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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1198**

In the Matter of the Welfare of the Children of:
K. H. and K. T., Parents.

**Filed February 13, 2023
Affirmed
Bratvold, Judge**

Lincoln County District Court
File No. 41-JV-22-1

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Considered and decided by Johnson, Presiding Judge; Bratvold, Judge; and Florey,
Judge.*

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant-mother challenges a district court order transferring permanent legal and
physical custody of her two children to paternal relatives. Appellant argues that the record

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

evidence was insufficient to support the transfer of custody under Minn. Stat. § 260C.517(a) (2022). After a careful review of the record evidence, we affirm.

FACTS

The following summarizes the district court’s written factual findings after a one-day bench trial. This summary also refers to evidence received during the trial when helpful to an understanding of the issues on appeal.

Appellant K.T. (mother) and respondent K.H. (father) married and are the biological parents of the two children who are the subject of the transfer petition—A.R.H., born in 2006, and J.K.H., born in 2007 (the children).¹ Following mother and father’s divorce in 2009, they had joint legal custody and father had sole physical custody of the children. Since 2009, father has been involved in ten child-protection intake assessments and mother has been involved in six.² According to the district court’s written findings, all intake assessments for both parents “involved an issue with alcohol and/or controlled substances.”

On July 20, 2021, father was arrested and criminally charged. Respondent Southwest Health and Human Services (the agency) filed an emergency petition for removal of the children from father’s custody. The district court granted the emergency petition. The agency consulted mother on where to place the children. A.R.H. was placed with paternal relatives (the relative custodians). J.K.H. was first placed in Iowa with

¹ Mother and father have a third child who is over 18 years old and not the subject of these proceedings.

² Mother’s parents have permanent sole legal and sole physical custody of mother’s two nonjoint children, who were involved in several child-protection intake assessments.

grandparents, but he soon joined A.R.H. with the relative custodians. The district court found that “[i]ncluding the time spent in placement on a prior juvenile protection matter, the children have been in placement a total of 400 days as of the date of trial.”

On July 23, 2021, the children were adjudicated in need of protection and services (CHIPS), and the agency began preparing a case plan with father and mother. According to testimony from the agency social worker, the case plan would serve as a “road map” of what the parents “need to work on, in order to reunify with their children.” At the time of the CHIPS adjudication, mother lived with her parents, did not have stable housing, and was on probation for fifth-degree controlled-substance-possession.

Mother’s case plan had two goals:

Goal 1: [Mother] will address her chemical dependency:

- [Mother] will maintain sobriety.
- If [mother] tests positive on a drug test, she will complete a chemical use assessment and abide by the recommendations.
- [Mother] will submit to random drug testing. This may include but is not limited to UA’s, sweat patches, and hair testing.
- [Mother] will not allow drugs, alcohol, or people under the influence of drugs or alcohol into her home.

Goal 2: [Mother] will demonstrate an ability to meet her children’s needs:

- [Mother] will obtain and maintain a home and ensure it is appropriate for herself and the children. This includes keeping it clean and sanitary.

Between August 2021 and January 2022, mother changed her mind several times about whether she sought physical custody or parenting time. The district court summarized mother's changing views:

On August 23, 2021, [the agency] discussed with Mother the steps she would need to take to have the children placed with her. At that time, Mother wanted unsupervised visitation only and not custody. Mother said she wanted to honor her children's wishes and allow them to remain in placement with relatives. On August 27, 2021, Mother told [the agency] that she decided to try for custody of the children because Father was not taking his obligations seriously. In December of 2021 and until January of 2022, Mother again expressed the desire to honor her children's wishes to remain in the home of [the relative custodians]. Subsequently, Mother changed her mind and again wanted to work toward obtaining custody of the children.

During this time, the agency regularly met with mother and monitored mother's case-plan progress. Mother cooperated in supervised visitation with the children and "eventually transitioned to unsupervised visits."

On February 8, 2022, the agency petitioned to transfer permanent legal and physical custody of the children to the relative custodians. The petition alleged that mother "has complied with some of the requirements" of the case plan but is "not in a position to care for the children now or in the reasonably foreseeable future." The petition asserted that permanent transfer of legal and physical custody to the relative custodians is in the children's best interests. The petition did not seek or recommend termination of parental rights for either parent.

The case was tried to the district court on May 18, 2022. Father admitted that his use of drugs had not been fully resolved and testified that transfer of permanent legal and

physical custody to either mother or the relative custodians is in the children's best interests. The trial included these witnesses: father, the social worker assigned to the family, the guardian ad litem (GAL), mother, and mother's father.³ The parties stipulated to the admission of fourteen exhibits, including mother's case plan, GAL reports, and toxicology reports.

