

*This opinion is nonprecedential except as provided by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
A23-1975**

In re the Custody of: O. J. M.-P.

**Filed September 30, 2024
Remanded
Harris, Judge**

Cass County District Court
File No. 11-FA-22-1991

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Considered and decided by Smith, Tracy M., Presiding Judge; Harris, Judge; and Klahake, Judge.*

NONPRECEDENTIAL OPINION

HARRIS, Judge

In this third-party custody action, appellants argue that the district court abused its discretion because the district court's findings do not support its determination to award sole physical and sole legal custody to respondents. While the district court made findings of fact on each statutory best-interest factor, the findings do not explain how each factor

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

led the district court to its determination and are not sufficient to permit appellate review, and therefore, we remand for additional findings.

FACTS

The facts are not disputed.¹ Appellants Carmen and Charles B. McCoy (aunt and uncle) challenge the district court's third-party custody determination, arguing that the district court abused its discretion by awarding sole legal and sole physical custody to respondents Charles M. and Donna McCoy (grandparents).

This case arises from respondents' third-party custody petition seeking sole legal and sole physical custody of their grandchild, O.J.M.-P., following the death of their daughter, the child's mother. The child was four-and-one-half years old at the time of the custody hearing. The child's father never had custody of the child and was incarcerated at the time of the custody hearing. The child's mother was diagnosed with cancer shortly after the child was born. As her health deteriorated, mother made plans for the custody of the child in the event of her passing. Mother executed a last will and testament. The will nominated mother's husband, the child's stepfather, as the child's guardian and conservator, in the event of mother's death. If stepfather was not able to serve as the child's guardian, mother nominated appellants. The child had a close relationship with her stepfather and referred to him as "dad." Mother was also actively seeking a termination of father's parental rights, so that the child could be adopted by the stepfather.

¹ Appellants did not order a transcript from the evidentiary hearing. The facts recited here are derived from the record, exhibits, and the district court's findings of fact in its order, filed November 9, 2023.

Mother passed away in June 2022. Appellants did not take any action to become the child's guardians under the will because they were under the impression that respondents were working with an attorney to have the stepfather awarded guardianship of the child. Respondents sought custody of the child without informing appellants or others. In November 2022, respondents petitioned for third-party custody. Following an ex parte motion, the district court awarded respondents temporary sole legal and temporary sole physical custody of child. Then, respondents invited extended family members out to dinner and announced they had obtained custody of the child and would take the child from stepfather if they had to do so.

In May 2023, appellants filed a motion to intervene, and respondents filed a responsive motion in opposition. The district court granted the motion to intervene. The parties could not resolve the dispute via mediation and the matter proceeded to an evidentiary hearing. During a two-day evidentiary hearing, the district court heard testimony from several witnesses, including appellants, respondents, and several of the child's family and community members. Father was self-represented and did not testify. The parties submitted written proposed orders and the district court took the matter under advisement. The district court filed a written order granting sole legal and physical custody of the child to respondents. This appeal follows.

DECISION

Generally, the district court has broad discretion in resolving third-party custody disputes. *In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002). Minnesota Statutes

chapter 257C outlines the procedure generally used for third-party custody actions. To establish that they were interested third parties, the parties had the burden to:

(1) show by clear and convincing evidence that one of the following factors exist:

- (i) the parent has abandoned, neglected, or otherwise exhibited disregard for the child's well-being to the extent that the child will be harmed by living with the parent;
- (ii) placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child, or both; or
- (iii) other extraordinary circumstances;

(2) prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the interested third party; *and*

(3) show by clear and convincing evidence that granting the petition would not violate section 518.179.

Minn. Stat. § 257C.03, subd. 7(a) (2022) (emphasis added).

When determining an interested third-party's petition, the district court must consider eight factors, including the "presence or involvement of other interested third parties." *Id.*, subd. 7(b) (2022).²

² Here, the district court determined that both parties established by clear and convincing evidence that they are interested third parties and that granting relief to either party would not violate section 518.179. *See* Minn. Stat. § 257C.03, subd. 7(a) (outlining requirements petitioner must establish to meet petitioner's burden of proof). On appeal, neither party disagrees with this determination or the district court's findings. The parties disagree whether the district court's findings are sufficient to support its determination to award sole legal and sole physical custody to respondents.

