

*This opinion is nonprecedential except as provided by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
A20-1038**

In the Matter of the Welfare of the Child of:

L. J. and T. L., Parents.

**Filed January 11, 2021
Affirmed
Jesson, Judge**

St. Louis County District Court
File No. 69DU-JV-19-707

Bill L. Thompson, Law Office of Bill L. Thompson, Duluth, Minnesota (for appellant father T.L.)

Mark S. Rubin, St. Louis County Attorney, Benjamin M. Stromberg, Assistant County Attorney, Duluth, Minnesota (for respondent St. Louis County Public Health and Human Services)

Matthew Miller, Cloquet, Minnesota (for respondent mother L.J.)

Alexandra Perron, Duluth, Minnesota (guardian ad litem)

Considered and decided by Slieter, Presiding Judge; Jesson, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant father challenges the transfer of his child's custody to the maternal grandmother. Because the district court sufficiently addressed the child's best interests—

which does not require a balancing of interests—and appropriately concluded that a transfer of custody was necessary, we affirm.

FACTS

When M.L. (the child) was born in March 2019, L.J. (mother) tested positive for methamphetamine. Mother admitted to recently using the drug. St. Louis County Public Health and Human Services (the county), responding to a child protection report, developed a safety plan that required both mother and child to stay at the child’s maternal grandmother’s house following the birth. But the next week mother and appellant T.L. (father) left grandmother’s house with the child without permission.¹ When they returned, both parents appeared to be under the influence of drugs. The county filed a child in need of protection or services (CHIPS) petition due to the parent’s ongoing drug use. After an emergency protective care hearing, the district court awarded temporary legal and physical custody of the child to the county. The child continued to live in the care of grandmother. In July 2019, the district court adjudicated the CHIPS petition and adopted case plans for reunification for both parents.

In September 2019, the county filed a petition to transfer the child’s custody to grandmother. Two months later, father filed a competing petition to transfer custody to himself. Shortly thereafter, mother voluntarily agreed to a transfer of custody.²

¹ T.L. was adjudicated father of the child in November 2019.

² At a pretrial hearing in February 2020, mother testified via letter that the transfer of custody was in the child’s best interests. She did not take a position on whether grandmother or father should have custody.

In June and July 2020, a two-day trial took place to consider the competing petitions to transfer permanent physical and legal custody of the child. Father, grandmother, the social worker, the guardian ad litem, and character witnesses for father, including his ex-wife and adult daughter, all testified.

With regard to his petition, father testified about his previous success as a parent,³ and noted his care and commitment to the child through his supervised visits with her. The county social worker commended father's ability to visit the child, noted that he "cares about her a lot," and that they have a good relationship. But the social worker said father was one of the most difficult clients she has worked with due to his resistance to changes in his lifestyle. The bulk of the social worker's testimony detailed how father did not fulfill his case plan, including completing only six of the 20 required urinalysis tests (UAs) to prove maintained sobriety.⁴ The social worker also testified to father's refusal to participate in a domestic abuse intervention program despite a misdemeanor conviction for domestic abuse in 2005, a conviction of disorderly conduct in 2013, and exhibiting aggressive and inappropriate behavior toward the social worker. Ultimately, the social worker said she could not recommend father for custody of the child due to his

³ Father's 19-year-old daughter testified that he was a "great dad" who has "always been there" for her. She also noted that she had never seen him use drugs and that there were no concerns about his treatment of others in the household.

⁴ Of the six tests father did submit, one tested positive for methamphetamine and THC, while another was rejected because the urine was much colder than body temperature, suggesting it was tampered with. Because the district court views missed tests as positive, the court deemed father to have tested positive more than 78% of the time.

unwillingness to follow his case plan and “show that he’s actually made changes in his life and show sobriety.”

As for grandmother’s fitness to parent, the social worker highlighted the bond and attachment between grandmother and the child. She also emphasized grandmother’s efforts to work through the child’s medical conditions, including routine doctor visits and finding a pediatric specialist. Grandmother, in her own testimony, did admit to a series of shoplifting offenses in the prior decade, but noted this was her only criminal history and that it was during a difficult time in her life. She also described her efforts to maintain a healthy home for the child, including contacting child protection services before her birth. While she stated she was “not a big fan” of father,⁵ grandmother reiterated that she wanted both parents to maintain contact with the child and would work with them toward that goal, but expressed a need for safety and sobriety.

Witnesses agreed that the child was doing well. The guardian ad litem testified to the child’s health and positive interactions with both grandmother and father. But father, over the 15 months, had been unable to move beyond supervised visits. And the guardian ad litem expressed concern with a transfer to father’s custody due in part to the fact that he has never had full-time custody.

After hearing the testimony, the district court ordered transfer of legal and physical custody of the child to grandmother, subject to continued regular contact (via the current

⁵ An order for protection (OFP) against father on behalf of grandmother, granted because father sent grandmother sexually explicit videos of her daughter (mother), lapsed prior to the trial.

supervised visitation schedule) with father. In reaching this conclusion, the district court explained that father had the ability to comply with reunification efforts set out in his case plan, but chose not to, noting his resistance to both the plan and his own delayed efforts to establish paternity. The district court further expressed concern with father's periods of incarceration and extensive probation violations which, it stated, do not "bode well for [father's] ability to provide stability for his child." In addressing the child's best interests, the district court stated that father's "unaddressed chemical dependency, mental health, and domestic violence issues make it impossible to conclude that it would be in the best interests of the child to be placed in the care of her father."