The social worker first testified that permanent placement with the relative custodians is in the children's best interests because mother "is still working on creating stability for herself at this time." Second, the social worker testified that the children stated they preferred to live with the relative custodians because there was "some consistency, some stability, and they wouldn't have to worry about if there was going to be food in the home, or if their parent was going to be coming home sober or not."

The GAL testified that mother "inconsisten[tly]" complied with her case plan and expressed concerns about domestic violence involving mother and her boyfriend, mother's lack of stable employment, and mother's lack of cooperation with unannounced home visits and random testing. The district court found that the GAL's recommendation for permanent placement with the relative custodians was supported by "the preference of the children, the proposed custodians' willingness, and ability to meet the children's needs, and the children are thriving in the home of the proposed custodians."

Mother testified that she has been sober since September 7, 2021—the eight months before trial. She also testified that she met her case-plan goals and could provide adequate

³ Mother's father testified that he has seen mother almost daily over the past eight months and has not witnessed any of the behaviors mother displayed in the past when using drugs.

care for the children’s needs. Still, mother admitted that until about two weeks before trial, she was living with an abusive boyfriend who “possibl[y]” used illegal drugs in her apartment.

On June 3, 2022, the district court granted the agency’s petition and transferred permanent legal and physical custody of A.R.H. and J.K.H. to the relative custodians pending completion of a state-benefits assessment. The district court issued an order finalizing the permanent transfer of custody and terminating jurisdiction on August 9, 2022, after benefits were in place.

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.” Minn. Stat. § 260C.515, subd. 4 (2022). A district court order “permanently placing a child out of the home of the parent or guardian” must include four “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 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). Each statutorily required finding must be proved by clear and convincing evidence. Minn. R. Juv. Prot. P. 58.03, subd. 1; *In re Welfare of Child. of J.C.L.*, 958 N.W.2d 653, 656 (Minn. App. 2021), *rev. denied* (Minn. May 12, 2021).

“On appeal of a juvenile-protection order, we review the juvenile court’s factual findings for clear error and its finding of a statutory basis for the order for abuse of discretion.” *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321 (Minn. App. 2015) (reviewing order transferring legal custody of child), *rev. denied* (Minn. July 21, 2015). “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

The clear-error standard of review “is a review of the record to confirm that evidence exists to support the decision.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021) (reviewing order for provisional discharge after civil commitment). “When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* at 223 (quotation omitted). When applying the clear-error standard of review, appellate courts (1) view the evidence in the light most favorable to the findings; (2) do not reweigh

the evidence; (3) do not find their own facts; and (4) do not reconcile conflicting evidence.

Id. at 221-22. Thus,

an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court. Rather, because the factfinder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding, an appellate court's duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.

Id. at 222 (quotations omitted); see *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* on review of a juvenile-protection order), *rev. denied* (Minn. Dec. 6, 2021).

Mother challenges the sufficiency of record evidence for each of the four required findings listed in Minn. Stat. § 260C.517(a). The agency did not file a brief with this court. Still, the issues mother raised will be determined on the merits. See Minn. R. Civ. App. P. 142.03 (“If the respondent fails or neglects to serve and file its brief, the case shall be determined on the merits.”). While we understand every government agency must carefully allocate its resources, it is both helpful and preferable for all parties to fully brief the issues raised in a weighty matter such as transferring permanent legal and physical custody of two children.

Throughout mother's brief to this court, she repeatedly argues that the district court ignored that she had completed her case-plan goals. For that reason, we first address whether mother corrected the conditions leading to out-of-home placement and then address the remaining three required findings.

A. Correction of Conditions Leading to Out-of-Home Placement

The district court must make detailed findings on whether “the conditions which led to the out-of-home placement have not been corrected so that the child[ren] can safely return home.” Minn. Stat. § 260C.517(a)(4). Mother argues that the conditions leading to out-of-home placement were corrected because mother had “demonstrated sobriety for at least eight months” and maintained an appropriate home since August 2021. We are not persuaded because mother’s brief to this court inaccurately summarizes the district court’s factual findings. We discuss the two case-plan goals in light of the district court’s findings and the record evidence.

On the first case-plan goal of maintaining sobriety, the district court found that mother only “partially compli[ed].” The district court found that mother tested positive for methamphetamine on September 7, 2021. The district court also found that mother “refused to cooperate with . . . hair follicle testing” and “was not fully cooperative with [urine] testing in that Mother would not agree to take unannounced, random tests on the dates requested.” Though mother released information from her probation officer to the agency at first, she later revoked the release. The agency could not verify whether mother followed the conditions of her probation. The district court concluded that it was “unknown if Mother’s period of abstinence was continuous since the positive sweat patch in September of 2021.”

