse-of-discretion standard. *Id.* at 321-22. An abuse of discretion occurs if the district court improperly applies the law. *In re Welfare of*

Child of J.K.T., 814 N.W.2d 76, 93 (Minn. App. 2012) (citing *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997)).

A TLC to a fit and willing relative is one of several permanency dispositions a district court may order in a child-protection proceeding. Minn. Stat. §§ 260C.513, .515 (2016). An order permanently transferring legal and physical custody of a child must detail the following findings of fact:

- (1) how the child’s best interests are served by the order;
- (2) the nature and extent of the responsible social services agency’s reasonable efforts . . . to reunify the child with the parent . . . ;
- (3) the parent’s . . . efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
- (4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

Minn. Stat. § 260C.517 (2016).

The county’s reasonable efforts to reunify

Before granting a TLC, the district court must make findings regarding the county’s reasonable efforts to reunify the children with their parents. Minn. Stat. § 260C.517(a)(2). M.D.J. argues that the district court clearly erred by determining that the county made reasonable reunification efforts.

“[T]he nature of the services which constitute reasonable efforts depends on the problem presented.” *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008) (quotation omitted). Here, the most significant issues that M.D.J. needed to address for

reunification, as directed in her case plan, were her mental health, her children's mental health, and her parenting skills.

In its order granting TLC, the district court identified numerous reasonable efforts made by the county to address the issues raised by M.D.J.'s case plan and to facilitate reunification including: supervised visits, case-management services, therapy for both children, therapy for M.D.J., therapeutic visits, parenting classes, and a mental-health evaluation for M.D.J. The district court also noted some gaps in the services offered to M.D.J., particularly that family therapy did not occur. However, the district court acknowledged that family therapy did not occur because the children's therapist did not believe the children were ready for it.

The district court's findings are supported by the record, including testimony from the children's therapist, which the district court found credible, and its findings demonstrate a clear effort by the county to address issues unique to this case. These findings satisfy the statutory requirement regarding the county's reasonable efforts to reunify, and therefore, the district court did not abuse its discretion.

M.D.J.'s efforts did not correct the conditions resulting in out-of-home placement.

Minnesota law requires the district court to make findings about a parent's "efforts and ability to use services to correct the conditions which led to the out-of-home placement" and whether "the conditions . . . have [] been corrected so that the child can safely return home." Minn. Stat. § 260C.517(a)(3), (4). M.D.J. argues that she was case-plan compliant and that her compliance deprives the district court of clear and convincing

evidence to support its finding that the conditions which led to the out-of-home placement have not been corrected. We disagree.

The district court acknowledged that M.D.J. “completed her case plan.” In doing so, the district court met its statutory burden to address M.D.J.’s efforts and ability to correct the conditions which led to the children’s out-of-home placement. However, despite M.D.J.’s argument, no statute or precedent compels the district court to equate case-plan completion with correction of the conditions that led to out-of-home placement. *See e.g. J.K.T.*, 814 N.W.2d at 88 (stating that the relevant statute “presumes that failure to complete the case plan amounts to a failure to correct the conditions leading to out-of-home placement. But there is no converse presumption that completion of the case plan amounts to a correction of those conditions.”). Nor is there a requirement that the district court come to negative conclusions about M.D.J. on all of its mandated findings; the only requirement is that the findings are made. *See Minn. Stat. § 260C.517(a).*

Here, the district court acknowledged M.D.J.’s efforts, but found that conditions preventing reunification remained. The district court stated that without M.D.J.’s acceptance that the children had been abused in the past, “there [was] concern that [M.D.J.] would not be able to keep her children safe if they were returned to her care.” This finding is supported by the record in the form of testimony from the children’s therapist, M.D.J.’s first case manager, M.D.J.’s second case manager, and the guardian ad litem—all of whom the district court found credible. The district court also found, and repeatedly noted, that M.D.J. was never able to participate in family therapy with the children, but that additional individual and family therapy was possible in the future and could correct the conditions.

The district court went further in emphasizing this point by ordering reunification therapy to begin within 60 days of its order. By doing this, the district court left open the possibility for correction of the conditions which continue to prevent reunification.

We believe the attempted supervised visit between M.D.J. and the children, scheduled for one month before the TPR/TLC trial, is illustrative of the continued conditions preventing reunification. The visit was cancelled after the children refused to enter the building to see their mother, instead walking away and throwing rocks at signs. Clearly, the children's behavior demonstrated they are not ready to be reunited with M.D.J., further supporting the district court's findings. Because the record contains substantial evidence that supports the district court's findings, we conclude there is no clear error, and the district court's order was not an abuse of discretion.

The best interests of the children are served by the district court's order.

