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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0844**

In the Matter of the Welfare of the Child of: M. A. D. and S. R. G.

**Filed October 29, 2018
Affirmed
Reilly, Judge**

St. Louis County District Court
File No. 69DU-JV-15-174

Bill L. Thompson, Law Office of Bill L. Thompson, Duluth, Minnesota (for appellant M.A.D.)

Mark S. Rubin, St. Louis County Attorney, Patricia I. Shaffer, Assistant County Attorney, Duluth, Minnesota (for respondent St. Louis County Public Health and Human Services Department)

Stephanie Carlson, Duluth, Minnesota (guardian ad litem)

Considered and decided by Smith, Tracy M., Presiding Judge; Rodenberg, Judge;
and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant-mother M.A.D. challenges the district court's finding that the transfer of legal and physical custody of the minor-child, S.G., is in the child's best interests. Because the district court did not abuse its discretion when it determined that there was clear and convincing evidence to support transferring legal and physical custody of S.G., we affirm.

FACTS

This case involves one minor child, S.G., born July 5, 2011. The biological parents are M.A.D., mother, and S.R.G., father.¹ S.G. is an Indian child pursuant to the Indian Child Welfare Act (“ICWA”). M.A.D. is presumed to be a palpably unfit parent based on the prior involuntary termination of M.A.D.’s parental rights to her older children. *See* Minn. Stat. § 260C.301, subd. 1(b)(4) (2016).

In October 2017, St. Louis County Public Health and Human Services Department (the county) received a report that M.A.D. was using heroin with her current boyfriend, S.F., and there was domestic violence in the home in which S.F., M.A.D., and their respective children lived. The county interviewed S.F.’s children, who indicated that S.F. and M.A.D. used drugs together. In an interview with S.G., she explained that M.A.D. and S.F. fought a lot. Unlike in prior proceedings,² M.A.D. stated that she would not cooperate with a chemical health assessment or submit to drug testing because she “had nothing to prove.” The county filed a termination of parental rights (TPR) petition against M.A.D. and S.R.G. but later amended it to a transfer of permanent legal and physical custody to M.A.D.’s father. When M.A.D.’s father died, the county amended the petition again, naming S.G.’s adult biological sister, D.D., as an alternative proposed custodian.

M.A.D. failed to appear at the review hearings held in February and March 2018, and the court allowed M.A.D.’s attorney to enter a denial on her behalf at each hearing.

¹ S.R.G. did not appeal an earlier involuntary transfer of custody of S.G. from S.R.G.

² The child has been the subject of two previous child in need of protection or services (CHIPS) cases due to M.A.D.’s drug and alcohol use and domestic violence in the home.

After the March review hearing, the district court issued an order warning that upon failure to appear at the next hearing “[t]he court may enter an order . . . permanently transferring the child(ren)’s legal and physical custody to a relative.” At the next hearing, M.A.D. again failed to appear and provided no valid excuse for her absence, although the record reflects that there was an active warrant for M.A.D.’s arrest. The court allowed the county to proceed by default due to M.A.D.’s failure to appear.

The county social worker, S.G.’s guardian ad-litem, and the proposed custodian all testified. Social worker Jessica Mantor testified that due to M.A.D.’s failure to start working on the reunification plan and “serious concerns” regarding M.A.D.’s chemical dependency and domestic violence issues, the transfer of custody was in S.G.’s best interest. Mantor further testified that D.D. is “able to provide stable, safe care” for S.G. and can help guide S.G. through similar experiences because they share the same mother. D.D. testified that she was strongly committed to caring permanently for her younger sister, was able to provide a stable and safe home for S.G., and would set appropriate boundaries for contact between M.A.D. and S.G.

Gina Secord, Bad River Band of Lake Superior Chippewa, and designated Qualified Expert Witness for the Tribe, provided an affidavit supporting the transfer of custody to D.D. because active efforts for reunification were unsuccessful and M.A.D.’s continued custody of S.G. was “likely to cause serious emotional or physical damage to the child.” After the hearing and the receipt of the affidavit from the Tribe, the district court issued an order to transfer the custody of S.G. to D.D. The district court determined that “the parents are not in a position now, nor will they be in the foreseeable future, to adequately care for

the child,” and “continued custody by the parents would likely result in serious emotional or physical damage” to S.G. M.A.D. appeals.

D E C I S I O N

I. The district court did not abuse its discretion when it determined that there was clear and convincing evidence to support transferring legal and physical custody of the minor child to the child’s adult sister.