Mother argues that she “only had one positive test,” which shows that she was “sober for at least eight months.” It is true that the social worker’s testimony confirmed that mother had only one positive drug test, and the test occurred on September 7, 2021.

But the social worker testified that mother's cooperation with drug testing was always "ebbing and flowing"; while mother verbally complied with scheduling tests, she often cancelled tests and would not submit to unannounced drug tests. The social worker testified that mother complied with drug testing but "never on the day [the social worker] asked her to," and so "there truly hasn't been true drug testing" in this case.

The social worker also testified that when a parent refuses to take an unannounced drug test, the agency considers the refusal to be "a failed test, not a positive [test], but a fail." Although mother did not have a second positive drug test during the eight-month period preceding the permanency trial, she refused to participate in several unannounced drug tests. The GAL also testified that mother would not submit to random drug testing. As a result, "it is difficult to know whether or not she is 100 percent sober."

Mother refused a random drug test on April 15, 2022, approximately one month before trial, which the social worker identified as a "concern at this point in the case." Mother agreed to a drug test three days later, on April 18. Thus, mother has not shown that the district court clearly erred in finding that mother's period of abstinence is "unknown" and that mother did not fully comply with the sobriety goal.

Mother's second goal was to "obtain and maintain a home and ensure it is appropriate for herself and the children." The district court found that mother "maintained an appropriate home" and "keeps the home clean and sanitary." The district court added, however, that "there is concern about limited bedroom space" and "concern about Mother allowing [a boyfriend] to live in her home due to concerns with his drug use and domestic abuse."

Record evidence supports these findings. As for adequacy of bedroom space, we note that mother has two children younger than A.R.H. and J.K.H. The social worker and GAL testified that they were concerned about the adequacy of mother's two-bedroom home for four children. Mother testified that when her two youngest children stayed with her, A.R.H. and J.K.H. could sleep at her parents' house six blocks away. As for domestic violence and drug use in mother's home, the social worker, GAL, and mother all testified that during a meeting on April 18, 2022—one month before trial—mother expressed concern about domestic violence involving her boyfriend and the safety of her children. Mother testified that her boyfriend was verbally abusive and that she “believe[s] [the abuse] is the reason” A.R.H. did not want to live in her home. Mother also testified that until two weeks before trial, her boyfriend lived with her and was “possibl[y]” using illegal substances in her home. Thus, the record evidence supports the district court's determination that mother “substantially met” her safe-housing goal.

Mother argues the district court erred in concluding that the conditions leading to the out-of-home placement have not been corrected. We disagree. The district court found that at the time of trial, mother “substantially met” her housing goal, but it was “unknown” if mother maintained continuous abstinence before trial. The district court also found that mother's efforts did not “sufficiently correct the issues in her home so that the children could be placed in her care.”

The district court correctly addressed conditions at the time of the permanency trial. *See In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) (stating, on review of an order terminating parental rights, that “the evidence must address conditions that exist at

the time of the hearing”). We thus conclude that record evidence supports the district court’s finding that mother did not sufficiently correct the conditions that led to out-of-home placement. *See* Minn. Stat. § 260C.517(a)(4).

B. Mother’s Efforts and Ability to Use Services to Correct Conditions

The district court must make detailed findings on “the parent’s . . . efforts and ability to use services to correct the conditions which led to the out-of-home placement.” Minn. Stat. § 260C.517(a)(3). Mother argues that she “demonstrated an effort and ability to use services to correct any conditions she was in control of.” Mother asserts that the two conditions she needed to correct were an “unsafe environment in the home and drug use” and that she demonstrated “sobriety for at least eight months” and “an ability to meet her children’s needs by maintaining a home.”

The district court found that mother “had the ability to substantially comply with the case plan, but her efforts did not sufficiently correct the issues in her home so that the children could be placed in her care.” The relevant record evidence detailed above supports the district court’s findings. Thus, mother has not shown that the district court clearly erred when it found that mother’s efforts and ability to use services did not sufficiently correct the conditions leading to out-of-home placement so that the children could return to her care. *See* Minn. Stat. § 260C.517(a)(3).

C. Reasonableness of Agency’s Efforts to Reunite the Family

The district court must make detailed findings on “the nature and extent of the responsible social services or agency’s reasonable efforts . . . to reunify the child[ren] with

the parent.” Minn. Stat. § 260C.517(a)(2). Mother argues that the district court erred in its analysis of this factor.

