STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1167
A21-1168

In the Matter of the Welfare of the Child of:
L. K. G. and E. J. S., Parents (A21-1167),

In the Matter of the Welfare of the Child of:
L. K. G. and J. B. M., Parents (A21-1168).

Filed May 9, 2022
Affirmed
Rodenberg, Judge[*]

Anoka County District Court
File Nos. 02-JV-20-571, 02-JV-20-396

Gretchen R. Severin, Munstenteiger & Severin, P.A., Anoka, Minnesota (for appellant L.K.G.)

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Virginia Murphrey, Tenth District Public Defender, Kenneth Dee, Assistant Public Defender, Anoka, Minnesota (for Child 2)

Judi Albrecht, Eagan, Minnesota (guardian ad litem)

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

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Rodenberg, Judge.

NONPRECEDENTIAL OPINION

RODENBERG, Judge

Appellant-mother appeals from the district court's order for involuntary transfer of permanent legal and physical custody of three of her children to their respective fathers, arguing that the district court erred in its best-interests analysis. She argues specifically that the district court's order did not contain the "detailed findings" required under Minn. Stat. § 260C.517 (2020), because it erroneously applied the best-interests standard used for termination-of-parental-rights (TPR) cases rather than the best-interests standards used in transfer-of-custody cases. We affirm.

FACTS

This child-protection case involves the transfer of permanent legal and physical custody of three of mother's children to their respective fathers.[1] In November 2019, after child 2 reported that she was not safe at home, a police-officer hold resulted in the children being placed in foster care. Child 2, child 3, and child 4 (then aged 12, 8, and 5 respectively) were adjudicated in need of protection or services (CHIPS) under what is now Minn. Stat. § 260C.007, subd. 6(8) (2020), and were first placed in separate out-of-home placements. In late November 2019, the district court placed child 4 with her father, where she has since

[1] Mother has four children, designated by the district court as child 1, child 2, child 3, and child 4. The numbers reflect the children's birth order, and we adopt the nomenclature used by the district court to identify the children. Child 1 is not involved in this appeal.

remained. In March 2020, the court ordered out-of-home placement for child 2 and child 3 with their father, where they have since remained. Father of child 2 and child 3 petitioned the district court for permanent custody in April 2020, and father of child 4 petitioned the district court for permanent custody in May 2020.

In May and August 2021, the district court held a three-day joint bench trial on the transfer-of-custody petitions. At that time, the children had been in out-of-home placements for 628 days. At trial, the county presented testimony from the Anoka County case manager, the children's family mental-health practitioner, an employee from child 2's mental-health program, child 2's individual therapist, mother's former drug-and-alcohol counselor, the parenting educator, father of child 2 and child 3, father of child 4, and the guardian ad litem. Mother and the children's maternal grandmother also testified at the trial. The district court found that the testimony credibly established the following facts.

In November 2019, the county received a welfare report concerning the children's living environment and mother's drug use. The report was corroborated by a home visit and mother's urinalysis (UA) was positive for amphetamines. The case manager created an out-of-home placement plan for mother that was approved by the district court. The county offered mother services, including parenting education, individual counseling, mental-health assessments and services, chemical-health assessments and services, family group conferencing, and long-term social services including assistance with laundry and dishes, lawn care, delivery of meals, skilled nursing services, and personal-care-assistance services.

Mother's engagement with her case plan was oppositional and hostile. Mother inconsistently attended chemical- and mental-health treatment. When she did attend, her limited participation was not constructive. She was unsuccessfully discharged from chemical-dependency treatment after regularly testing positive for methamphetamine, getting into altercations with other treatment-program members, and refusing to accept feedback or take any level of personal responsibility for her addiction. Although recommended, mother did not enter or complete an inpatient treatment program.

