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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1419**

In the Matter of the Welfare of the Child of:
D. A. E. and M. S. P., Parents

**Filed January 18, 2011
Affirmed
Wright, Judge**

Wright County District Court
File No. 86-JV-09-7484

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Considered and decided by Stauber, Presiding Judge; Wright, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant-mother challenges the district court's transfer of permanent legal and physical custody of her child, arguing that (1) there is insufficient evidence to support the district court's finding as to the child's best interests, (2) respondent-county made

inadequate efforts to reunite her with the child, and (3) she made significant progress in correcting the conditions leading to the child's out-of-home placement. We affirm.

FACTS

J.P. is the son of appellant-mother, D.A.E., and respondent-father, M.S.P. At the time of the district court's order transferring legal custody, J.P. was 11 years old. In July 2007, agents of the Wright County Drug Task Force executed a search warrant at D.A.E.'s home, where she lived with J.P. and her other minor child. During the search, police recovered marijuana, trace quantities of methamphetamine and drug paraphernalia. When Wright County Human Services Agency was notified, it filed a petition alleging that J.P. was in need of protection or services. D.A.E. admitted the allegations, and J.P. was adjudicated as a child in need of protection or services. At that time, the district court ordered D.A.E. to complete a chemical-dependency evaluation, follow all recommendations made as a result of the evaluation, submit to random drug testing, remain law-abiding, and refrain from possessing mood-altering chemicals and alcohol. The district court also warned that any missed, refused, or diluted drug test would be deemed a positive drug test result for the proscribed substances.

J.P. initially was placed with his grandmother and later was placed with M.S.P. J.P. returned to D.A.E.'s care in August 2009. But the following month, after D.A.E. tested positive for methamphetamine on two occasions, J.P. was removed again from his mother's care. J.P. has resided with M.S.P. since October 1, 2009.

D.A.E.'s compliance with the terms of the district court's order was poor. Between August 2007 and June 2010, D.A.E. was required to submit to approximately

288 drug tests. The district court determined that the results of at least 35 drug tests were positive based on D.A.E.'s failure to appear on 17 occasions, 10 positive test results, four diluted urine samples, three failures to provide a urine sample, and provision of one non-human urine sample. Between August 2007 and August 2009, D.A.E. failed to complete two inpatient chemical-dependency programs successfully and demonstrated poor performance in an outpatient program that she completed. In August 2007, D.A.E. was diagnosed with bipolar, attention-deficit, and anxiety disorders. Between December 2007 and March 2008, D.A.E. participated in several mental-health treatment programs from which she was discharged for failure to cooperate. She met regularly with a psychotherapist from March 2008 through the time of trial. In May 2008, she pleaded guilty to driving while intoxicated in November 2007. She also was cited for theft in August 2008.

Respondent Wright County petitioned the district court on October 30, 2009, for a transfer of permanent legal and physical custody to M.S.P., Minn. Stat. § 260C.201, subd. 11 (2010),¹ asserting that D.A.E. is unable to provide a safe and stable home for J.P. because of her drug abuse and mental-health problems. Following a hearing, the district court found that (1) the custody transfer is in J.P.'s best interests, (2) the county made reasonable efforts to reunite J.P. with D.A.E. before initiating the permanent custody

¹ Because the 2010 version of the applicable statutes does not change or alter the rights of the parties, we refer to the 2010 version of these statutes in our analysis. *See McClelland v. McClelland*, 393 N.W.2d 224, 226-27 (Minn. App. 1986) (indicating that appellate court applies current version of statute unless doing so alters matured or unconditional rights of parties or creates other injustice), *review denied* (Minn. Nov. 17, 1986).

transfer, (3) D.A.E. failed to satisfactorily correct the conditions that led to J.P.'s placement outside of D.A.E.'s home, and (4) the conditions that led to the placement had not been corrected so that J.P. can safely return. Based on these findings, the district court ordered the transfer of permanent legal and physical custody of J.P. to M.S.P.