On appeal from a permanent-placement order transferring legal custody, this court applies a two-part standard of review. *See In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321–22 (Minn. App. 2015), *review denied* (Minn. July 21, 2015). First, factual findings are reviewed to determine whether they address the statutory criteria and are supported by “substantial evidence,” or whether they are clearly erroneous. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). “A finding is clearly erroneous only if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred.” *D.L.D.*, 865 N.W.2d at 322 (quotation omitted). Second, the ultimate decision that there is a statutory basis for a permanency disposition is reviewed for an abuse of discretion. *Id.* “A district court abuses its discretion if it improperly applies the law.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 93 (Minn. App. 2012).

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 (2016). An order permanently transferring legal and physical custody of a child 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;

(3) the parent’s efforts and ability to use services to correct the conditions which led to the out-of-home placement; and (4) that the conditions leading to the out-of-home placement have not been corrected to permit the child to safely return home. *Id.* § 260C.517(a) (2016). Each of these four statutory findings must be proved by clear and convincing evidence.³ *See* Minn. R. Juv. Prot. P. 39.04, subd. 1.

Appellant challenges only the first of these four requirements—asserting that the district court did not adequately address how the child’s best interests were served by the transfer of custody. In the case of a permanency disposition, “the court must be governed by the best interests of the child, including a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact.” Minn. Stat. § 260C.511(b) (2016). Additionally, the best interests of an Indian child “support the child’s sense of belonging to family, extended family, and tribe.” Minn. Stat. § 260.755, subd. 2(a) (2017). Here, the district court properly analyzed the child’s best interests for a transfer-of-legal-custody under ICWA, finding that S.G. “has a bonded relationship with her extended family and it is in the child’s best interests to continue having a relationship with her mother, extended family, and remain connected to her tribe.”

Appellant contends that when considering the child’s best interests in a permanency case the court must also balance the three factors as set forth in *R.T.B.*: (1) the child’s

³ For a termination of parental rights case involving an Indian child, the standard of proof is beyond a reasonable doubt. Minn. R. Juv. Prot. P. 39.04, subd. 2(b). However, this is a transfer of legal and physical custody case, therefore the general standard applies. *Id.* at subd. 1.

interest in preserving the parent/child relationship; (2) the parent's interest in preserving the parent/child relationship; and (3) any competing interests of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992) (requiring such analysis in a termination of parental rights case). We agree that these factors must be considered in a termination-of-parental-rights case, however, the factors need not be addressed in a transfer-of-custody case. See *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 264 (Minn. App. 1996) (noting difference between termination proceedings and transfer of custody). The district court found that the transfer of legal custody to D.D. is in S.G.'s best interest while the termination of M.A.D.'s parental rights is not. Therefore, the termination-centered analysis of *R.T.B.* does not apply to this transfer-of-legal-custody proceeding, and the district court did not err by failing to use it.

II. The court issued sufficient written findings to permit appellate review.

Appellant also argues that the district court erred by failing to make sufficient written findings on the child's best interests to permit appellate review and that "the record is devoid of any support for a best interest determination." To be adequate, the district court's best-interests findings must provide insight into which facts or opinions were most persuasive for the court's ultimate decision, and demonstrate the court's comprehensive consideration of the statutory criteria. *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). In its order, the district court thoughtfully considered M.A.D.'s ability to parent, D.D.'s suitability as a custodian, S.G.'s well-being, and the Tribe's recommendations. The district court made well-reasoned and sufficient factual findings, including the following:

[M.A.D.] continues to have unresolved chemical dependency, domestic violence . . . [and] has made no progress on her reunification plan to address the underlying child protection concerns. . . . [M.A.D.] has refused to avail herself of services to reunify with her child despite social services reasonable and active efforts to engage her in her reunification plan.

. . . .

[D.D.] has demonstrated her ability to provide a stable and safe home to the child as well as set appropriate boundaries for contact between the mother and the child and ensuring that the mother is safe and appropriate for visits.

. . . .

By all accounts, the Child has done well in [D.D.'s] care and the two have formed a strong bond. Human Services and the Child's Guardian ad Litem and Tribe believe that [D.D.] has the resources, skill, and commitment necessary to provide the Child with a stable, permanent, and loving home.

The district court's findings sufficiently address the best interests of the child, are supported by substantial evidence, and are not clearly erroneous. The district court properly applied the law and therefore did not abuse its discretion when it determined that there was a statutory basis for a transfer of custody in this case. Therefore, we affirm.

Affirmed.