Mother missed a quarter of her scheduled visits with the children under the court-approved case plan and was late to other visits. During the visits that she did attend, mother engaged in inappropriate behavior with the children. The parenting educator testified that mother openly blamed child 2 for the child-protection proceeding, interrogated the children about their fathers and what they were doing at their fathers' homes, ignored the children when they talked about school or themselves and turned the conversation to herself, complained about child protection services, and manipulated the children so that they became angry with one another and then failed to intervene when things got out of hand. The parenting educator reported that the family dynamic had not changed in the four months she worked with mother and that the visits continued to be "very chaotic." The parenting educator testified that mother cannot recognize the cues and needs of her children or how her own behavior hurts them. Often the children would emotionally shut down or withdraw after interacting with mother.

Mother also engaged in similar misguided behavior with the children during supervised phone calls. During one phone call with child 4, mother told child 4 to call the

police if she saw child 2. Mother also divulged information about her medical conditions to the then-six-year-old, child 4. One phone call with child 2 was "shut down" because of mother's inappropriate boundaries, and the case manager testified that child 2 was "upset" after that call. Child 3 chose to no longer have phone contact with mother.

Mother was often antagonistic toward the children and their fathers. During a court hearing in November 2019, mother "became so dysregulated that she began yelling and screaming at the fathers of her children while the children were in the room." The case manager intervened to remove the children from the room. Father of child 2 and child 3 also testified to several occasions when he witnessed mother "yelling and screaming at the [children] . . . inches from their face." The case manager similarly testified that the children told her that mother "yells and screams and swears" at them. She further testified that mother "would scream and yell at [her]."

Both fathers testified that the children are doing well in their care. Father of child 4 testified that he provides for child 4's physical and educational care, takes her to dentist and doctor's appointments, and enrolled her in before- and after-school programming. He testified that child 4 is "doing great" in his home and that, when she is with him, she is a "normal, happy-go-lucky little kid." Father of child 2 and child 3 testified that "they're both doing good right now with [him]." He testified that he participates in therapy with both children and that this has improved his communication with them. He testified that child 2 is hanging out with friends a lot, interacting more, and "doing more family stuff." He described child 2 as "more happy with life" since moving in with him. Father of child 2 and child 3 testified that he and child 3 did not have a bond before she moved in with

him, but they have "gotten really close." He testified that child 3 interacts with him a lot more, she has made a lot of friends at school and in the neighborhood, and "she's just a delight to have." Father of child 2 and child 3 testified that he supports their relationship with child 4 and will continue to bring the children to scheduled visits to keep the siblings connected.

The case manager and the guardian ad litem both testified that it was in the children's best interests that they remain with their fathers.

In August 2021, after hearing three days of testimony and receiving 95 exhibits, the district court granted the fathers' petitions and determined that it was in the children's best interests to transfer permanent legal and physical custody to their respective fathers. In its best-interests analysis, the district court used a modified three-factor TPR standard, determining that its decision to transfer custody of the children to their fathers "is based on a careful and cautious balancing of: (1) [the children's] interest in preserving [mother] as [their] legal and physical custodian; (2) [mother's] interest in preserving her role as the legal and physical custodian of [the children]; and (3) the competing interests of [the children] to be raised by a primary custodian who is willing and able to provide a safe, stable, and clean environment."

Mother appealed.

DECISION

In a permanency proceeding under Minn. Stat. §§ 260C.503-.521 (2020), a district court may order any one of six dispositions, including a transfer of permanent legal and physical custody "to a fit and willing relative." *See* Minn. Stat. § 260C.515, subd. 4. An order for such a transfer must include "detailed findings" on "how the child's best interests are served by the order." Minn. Stat. § 260C.517; *see also* Minn. R. Juv. Prot. P. 58.04(b). This statutory requirement must be proved by clear and convincing evidence. Minn. R. Juv. Prot. P. 58.03, subd. 1; *see also In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 322 (Minn. App. 2015), *rev. denied* (Minn. July 20, 2015).

