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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0543**

Patrick Hugh Stack, et al., petitioners,
Respondents,

vs.

Lamont Green,
Appellant,
Elvis Austin Butler, et al.,
Respondents Below.

**Filed March 25, 2019
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-FA-14-8633

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Maureen Stack, Dayton, Minnesota (mother)

Jacquelyn Cardinal, Minneapolis, Minnesota (guardian ad litem)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant father challenges the district court's grant of third-party custody of father's child to the child's maternal grandparents, arguing that (1) the district court misapplied Minn. Stat. § 257C.03, subd. 7 (2018) and (2) the district court did not consider all of the evidence. We affirm.

FACTS

This appeal arises from a district court's grant of third-party custody of six-year-old G.L.S. to his maternal grandparents, respondents Patrick Hugh Stack and Colleen Agnes Stack (grandparents). Appellant Lamont Green (father) and respondent Maureen Stack (mother) are the biological parents of G.L.S.

Grandparents have been the primary caretakers of G.L.S. throughout his life, with mother providing care at times. Mother has another daughter, K.K.S., for whom grandparents have also provided care. Mother has a history of drug use, mental illness, a brain tumor, and criminal issues that led to her incarceration. Mother supported grandparents' petition for third-party custody of both children.

Father spent some time with G.L.S. during the first year of his life but then had very little contact with him until Hennepin County brought a paternity action and the district court adjudicated him as G.L.S.'s biological father. The district court granted father parenting time in 2015. However, the district court revoked his parenting time in April 2016 after grandparents obtained an order for protection (OFP) against him due to allegations that G.L.S. had suffered abuse in father's home by father, father's girlfriend,

and father's other children. The parties later agreed to dismiss the OFP. However, since that time, father has not exercised parenting time because he has not completed court-ordered reunification therapy.

Hennepin County child protection services (CPS), while not a party, became involved in this case and conducted an investigation and forensic interview of G.L.S. CPS made no finding of maltreatment but opened a case to offer services to the parties.

The district court held a court trial in April 2017 to determine custody of G.L.S. The primary dispute at trial surrounded the allegations of abuse and harm that occurred in father's home, which father denied completely. The district court granted sole physical custody and sole legal custody of both children to grandparents.¹ In September 2017, father moved for amended findings and a new trial, which the district court denied. This appeal follows.²

D E C I S I O N

I. The district court properly applied Minn. Stat. § 257C.03, subd. 7.

Father argues that the district court failed to make a finding as to whether clear and convincing evidence showed that one of the statutory factors under Minn. Stat. § 257C.03, subd. 7 existed. We disagree.

¹ K.K.S.'s father supported grandparents' petition.

² Grandparents request that we dismiss the appeal, or, in the alternative, strike father's brief, due to a number of defects with his brief, including timeliness. However, grandparents did not bring a formal motion to dismiss or motion to strike, and after careful review of the record, we conclude that father's untimeliness and other errors did not prejudice grandparents. We therefore decline to grant grandparents' request. *See Boom v. Boom*, 361 N.W.2d 34, 36 (Minn. 1985).

Appellate review of third-party custody determinations is limited to whether the district court abused its discretion by improperly applying the law or by making findings unsupported by the evidence. *In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002). We view the record in the light most favorable to the district court’s findings. *Vangness v. Vangness*, 607 N.W.2d 468, 472 (Minn. App. 2000). We will not set aside a district court’s findings of fact unless they are clearly erroneous. *In re Custody of A.L.R.*, 830 N.W.2d 163, 166 (Minn. App. 2013). A finding of fact is clearly erroneous if we “are left with the definite and firm conviction that a mistake has been made.” *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (citation omitted).

Minn. Stat. §§ 257C.01-.08 (2018) governs third-party custody. Under the statute, an interested third party may file a petition for third-party custody. Minn. Stat. § 257C.03, subd. 1(a). To establish that he or she is an interested third party, a petitioner must show by clear and convincing evidence that:

- (i) the parent has abandoned, neglected, or otherwise exhibited disregard for the child’s well-being to the extent that the child will be harmed by living with the parent;
- (ii) placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child, or both; or
- (iii) other extraordinary circumstances [exist] [.]

Minn. Stat. § 257C.03, subd. 7(a)(1)(i)-(iii) (2018). The district court found that the first two factors were present, although it only needed to find the presence of one.

Under the second factor, the district court found that “placement of [G.L.S.] with his grandparents takes priority over preserving the day-to-day parent-child relationship

between father and G.L.S. because of the presence of physical and emotional danger to [G.L.S.].” The district court found that G.L.S. has suffered harm in father’s care, despite father’s absolute denial that anyone in his home has harmed G.L.S. Father repeatedly challenges the district court’s findings of abuse and harm to G.L.S.

