

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1521**

In the Matter of the Welfare of the Children of:
J. C. L. and J. H. L., Parents.

**Filed April 12, 2021
Affirmed
Johnson, Judge**

Pine County District Court
File Nos. 58-JV-20-7, 58-JV-18-175

Anne M. Carlson, St. Paul, Minnesota; and

James S. Robbins, Maple Grove, Minnesota (for appellant J.C.L.)

Mackenzie P. Guptil, Pine City, Minnesota (for respondent J.H.L.)

Reese Frederickson, Pine County Attorney, Sydney J. Silko, John C. Lauer, Assistant County Attorneys, Pine City, Minnesota (for respondent Pine County Health & Human Services)

Cynthia Bell, Pine City, Minnesota (guardian *ad litem*)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Hooten, Judge.

SYLLABUS

In making findings pursuant to section 260C.517(a) of the Minnesota Statutes to support a permanency disposition other than a termination of parental rights, a district court must consider the best interests of the child according to the criteria specified in section 260C.511.

OPINION

JOHNSON, Judge

The district court transferred permanent legal and physical custody of J.C.L.'s four children to her step-father. We conclude that the district court adequately considered the children's best interests and did not clearly err in any of its findings of fact. Therefore, we affirm.

FACTS

J.C.L. is a 32-year-old woman who, while married to J.H.L., gave birth to four children between 2009 and 2016. In 2017, the four children were adjudicated children in need of protection or services based on concerns about an unstable home environment and the parents' chemical dependency, domestic violence, and mental-health issues. The child-protection case was dismissed 90 days later.

In November 2018, after a credible report of child neglect, Pine County learned that J.C.L. and J.H.L. were using methamphetamine and that the family was homeless. The county again petitioned for a determination that the children were in need of protection or services, and the county requested out-of-home placements. In January 2019, the parents admitted the allegations, and the children were placed in foster care. The district court approved a case plan that required J.C.L. to take various actions to address her chemical-dependency and mental-health issues and to obtain safe and stable housing. In the following months, J.C.L. enrolled in several in-patient and out-patient chemical-dependency programs, with mixed results.

In September 2019, the children were returned to J.C.L. and J.H.L.'s home for a trial home visit. In October 2019, J.C.L. refused to take two drug tests and admitted to the county social worker that she recently had used drugs. The county discontinued the trial home visit because the parents had failed to submit to drug testing, the children often missed school and were inadequately supervised, there were reports of "marital discord," and J.C.L. was no longer living in the home. In November 2019, the children were returned to foster care. J.C.L. requested that the children be placed with her step-father, and the district court ordered that placement.

In January 2020, the county petitioned to transfer permanent legal and physical custody of the children to J.C.L.'s step-father. In April 2020, J.H.L. voluntarily agreed to the county's petition, and the district court approved the transfer of his interest in legal and physical custody. The matter was tried on two days in June 2020 with respect to J.C.L. The district court heard the testimony of five witnesses (J.C.L., her chemical-dependency counselor, her step-father, the county social worker, and the guardian *ad litem*) and received 54 exhibits. In July 2020, the district court filed an order in which it granted the county's petition and ordered that permanent legal and physical custody of the children be transferred to J.C.L.'s step-father. J.C.L. appeals.

ISSUE

Did the district court err in making findings under section 260C.517(a) of the Minnesota Statutes to support its order for a transfer of permanent legal and physical custody of the children to J.C.L.'s step-father?

ANALYSIS

In a permanency proceeding under sections 260C.503 to 260C.521 of the Minnesota Statutes, a district court may order any one of six dispositions. *See* Minn. Stat. § 260C.515 (2020). One of the possible dispositions is a transfer of permanent legal and physical custody “to a fit and willing relative.” *Id.*, subd. 4; *see also* Minn. Stat. §§ 260C.509, .513 (2020). An order for such a transfer, or for any permanency disposition other than a termination of parental rights, “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 or, in the case of an Indian child, active efforts to reunify the child with the parent or guardian where reasonable efforts are required;

(3) the parent’s or parents’ 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) (2020); *see also* Minn. R. Juv. Prot. P. 58.04(b). Each of these four statutory requirements must be proved by clear and convincing evidence. Minn. R. Juv. Prot. P. 58.03, subd. 1; *see also In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 322 (Minn. App. 2015), *review denied* (Minn. July 20, 2015).