In a motion to amend the findings of fact and order, D.A.E. argued that the county failed to prove the statutory grounds for the custody transfer. She sought the return of J.P. to her custody or amended findings clarifying whether the transfer was voluntary or involuntary. The district court found that the custody transfer was involuntary and denied D.A.E.'s motion to return J.P. to her custody. This appeal followed.

D E C I S I O N

When reviewing a permanent-placement order, we 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). In doing so, we view the record in the light most favorable to the findings and decline to disturb them absent a firm and definite conviction that the district court erred. *Id.* We do not independently weigh the evidence or draw contrary conclusions about witness credibility. *See In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). Even when the record could support an alternate custody determination, we decline to substitute our judgment for that of the district court. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 378 (Minn. 1990) (criticizing this court for substituting its judgment for district court’s findings of fact).

The district court may transfer permanent legal and physical custody of a child to the child's relative when such transfer is in the child's best interests. Minn. Stat. § 260C.201, subd. 11(d)(1). An order permanently placing a child outside the home of a parent or guardian must address the following factors: how the placement serves the child's best interests, the extent and nature of the responsible social service agency's reasonable reunification efforts, the ability and efforts of the parent to use services to correct the conditions leading to the child's placement outside the home, and whether the conditions leading to the placement have been corrected so that the child can safely return home. *Id.*, subd. 11(i). When a district court grants custody to a relative, the district court also must address the suitability of the prospective custodian. *Id.*, subd. 11(d)(1)(i).

I.

D.A.E. contends that there is insufficient evidence to support the district court's finding that it is in J.P.'s best interests to transfer permanent legal and physical custody of J.P. to his father. The "best interests of the child" includes "all relevant factors to be considered and evaluated." *Id.*, subd. 11(c)(2).

The district court articulated the basis for its "best interests" determination and made specific findings on the suitability of M.S.P. as the permanent custodian. Our review of the district court's best-interests determination begins with the latter consideration. The district court addressed the nature of the father-son relationship, the stability and safety of M.S.P.'s home environment and community, the degree to which M.S.P. has cooperated with the county and provided for J.P.'s needs, and specific concerns raised at trial concerning M.S.P.'s capacity to appropriately care for J.P. The

district court found that concerns about M.S.P.'s alcohol use were allayed by M.S.P.'s voluntary submission to a chemical-dependency evaluation and his compliance with the resulting recommendations. The district court also rejected as unsubstantiated allegations that M.S.P. inappropriately exposed himself to J.P.

The record supports these findings. The county social worker who has managed the case since 2007 and J.P.'s former guardian ad litem testified that M.S.P. is actively involved in J.P.'s schooling and interests, provides a safe and stable home environment, and has a parental bond with J.P. They also testified that M.S.P. meets J.P.'s needs and cooperates with social services. Both witnesses opined that it is in J.P.'s best interests for M.S.P. to have permanent legal and physical custody. M.S.P. also testified about his bond with J.P., his parenting, and his willingness to help J.P. maintain a relationship with D.A.E. and J.P.'s grandparents. A chemical-dependency evaluation concluded that M.S.P. is not chemically dependent. And M.S.P. testified that he will refrain from consuming alcohol around J.P., as the chemical-dependency evaluation recommended.

We reject D.A.E.'s contention that the district court erroneously focused only on M.S.P. and failed to consider her merit as a parent. The district court made three factual findings addressing D.A.E.'s suitability as a parent, each of which supports the district court's best-interests analysis. The district court found that (1) D.A.E.'s untreated chemical dependency creates a home environment that would compromise J.P.'s safety, (2) the serious and persistent nature of D.A.E.'s mental-health problems renders her unable to care for J.P. appropriately, and (3) D.A.E.'s criminal activity interferes with her ability to care for J.P. In addition, the district court found that D.A.E. failed to cooperate

with extensive mental-health and chemical-dependency program offerings by being overtly resistant and deceitful. The findings include a detailed account of D.A.E.'s untreated chemical abuse, mental-health problems, and failure to cooperate with efforts to assist her. Substantial evidence supports these findings.

