

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0876**

In the Matter of the Welfare of the Children of:
A. D. B. and R. N. L., Parents.

**Filed January 18, 2022
Remanded
Smith, Tracy M., Judge**

Stearns County District Court
File No. 73-JV-21-445

Kimberly Stommes, Stommes Law Office, LLC, St. Cloud, Minnesota (for appellant-mother A.D.B.)

Kyle R. Murray, Jason, W. Migala, Migala Law Office, St. Cloud, Minnesota (for respondent-father R.N.L.)

Katherine Solveig Malmanger, St. Cloud, Minnesota (for children T.H.B. and T.L.L.)

Janelle P. Kendall, Stearns County Attorney, Patrick M. Moen, Assistant County Attorney, St. Cloud, Minnesota (for respondent Stearns County Human Services)

Stephanie Schwegel, Waite Park, Minnesota (guardian ad litem)

Considered and decided by Gaïtas, Presiding Judge; Smith, Tracy M., Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

On appeal from the district court's order for involuntary transfer of permanent legal and physical custody of appellant-mother's children to respondent-father, appellant-mother argues that the record does not support the district court's findings of fact, that the transfer

is not in the best interests of the children, that respondent Stearns County Human Services (the county) failed to make reasonable efforts to reunite the family, and that the district court's order did not contain the "detailed findings" required under Minn. Stat. § 260C.517 (2020). Because the district court's order did not contain the requisite detailed findings, we are unable to meaningfully review the order on appeal, and so remand for further proceedings in line with this opinion.

FACTS

Appellant A.D.B. is the mother of four children; the custody of her children T.L.L. and T.H.B., born in 2007 and 2008, respectively, is the subject of this appeal. Respondent R.N.L. is father to both children.¹ In March 2020, mother gave birth to J.N.B., the half-brother of T.L.L. and T.H.B. After mother and J.N.B. tested positive for several illicit substances, including methamphetamine, at the hospital, the county placed a protective hold on the four children, removed the children from the home, and initiated a child-protection case. The children were eventually placed in foster care with relatives while mother worked with a social worker to complete her court-ordered case plan. The case plan included drug testing, visitation with her children, and completion of chemical-dependency treatment. Mother's chemical dependency was identified as the main barrier to reunification with her children.

¹ Father has signed a recognition of parentage for both children, has been adjudicated as the father of both children by court order, and is listed as the father on T.L.L.'s birth certificate.

In January 2021, the county petitioned for the permanent transfer of custody of T.L.L. and T.H.B. from mother to father. The district court held a joint child-protection trial regarding permanency petitions for all four of mother's children. After the trial, the district court ordered the transfer of permanent legal and physical custody of T.L.L. and T.H.B. to father.

Mother appeals.

DECISION

A district court may “order permanent legal and physical custody to a fit and willing relative in the best interests of the child” after “the court has reviewed the suitability of the prospective legal and physical custodian.” Minn. Stat. § 260C.515, subd. 4 (2020). More specifically, under Minn. Stat. § 260C.517,

an order permanently placing a child out of the home of the parent or guardian 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 or guardian . . . ; (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.

When reviewing a permanent transfer of custody, we review factual findings for clear error and review the finding of the statutory basis for the order for an abuse of discretion. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321-22 (Minn. App. 2015), *rev. denied* (Minn. July 20, 2015); *see also In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 900-01 (Minn. App. 2011) (holding, in a termination-of-parental-rights case, that we

review “findings of basic or underlying fact . . . for clear error” and “ultimate facts,” or a district court’s “determination of whether a particular statutory basis . . . is present,” for an abuse of discretion), *rev. denied* (Minn. Jan. 6, 2012).

Appellate courts do not make factual findings. *See Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966). Meaningful appellate review requires factual findings by the district court. *See In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003) (remanding a termination-of-parental-rights case for failure to make specific findings on the best interests of the children); *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 669-70 (Minn. App. 2020) (concluding that the court of appeals cannot review an order without findings on the best interests of the child in a termination-of-parental-rights case). Without factual findings—and especially without credibility determinations when credibility is important—we are unable to conclude whether a district court clearly erred when making factual findings or abused its discretion when making its ultimate decision. *See In re Welfare of Child of H.G.D.*, 962 N.W.2d 861, 873 (Minn. 2021) (stating that appellate courts defer to the district court’s credibility assessments because [the district court] “is in a superior position to assess the credibility of witnesses” (quotation omitted)); *In re Welfare of C.K.*, 426 N.W.2d 842, 849 (Minn. 1988) (holding that “the lack of findings substantiating the conclusion . . . makes it literally impossible under appropriate review standards . . . to make a determination . . . that the juvenile court’s disposition was not clearly erroneous”).

The district court was required to make “detailed findings” under Minn. Stat. § 260C.517. In its sparse, three-page order, the district court found that: (1) the county “has

made reasonable efforts to reunify the children with their mother” and “[t]hose efforts have failed”; (2) transfer to father “would provide permanency for the child”; (3) father “desires to have the care and custody of the children,” “is fit, willing, and suitable,” and “will maintain the sibling relationship with all half-siblings”; (4) the county “believes that” father “has the capacity and disposition to give the child the love, affection and guidance the children require and to raise them to adulthood”; and (5) “[i]t is in the best interests of the child to transfer custody to their father.”

These conclusory findings are inadequate to allow meaningful appellate review. The findings state the district court’s ultimate findings on two of the four statutory factors: the best interests of the children and the reasonable efforts by the county to reunify the family. *See* Minn. Stat. § 260C.517. The district court’s finding that the county’s reasonable efforts “have failed” presumably is a finding that the conditions that led to the out-of-home placement have not been corrected. *See id.* But the district court made no finding on the third statutory factor—mother’s efforts and ability to use services to correct her chemical dependency.

But, even if we assume that the district court did make ultimate findings as to all four statutory factors, it made few, if any, underlying factual findings to support the ultimate findings on the statutory factors. For example, the amended order does not mention mother’s chemical dependency or describe any efforts, successful or otherwise, by the county or by mother to address mother’s chemical dependency. In addition, although conflicting trial testimony created factual disputes, the district court made no credibility determinations to resolve these disputes. For example, mother testified that she did not

participate in drug testing because she did not have transportation to the testing site and that she talked to her social worker but was not offered any solutions. Her social worker, on the other hand, testified that she had referred mother to a transportation program for transportation to testing but that mother never followed up, that she had driven mother to supervised visits several times, and that the county had set up transportation to visits on multiple occasions. The district court did not assess the credibility of either witness's testimony.

Thus, even if we were to ignore the lack of ultimate findings on all of the factors listed in Minn. Stat. § 260C.517, without the findings by the district court on the facts that would underlie those ultimate findings, including credibility determinations, we cannot review whether substantial evidence supports the permanent transfer of custody, as mother asks us to do. *See In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996) (holding that, in permanency proceedings, the court of appeals determines whether substantial evidence supports the district court's determination that the statutory criteria are satisfied). Therefore, we remand this case to the district court to make detailed findings as required under Minn. Stat. § 260C.517. Pending completion of its work on remand, the district court shall have the discretion to continue the current custody arrangement. The district court shall also have the discretion to reopen the record as appropriate to make updated factual findings.

Remanded.