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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0821**

In the Matter of the Welfare of the Child of: S. F. and J. E., Parents.

**Filed October 15, 2018
Affirmed
Reyes, Judge**

Pipestone County District Court
File No. 59-JV-18-1

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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

REYES, Judge

Appellant father argues that the district court erred in making its statutory findings and in making its determination to transfer custody of child from father to respondent

mother. Father also argues that the correct standard for review is the clear-error standard. We affirm.

FACTS

G.F. was born in 2013, to appellant S.F. (father) and respondent J.E. (mother). Mother and father were in a brief relationship that ended before G.F. was born. After a trial in 2014, father had sole physical and legal custody, and mother had little to no contact with G.F. until September 2017.

I. Father

Father has used marijuana and methamphetamine for twenty years. Since March 2016, G.F. has lived with father's parents (grandparents), who have taken on the primary role of parenting G.F. In January 2017, Southwest Health and Human Services (SWHHS) initiated a Child in Need of Protection or Services (CHIPS) proceeding regarding G.F. after law enforcement found drugs and paraphernalia among G.F.'s toys and clothing in father's home. SWHHS began working with father to address concerns including father's drug use, the condition of his home, and his anger-management issues. SWHHS formally placed G.F. with grandparents following a voluntary-placement agreement. The district court formally adjudicated G.F. as CHIPS on September 14, 2017.

When father entered treatment on December 4, 2017, he tested positive for methamphetamine but maintains that he has remained drug-free since this date.¹ Father successfully completed treatment on January 5, 2018. At the time of trial, father still attended outpatient treatment, Alcoholics Anonymous meetings, and maintained daily contact with his sponsor.

II. Mother

Mother used methamphetamine for about a year and a half shortly after G.F. was born. Mother stopped using drugs in November 2014, and has not used drugs since. Also at that time, mother returned to South Dakota to resume living with her fiancé, D.W., and their five children, who are G.F.'s half-siblings. Since then, mother has been a stay-at-home parent and continues to be the primary caretaker for her children.

After learning that a CHIPS proceeding had been initiated, mother contacted SWHHS and stated that she is G.F.'s mother and is willing to care for him. Mother complied with a case plan that SWHHS gave her, including the completion of a chemical-dependency assessment. After conducting the chemical-dependency assessment, SWHHS did not recommend any additional steps for mother to take.

At the time of trial, mother had unsupervised visitation with G.F. every other Wednesday and every other weekend. G.F. enjoys spending time with his half-siblings

¹ There is some dispute as to the date on which father stopped using drugs. SWHHS has concerns as to whether father has abstained from using drugs after completing in-patient treatment, as one of the sweat patches removed on January 30, 2018, came back positive and another one appeared to be tampered with. SWHHS maintains that father actually stopped using drugs after January 30, 2018.

and has adapted well to daily life at mother's house. Mother is very involved in her children's education and activities in the community. In addition, D.W. is willing and able to provide financial and emotional support for G.F. in addition to his and mother's other children.

SWHHS and mother petitioned for a transfer of custody to mother. Based on the testimony at trial, the district court made factual findings and findings under Minn. Stat. § 260C.517(a)(1)-(4) (2016). In an order dated May 11, 2018, the district court awarded sole legal and physical custody to mother. This appeal follows.

D E C I S I O N

I. Standard of Review

As an initial matter, the parties dispute the standard of review on appeal. Father argues that a clear-error standard applies to the district court's statutory bases for the transfer of custody. Mother argues that the correct standard of review is abuse of discretion. On appeal from a juvenile-protection order transferring legal 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). The district court's factual findings are reviewed for clear error, and the statutory findings are reviewed for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900–01 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012). A finding of fact “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.” *In re Welfare of J.H.*, 844 N.W.2d 28, 35 (Minn. 2014) (citing *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn.

2012)). “Among other ways, a district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law.” *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (internal quotation marks and citations omitted).

Therefore, we review the district court’s factual findings for clear error, and we review the statutory findings and ultimate custody determination for an abuse of discretion.

II. The district court’s factual findings are supported by the record.

Father does not challenge the district court’s particular factual findings, but instead points to other evidence in the record to support his argument that this court should reverse the district court’s custody determination. Father’s argument is misguided.