We begin by noting that Minn. Stat. § 260.012(h) (2020) lists six factors that the court shall consider when “determining whether reasonable efforts have been made.”⁴ The district court’s written findings addressed all six factors and stated that the agency “has made reasonable efforts to reunify the children with the Father and Mother” because the agency “offered services to the family that were relevant to the safety and protection of the children, adequate to meet the needs of the children and family, culturally appropriate, available, accessible, consistent, . . . timely, and realistic under the circumstances.” The district court identified 12 services that the agency provided for this family.

The record evidence supports the district court’s findings that the agency’s efforts were appropriately tailored to alleviate the conditions that led to the out-of-home placement—namely, mother’s history of drug abuse and her lack of stable housing.⁵ A written report by the social worker stated that following adoption of mother’s case plan, the agency “has offered [mother] a Rule 25 assessment, child protection case management, [Family Group Decision Making] conference, and continued contact with service providers.” When mother expressed concerns about domestic violence in her home, the

⁴ In 2022, Minn. Stat. § 260.012(h) was amended to add two more factors. 2022 Minn. Laws ch. 98, art. 8, § 2, at 175. The district court order was issued before the 2022 amendment became effective.

⁵ To be clear, the social worker testified that before the emergency removal of the children from father’s home in July 2021, the agency was not working with mother to reunify because mother did not have custody of the children.

social worker and GAL provided mother with information on domestic-abuse services and offered more help with this issue. All of these services were directly related to mother's goals to maintain sobriety and provide a safe living environment for herself and the children.

Mother asserts that the agency "focused only on the plan to place the children with [the relative custodians]." We disagree for two reasons. First, the record evidence shows that mother's case plan had defined goals, mother received services directed toward these goals, and mother had many meetings with the agency to address her goals. Second, the agency appropriately considered the relative custodians for placement given mother's shifting position on whether she wanted custody of the children. The record evidence supports the district court's finding that mother changed positions. For example, the social worker testified that on August 23, 2021, mother stated she did not want custody of her children, only parenting time. Then, on August 27, mother told the agency she "wanted to try to get custody" of the children. Between December 2021 and January 2022, mother told the agency she would accept the children's preference to remain with the relative custodians. Later still, mother changed her mind and sought custody.

Mother's brief to this court discusses the two goals identified in her case plan and contends that "[t]hese were the only services offered as part of the case plan. There were no additional services offered to [mother] to correct any concerns mentioned by [the agency] or the [GAL]." Mother also asserts: "Given the completion and compliance with the case plan, reasonable efforts to reunite the minor children with [mother] were not reasonable, in fact, they were non-existent." This argument is unavailing because the record

supports the district court's finding that the services provided were "relevant to the safety and protection of the children" and "adequate to meet the needs of the children and the family."

Thus, we conclude that sufficient evidence supports the district court's finding that the agency made reasonable efforts to reunify the children with mother. *See* Minn. Stat. § 260C.517(a)(2).

D. The Children's Best Interests

Mother argues the district court clearly erred when it found that transferring custody to the relative custodians was in the children's best interests under Minn. Stat. § 260C.517(a)(1). Mother contends that the district court made this determination "despite no specific findings of fact, analysis, or consideration of [mother's] completion of the case plan, ability to care for the children on a day-to-day basis, and [mother's] ability to care for the needs of the minor children."

The district court made detailed findings supporting its conclusion that transferring permanent legal and physical custody to the relative custodians is in the children's best interests. Paragraphs 22 and 25 of the findings of fact state that the children "are thriving in the home of the [relative custodians]"; are currently "academically successful"; "need a stable, consistent, and sober living environment"; "want to remain with the relative [custodians]"; J.K.H. "participates in three different sports and work[s] part time"; A.R.H. "enjoys working part time" and "purchased his own vehicle"; "[t]he children have bonds with the many people that deeply love and care for them, including Father, Mother,

siblings, grandparents, and other extended family”; and “the children have developed a close, intimate relationship with” the relative custodians and their children.

Mother’s brief to this court does not challenge any of the findings in paragraphs 22 and 25. Mother merely repeats her claim that there was “no consideration given to [mother’s] maintaining of sobriety . . . nor maintaining an appropriate home.” As discussed above, mother’s brief to this court inaccurately summarizes the district court’s findings on her compliance with the case plan. Thus, we conclude that the record evidence supports the district court’s finding that transferring custody to the relative custodians is in the children’s best interests. *See* Minn. Stat. § 260C.517(a)(1).

In sum, after a careful review of the record evidence, we conclude that the district court’s findings of fact addressing the factors listed in Minn. Stat. § 260C.517(a) are not clearly erroneous and that the district court did not otherwise abuse its discretion in transferring legal custody of the children to the relative custodians.

Affirmed.