D.A.E., her mother, and her psychotherapist testified in support of D.A.E. retaining custody of J.P. But the district court expressly rejected this testimony for lack of credibility. The determination of weight and credibility afforded testimonial evidence is the exclusive province of the district court. *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996); *see also L.A.F.*, 554 N.W.2d at 396 (stating that district court is in superior position to assess witness credibility). Accordingly, D.A.E.'s reliance on this testimony is unavailing.

D.A.E. argues that, because she and J.P. have a close relationship and J.P. expressed a desire to live with her, it is in J.P.'s best interests for her to retain permanent legal and physical custody. The district court found that any evidence of J.P.'s positive relationship with D.A.E. is outweighed by evidence of D.A.E.'s pattern of chemical abuse, mental-health issues, and continued failure to acknowledge and treat these challenges. Our careful review establishes that the record amply supports the district court's findings that D.A.E. is unable to care for J.P. and that a transfer of permanent legal and physical custody to M.S.P. is in J.P.'s best interests.

II.

D.A.E. also contends that the county failed to attempt to reunite her with the child. When a child in need of protection or services is under the district court's jurisdiction, the

responsible social services agency must make reasonable efforts to reunite the child and the child's family. Minn. Stat. § 260.012(a), (f) (2010). "Reasonable efforts" is defined as "the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family." Minn. Stat. § 260.012(f).

The district court found that the county offered case-management services, visitation, referrals for chemical-dependency evaluations and treatment programs, random drug testing, psychological evaluations, parenting assessment, medication management, mental-health treatment, and rehabilitative mental-health services. The district court found these services to be relevant, adequate, culturally appropriate, available and accessible, consistent and timely, and realistic.

The record establishes that a county social worker met with D.A.E., monitored her progress, reviewed the case periodically, made service referrals, scheduled chemical testing, and arranged both supervised and unsupervised visits. A guardian ad litem ensured that the services provided to J.P. were appropriate and responsive to his needs. The record also supports the district court's findings that the services provided were relevant, adequate, culturally appropriate, available and accessible, consistent and timely, and realistic. Indeed, the county attempted to reunite D.A.E. and J.P. in August 2009 by returning J.P. to D.A.E.'s home. But J.P. was removed one month later when D.A.E. twice tested positive for methamphetamine.

The district court's findings that the county made reasonable efforts and exercised due diligence to use appropriate and available services to reunite D.A.E. and J.P. are well supported by the record.

III.

D.A.E. next argues that the district court clearly erred by finding that she failed to correct the conditions that led to J.P.'s out-of-home placement. J.P. was removed from D.A.E.'s care in 2007 and again in 2009 because of D.A.E.'s drug use and J.P.'s exposure to drugs in D.A.E.'s home. Although D.A.E. made some progress toward establishing a safe and stable environment for J.P., there is substantial evidence supporting the district court's determination that D.A.E. failed to significantly address her chemical abuse and mental health, which had a detrimental impact on her ability to parent J.P.

D.A.E. submitted multiple positive drug-test results after J.P. was removed from her care. She was discharged from three chemical-treatment programs with unsuccessful performance, and she had difficulty attending other services consistently. She failed to accept responsibility for the effect of her drug use and mental health on her parenting during this period and at trial. The social worker testified that, based on reports that she received in the months before trial, she was concerned that D.A.E. still was using drugs. D.A.E. did not complete any chemical-dependency assessments or treatments after September 2009. In June 2010, she refused to submit to a hair-follicle test that would have assessed her for drug use in the preceding three months. Viewing the evidence in the light most favorable to the district court's findings, with deference to its credibility

determination, we conclude that the district court did not clearly err by finding that D.A.E. failed to correct the conditions that led to J.P.'s removal from D.A.E.'s home.

The district court made detailed and careful findings on each of the factors it was required to evaluate when considering a petition to transfer permanent legal and physical custody under Minn. Stat. § 260C.201, subd. 11(d)(1), (i). Substantial evidence supports the district court's findings that transferring permanent legal and physical custody to M.S.P. is in J.P.'s best interests, the county made reasonable efforts to reunite D.A.E. and J.P., and D.A.E. failed to correct the conditions leading to J.P.'s out-of-home placement. Accordingly, we affirm.

Affirmed.