Father’s arguments urge this court to reweigh the evidence, assess witness credibility, and disregard factual findings supported by the record, without making any specific challenges to the district court’s findings. But, “[t]hat the record might support [factual] findings other than those made by the trial court does not show that the court’s findings are defective.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000); see *In re Welfare of Child of J.L.L.*, 801 N.W.2d 405, 413 (Minn. App. 2011) (citing this aspect of *Vangsness* in a juvenile-protection appeal).

Further, we have reviewed the record and are satisfied that the district court’s findings are not clearly erroneous. See *Wilson v. Moline*, 234 Minn. 174, 182, 47 N.W.2d 865, 870 (1951) (an appellate court’s function “does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the trial court’s findings” and an appellate court’s “duty is performed when [it] consider[s] all the

evidence. . .and determine[s] that it reasonably supports the findings.”); *Peterka v. Peterka*, 675 N.W.2d 353, 257-58 (Minn. App. 2004) (applying this aspect of *Wilson* in a family law appeal). Accordingly, we defer to the district court’s findings.

III. The district court did not abuse its discretion in its statutory findings and its transfer determination.

Father argues that each of the district court’s findings under Minn. Stat. § 260C.517(a)(1)-(4) were not “proved by clear and convincing evidence” and that the district court “clearly erred” in making each of these findings. We are not persuaded.

The district court’s statutory findings and the ultimate decision that there is a statutory basis for a permanency disposition is reviewed for an abuse of discretion. *D.L.D.*, 865 N.W.2d at 322.

The district court may order permanent legal and physical custody to a fit and willing relative if it is in the best interests of the child. Minn. Stat. § 260C.515, subd. 4 (2016). Such an order must include the following detailed findings: (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(a)(1)-(4). We address each factor in turn.

A. Best interests

Father argues that the district court clearly erred in finding that the transfer of custody served G.F.'s best interests because it failed to assess G.F.'s need to maintain connections to his community, the impact that a transfer of custody would have on G.F., and G.F.'s relationship to current caretakers. We disagree.

The district court found that G.F.'s best interests would be served by transferring custody to mother after analyzing the best-interests factors listed in Minn. Stat. § 260C.212, subd. 2(b)(1-10) (2016). The first factor is the child's "current functioning and behaviors." *Id.*, subd. 2(b)(1). The district court found that G.F. is a "happy, healthy young boy," is enrolled in preschool, is "bright, curious, and verbal," and functions well at both mother's home and grandparents' home.

The second, third, and fourth best-interests factors are the medical, educational, and developmental needs of the child. *Id.*, subd. 2(b)(2)-(4). The district court found that G.F. has no ongoing medical needs and that family counseling may benefit G.F. as he transitions to mother's house. The district court found that G.F.'s educational needs can be met by the school system in Clark, South Dakota, where mother lives. The district court found that G.F. has no developmental issues and can benefit from being active and participating in family and extracurricular activities.

The fifth, sixth, seventh, and eighth factors are the child's history and past experience, religious and cultural needs, community connections, and interests and talents. *Id.*, subd. 2(b)(5)-(8). The district court found that G.F. has been raised in a loving environment by his grandparents and has been protected from exposure to father's

chemical use, but that he has been deprived of a relationship with mother. Additionally, the district court found that G.F.'s cultural needs could be met by both parents. Finally, the district court found that, at age four, G.F. has limited connections with communities. His primary connections are to family, which are well-established with father and grandparents, and are developing positively with mother and her family. The district court found that G.F.'s interests revolve around toys and simple outdoor activities and that they should be developed and encouraged by family members as G.F. grows.

The ninth factor is the child's relationship to current caretakers, parents, siblings, and relatives. *Id.*, subd. 2(b)(9). Under this factor, the district court found that G.F. has a loving bond with grandparents, but that over time, this relationship should take on more characteristics of a typical grandparent-grandchild relationship. The district court found that while G.F. has a positive relationship with father, the relationship has been stunted by father's chemical use and that father should assume more parenting responsibilities. With respect to G.F.'s relationship with mother, the district court found that while it has been delayed, the relationship is progressing toward a healthy mother-son relationship. The final factor is the child's reasonable preference. *Id.* subd. 2(b)(10). The district court found that G.F. is not at a sufficient age to express a preference.

