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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0372**

In the Matter of the Welfare of the Children of:
D. L. O., J. J. B. and W. R. O.,
Parents.

**Filed July 22, 2013
Affirmed
Chutich, Judge**

Nicollet County District Court
File Nos. 52-JV-12-8
52-JV-10-283
52-JV-12-70
52-JV-10-284

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Considered and decided by Smith, Presiding Judge; Chutich, Judge; and Toussaint, Judge.*

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant D.L.O. appeals the transfer of custody of her two biological children, S.M.O. and K.R.F., arguing (1) that the district court erred by not making findings required by Minnesota Statutes section 260C.201, subdivision 2 (2010); and (2) that the district court's findings under section 260C.201, subdivision 11 (2010) do not support transferring custody. Because section 260C.201, subdivision 11, governs this proceeding and the district court made the findings required by the subdivision, and because clear and convincing evidence supports the district court's findings, we affirm.

FACTS

S.M.O. was born in 1998 to D.L.O. and W.R.O., who were then married. After their divorce in 2001, D.L.O. and W.R.O. shared joint legal and physical custody of S.M.O. Another child, K.R.F., was born in 2004 to D.L.O. and another father, J.J.B. D.L.O. and J.J.B.'s relationship lasted until 2009, when J.J.B. moved out of the state, leaving K.R.F. with D.L.O.

In October 2010 a neighbor of D.L.O. called the North Mankato Police Department and complained of yelling and breaking dishes in D.L.O.'s apartment. D.L.O., D.B., who was D.L.O.'s boyfriend at the time, and K.R.F. were present when

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

officers arrived. D.B. told the officers that D.L.O. had been drinking and was belligerent. The officers took D.L.O. to detox and left K.R.F. in D.B.'s care.

Approximately two weeks later, the North Mankato Police Department again responded to a call from D.L.O.'s apartment. D.L.O. was severely intoxicated and arguing with D.B. The responding officers thought that D.L.O. was too intoxicated to care for K.R.F., so the child was put on a 72-hour hold and placed in foster care. K.R.F. remained in foster care for three weeks before returning to D.L.O.'s custody. The oldest child, S.M.O., stayed with her father W.R.O. and her step-mother K.O. during this time.

On November 10, 2010, Nicollet County Social Services filed a Child in Need of Protection or Services (CHIPS) petition. D.L.O. admitted that both K.R.F. and S.M.O. were children in need of protection or services under Minnesota Statutes section 260C.007, subdivision 6(8) (2010), because they were without proper parental care. The county prepared a case plan for D.L.O. to address issues of supervision, domestic violence, chemical dependency, housing and household management, and the children's school attendance.

On June 14, 2011, Nicollet County removed both children from D.L.O.'s home after D.L.O. assaulted the oldest child. The two children had been at D.L.O.'s apartment with D.L.O. and A.B., D.L.O.'s boyfriend. D.L.O. and A.B. had been drinking and arguing. When the adults started arguing, the children went to the bedroom. D.L.O. eventually left the apartment for a bar and A.B. sent S.M.O. after her to bring her back to the apartment. A.B. left as well, leaving K.R.F., then six years old, alone in the apartment. S.M.O. found D.L.O. at a bar and D.L.O. yelled at her and shoved her when

S.M.O. asked her to return home. S.M.O. returned to the apartment and found K.R.F. alone and crying. A.B. came back to the apartment and called the police. The responding officers arrested D.L.O. for assaulting S.M.O. when she returned from the bar. The officers transferred S.M.O. and K.R.F. to foster care. S.M.O.'s father picked her up from foster care and he and his wife K.O. eventually became foster parents for K.R.F.

In January 2012, the county petitioned the district court to permanently transfer custody of S.M.O. and K.R.F. to W.R.O. and K.O. under Minnesota Statutes section 260C.201, subdivision 11. After a 7-day trial, the district court issued findings of fact and an order granting the county's petition. The district court found that (1) the custody transfer was in the children's best interest, (2) the county made reasonable efforts to reunite the girls with D.L.O. before initiating the permanent custody transfer, (3) D.L.O. failed to take full advantage of the services offered by the county, and (4) D.L.O. failed to correct the conditions leading to the out-of-home placement. The district court subsequently issued orders addressing visitation and parenting time for D.L.O. with her two daughters. This appeal followed.

D E C I S I O N

I. Minnesota Statutes section 260C.201, subdivision 2

First, D.L.O. argues that, in addition to the four factors listed in the criteria for court-ordered permanent placement under Minnesota Statutes section 260C.201, subdivision 11(i), the district court was also required to make written findings on the factors listed in subdivision 2. Statutory interpretation is a question of law, which we

review de novo. *In re A.R.M.*, 611 N.W.2d 43, 47 (Minn. App. 2000). We disagree with D.L.O.'s interpretation and conclude that the district court was not required to make the findings listed in subdivision 2 to permanently transfer custody of K.R.F. and S.M.O.

