STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0110

In the Matter of the Welfare of the Children of:
S. S. and K. W., Parents.

Filed May 30, 2023
Affirmed
Bratvold, Judge

Mower County District Court
File No. 50-JV-22-1681

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Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant father argues the district court erred by transferring permanent legal and physical custody of his children from respondent mother to maternal grandmother. Father contends that the district court clearly erred in its analysis of the best-interests and corrected-conditions factors. Because we conclude the district court did not clearly err by

making its factual findings or abuse its discretion by ordering the transfer to grandmother and denying father's petition, we affirm.

FACTS

These facts summarize the evidence received at the evidentiary hearing and the district court's order following the hearing. Appellant K.W. (father) and respondent S.S. (mother) have two joint children, T.W., born in 2014, and E.W., born in 2016 (collectively, the children). In 2014, father and mother cohabitated in Minneapolis. By the time E.W. was born in 2016, father and mother had separated, and mother and the children had moved to Austin. The children's maternal grandmother also lives in Austin. Father moved to Madison, Wisconsin, then moved to Aurora, Colorado, where he currently resides. In Aurora, father works for an airline and lives in a two-bedroom, two-bathroom apartment with his sister, his sister's adult child, and father's adult child.

Between 2016 and 2021, father did not visit the children in person. Father "chat[ted]" with the children by video. Father "talked to [the children] once a week." The children have "mainly . . . been with [grandmother]" since they moved to Austin.

On September 8, 2021, the children were removed from mother's home "due to [mother's] chemical use and incarceration." The district court placed the children with grandmother and adjudicated them as children in need of protective services.

Respondent Mower County Health and Human Services (the county) unsuccessfully tried to contact father at a Minneapolis address "immediately" after the out-of-home placement. In October 2021, the county mailed father "a packet of paperwork" that was returned as "undeliverable" from an Aurora address mother provided. The county called

father, and he provided an updated address in Aurora. The county mailed the paperwork to the updated address, but it was again returned as "undeliverable." Father's phone number was "then shut off shortly after." The county continued to "attempt phone calls each month" and to send letters.

On August 23, 2022, the county petitioned for a permanent transfer, asking the district court to grant custody of the children to grandmother under Minn. Stat. § 260C.515, subd. 4 (2022). The petition outlined mother's case plan and concluded that "mother ha[d] not corrected the conditions leading to the children being placed out of her care." The petition also noted that "father has had no contact with [the county] nor the children during the pendency of this matter. His current whereabouts are unknown." The petition stated that placement with grandmother "will be in the best interests of the children" because "the children have an established relationship with" grandmother. The petition did not seek or recommend termination of parental rights for either parent.

On August 24, 2022, the county learned father was in Minnesota. Father had some supervised visits with the children; how many visits occurred is not clear. Father canceled "a lot" of the supervised visits and later "canceled all [future] visits."

In September 2022, the county had "completed paperwork and referrals for therapy to start for the children," and the district court assigned a guardian ad litem (GAL). One of the children "demonstrated indicia of trauma following visits with . . . mother, including self-harm ideations."

On October 11, 2022, father petitioned for sole physical and sole legal custody of the children. That same day, mother consented to the transfer of custody of the children to

grandmother and agreed the transfer "is in the best interest" of the children. Mother stated that her admission was conditioned on placement with grandmother, and she did not agree with transferring custody to father.

On October 21, 2022, the district court conducted an evidentiary hearing and heard arguments on the competing petitions. Mother, father, grandmother, father's sister, the GAL, and the county social worker testified. Father testified that he planned to return to Aurora with the children and continue living with his sister. Father testified that he did not visit the children between 2016 and 2022 because of COVID-19 and because he did not have a place to stay. Father also testified that he does not "remember talking to [the social worker] at all."

After hearing arguments, the district court determined that "the County has proven its permanency petition" and that father "has not proven his petition." The district court therefore granted the county's petition and denied father's petition.

Father 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. The district court's order transferring permanent custody must include detailed findings. Minn. Stat § 260C.517(a) (2022). 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, "[t]he concept that findings of basic or underlying fact are reviewed for clear error while 'ultimate facts' and 'mixed questions of law and fact' . . . are reviewed for an abuse of discretion . . . is inherent in juvenile-protection caselaw." *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 900-01 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). "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).

Before approving a permanent transfer of custody, a district court must make "detailed findings" on four factors: (1) the best interests of the children, (2) the county's reasonable efforts to reunify the children with the parents, (3) the parents' use of services to correct the conditions that led to the out-of-home placement, and (4) whether the conditions that led to the out-of-home placement have been corrected. Minn. Stat § 260C.517(a).

On appeal, father does not challenge the district court's analysis of the second and third factors and focuses on the first and fourth factors. Father argues the evidence is insufficient to sustain the district court's determinations (A) that it is in the children's best interests to transfer custody to grandmother and (B) that the conditions that led to the out-of-home placement were not corrected. We discuss the district court's decisions on the first and fourth factors in turn.

A. Best Interests of the Children

Father challenges the district court's determination that it is in the children's best interests to transfer custody to grandmother. Father also challenges the district court's denial of his petition for custody based on this determination.

"The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2(a) (2022). In a permanency proceeding, "'best interests of the child' means all relevant factors to be considered and evaluated." Minn. Stat. § 260C.511 (2022). Section 260C.511 "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." *J.C.L.*, 958 N.W.2d at 656. The district 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(b).