If two or more parties seek custody of a child, the district court must consider and evaluate all relevant factors to determine the best interests of the child. Minn. Stat. § 257C.04, subd. 1(a) (2022). The district court must consider:

- (1) the wishes of the party or parties as to custody;
- (2) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;
- (3) the child’s primary caretaker;
- (4) the intimacy of the relationship between each party and the child;
- (5) the interaction and interrelationship of the child with a party or parties, siblings, and any other person who may significantly affect the child’s best interests;
- (6) the child’s adjustment to home, school, and community;
- (7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) the permanence, as a family unit, of the existing or proposed custodial home;
- (9) the mental and physical health of all individuals involved . . . ;
- (10) the capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child’s culture and religion or creed, if any;
- (11) the child’s cultural background; and
- (12) the effect on the child of the actions of an abuser, if related to domestic abuse . . . that has occurred between the parents or the parties.

Id.

The district court “must make detailed findings on each of the [best-interests] factors and explain how the factors led to its conclusions and to the determination of the best interests of the child.” *Id.*, subd. 1(b) (2022). And the district court “may not use one factor to the exclusion of all others.” *Id.*

A. The district court failed to sufficiently explain the connection between its findings of fact and its conclusions of law necessary to allow for meaningful appellate review.

Appellants argue that the district court abused its discretion by misapplying the law because the district court relied on one best-interests factor to the exclusion of all others and the findings of fact “so overwhelmingly favor [appellants’] position that no reasonable person could have applied the facts to the best interests factors and yielded the same result as the [district] [c]ourt.” We do not conclude that the only way to interpret the district court’s findings is to award custody to appellants. However, due to the district court’s multiple conflicting findings, we are unable to determine why the district court made its custody determination, and thus whether it abused its discretion.

For meaningful appellate review, “it is especially important that the basis for the [district] court’s decision be set forth with a high degree of particularity.” *Wallin v. Wallin*, 187 N.W.2d 627, 631 (Minn. 1971). The district court must explain both its decision and why it made its decision to “(1) assure consideration of the statutory factors by the family court; (2) facilitate appellate review of the family court’s custody decision; and (3) satisfy the parties that this important decision was carefully and fairly considered by the family court.” *Rosenfeld v. Rosenfeld*, 249 N.W.2d 168, 171 (Minn. 1976).

Here, the district court determined “that the best interest and other factors tip slightly in favor of [respondents].” The district court reasoned that, “[respondents’] home and the family who frequently visit the home will provide [the child] with the most satisfactory environment.” In reaching its decision, the district court made findings on all best-interests

factors, but did not expressly weigh each factor.³ We recognize that a district court’s findings of fact regarding credibility and other matters can be implicit. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (noting that district court’s findings “implicitly indicate[d]” it found certain evidence credible); *Prahl v. Prahl*, 627 N.W.2d 698, 703 (Minn. App. 2001) (stating that “[w]e may treat statutory factors as addressed when they are implicit in the findings”). However, “an order does not permit meaningful appellate review if it does not identify the facts that the district court has determined to be true and the facts on which the district court’s decision is based.” *In re Civ. Commitment of Spicer*, 853 N.W.2d 803, 811 (Minn. App. 2014).

Because the district court made several findings inconsistent with awarding sole legal custody and sole physical custody to respondents and did not adequately describe the facts on which its decision is based, we are unable to address whether the district court abused its discretion. For example, the district court found that the child is part of a large, extended family, that respondents often have members of the extended family over to their house, and that it is not in the child’s best interests for her time with appellants to be limited. However, it also found that respondents have not facilitated or prioritized the child’s continued relationship with appellants and her cousin, and that appellants would be more likely to facilitate the child’s relationship with respondents and stepfather.

³ For factor seven, the district court did expressly determine that “[the child’s] familiarity with and comfort in [respondents’] home weighs heavily in favor of maintaining this living environment.” Minn. Stat. § 257C.04, subd. 1(a)(7).

The district court found that appellants have not been actively engaging with the extended family for some time due to concerns about respondents permitting two family members, who are convicted sex offenders, to frequently be around children at respondents' home.⁴ The district court found that, "[respondents'] casual attitude toward[] the risk these persons pose to children is a concern." It further found that "the incongruity between the [respondents'] willingness to permit members of the extended family who are sex offenders to be around child and the [respondents'] hostility towards [appellants] because [appellants] are defying [respondents] by seeking custody of [the child] and deviating from the familial norm by not having the child around the sex offenders is an additional concern." The district court further found that respondents and other members of the extended family talk about this custody dispute in the child's presence, which is not in the child's best interest. Yet, the district court did not explain or weigh these concerns against awarding custody to respondents.

