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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1359**

In the Matter of the Welfare of the Children of: J.W. and A.W., Parents.

**Filed January 14, 2019
Affirmed
Smith, John, Judge***

Blue Earth County District Court
File No. 07-JV-17-2660

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Considered and decided by Florey, Presiding Judge; Schellhas, Judge; and Smith,
John, Judge.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We affirm the transfer of legal and physical custody of appellants' three children
because the district court did not abuse its discretion in finding that the conditions leading

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

to out-of-home placement were not corrected and that the transfer was in the children's best interests.

FACTS

Appellant parents—J.W., mother, and A.W., father—have three biological children: T.W. (born in 2003), N.W. (born in 2008), and Z.W. (born in 2010). The three children lived with their parents until they were removed from the home by respondent Blue Earth County Human Services (the county).

In December 2016, the county received a possible neglect report. According to the report, N.W. was “constantly” scratching his head and “play[ing] with bugs that [fell] out of his hair and onto his desk” at school. The children were continually wearing the same soiled and odorful clothes to school which resulted in their peers teasing and bullying them. Additionally, Z.W. had not obtained replacement glasses after his prior pair had broken earlier in the school year. Though the school had tried to coordinate with J.W. and offered to provide a voucher so that Z.W. could obtain glasses at no cost to the family, the resources went unutilized and Z.W. continued to “hold his papers an inch away from his face [in order] to see them.” Lastly, the children had not come to school the week of December 16, 2016.

Based upon the report, a Blue Earth County Child Protection Worker (county worker) and a Blue Earth County Sheriff (detective) went to the family home to check on the children. The garage door was open, but the county worker and detective “had to climb over garbage” in the garage in order “to get to the door to knock.” They were greeted by Z.W. who was wearing only his underwear. When Z.W. opened the door, there was a “very

foul and overwhelming” odor so powerful that the detective reported it “burned” his nostrils and the county worker stated it almost made her eyes water. The home was “filthy”; the detective and county worker saw cat feces, bugs flying in the air, rotting food, garbage lying around including “100 beer cans” and at least three or four empty “liters of Captain Morgan,” piles of dirty clothes, and “stacks and stacks” of dirty dishes.

Once the county worker and detective were inside the home, the children’s father, A.W., came out of a room and explained that he was not feeling well and the children did not want to go to school because they “had a bug.” When the detective pointed out that the children did not appear to be sick, A.W. explained that he did not send the children to school because there was a winter storm warning. The detective noted that it was not snowing and no schools were closed in the local area.

The children apologized for their living conditions while they provided a tour of the home to the county worker and detective. The beds were soiled. There were large amounts of cat feces located in one of the bedrooms. The upstairs bathroom toilet was not working and full of feces and the shower was covered in black mold and dirt. It was difficult for the detective to breathe while in the bathroom because “something in the air” irritated his lungs. The detective determined that based upon the contents of the toilet, it continued to be used despite its non-working condition.

The children reported that their father drinks beer and mother drinks “the Morgan” in order to “put up with us.” Unbeknownst to the detective and county worker, J.W. had been sleeping on the couch underneath a blanket while they were inside the home—approximately 45 minutes to one hour. Once J.W. awoke, she locked herself in the lower-

level bathroom. When J.W. eventually came out of the bathroom, she was emotional and there was a strong odor of an alcoholic beverage emanating from her.

When the detective and the county worker explained that the boys would be placed on a 72-hour hold and placed in foster care, A.W. told the children to gather their clothes because they were “taking you away from us, you are gonna go live with strangers.” At this point, the boys became emotional and started crying.

The county worker brought the boys to a clinic to receive medical attention. T.W. had breathing problems and headaches. T.W. had a prescription for an inhaler, but used his father’s inhaler because T.W.’s was depleted one year prior. T.W. reported that he had diarrhea “for almost ever,” but had bad diarrhea for at least a week. T.W. had several decayed teeth¹, flea bites on his legs, dark circles under his eyes, and a small abrasion under his eye that itched very badly. N.W. had performed his own lice treatment from a bottle that he found around the house a week prior to his removal from the home. N.W. reported having diarrhea for months, a runny nose, plugged ears, and a sore throat for about a month or two. The doctor noted that N.W. had flea bites on his lower legs and likely had a sinus infection. Z.W. denied having diarrhea but said he vomited a couple days prior. Z.W. needed glasses.