The district court's findings on the best-interests factors are supported by evidence in the record. This evidence included the guardian ad litem (GAL)'s testimony that it is in G.F.'s best interests to be placed in the custody of mother and that G.F. would adapt well to mother's home. The social worker also testified that placing G.F. with mother is in G.F.'s best interests. Mother expressed her willingness to participate in therapy with G.F.

and her other children in order to assist him with the transition. Mother stated that she would help maintain G.F.'s relationship with father and G.F.'s grandparents. The district court carefully considered and balanced all of the best-interests factors, including G.F.'s current relationships to caretakers and the impact that the transfer might have on G.F. The district court did not abuse its discretion.

B. Reunification efforts

Father argues that the district court clearly erred when it found that SWHHS made reasonable efforts to reunite G.F. and father because SWHHS should have asked father to complete a parenting class and to work on the parent-child bond. We disagree.

The district court found that SWHHS provided father with chemical-use assessments, transportation, anger-management assessments, case management, unannounced home visits, random UAs, monthly face-to-face contact with G.F., and administrative-review meetings with father, the foster parents, social services, and the child-protection social worker. The “nature of the services which constitute ‘reasonable efforts’ depends on the problem presented.” *See In re Welfare of Children of T.R.*, 750 N.W.2d 656, 664 (Minn. 2008) (citing *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996)). Given the issues presented here, which include father’s chemical use, anger management, and the condition of father’s home, SWHHS’s efforts were reasonable. We discern no abuse of discretion by the district court.

C. Father’s efforts and ability to use services to correct conditions

Father argues that the district court clearly erred when it found that father’s efforts and ability to use services to correct the conditions leading to out-of-home placement were

insufficient because he worked on items in his case plan prior to entering into treatment and was in full compliance with his case plan at the time of trial. We are not persuaded.

The district court found that father's compliance with the case plan was unsatisfactory for a period of time based on his continued chemical use and failure to improve the conditions of his home. The district court based this finding on the testimony of the social worker that father did not fully comply with the case plan until January 18, 2018, his chemical use had continued for eleven months after SWHHS became involved, and he failed to cooperate with agency efforts prior to entering treatment. The social worker testified that, in accordance with the CHIPS case plan, she visited father's home approximately ten times between January 2017 and January 2018 and observed that the house was not safe and appropriate for G.F. until January 2018. Additionally, the case plan required father to comply with all random drug testing, but on some occasions, father refused to comply because he was still using drugs. Substantial evidence in the record supports the district court's determination that father's efforts and ability to use services to correct the conditions were insufficient.

D. Whether conditions have been corrected

Father contends that the district court clearly erred by finding that the conditions which led to out-of-home placement had not been corrected so that G.F. could safely return home. Similar to the argument above, father's argument centers on the fact that he had completed the case plan at the time of trial. We disagree.

The district court found that the conditions leading to G.F.'s out-of-home placement had not been corrected to allow G.F. to safely return home. Despite father's successful

completion of treatment, father “continues to defer parenting responsibilities to his parents, has not demonstrated sufficient stability, and would need a significant amount of time to develop a healthy parent-child relationship.” In addition, the district court found that father has not demonstrated an ability to provide safety and stability for G.F. While the district court commended father for being drug-free, it also considered the risk of relapse in the early stages of recovery and the particular dangers to G.F. in the event that father were to relapse.

The record contains substantial evidence to support these findings, including the opinions of the GAL and the social worker. The social worker testified that, at the time of trial, father had not demonstrated an ability or willingness to assume all parental duties and responsibilities for G.F. He needed a significant amount of time to build a healthy parent-child relationship. As of February 2018, father’s parental duties were minimal, such as, giving G.F. “a quick bath once,” and father’s relationship with G.F. was “more of a fun uncle that likes to play video games.” According to the social worker, G.F. could not be returned to father in the foreseeable future. The GAL also testified that father had not demonstrated an ability to be a full-time parent. Further, father’s treatment counselor recommended that his patients refrain from major life changes in the first six to twelve months of treatment to lower the risk of relapse. As a result, the district court did not abuse its discretion in determining that the conditions that led to out-of-home placement were not corrected so that G.F. could safely return home.

Here, the district court made extensive findings under Minn. Stat. § 260C.517(a) (1)-(4). Because the district court's findings are supported by ample evidence in the record, we conclude that the district court did not abuse its discretion.

Affirmed.