Father's brief to this court argues that Minn. Stat. § 260C.212, subd. 2 (2022), provides the relevant best-interests factors. Father ignores this court's decision in *J.C.L.* and argues that for "consisten[cy]," the factors from Minn. Stat § 260C.212, subd. 2, should apply.

Father's argument relies on *In re Welfare of Children of M.L.S.*, 964 N.W.2d 441, 454 (Minn. App. 2021). *M.L.S.*, however, arose in a different circumstance because we reviewed a district court's denial of a motion for permissive intervention in adoption proceedings. *Id.* We noted both that (a) the use of the list of factors in Minn. Stat. § 260C.212, subd. 2, guided the county's decision on the child's placement and was used in the district court's analysis by the parties' agreement, and (b) what a district court is to examine when evaluating a child's best interests varies with the decision the district court is making and the circumstances of the child. *Id*. at 452 & n.6.

We decline to follow *M.L.S.* as father urges. We are bound by our precedential opinions, *State, Comm'r of Hum. Servs. v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *rev. denied* (Minn. Sept. 21, 2010), and *J.C.L.* states that Minn. Stat. § 260C.511 provides the applicable best-interests factors; therefore, we review the district court's decision given those factors.

Father also argues that the district court abused its discretion by granting the county's petition and denying his petition. Father contends that "[t]here is absolutely no evidence of [his] parental unfitness" and that absent "extraordinary or grave reasons . . . he should have been awarded custody." Father concedes that grandmother has met the special needs of the children but argues there is "no evidence" that he could not meet the children's needs. Father cites his sister's testimony as showing that the children's needs would be met in Colorado. Lastly, father argues that his absence from the children's lives or his delayed response to the county's petition "should not be held against" him because "he made enormous sacrifices to take an extended leave from his job, to travel to Minnesota, and to attempt to reunite with his children."

In the order transferring custody to grandmother, the district court considered father's arguments and the evidence received at the hearing. The district court found that father lived with mother and T.W. "for a short period of time," but father "never resided with [E.W.]" On the other hand, the district court found that the children "had previously resided with . . . grandmother" and that "[t]he home of . . . grandmother is what the children call home." The district court expressed "concern[] about how long it took for [father] to come and see the kids" after the county contacted him in October 2021. The

district court determined father's "reasons for not seeing the children before and after they were placed out of home were not credible." The district court expressed its "concern[] that [father] cut off [supervised] visits [with the children] which were meant as a starting point . . . to develop a relationship."

The district court acknowledged that father's sister "seem[s] to be a good support for [father]" but found that "moving the children to Colorado to live with relatives they have little to no established relationship with would be extremely traumatic and not in their best interests." The district court determined that "[s]tability is especially important for the[] children because of struggles they have had in the past as well as their ongoing mental health." Lastly, the district court found that "[t]he children have repeated[ly] expressed the opinion that they do not want to leave the home of . . . grandmother. The idea of being separated from grandmother 'scares the living daylights' out of the children according to the [GAL]." The district court concluded that it is in the children's best interests to transfer permanent custody to grandmother and explained that

> [t]here is a preference for placement with a biological parent. However, in this matter that preference is overcome by a number of reasons placement with the grandmother is in the best interests of the children. The home of the grandmother is the only stability the children have had in their lives. The children have a very limited relationship with the father. Sending the children with the father at this point would not alleviate trauma, it would cause it. This would not be in the best interests of the children.

We conclude that the record evidence supports the district court's findings. Mother testified that father did not live with her when E.W. was born and that father did not have any in-person visits with the children for many years. The social worker testified that in

October 2021, she spoke with father and informed him of the county's involvement with the children, but she agreed that she was never "successful in getting involvement from" father. The social worker also testified that she arranged for father to have supervised visits with the children, but "a lot of those visits [got] canceled," and eventually, father "canceled all [future] visits."

The social worker and the GAL testified about the children's well-being. The social worker testified that the children are "doing very well" with grandmother and "are engaged in therapy," "doing very well in school," and "meeting goal[s] on their IEP." The social worker testified that the children "spent significant time with [grandmother] throughout their life." The social worker opined that "[s]tability would be important for [the children] because they both struggle in school. They struggle with their mental health and a stable home environment would give them an opportunity to do better." The social worker described the children's relationship with father: "it was my understanding [father] had not seen the boys since [E.W.] was very little . . . [and] there was never a significant relationship." The GAL testified that the children have had "tremendous improvement" living with grandmother. The GAL also testified that it is in the children's best interests "[t]o remain with their grandmother."

Because the record supports the district court's findings, the district court did not abuse its discretion by determining that it is in the children's best interests to grant the county's petition to transfer permanent custody to grandmother.

B. Corrected Conditions

Father argues that "there is no evidence whatsoever that his home ever needed to be 'corrected,'" and the district court's finding that the conditions leading to the out-of-home placement were not corrected is therefore clearly erroneous. We disagree. The district court's determination concerned the failure to correct the conditions in mother's home. The district court's finding did not involve father's home. Father agreed at trial and on appeal that the children could not return to live with mother. The district court therefore did not abuse its discretion by determining that the conditions that led to the out-of-home placement were not corrected.

In sum, the district court considered the evidence received at the hearing and issued a detailed order. Because the record supports district court's findings, the district court did not abuse its discretion by granting the county's petition to transfer permanent custody of the children to grandmother and by denying father's petition for custody.

Affirmed.