The county placed the children with their uncle and aunt, J.K. and V.K. (foster parents). During the first night of placement, the foster parents had to show the children

¹ The foster parents described T.W.’s teeth as “black” and “rotting.” T.W. was required to have emergency dental attention, where one tooth was pulled and a root canal was performed on another.

how to wash their hair, use a washcloth, and clean themselves. The foster parents reported that the two younger boys were “deadly scared” of the shower and were “screaming and crying.” T.W., the eldest boy, was reluctant to shower. The boys also had to be shown how to use toothbrushes.

On December 19, 2016, the county filed a petition to adjudicate J.W. and A.W.’s three children in need of protection or services (CHIPS). In January 2017, the parents admitted that their house was injurious or dangerous to their children and the district court adjudicated the children CHIPS. In February 2017, the district court adopted a case plan for the parents and three children. The county case worker that prepared the case plan indicated that parents’ goal was to have a safe, sober, stable home environment for the children.

Parents’ Progress on Case Plan

J.W. completed a psychological assessment which recommended that she attend individual therapy. At trial, J.W.’s therapist testified that her depression and anxiety are “much more under control,” than when she first began in 2016.

In February 2017, a mental health professional performed a parenting capacity evaluation for J.W. The parenting evaluation revealed that J.W. had depressive symptoms, lacked self-assertion, lacked coping skills to deal with stress and pressure, and was at a high risk for corporal punishment. The mental health professional noted discrepancies in J.W.’s description of her alcohol use and her actual use.² Around February or March of

² For example, the day the boys were removed from the home, J.W. was taken to the hospital at 10:00 p.m. but could not be admitted until the next day at 11:00 a.m. because

2017, J.W.'s mental health professional recommended a residential chemical dependency treatment program.

In April 2017, a psychologist performed a parenting evaluation for A.W. Testing revealed the A.W. met the criteria for major depressive disorder and generalized anxiety disorder. At the recommendation of the psychologist, A.W. began individual therapy. A.W.'s therapist stated that A.W. had "made really good progress." After the county filed a petition to transfer permanent custody of the children in July 2017, A.W. completed a chemical dependency evaluation. A.W. never failed a drug test.

On July 14, 2017, after the children had been in out of home placement for six months, the county filed a permanency petition seeking to transfer permanent legal and physical custody of the children to relatives.

The district court stated that:

[t]he permanency petition was filed because the parents required continual prompting to accomplish tasks on the case plan. The parents had not sufficiently cleaned the home so that it was safe for the children. Mother had not started any chemical dependency treatment and was resisting the recommendation for inpatient treatment. She was continuing to have diluted UAs. Father had just begun individual therapy. The parents had not yet begun relationship counseling, denied that there were issues with their care of the children, and were resistant to offers of help from family members.

During May 2017 until August 2017, J.W. had taken 24 urine-analysis tests (UAs), 17 of which came back diluted. There was no medical explanation for the diluted results.

her blood-alcohol content was too high. However, J.W. reported that her alcohol use was "a drink maybe once every week or two weeks."

Based upon this information, the case worker recommended that J.W. complete chemical dependency treatment and be placed on a daily alcohol monitoring system.

In August 2017, J.W. and A.W. let their home go into foreclosure and moved into an apartment. The district court continued the permanency trial, at the request of the parents, to allow them additional time to work on their case plans and authorized the county to expand visits to include overnights as they deemed appropriate.

In September 2017, J.W. was placed on an ankle alcohol monitor. Though J.W. completed previous chemical dependency assessments which recommended in-patient treatment, the last assessment in September 2017 recommended out-patient treatment.³

In January 2018, the district court expressed concern “that progress in this matter has been so slow” but continued to suspend the permanency petition “as long as the parents continue to make progress on the case plan.” In February 2018, after visitation was expanded, there were reports that the boys had a very “sour” smell to the point “that other kids were asking why the boys smell.” When the county worker visited the home in February 2018, “there were dirty dishes in the sink, garbage on the living room and kitchen floor, and clothes in a hamper that smelled like body odor.” While the case worker stated that the condition of the apartment was nowhere near the state of the home, she remained concerned that this demonstrated “what could potentially [happen] the more time they spend there.”