In this case, J.C.L. challenges the district court’s findings that were made pursuant to section 517(a). Her argument has four parts, which correspond to the four requirements of the statute. We will address each argument in turn.

1.

J.C.L. first argues that the district court erred in its finding concerning the first statutory requirement: “how the child’s best interests are served by the order.” *See* Minn. Stat. § 260C.517(a)(1). She contends that the district court did not apply the appropriate best-interests factors, which, she asserts, must include consideration of her interest and the children’s interests in maintaining the parent-child relationship. J.C.L.’s first argument implicates the meaning of the statutes governing an order for a permanency disposition. Accordingly, we apply a *de novo* standard of review. *In re Welfare of T.P.*, 747 N.W.2d 356, 360 (Minn. 2008).

The statutes governing permanency dispositions define the term “best interests” and specify the relevant criteria that a district court must consider, as follows:

(a) The “best interests of the child” means all relevant factors to be considered and evaluated. In the case of an Indian child, best interests of the child includes best interests of an Indian child as defined in section 260.755, subdivision 2a.

(b) In making a permanency disposition order or termination of parental rights, 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.

Minn. Stat. § 260C.511 (2020). This statute provides the best-interests criteria that a district court must consider before ordering a transfer of permanent legal and physical custody of a child to a relative. *See* Minn. Stat. §§ 260C.515, subd. 4; 260C.517(a).

J.C.L. contends that the district court erred by not applying a three-part test that considers the child's interest in maintaining the parent-child relationship, the parent's interest in maintaining the parent-child relationship, and any competing interests.¹ In support of this contention, she cites *In re Welfare of Children of M.A.H.*, 839 N.W.2d 730 (Minn. App. 2013). In *M.A.H.*, this court considered a district court's decision on a petition to terminate parental rights. *Id.* at 734. In doing so, we considered a child's best interests according to the three factors identified by J.C.L. *Id.* at 744. Our opinion in *M.A.H.* is consistent with supreme court opinions that applied a three-part best-interests test in cases concerning the termination of parental rights. *See, e.g., In re Welfare of L.A.F.*, 554 N.W.2d 393, 399 (Minn. 1996); *In re Welfare of M.D.O.*, 462 N.W.2d 370, 378-79 (Minn. 1990); *In re Welfare of J.J.B.*, 390 N.W.2d 274, 279 (Minn. 1986). But the three-part best-interests test is not mentioned in the statutes governing a permanency order that is not an order for the termination of parental rights. *See* Minn. Stat. §§ 260C.511, 260C.515, 260C.517(a). We are unaware of any supreme court opinion applying the three-part best-interests test in an appeal of a permanency order other than an order for the termination of parental rights. The limited applicability of the three-part best-interests test is confirmed

¹J.C.L. asserts that "this area of law requires clarification" because this court has issued unpublished, non-precedential opinions that are not uniform in identifying the best-interests criteria that apply to an order for a transfer of permanent legal and physical custody. *See, e.g., In re Welfare of Child of J.A.T.*, No. A18-0744, 2018 WL 4956989, at *4 (Minn. App. Oct. 15, 2018); *In re Welfare of Children of S.J.Z.M.*, No. A17-0881, 2017 WL 6272943, at *8 (Minn. App. Dec. 11, 2017); *In re Welfare of Children of A.S.*, No. A16-1353, 2017 WL 562544, at *3 (Minn. App. Feb. 13, 2017); *In re Welfare of Child of J.B.*, No. A16-0528, 2016 WL 4163324, at *5 (Minn. App. Aug. 8, 2016). We appreciate the suggestion and take this opportunity to clarify the applicable criteria.

by the rules of juvenile protection procedure, which prescribe it in termination cases but not in other permanency cases. *Compare* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) *with* Minn. R. Juv. Prot. P. 58.04(b). Thus, the district court was not required to apply the three-part best-interests test that applies in termination cases.

The district court recognized its obligation to make findings concerning “how the child’s best interests are served by the order,” Minn. Stat. § 260C.517(a)(1), and its obligation to consider “all relevant factors,” “including the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact,” Minn. Stat. § 260C.511(a), (b). To fulfill that obligation, the district court looked to section 260C.212, subdivision 2(b), for detailed criteria. That statute identifies 11 factors that a social-services agency must consider in determining the needs of a child when the agency is recommending an out-of-home placement for the child. Minn. Stat. § 260C.212, subd. 2(b) (2020). Based on those factors, the district court found that “it is in the children’s best interests to transfer permanent legal and physical custody” because the best-interests factors “overwhelmingly weigh in favor of transferring custody to” J.C.L.’s step-father.