If a court determines that a child is in need of protection or services, it may consider a number of possible dispositions, including removing the child from the home, placing the child under protective supervision of the responsible social services agency, or transferring custody to a child-placing agency. Minn. Stat. § 260C.201, subd. 1 (2010). To support such a disposition, the district court is required to make the findings contained in subdivision 2(a), which include the following: (1) why the best interest and safety of the child is promoted by the selected disposition; (2) what alternatives were considered; (3) the appropriateness of the placement; and (4) whether reasonable efforts were made to reunify the family. *Id.*, subd. 2(a).

After the child is in out-of-home placement for a specified period of time, the district court is required to make a permanency determination. Minn. Stat. § 260C.201, subds. 11(a), (c). The district court may “order the child returned to the care of the parent or guardian from whom the child was removed” or “order a permanent placement or termination of parental rights.” *Id.*, subd. 11(c). If the court orders the child to be placed permanently outside of the parent’s home, it must make specific findings about: (1) the best interests of the child; (2) the nature and extent of reasonable efforts to reunite the family; (3) the parents’ efforts and ability to use services to correct the conditions that led to out-of-home placement; and (4) whether the conditions that led to the out-of-home placement have been corrected. *Id.*, subd. 11(i).

Here, the district court issued the initial disposition order governed by subdivision 2 in March 2011. But the order that D.L.O. now appeals is the district court's order transferring permanent legal custody of her children, a proceeding governed by section 260C.201, subdivision 11. Accordingly, we conclude that the district court was not required to make the findings outlined in subdivision 2 because the case had moved beyond a CHIPS proceeding to a permanency proceeding.

II. Findings Supporting the Transfer of Custody

D.L.O. next contends that the district court's findings are not supported by clear and convincing evidence. When reviewing a permanent-placement order, we must determine "whether the [district] court's findings address the statutory criteria and are supported by substantial evidence, or whether they are clearly erroneous." *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996) (quotation omitted). "[A] district court's individual fact-findings will not be set aside unless the review of the entire record leaves the court with the definite and firm conviction that a mistake has been made." *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998) (quotation omitted). "Consistent with the level of proof generally required in child protection proceedings," a permanent placement determination must be supported by "clear and convincing evidence." *A.R.G.-B.*, 551 N.W.2d at 261.

D.L.O. contends that clear and convincing evidence did not support the district court's findings (1) that the conditions leading to out-of-home placement were not corrected; and (2) that the children's best interests supported transferring permanent custody.

A. Conditions Leading to Out-Of-Home Placement

The conditions that led to the children's out-of-home placement included D.L.O.'s issues with chemical dependency, domestic violence, supervision, stable housing, and household management. D.L.O. contends that all of these conditions had been corrected by the time of the permanency trial.

The district court acknowledged that D.L.O. had made much progress in fighting her drinking problem and was sober at the time of trial, but it stated that sobriety "is only one piece of the puzzle." The district court further noted that to correct the conditions, D.L.O. was to avoid relationships with individuals who use chemicals and have a propensity to act out violently. It noted that, since 2004, D.L.O. had a history of relationships with individuals "where chemical use and domestic violence is prevalent," and leads to "violent outbursts that involve [D.L.O.], her significant other, and the children." At the time of the trial, D.L.O. was still in a relationship with A.B., who had a history of violence and chemical use. The district court concluded that "[b]y choosing to continue her involvement and relationship with [A.B.], [D.L.O.] has failed to correct the conditions leading to placement."

Clear and convincing evidence supports these findings. The county presented evidence that several of D.L.O.'s prior relationships required police intervention when domestic disputes involving alcohol escalated to physical violence. S.M.O. testified about a domestic dispute between J.J.B. and D.L.O. in January of 2009, when J.J.B. struck S.M.O. and threatened to hurt K.R.F. The incident that precipitated the CHIPS petition resulted from a domestic dispute between D.L.O. and her previous boyfriend

D.B. where officers found D.L.O. too intoxicated to care for K.R.F. The county also presented evidence that D.L.O.'s boyfriend A.B. was present and a significant contributory factor to D.L.O.'s relapse in June 2011. After D.L.O. and A.B. had a drunken argument, D.L.O. assaulted S.M.O. and the county removed the children from her custody.