Mother argues that the district court erred in its finding concerning "how the child's best interests are served by the order." *See* Minn. Stat. § 260C.517(a)(1). She contends that the district court did not apply the appropriate best-interests factors because it applied the three-factor TPR test rather than best-interests criteria from Minn. Stat. § 260C.511. *See In re Welfare of Children of M.A.H.*, 839 N.W.2d 730, 744 (Minn. App. 2013); *see also, e.g.*, Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) (requiring a district court to make specific findings in a TPR case that considers the child's interest in maintaining the parent-child relationship, the parent's interest in maintaining the parent-child relationship, and any competing interests). Because mother's argument involves the meaning of the statutes governing an order for a permanency disposition, we review the district court's ruling on her argument de novo. *In re Welfare of T.P.*, 747 N.W.2d 356, 360 (Minn. 2008).

Minn. Stat. § 260C.515 governs permanency dispositions. Section 260C.511 addresses "best interests," and provides:

> (a) The "best interests of the child" means all relevant factors to be considered and evaluated. . . .
>
> (b) In making a permanency disposition order or termination of parental rights, 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.

Mother contends that the district court erred when it applied the three-factor best-interests test employed in TPR cases. *See In re Welfare of Child. Of J.C.L.*, 958 N.W.2d 653, 656-58 (Minn. App. 2021) (distinguishing when to use the three-part best-interests test for TPR cases from when to use the more generic best-interests test), *rev.* denied (Minn. May 18, 2021). But the plain language of section 260C.511, the statute mother argues that the district court failed to apply, directs the district court to consider "all relevant factors" in determining the best interests of the children. *Id.* Here, given the district court's thorough and extensive findings of fact concerning mother's parental incapacity, adding the extra consideration of balancing the children's interest in continuing in their mother's care weighed against mother's interest in preserving her role as their custodian and the competing interests of the children in being cared for by a safe and stable parent is at least a "relevant factor." We therefore conclude that the district court did not err by considering a modified three-factor best-interests analysis ordinarily employed in TPR cases along with the many other factors that the district court considered to support its ultimate disposition. In the context of record-supported findings that amply support the

orders transferring permanent custody of these children to their respective fathers, the district court's consideration of the modified TPR standard was not legal error.

But even if the district court erred by applying the modified TPR factors in transferring custody of these children to their respective fathers, the district court's other record-supported findings of fact amply support its conclusion. For example, in over eight pages of findings about child 4's relationships with her parents, the district court found that her father enrolled her in school and before- and after-school programs, took her to dentist and doctor appointments, and maintained his sobriety. The district court found that child 4 is a high-needs child and that her father is an appropriate placement. The district court found that that he can provide her protection, education, care, and control. These findings support the district court's conclusion that the father of child 4 is a "fit, willing, and suitable parent." The district court found that mother—in spite of numerous services afforded her under the court-approved case plan—made no notable improvements in her chemical, mental, or physical health and that her interactions with child 4 were inappropriate. These findings support the district court's conclusion that mother cannot provide child 4 with a safe and suitable environment that addresses child 4's needs.

As for child 2 and child 3, in over ten pages of detailed findings, the district court found that both children have high needs, and that their father provides them safety, stability, and routine. The district court found that the children are well-cared for and loved in their father's care. It found that their father ensured that child 2 and child 3 met regularly with their siblings to maintain their familial bond. These findings support the district court's conclusion that the father of child 2 and child 3 is a "fit, willing, and suitable parent"

and that he is an appropriate placement for the children. The district court also found that mother undermined attempts to stabilize child 2's mental health by engaging in behavior that caused child 2 to become dysregulated and in need of hospitalization. This finding supports the district court's conclusion that mother cannot provide child 2 and child 3 with a safe and suitable environment that addresses the children's needs.

On this record, if there was any error in using the modified three-factor TPR test, that error was harmless. *See In re Welfare of D.J.N.,* 568 N.W.2d 170, 176 (Minn. App. 1997) (refusing to reverse termination of parental rights for harmless error).

The district court's thorough and record-supported findings concerning the children's best interests are consistent with section 260C.511 and the requirement that the district court consider "all relevant factors." These record-supported findings also amply support the district court's orders transferring physical and legal custody of the children to the two fathers.

Affirmed.