Minnesota law requires that the district court describe "how the child's best interests are served by the order." Minn. Stat. § 260C.517(a)(1). M.D.J. argues that the district court abused its discretion by determining that TLC was in the children's best interests. Specifically, she argues that the district court's findings are clearly erroneous because they are contradictory, relied too heavily on the testimony of the children's therapist, and they found TLC to be in the children's best interests but not TPR.

A district court's best-interests findings must "facilitate effective appellate review . . . provide insight into which facts or opinions were most persuasive [of] the [court's] ultimate decision, [and] demonstrate the court's comprehensive consideration of the statutory criteria." *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003) (quotation

omitted). Determining the best interests of the children requires the district court to make written findings that properly reflect its consideration and evaluation of the relevant statutory factors. See *Rosenfeld v. Rosenfeld*, 249 N.W.2d 168, 171 (Minn. 1976); Minn. Stat. § 260C.511(a) (2016). In the case of a permanency disposition, “the court must be governed by the best interests of the child, 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) (2016). However, the district court’s findings need not “go into great detail.” *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004).

Here, the district court reviewed the relationships between the children and their relatives. The district court found that it was in the children’s best interests to maintain the family relationship they had developed with R.L., II. The district court also found that permanency was in their best interests. It found that the children would be better able to heal from their trauma if they knew their placement with R.L., II would not change. The district court further found that it had been over two years since the children had seen M.D.J., and yet the children were not ready or willing to see their mother. These findings are supported by the record. The district court made findings, supported by substantial evidence in the record, to justify its determination regarding the best interests of the children. Whether or not these findings appear contradictory to M.D.J. is not dispositive here.

The district court opined that termination of M.D.J.’s parental rights was not in the best interests of the children in part because M.D.J. had complied with her case plan and

was not given an opportunity to show that she had corrected the conditions that brought the case to court. However, the court further found that TLC was appropriate, because reunification was not yet possible or currently in the children's best interests due to the children's need for permanency and time to repair their relationship with M.D.J.

M.D.J.'s argument, that the district court's findings conflict with each other, confuses, or fails to distinguish, the best-interests analysis in a TPR decision as opposed to a TLC. *See generally, In re Paternity of B.J.H.*, 573 N.W.2d 99, 102 (Minn. App. 1998) (noting that what a district court considers to address a child's best interests in the context of a parentage dispute is not the same as what a district court considers when addressing custody); *In re Welfare of M.J.L.*, 582 N.W.2d 585, 589 (Minn. App. 1998) (citing this aspect of *B.J.H.* in an appeal involving a challenge to the district court's denial of foster parents' motion to remove the county as guardian of their foster child). The district court's subtle distinction on this point and its painstaking effort to balance the interests of the children against the interests of M.D.J. is further evidence of its thoughtful consideration of the best-interests factor.

Based on substantial evidence in the record, the district court's findings on the children's best interests are not clearly erroneous, and the resulting conclusion does not constitute an abuse of discretion.

The district court's transfer of legal custody is not clearly erroneous.

A district court's findings of fact, supported by substantial evidence, are treated with great deference and will not be set aside unless clearly erroneous. *See Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). A finding is clearly erroneous "only if

the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted).

M.D.J. argues that the district court’s findings of fact supporting its order to transfer legal and physical custody are clearly erroneous because they positively discuss her efforts towards reunification. We disagree.

Pursuant to Minn. Stat. § 260C.517, the district court found that reasonable efforts were made by the county, that M.D.J. was case-plan compliant, that conditions remained that prevented reunification, and that TLC was in the best interests of the children. The record contains ample evidence to support these findings. As we previously stated, the children’s therapist testified that the children were not ready to be reunited with their mother. This testimony was corroborated by statements from M.D.J.’s case manager and the guardian ad litem. For example, M.D.J.’s case manager testified to the services provided M.D.J., her case-plan compliance, and how reunification was not in the children’s best interest at that time. The guardian ad litem testified that it would be in the children’s best interests for the district court to grant R.L., II permanent custody. She stated that the children were thriving in the care of R.L., II, where they had stability and felt comfortable. She further testified that, not only was staying in the care of R.L., II in the best interests of the children, but the children were having trouble trusting M.D.J. due to her continued failure to acknowledge their experiences of abuse. The district court found all of this testimony credible.

The district court went to painstaking lengths to dismiss the TPR petition and grant the TLC, while still leaving many doors open for reunification in the future. While the

district court praised M.D.J.'s efforts on a number of occasions, it ultimately found that reunification was not in the children's best interests at that time. Its order includes findings of fact required by statute and is supported by sufficient evidence in the record. *See* Minn. Stat. § 260C.517(a). As such, we find no clear error.

Affirmed.