D.L.O.'s substance abuse counselor Dawn Schull testified that, after D.L.O. completed her outpatient treatment, she gave D.L.O. a prognosis of "fair to good" assuming that she complied with her continuing care recommendations. These recommendations included pursuing only sober friendships because a person newly out of treatment is susceptible to relapse. Schull testified that had D.L.O. properly disclosed her relationship with A.B., Schull would have downgraded D.L.O.'s prognosis to "guarded" and that she would have had concerns about D.L.O.'s recovery. Thus, evidence clearly supports the district court's finding that D.L.O.'s "continuing relationship with [A.B.] jeopardizes [D.L.O.'s] potential for sobriety."

D.L.O. contends that the district court relied too heavily on her relationship with A.B., contending that A.B. has never assaulted D.L.O. or her children and "has refrained from chemical use when they were together." The record does not support D.L.O.'s assertions. While A.B. has not directly assaulted the children, he has a history of violence. He was also a factor in D.L.O.'s relapse when she assaulted S.M.O. in June of 2011. In addition, D.L.O.'s mother and S.M.O. testified that they observed A.B. smoking either natural or synthetic marijuana in the children's presence. Clear and convincing evidence in the record supports the district court's concerns about D.L.O.'s ongoing

relationship with A.B. and its conclusion that the conditions leading to out-of-home placement were not all corrected.

B. Best Interests of the Children

D.L.O. also challenges the district court's finding that permanently transferring custody was in the children's best interests. The "best interests of the child" includes "all relevant factors to be considered and evaluated." Minn. Stat. § 260C.201, subd. 11(c)(2).

The district court articulated the basis for its "best interests" determination and made specific findings that transferring custody to W.R.O. and K.O. was in K.R.F.'s best interests. In reaching that conclusion, the district court considered K.R.F.'s relationship with W.R.O. and K.O. and the stability and safety that their home environment provided K.R.F. The district court concluded that this placement would allow K.R.F. to maintain her strongest relationships, her relationship with her half-sister S.M.O., and with her mother D.L.O.

The district court also made specific findings that transferring permanent custody was in S.M.O.'s best interests. In doing so, the district court focused on the negative impact that D.L.O.'s actions had on her relationship with S.M.O., discussing D.L.O.'s assault of S.M.O. in June 2011, and another incident when D.L.O. accused S.M.O. of manipulating K.R.F. and fabricating lies about A.B. Citing damage to the mother-child relationship, the district court concluded that D.L.O. was not "capable of acting in [S.M.O.'s] best interests."

These findings are supported by clear and convincing evidence in the record. The county presented evidence that K.R.F. has bonded with both W.R.O. and K.O. and that

she has grown close with the younger children in the family as well. W.R.O. and K.O. testified that they were willing to allow S.M.O. and K.R.F. to maintain their relationship with their mother and have facilitated phone contact with D.L.O., D.L.O.'s extended family, and with J.J.B. on behalf of K.R.F.

In addition, the children's counselor testified about the strength of their relationship with each other. The two half-sisters have a very close bond and S.M.O. has taken on the role of caretaker for her sister. The counselor also testified that separating the two sisters would greatly increase S.M.O.'s and K.R.F.'s anxiety levels. Further, S.M.O., who was old enough to state a preference, stated that she would like to stay with her dad and K.O. These facts support the district court's finding that it is in the children's best interests to permanently transfer custody to W.R.O. and K.O.

D.L.O. presents a number of arguments about why the district court's findings are unsupported by the record, but they are not persuasive. First, D.L.O. argues that she has corrected the conditions that led to out-of-home placement and therefore the best interests of the children would be best served by returning them to her custody. As discussed above, however, clear and convincing evidence supports the district court's findings that D.L.O. has not corrected these conditions.

D.L.O. next contends that S.M.O. has an interest in maintaining a relationship with D.L.O. and speculates that if K.R.F. had been able to express her preference, she would have chosen to move back with her mother. While these assertions may be true, they do not undermine the district court's finding because it explicitly considered S.M.O.'s and K.R.F.'s interests in maintaining a relationship with D.L.O. It found that transferring

permanent legal custody to W.R.O. and K.O. would further this objective because they were willing to facilitate contact between the children and D.L.O.

Finally, D.L.O. argues that, while residing with W.R.O. and K.O., S.M.O. has to watch three younger children and has had poor grades and truancy issues at school. The record demonstrates that S.M.O. was required, at times, to supervise the younger children in the home, but no evidence shows that this happened an excessive number of times. S.M.O. did have some difficulties at school initially, but she finished the school year on the B-honor roll. In sum, clear and convincing evidence supports the district court's finding that transferring custody to W.R.O. and K.O. is in the best interests of the children.

Affirmed.