³ J.W. completed out-patient treatment in May 2018. J.W. took a test in June 2018 (around the time of the trial) which initially came back positive for alcohol, however, upon retesting was determined to be negative.

In April 2018, the county filed an amended permanency petition and a trial was held on June 26-27, 2018. During the course of the two-day trial, fourteen different witnesses testified.

A county inspector testified that he had inspected the parents' current apartment and found it to be in much better condition than their previous residence, determined it was not a public nuisance, and thought it would be safe to raise children inside.

The children's therapist testified that the boys love their parents and desire to return home. The therapist testified that the boys spoke about being teased at school regarding their odor and not being provided food at home prior to their removal. The therapist observed some parenting "from the couch." Additionally, the therapist stated that in March or April of 2018, after one of the therapy sessions, A.W. came back to the therapist's office without a scheduled appointment and told her that the boys were not going to speak to her anymore, could not trust her anymore, and that she was going to be investigated. Ultimately, the children's therapist testified that she believes transfer of custody is in the children's best interest.

The case worker testified that the progress on the parents' case plan was slow. In January 2018, after the parent-children visitation had been lengthened to approximately four consecutive days, the county received reports from the school that the children "were smelling," "not having their homework completed," and "coming to school exhausted." Additionally, the parents were talking inappropriately about the case in front of the

children.⁴ At an unannounced visit in February 2018, the county case worker smelled an odor at the apartment, and A.W. said “it was probably his feet or [that] he may have farted.” At that time, A.W. told the case worker that he hated her. The case worker testified that transfer is in the children’s best interests because they had made “wonderful progress” with their foster parents and could “maintain a relationship with their parents,” but “would be able to be better cared for in their foster family home.”

The eldest child, T.W., told the court that he wanted to “go back to live with [his] parents.” T.W. thought that the living conditions had improved and it would not happen again.

J.K, the children’s current foster parent, testified that the parents’ home had been in that condition since before the boys were born. J.K. explained that J.W.’s family tried to come in and clean the home multiple times. J.K. testified that he was willing to continue to maintain the children’s connection with their parents. Additionally, J.K. expressed the following:

My hope for [J.W.] and [A.W.] would be that they would—um—come to realize that there is a problem here; that [there] was a problem; that’s why the kids were removed from the home—um—that they would seek good help and make progress and like I said, [V.K.] and I would like nothing more than to return those kids to their mom and dad if their mom and dad are healthy. I know that this has gone on 18 months and it has been incredibly difficult on the kids and anytime I bring that up to [J.W.] she does remind me that well her feelings are hurt too in this . . . I know they resisted a lot; they resisted help

⁴ A.W. discussed how unfair visitation changes were in front of the children, approached the county case workers in an intimidating manner, and told the children that the foster parents were the reason the children could not return home.

it seemed like at every turn—um—my hope is that they will get the help that they need.

At trial, the guardian ad litem (GAL) for the boys testified that the children are doing well in foster care. The children “remain in the community where their parents live,” maintain the same school, and “have friends in the community and at school.” The children are encouraged to participate in activities in the community and have interests. The GAL recommended the transfer of legal and physical custody, noting the following:

[T]he children have been in placement for 18 months and—um—the parents took a long time to get started in their case plan; they constantly needed you know encouragement and direction to get going on it—um—when we started to move to overnight visits—um—we were able to see some of the older habits come back—um—and so my concern is that the parents haven’t—they’ve checked off the boxes of the case plan but haven’t necessarily—um—implemented them or recognized them in their life.

J.W. testified at trial and admitted that the conditions of the home were “absolutely terrible.” J.W. stated that she “was incapable of doing anything about it,” because of the “depression that [she] suffered.” J.W. also testified to her mental health issues and stated that she was drinking in order to “make sure that my life ended so that my children and my husband could have my life insurance because our financial stresses were so horrible.”