We also note that the district court suggested multiple times in its order that either party could meet the child's needs. The district court found that the child has a close, connected relationship with both parties; both parties are part of a large extended family; both parties are in favor of the child not attending public school; both parties are able to provide the child with a stable, satisfactory environment and either home would be beneficial to the child; both homes are likely to undergo significant changes over time;

⁴ The district court made a finding of fact that the sex-offender relative was not permitted to be around minors unless the contact is approved by his probation agent and that the sex offender relative's victims were a niece and nephew of respondent (grandmother) who were approximately the same age as O.J.M.-P.

both parties are “capable and disposed to giving [the child] love, affection and guidance and to continue raising her appropriately”; and that the parties reside on adjacent properties.

And other findings seem to suggest that joint custody would be in the child’s best interest, either now or in the future. For example, for factor 3—the child’s primary caretaker—the district court found “[the child] does not have a primary caretaker. She has a large extended family of people who love her and care for her. Her caretakers include [respondents] as well as [appellants]. *This collaborative care is in [the child’s] best interest.*” (Emphasis added.) And the district court decided,

It is important that both the home and family, including Uncle and Aunt, be a source of stability for [child]. The sense of safety and security that comes with maintaining this continuity is particularly important for [child] given what she has gone through. This specifically means [child] should be free to spend substantial time at Uncle and Aunt’s home. It is not in [child’s] best interests for her time with Uncle, Aunt and [cousin] to be limited to weekend family gatherings reasonably deemed unsafe by Uncle and Aunt.

Yet, the district court did not analyze the joint-custody factors or award any custody or parenting time to appellants. *See* Minn. Stat. § 257C.04, subd. 2 (2022) (stating factors the district court must consider when joint custody is sought, and that “if the court awards joint legal or physical custody over the objection of a party, the court must make detailed findings on each of the factors”). Accordingly, given these conflicting findings and the limited explanation for awarding custody to respondents, we are unable to understand why the district court determined that the best interests of the child would be served by awarding

custody to respondents or whether the district court abused its discretion by using factor seven⁵ to the exclusion of all others.

Because the district court's order fails to sufficiently explain the connection between its findings and its conclusions, a remand is necessary to allow for meaningful appellate review.

B. Appellants met their burden to obtain appellate relief.

We also conclude that appellants met their burden to obtain relief on appeal. Generally, to obtain relief on appeal, a complaining party must show that the district court erred, that the complaining party was prejudiced by the error, and that the prejudice to the complaining party arising from the error was substantial. Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008). A lack of particularized findings prejudiced appellants because it limits their ability to “facilitate appellate review of the family court’s custody decision,” and be satisfied that “this important decision was carefully and fairly considered by the family court.” *Rosenfeld*, 249 N.W.2d at 171.

The lack of particularized findings in this instance results in substantial prejudice because this order may be subject to modification in the future. Here, the district court

⁵ Factor seven is “the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.” Minn. Stat. § 257C.04, subd. 1(a)(7). The district court determined that the child has resided with respondents for a significant portion of her young life and that respondents will provide the child with the most satisfactory environment. But because the district court did not tie any additional findings of fact to its custody determination, we are unable to conclude whether the district court abused its discretion. *See Wallin*, 187 N.W.2d at 631 (stating that “a change of custody involving small children will be disruptive to some degree in almost all cases”).

stated, “[e]ven more helpful for [the child’s] development would be if the parties could, after the conclusion of this litigation, work to repair their relationship so that [the child] can establish and maintain a strong and consistent relationship with both parties.” And “[i]f the family can repair the rift created by the present dispute, either home would be an excellent environment in which to raise [the child].” In a custody modification, the burden is on the movant to “establish on a preliminary basis that there has occurred a significant change of circumstances from the time when the original or amended custody order was issued.” *Spanier v. Spanier*, 852 N.W.2d 284, 289 (Minn. App. 2014). To adequately evaluate a claim of changed circumstances, there must be a sufficiently detailed understanding of why the district court initially found that the best interests of the child favored respondents. *See Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005) (stating in the child-support context that “[u]nless a support order provides a baseline for future modification motions by reciting the parties’ then-existing circumstances, the litigation of a later motion to modify that order becomes unnecessarily complicated because it requires the parties to litigate not only their circumstances at the time of the motion, but also their circumstances at the time of the order sought to be modified”).

In sum, we are unable to determine from the district court’s order why it awarded sole legal and sole physical custody to respondents. “If there are inconsistent facts or testimony in the record, as in this case, such an explanation is particularly important.” *Spicer*, 853 N.W.2d at 811. Accordingly, we remand the matter to the district court to make detailed findings. *See id.* (stating that remand is required when a district court fails to sufficiently explain the connection between its findings and its conclusions).

Furthermore, the district court must explain how each best-interests factor led to its determination. We recognize that the district court is in the best position to review the evidence and make credibility determinations when deciding this difficult case, and the district court has discretion to determine whether it is necessary to reopen the record upon remand.

Remanded.