The record supports the district court’s findings.³ Grandparents took G.L.S. to the doctor on multiple occasions for injuries beginning in April 2016. Among those injuries were a bruised knee, a bruised eye, bite marks, and fork marks on his abdomen. G.L.S. reported that father had hit him with a frying pan. Further, G.L.S.’s daycare provider noticed consistent bruising on his body, bite marks, and scratches. As a result, she filed three reports with CPS on behalf of G.L.S. Two of these reports were made in April 2016 after observing a fork-like wound in G.L.S.’s abdomen and multiple large bruises on his temples. G.L.S.’s CornerHouse interview also supports the district court’s findings.

G.L.S.’s play therapist testified that she had “significant concern” for G.L.S.’s safety after he reported that father had hit him, he had marks consistent with this, and he said that he feared father. She testified that, between April and June 2016, she noticed significant behavioral regressions, which is consistent with the time period during which the abuse occurred.

³ The district court also found that grandparents had shown by a preponderance of the evidence that it is in G.L.S.’s best interests to be in the custody of grandparents and that grandparents had not been convicted of the crimes set forth in Minn. Stat. § 518.179, as required by the statute. The district court further considered and made findings under the eight factors laid out in Minn. Stat. § 257C.03, subd. 7(b)(1)-(8) (2018). We have carefully reviewed the record and conclude that it supports the district court’s findings.

G.L.S. also worked with a family therapist. During those sessions, G.L.S. has reacted negatively to father and expressed worry that father would be there because father hurts him. The family therapist asked G.L.S. to place pictures of family members on cards representing the feelings he had when he thought of them. G.L.S. placed father on the card representing mad feelings and his father's girlfriend on the card representing scared feelings. After discussing his father, G.L.S. became upset and curled up in the fetal position on the floor. The family therapist further testified that she did not believe G.L.S. had been coached.

The guardian ad litem (GAL) recommended that the district court award sole physical custody and sole legal custody of G.L.S. to grandparents, that father have supervised parenting time after completing reunification therapy, and that mother have supervised parenting time. The GAL had been appointed to this case in April 2015 and had represented G.L.S.'s interests for two years at the time of trial.

Appellant repeatedly attacks the district court's findings by arguing his theory that the instances of G.L.S.'s harm were fabricated and that grandparents coached him to make false accusations against father. But the district court rejected this theory, noting that it "has thoroughly considered [fa]ther's claim that the child's fear is not from within, but planted in his thoughts by [grandparents] and [his play therapist]." As an appellate court, our purpose is to correct errors, and not to retry the case. *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 68 n.2 (Minn. 1979).

Father points to favorable facts and attacks the credibility of testimony. The district court accepted the testimony of grandfather, the play therapist, the reunification therapist,

the daycare provider's actions following G.L.S.'s reports of injuries, and the CornerHouse interview as credible evidence of G.L.S.'s fear of his father. A district court is in a far superior position to determine the credibility of witnesses, and we give such determinations considerable deference. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). Moreover, that an appellant's version of the facts might lead another trier of fact to make different findings does not render the district court's findings clearly erroneous when there is sufficient contradictory evidence to reasonably support the district court's findings. *Crosby v. Crosby*, 587 N.W.2d 292, 296 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999).

Father further assigns error to the district court because it did not separately consider the common-law presumption that a natural parent is presumed fit to raise their child. But this court has clarified that the common-law parental presumption is now incorporated into chapter 257C. *A.L.R.*, 830 N.W.2d at 168-69 (noting district court did not err by failing to separately address parental presumption in its custody order). The district court did not abuse its discretion in granting third-party custody to grandparents.

II. The district court properly weighed the evidence and made credibility determinations regarding grandfather's interference with father's parenting time.

Father argues that the district court disregarded evidence relating to grandfather's interference with father's parenting time with G.L.S. and his "fundamental right to parent." Father's argument lacks merit.

First, father provides no legal authority or analysis to support this argument. Inadequately briefed issues are not properly before this court. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982).

Second, this argument is largely repetitive of father's first argument. Father places great emphasis on the custody evaluator's report, completed in April 2016, which recommended granting custody to father. The district court gave weight to this recommendation but also considered the fact that, at the time of that recommendation, the allegations of abuse against father had not yet surfaced. Father also attacks the credibility of G.L.S.'s play therapist and alleges bias against G.L.S.'s daycare provider, again urging this court to make credibility determinations and findings of fact. But that is not the role of this court. *L.A.F.*, 554 N.W.2d at 396; *Turner*, 276 N.W.2d at 68 n.2.

For the reasons already stated above, the district court's findings of fact are not clearly erroneous because the record supports them.

Affirmed.