On July 30, 2018, the district court ordered the permanent transfer of legal and physical custody of the children to the foster parents. The parents appeal.

DECISION

I.

On appeal from a permanent-placement 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). First, factual findings are reviewed to determine whether they address the statutory criteria and are supported by “substantial evidence,” or whether they are clearly erroneous. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). “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.” *D.L.D.*, 865 N.W.2d at 322 (quotation omitted). Second, the ultimate decision that there is a statutory basis for a permanency disposition is reviewed for an abuse of discretion. *Id.* “A district court abuses its discretion if it improperly applies the law.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 93 (Minn. App. 2012). Accordingly, 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.

The district court “may order permanent legal and physical custody to a fit and willing relative in the best interests of the child.” Minn. Stat. § 260C.515, subd. 4 (2018). An order permanently transferring legal and physical custody of a child must address: (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 leading to the out-of-home placement have not been corrected to permit the child to safely return home. *Id.* § 260C.517(a) (2018). The findings of fact underlying these considerations must be proved by clear and convincing evidence. *See* Minn. R. Juv. Prot. P. 39.04, subd. 2(a) (stating that the standard of proof in a non-Indian child permanency matter is clear-and-convincing evidence). Appellants assert that their efforts to correct the conditions leading to the children’s out of home placement were sufficient and that the children’s best interests were not served by the transfer of custody.

II.

Minnesota law requires the district court to make findings about the “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). Appellants argue that the district court abused its discretion by concluding that the parents’ efforts were insufficient and that the underlying conditions have not been corrected because the parents moved into a clean apartment, graduated from parenting skills classes, ameliorated their chemical use, and attended individual and couples therapy.

The district court analyzed the parents’ efforts, including their completion of the parenting skills class twice, their chemical use, their attendance at couples therapy, and the state of their apartment. However, after careful consideration of the entire record, the district court determined that “[d]espite [the county]’s efforts, the conditions which led to the children’s out-of-home placement have not been corrected so that the children can

safely return home.” The district court based its finding on the fact that “[t]he parents’ issues with depression, anxiety, and chemical use are deep seated and contributed to the terrible condition of the home from which the children were removed.” Ultimately, the district court determined that “[a]lthough the parents believe that they have resolved their underlying mental health or chemical use issues, they have not adequately dealt with their underlying mental health or chemical use issues or are just beginning to deal with such issues.” To support its factual finding that conditions have not been corrected, the district court explained:

As the children’s visits with the parents were expanded, many of the same concerns that had been present when the children were removed from the parents’ home became evident. [The children’s therapist] noticed that [T.W.] began to assume a parental role again and that [N.W.] and [Z.W.] were more aggressive towards one another and others, which [the therapist] believes shows their conflicted feelings. The Court also notes that this aggressive behavior may be related to the inappropriate movies and video games that the parents were allowing the children to watch and play. School officials reported to [the county] that the children appeared more tired, homework was not being completed during the children’s time at the parents’ home, and the children had an odor. When the children returned to the [foster parents’] home from visits to the parents, they often smelled of cigarette smoke, and on two occasions, were reinfected with lice. [The county worker] noticed that tremors that [T.W.] had when he first entered foster care had returned. Although these tremors are likely hereditary, they appear to be exacerbated by conditions in the parents’ home. There was concerns about an odor that seemed to be in the home and about the boys when they came from the parents’ residence.

“Considerable deference is due to the district court’s decision because a district court is in a superior position to assess the credibility of witnesses.” *In re Welfare of J.M.*,

574 N.W.2d 717, 724 (Minn. 1998). Appellants do not cite any specific factual errors that the district court made in its findings, rather, appellants urge this court to reweigh the evidence and disregard factual findings supported by the record. Though appellants point to plausible alternative findings, the assertion that “the record might support findings other than those made by the [district] 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). Because this court defers to the district court’s credibility determinations and 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.

III.