With regard to grandmother, however, the district court stated that an analysis of the best interests factors supported a transfer of custody. The district court noted:

[The child's] medical and developmental needs are being met. She is fully integrated into [grandmother's] home and is strongly bonded with her grandmother. Disrupting that connection and removing the child from the only home she has ever known would not be in her best interests.

Father appeals.

DECISION

Father argues that the record is insufficient to support—by clear and convincing evidence—that a transfer of custody is in the child's best interests. To support this, he first points to the district court's lack of balancing the best interests factors required by Minnesota Statutes section 260C.301, subdivision 7 (2018). We review this question of statutory interpretation *de novo*. *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019). Second, father asserts that the evidence overall (particularly in light of the grandmother's

testimony about him) belies the district court’s best interests analysis. We review the district court’s decision to transfer custody for an abuse of discretion. *In re Welfare of C.F.N.*, 923 N.W.2d 325, 334 (Minn. App. 2018). We observe that in making these arguments, father does not assert that any of the district court’s factual findings are clearly erroneous.

To frame our review, we begin by highlighting the paramount consideration in all juvenile protection proceedings: “the health, safety, *and best interests* of the child.” Minn. Stat. § 260C.001, subd. 2(a) (2018) (emphasis added). And when making the difficult decision about a child’s permanent placement, the legislature has expressed a preference for relatives where the child cannot remain with a parent. Minn. Stat. § 259.57, subd. 2(c) (2018). As a result, the 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 (2018). In such a permanent custody order, the district court must address:

- (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 . . . 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) (2018). Each of the four statutory criteria must be proved by “clear and convincing evidence.” Minn. R. Juv. Prot. P. 58.03, subd. 2(a). With this standard in mind, we turn to father’s arguments.

I. An explicit balancing of best interests is not required to support a transfer of legal custody.

Father challenges only the first of the four requirements of section 260C.517(a)—asserting that the district court did not adequately address how the child’s best interests were served by the transfer of custody. Father does not challenge the individual findings, but instead asserts that the district court’s decision is erroneous for failing to include the “required” balancing of factors, including the child’s interest in preserving her relationship with her father and father’s interest in preserving his relationship with his child.

But the explicit balancing of interests approach father refers to applies to a termination of parental rights petition, not a transfer of custody petition. Father cites to Minnesota Statutes section 260C.301, subdivision 7 and Minnesota Rules of Juvenile Protection Procedure 58.04(c)(2)(ii), but all of this language is limited to termination of parental rights. Here, we note the district court explicitly did *not* find a termination of father’s parental rights to be in the child’s best interests. Instead, the district court said that it was in the child’s best interests to maintain a relationship with father through continued visitation.

Because the termination-centered analysis does not apply to this transfer-of-legal-custody proceeding, the district court did not err by failing to use it.⁶

⁶ Cf. *In re Paternity of B.J.H.*, 573 N.W.2d 99, 102 (Minn. App. 1998) (noting that the best interests factors of Minnesota Statutes section 518.17, subdivision 1 (1996) used to address custody disputes between “parents” and were not dispositive in resolving conflicting presumptions of parentage).

II. The district court did not abuse its discretion in transferring legal and physical custody to grandmother.

Father further argues that the district court's findings do not adequately support the conclusion that a transfer of custody was in the child's best interests, and that this court should remand for more fact finding. He asserts that remand is particularly necessary given testimony from grandmother. To be adequate, the district court's best-interests findings must provide insight into which facts or opinions were most persuasive for the district court's ultimate decision and demonstrate the district court's comprehensive consideration of the statutory criteria. *In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990).

Here, the district court's best-interests determination is supported by evidence in the record. This includes: that grandmother has been caring for the child in out-of-home placement for effectively child's entire life, and that they share a strong bond; that father's chemical dependency issues, including his admitted failure to comply with the UAs,⁷ would be liable to "interfere with his parenting ability"; and that due to his extensive history of probation violations, it does not "bode well for [father's] ability to provide stability for his child." Additionally, the district court concluded that the unaddressed issues of domestic abuse in the home of father may adversely affect the child's safety, well-being, and development. Ultimately, the district court found that as the conditions that led to the need for the child's placement had not been corrected, and further that father, after 15 months, was unable to move past supervised visitation, it was not in the best interests of

⁷ The district court also noted that the UAs were father's opportunity to demonstrate that "illegal drug use was not an impediment to him caring for his child."

the child to transfer custody to father. This determination, with its underlying findings, is sufficient to satisfy the requirements of section 260C.517(a).

Still, father argues that grandmother's testimony should have raised "huge concerns" over what is in the child's best interests, due to her admitting that she was "not a big fan" of father, and that she had not contacted him with updates on the child. But, not only was there a two-year OFP that prevented father and grandmother from communicating until shortly before the hearing, grandmother agreed that he should still be able to see the child. The district court, in a careful order considering the child's best interests, explicitly retained jurisdiction in order to ensure that the child continued to have contact with her father through visitations that would be at least as frequent as the schedule currently in place.

In sum, the district court's transfer of legal and physical custody to grandmother, while maintaining visitation with father, is within the district court's wide discretion and a proper application of the law.

Affirmed.