By its terms, section 260C.212, subdivision 2(b), is limited to the situation in which a social-services agency is selecting an out-of-home placement. *See* Minn. Stat. § 260C.212, subd. 2(b). The statute promotes the best interests of a child in foster care by ensuring that “the selected home will serve the needs of the child” in the event that the child later remains in the home pursuant to an adoption or a transfer of custody. *See* Minn. Stat. § 260C.193, subd. 3(a) (2020). But the statute does not refer to a district court’s

decision to order a permanency disposition, *see* Minn. Stat. § 260C.212, subd. 2(b), and the statute is not referenced in the statutes governing permanency dispositions, *see* Minn. Stat. §§ 260C.503-.519. The factors in section 260C.212, subdivision 2(b), are aligned with the best interests of a child in a permanency proceeding, but those factors are not required by section 260C.511, which governs and specifies the best-interests criteria that must be considered before ordering a permanency disposition other than a termination of parental rights.

Nonetheless, the district court's findings in this case satisfy section 260C.511. The district court made detailed findings on each of the 11 factors in section 260C.212, subdivision 2(b), including the ninth factor, "the child's relationship to current caretakers, parents, siblings, and relatives." Minn. Stat. § 260C.212, subd. 2(b)(9). In making findings on the ninth factor, the district court found that there is a healthy relationship between the children and their step-grandfather, with whom they reside in foster care. The district court also found that the step-grandfather appropriately plays with and disciplines the children, helps them in their school work, participates in their activities, and ensures that they receive appropriate medical care. The district court also found that the children seem "happy, content, and more relaxed" when residing with their step-grandfather and "have developed a close, intimate relationship" with their step-grandfather. The district court further found that the step-grandfather has facilitated the children's relationships with their mother and father, as well as members of the children's extended family, including both maternal and paternal grandparents, aunts, uncles, and half-siblings. Because the ninth factor in section

260C.212, subdivision 2(b), substantially overlaps with section 260C.511, the district court's best-interests findings in this case satisfy the requirements of section 260C.511.

Thus, the district court did not fail to consider all relevant factors related to the best interests of the children, including their relationships with relatives and other important persons with whom they have resided or had significant contact, as required by section 260C.511.

2.

J.C.L. also argues that the district court erred in one finding of fact related to the second statutory requirement: "the nature and extent of the responsible social services agency's reasonable efforts . . . to reunify the child with the parent or guardian where reasonable efforts are required." *See* Minn. Stat. § 260C.517(a)(2); *see also* Minn. Stat. § 260.012(h) (2020). We apply a clear-error standard of review. *D.L.D.*, 865 N.W.2d at 321-22.

J.C.L. argues that the district court clearly erred in its finding in paragraph 51, in which it found that the county "has made reasonable efforts to facilitate reunification and prevent the break-up of the family." J.C.L. contends that the county social worker did not work collaboratively with her to develop the case plan and, in addition, did not "provide parenting education, explain the recommendations of the mental-health assessment, provide assistance filling out health insurance forms, and provide assistance locating child-care." In response, the county recites the social worker's testimony concerning the various ways in which she provided assistance to J.C.L. The district court relied on the social worker's testimony by finding that, among other actions, she made referrals for mental-

health therapy, chemical-dependency assessments, and other forms of social services; arranged for supervised visitation and the trial home visit; and arranged for financial assistance for gasoline, rent, child-care, and clothing for the children. J.C.L. does not challenge those underlying findings of fact. The district court stated that “the nature and extent” of the county’s reunification efforts were “more than satisfactory.” The district court’s findings are relevant to the statutory factors concerning reasonable efforts. *See* Minn. Stat. § 260.012(h).

Thus, the district court did not clearly err in its findings of fact concerning the county’s efforts to reunify the children with J.C.L.

3.

J.C.L. also argues that the district court erred in four of its findings of fact related to the third statutory requirement: “the parent’s . . . efforts and ability to use services to correct the conditions which led to the out-of-home placement.” *See* Minn. Stat. § 260C.517(a)(3). Specifically, J.C.L. argues that the district court clearly erred in its findings in paragraphs 63, 64, 68, and 73 of its order.

