

*This opinion is nonprecedential except as provided by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
A23-1449**

In re the Custody of B. B. F. F.

**Filed July 22, 2024
Affirmed
Klaphake, Judge***

Wright County District Court
File No. 86-FA-21-1670

John DeWalt, Melissa Chawla, Dewalt, Chawla + Saksena, LLC, Minneapolis, Minnesota
(for appellants)

Heather D. Olson, Collin B. Ostroot, Olson Law, LLC, Buffalo, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Harris, Judge; and
Klaphake, Judge.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellants argue that the district court abused its discretion by dismissing their
third-party custody petition. We affirm.

DECISION

Appellants-maternal grandparents Benjamin Joseph Jerulle and Jennifer Diane
Jerulle filed a petition for third-party custody of B.B.F.F. (the child) on April 12, 2021.

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

This occurred approximately two weeks after respondent-father Brock Richard Flamang left the child in appellants' care while he returned to his home in Wisconsin to attend to legal issues. Respondent and the child had been living with appellants since the child's birth on March 7, 2021, after the child's mother (appellants' daughter) unexpectedly died from childbirth complications.

The district court filed an ex parte order granting appellants temporary sole legal and temporary sole physical custody of the child and respondent supervised parenting time pending an evidentiary hearing. Following that hearing, the district court dismissed appellants' petition, concluding that appellants failed to establish that they are interested third parties under Minn. Stat. § 257C.03, subd. 7 (2022), because they did not prove one of the three endangerment factors. Appellants challenge the dismissal of their petition.

Appellate courts review a district court's third-party custody determination for an abuse of discretion. *In re Custody of A.L.R.*, 830 N.W.2d 163, 166 (Minn. App. 2013). A district court abuses its discretion by "making findings unsupported by the evidence or by improperly applying the law." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). This court will uphold a district court's factual findings unless they are clearly erroneous. Minn. R. Civ. P. 52.01. This court also defers to the district court's witness credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Appellants argue that the district court erred in its analysis of section 257C.03, subdivision 7, and by failing to consider additional statutory factors, including the best-interest factors under section 257C.03, subdivision 7(a)(2). The interpretation and

construction of statutes are questions of law that this court reviews de novo. *Lewis-Miller v. Ross*, 710 N.W.2d 565, 568 (Minn. 2006).

To establish that they are an interested third party, appellants had 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.

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

The district court determined that appellants failed to satisfy their burden to establish the first requirement. The district court further determined that, because appellants failed to establish the first requirement, it did not need to consider the second and third. Appellants argue that the statute mandates the district court to analyze all three requirements. We agree with the district court's determination.

The statute uses "and," requiring appellants to establish three requirements. Even if the district court had determined that appellants made the required showing on the second and third requirements, they would not have satisfied all requirements because they failed

on the first. The district court appropriately interpreted the statute. *See Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) (ruling, in maintenance-modification context, that movant’s failure to show statutorily required change of circumstances was fatal to motion to modify maintenance, and hence that “it is not necessary for the [district] court to make findings regarding any other factors addressed in the statute”). We must now determine whether the district court properly concluded that appellants failed to establish the first requirement.

The district court determined that appellants failed to “show by clear and convincing evidence that [respondent] 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 [him].” *See* Minn. Stat. § 257C.03, subd. 7(a)(1)(i). The district court also determined that appellants failed to show that the child was in physical or emotional danger while living with respondent. *See id.*, subd. 7(a)(1)(ii). Finally, the district court determined that appellants failed to show that other extraordinary circumstances existed that would result in the granting of the petition. *See id.*, subd. 7(a)(1)(iii).

Appellants argue that (1) respondent abandoned the child when he left the child in appellants’ care, (2) respondent neglected the child, (3) respondent disregarded the child’s well-being by missing parenting time and refusing to take a hair-follicle drug test, (4) respondent endangers the child because he is chemically dependent, and (5) they have a substantial relationship with the child and can attend to the child’s medical condition. The district court considered these assertions and determined that none rose to endangerment.

The district court found that appellants testified that respondent did not abandon the child and that he always planned to return. The district court found that respondent's parenting time was positive and that there was not substantial evidence that respondent has a chemical-dependency issue. Finally, the district court determined that the child's medical condition would be considered with the creation of a transition plan. The record supports the district court's findings.

At the evidentiary hearing, appellant-grandmother testified that the parties agreed that the child would stay with appellants when respondent went to Wisconsin. Appellant-grandmother testified that she did not believe that respondent "ever" abandoned the child.

Appellant-grandmother testified that appellants are the child's primary caregivers, and that respondent was neglectful in caring for the child when he lived with them. But she also testified that she did not believe that respondent neglected or disregarded the child's well-being. And while appellant-grandfather believed that respondent neglected the child, he admitted that the child was not harmed. The district court determined that, even assuming that respondent was not active in the child's care when he resided with appellants, "there is no evidence that his alleged lack of care rises to the level of abandonment, neglect, or disregard for the child's well-being. Rather, [appellants] testified that the child was well provided for." Additionally, the district court observed that the notes from respondent's parenting time "are positive and do not show any present neglect or disregard for the child's well-being."

Appellant-grandmother testified that she was concerned about the child's safety in respondent's care because she alleged that he abused drugs and alcohol and had mental-

health issues. But, as the district court stated, appellant-grandmother's opinion is based on her awareness of respondent's use. The district court found that appellant-grandmother testified "that she is not aware of any diagnoses or any professional statement that [respondent] is chemically dependent."

Appellants are concerned about the child while in respondent's care because his chemical use in the past led to acts of violence, including against appellants' daughter. The district court considered this concern and concluded that "[a]lthough [appellants] provided evidence as to various incidents . . . [they] were either before the child was born or while the child was not present." The district court determined that appellants are "concerned of the potential" danger to the child but "acknowledge[]" that those concerns have not yet affected the child."

Regardless of any concern we may share with appellants regarding respondent's noncompliance with substance-use testing, the district court correctly applied the law. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990) (stating that role of this court is to correct errors); *Pikula*, 374 N.W.2d at 710 (stating district court does not abuse its discretion when it properly applies law). Because the district court determined that appellants failed to satisfy the showing of abandonment or endangerment, it did not abuse its discretion by dismissing appellants' petition without considering additional statutory factors, including best-interest factors. *See Tuthill*, 399 N.W.2d at 232.

Affirmed.