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). In all juvenile protection proceedings, the “paramount consideration” is the “health, safety, and best interests of the child.” *Id.* § 260C.001, subd. 2(a) (2018). Accordingly, the district court must consider and evaluate “all relevant factors” and must review “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.* § 260C.511(a), (b) (2018). The best-interests factors include: (1) the child’s current behaviors and functioning; (2) the child’s medical needs; (3) the child’s educational needs; (4) the child’s developmental needs; (5) the child’s past experience and history; (6) the child’s cultural and religious needs; (7) the child’s

connection with a school, community, and faith community; (8) the child's talents and interests; (9) the child's relationship to parents, siblings, current caretakers, and relatives; and (10) the child's reasonable preferences, if the court deems the child to be of sufficient age to express preferences. *Id.* § 260C.212, subd. 2 (2018).

Again, appellants argue that the district court abused its discretion in making the best-interests findings in light of the other evidence in the record. However, the argument that the district court abused its discretion when it found that the children's best interests were served by the transfer of custody is not persuasive. Appellants highlight T.W.'s wish to return to his parents' home, which the district court addressed in its order, finding that "while the court is not disregarding [T.W.'s] wishes and opinions, they appear to be motivated by his desire to protect his parents." Though it is uncontested that the children wish to return to their parents, the district court found:

Since the children have been living with [their foster parents], their physical health and mental health has improved. All the children now have glasses. [T.W.]'s respiratory conditions, such as allergies and asthma, are properly managed. [T.W.] has been to the dentist to repair his teeth. [Z.W.] and [N.W.] are less aggressive and their behaviors at school are much less of an issue. All of the children are involved in activities and have friends. [T.W.] has gone on a choir trip and a church retreat. [Z.W.] has become interested in playing football and baseball. [N.W.] has become a server at church. In addition, the children's educational needs have been better met. [Z.W.] was below his class in reading ability when placed in foster care and now he reads fluently and enjoys it. The children's connections with their community and extended family are much stronger and there is no evidence, beyond [J.W.]'s concerns, that the children's connection with [A.W.]'s extended family would suffer if the children remained with the [foster parents].

The district court determined that the county provided reasonable efforts and despite those efforts “the parents have resisted recognizing their own issues, have focused more on how difficult the situation has been for them rather than the children, and have refused to accept the help of [the county] or family members. By doing so, the parents put their own interests above the interests of the children.”

To be adequate, the district court’s best-interests findings must provide insight into which facts or opinions were most persuasive for 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). Here, the district court’s thoughtful and comprehensive findings demonstrate a comprehensive consideration of that criteria. In its findings, the district court recognized that the “neglect that the children have suffered while residing with the parents was long-standing and continuous.” Due to this history of neglect, “the children become anxious and revert to their old behaviors in the parents’ care, with [T.W.] again taking on a parental and protective role and [N.W.] and [Z.W.] becoming more aggressive since beginning extended visits.” Moreover, the district court expressed “grave concern” that the neglect could be repeated if the children were returned to their parents’ care.

The district court balanced the wishes of the children and parents with the fact that the foster parents “have performed their role with fairness and love, both to the children and to the parents.” The district court found that the “children have thrived in [the foster parents’] care” and “[k]eeping the children in their care will help assure that [the children] grow to be responsible healthy adults.” The district court found that “[t]ermination of the

parents' parental rights is not appropriate in this case, where the children have a close bond and recognized attachment to their parents." The district court also considered that "there is a commitment by the [foster parents] to maintain the children's relationship with their parents" and if "the parents become healthy . . . the [foster parents] would not oppose the return of the children to the parents." Ultimately, the district court determined that "[a]ny interest that the parents have in restoring the children to their care is outweighed by the best interests of the children in remaining in a safe, stable home where there is assurance that their needs will be met." It is clear from the district court's factual findings that it carefully and thoughtfully considered the statutorily required factors.

Even though appellants disagree with the district court's weighing of the evidence, the district court's comprehensive and thorough findings are supported by the record and the district court's decision is therefore not clearly erroneous. Because the district court properly applied the law, it did not abuse its discretion when it determined that transfer of custody was appropriate in this case.

Affirmed.