In paragraph 63, the district court found that J.C.L. “has not provided proof of attendance at weekly sober-support groups.” J.C.L. contends that she was not required to do so by the court-ordered case plan. The county does not contend that such a requirement is expressly stated in the case plan, but it contends that J.C.L. was required to follow the recommendations of her chemical-dependency assessment, which included weekly attendance at sober-support meetings. The county social worker testified that she was concerned about J.C.L.’s attendance and tried in various ways to confirm that J.C.L. was

attending. In any event, the district court did not find that J.C.L. had violated the case plan by not providing proof of her attendance.

In paragraph 64, the district court found that J.C.L. provided an invalid urine sample and admitted that she had purchased fake urine after using controlled substances. J.C.L. contends that there is no evidence in the record that she provided a false urine sample but merely evidence that she “purchased a detox kit and drank a lot of water.” J.C.L. testified that, because she had “used,” she “faked” a drug test by consuming “detox medicine” that she purchased at a tobacco store. The challenged finding is consistent with J.C.L.’s testimony and the reasonable inferences that may be drawn from it.

In paragraph 68, the district court made findings about J.C.L.’s limited participation in chemical-dependency treatment. J.C.L. contends that the COVID-19 pandemic “limited [her] ability to participate in [chemical-dependency] programming” because the county did not assist her in finding virtual treatment and because she did not have access to the internet. The district court’s findings note that some of J.C.L.’s unexcused absences coincided with the pandemic, when sessions were conducted virtually. The district court also found that the treatment provider called J.C.L. by telephone several times and left messages but that J.C.L. did not return the calls. The district court further found that J.C.L. did not attend another session until one week before trial. These findings indicate that J.C.L.’s limited participation in chemical-dependency treatment was not due solely to the pandemic.

In paragraph 73, the district court found that J.C.L. did not substantially comply with the requirement that she “abstain, follow the recommendations of the chemical-

dependency evaluation, demonstrate learned coping skills, establish a sober support system, and submit to testing.” J.C.L. contends that she substantially complied with the case plan’s requirement that she complete a chemical-dependency evaluation and follow its recommendations. The district court’s finding is supported by the social worker’s testimony that J.C.L. did not complete her inpatient treatment, which was recommended in her first chemical-dependency assessment, and did not complete individual therapy, which was recommended in her second chemical-dependency assessment.

Thus, the district court did not clearly err in its findings of fact concerning J.C.L.’s efforts and ability to correct the conditions that led to out-of-home placement.

4.

J.C.L. also argues that the district court erred in three findings of fact related to the fourth statutory requirement: whether “the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.” *See* Minn. Stat. § 260C.517(a)(4). Specifically, J.C.L. argues that the district court clearly erred in its findings in paragraphs 110, 112, and 113 of its order.

In paragraphs 110 and 112, the district court found that J.C.L. had not corrected three important conditions that led to the out-of-home placement plan: her poor mental health, her chemical dependency, and her unstable housing. J.C.L. contends that the district court did not consider the conditions as they existed at the time of trial. The district court made particular findings that J.C.L. admitted during her trial testimony that she would need help in caring for the children on a full-time basis and that she had not attended therapy sessions for several months before trial. J.C.L. does not challenge these underlying findings. The

social worker testified that J.C.L. struggled to manage her mental health and chemical dependency and to maintain stable housing. In addition, J.C.L. testified at trial that she did not know where she would live with the children, that she is easily overwhelmed when caring for the children, and that she had not recently attended therapy sessions.

In paragraph 113, the district court found, among other things, that J.C.L. “has not addressed her chemical dependency” and “has not demonstrated a long-term period of sobriety.” J.C.L. contends that there is no evidence that J.C.L. did not maintain her sobriety after October 2019, when she admitted to using methamphetamine. But the evidence shows that J.C.L. did not submit a urine sample in March 2020 or a hair-follicle sample in April 2020, as required. It appears that J.C.L. did not pass a drug test between October 2019 and trial in June 2020.

Thus, the district court did not clearly err in its findings of fact concerning whether the conditions that led to the out-of-home placement have been corrected.

DECISION

In sum, the district court considered the factors relevant to the first statutory requirement, the best interests of the children, and the district court did not clearly err in its findings of fact concerning the second, third, and fourth requirements. Therefore, the district court did not err by granting the petition for a transfer of permanent legal and physical custody.

Affirmed.

A handwritten signature in black ink, appearing to read "Matthew Johnson", is written in a cursive style.