STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1671

In re the Custody of:
T.L.H.
DOB 12/05/2014,

Beth A. Hastings, petitioner,
Respondent,

vs.

Brittany L. Tuinder,
Respondent,

and

Raey M. Hastings, V,
Appellant.

Filed August 29, 2022
Affirmed
Worke, Judge

Mower County District Court
File No. 50-FA-20-667

Dean K. Adams, Morgan E. Carlson, Adams, Rizzi & Sween, P.A., Austin, Minnesota (for respondent Hastings)

Brittany L. Tuinder, Austin, Minnesota (pro se respondent)

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Kristen Nelsen, Mower County Attorney, Heather Kjos Schmit, Assistant County Attorney, Austin, Minnesota (for respondent intervenor Mower County Health and Human Services)

Considered and decided by Frisch, Presiding Judge; Worke, Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this third-party custody proceeding, appellant-father argues that the district court should have applied the presumption in Minn. Stat. § 518.175, subd. 1(g) (2020), that would grant him at least 25% of the parenting time. We affirm.

FACTS

Appellant-father Raey M. Hastings, V and respondent-mother Brittany L. Tuinder[1] are the biological parents of T.L.H. born in 2014. The parents were never married and signed a recognition of parentage identifying themselves as the child's biological parents. Respondent-paternal grandmother Beth A. Hastings has cared for the child for most of the child's life. In September 2019, the child began living primarily with grandmother. In March 2020, grandmother petitioned the district court for third-party custody, asserting that she is the child's de facto custodian under Minnesota Statutes Chapter 257C.

In September 2020, all parties created a temporary parenting-time agreement under which father would have parenting time every first weekend of the month beginning at 2:30 p.m. on Friday until 7:00 p.m. on Sunday, and on Wednesdays from 2:30 p.m. until 7:00 p.m. The district court adopted this agreement.

[1] Mother, a party in the third-party custody proceeding, raised no issues in this appeal.

After an evidentiary hearing, the district court named grandmother the child's de facto custodian and awarded each parent reasonable parenting time. The district court awarded father less than 25% of the parenting time and did so without affording father the benefit of the presumption in Minn. Stat. § 518.175, subd. 1(g), that a parent should receive at least 25% of the parenting time. Father moved the district court for a new trial or to amend its findings based in part on the district court's failure to apply the parenting-time presumption.

The district court denied father's motion for a new trial and granted in part and denied in part his motion for amended findings. The district court determined that the parenting-time presumption was "not operable" in this third-party custody proceeding. This appeal followed.

DECISION

De facto custody and third-party proceedings are governed by Minnesota Statutes Chapter 257C. Minn. Stat. §§ 257C.01-.08 (2020). Under Chapter 257C, the district court, in addition to addressing custody, "must make any additional order it considers just and proper concerning . . . the quality and duration of parenting time." Minn. Stat. § 257C.05, subd. 1(3). Unless Chapter 257C "specifie[s]" otherwise, Chapter 518 applies to de facto custody proceedings. Minn. Stat. § 257C.02(a). For purposes of this appeal, we assume that Chapter 257C does not "specif[y]" that section 518.175, subdivision 1(g), does not apply to de facto custody proceedings. *See id.*; *cf.* Minn. Stat. § 257C.03, subd. 5(a) (stating that, at emergency or temporary hearings, Minn. Stat. §§ 518.17- .175, "must" guide the district court regarding "custody and parenting time").

Under Minn. Stat. § 518.175, subd. 1(g), absent "other evidence, there is a rebuttable presumption that a parent is entitled to receive a minimum of 25 percent of the parenting time for the child." Here, the sole issue on appeal is whether the district court should have given father the benefit of the rebuttable presumption created by subdivision 1(g).

Generally, "a district court has broad discretion in determining . . . parenting time." *Christensen v. Healey*, 913 N.W.2d 437, 443 (Minn. 2018); *In re Custody of A.L.R.*, 830 N.W.2d 163, 166 (Minn. App. 2013) (stating that third-party custody determinations are reviewed for an abuse of discretion). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *See Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted). Here, even if we assume that section 518.175, subdivision 1(g), applies to a third-party proceeding under Chapter 257C, affirming the district court's award of less than 25% of the parenting time to father is still appropriate.

In denying father's posttrial motion, the district court stated that "Minn. Stat. § 518.175, subd. 1(g) is not operable" in proceedings under Chapter 257C, and that applying the presumption created by that statute "would be counterintuitive" because of the "extraordinary circumstances to give a third party custody of a child over the [presumption that custody of a child is best placed with the child's parent]." Thus, while the district court ruled that Minn. Stat. § 518.175, subd. 1(g), did not apply to this proceeding, it also ruled that, if the statute did apply, the rebuttable presumption therein was rebutted.

While Minn. Stat. § 518.175, subd. 1(g), does not identify the findings a district court must make to rebut the parenting-time presumption, the supreme court has long held that the "paramount" question for courts in establishing a child's familial relationships is the child's best interests. *See*, *e.g.*, *Olson v. Olson*, 534 N.W.2d 547, 549 (Minn. 1995) (considering child's best interests in grandparent-visitation matter); *State ex rel. Flint v. Flint*, 65 N.W. 272, 272 (Minn. 1895) (considering in a custody dispute "the cardinal principle is to regard the benefit" of the child rather than which parent is more blameworthy). Here, we conclude that the relevant findings by the district court are not clearly erroneous and rebut the parenting-time presumption.

The district court issued a thorough and detailed order containing ten singled-spaced pages of findings of fact. A district court's findings of fact are not set aside unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *see Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (applying rule 52.01 in a family-law appeal). The clear error standard of review "is a review of the record to confirm that evidence exists to support the decision." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021). "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* at 223 (quotation omitted). When applying the clear error standard of review, appellate courts (1) view the evidence in the light most favorable to the findings; (2) do not reweigh the evidence; (3) do not find their own facts; and (4) do not reconcile conflicting evidence. *Id.* at 221-22. Thus,

> an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court. Rather, because the factfinder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding, an appellate court's 'duty is fully performed' after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.

Id. at 222 (quotations omitted); *see Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (discussing clear error standard of review).

In its de facto custody analysis, the district court found, by clear and convincing evidence, that (1) the child has lived primarily with grandmother since September 2019; (2) grandmother is the person primarily responsible for the child's medical and educational care; and (3) father's involvement with the child was "inconsistent."

Regarding whether it was in the child's best interests for grandmother to be named the child's de facto custodian, the district court found, by a preponderance of the evidence, that (1) grandmother had been the child's primary caretaker "for a significant portion of the young child's life"; (2) grandmother fostered the child's relationships with the child's extended family, but father did not promote the child's relationships with extended family or with grandmother; (3) father entered no evidence regarding his willingness to continue or discontinue the child's education and religious studies; (4) there were "concerns" about whether father's house provided "satisfactory and safe housing for [the child]"; (5) father testified that he previously "would smoke marijuana while parenting [the child]," but outside the child's presence; (6) father's live-in significant other knew that father smoked

but did not know that he smoked marijuana; and (7) the "lack of supervision and awareness of what happens at [father's] residence by the adults residing in the home is of concern."

These findings of fact are not challenged in this appeal and are not clearly erroneous. *See Kenney*, 963 N.W.2d at 222 (noting that, when reviewing a district court's findings of fact, an appellate court need not go into an extended discussion of the evidence to show that the district court's findings are correct); *Cook v. Arimitsu*, 907 N.W.2d 233, 240 n.3 (Minn. App. 2018) (applying this idea in a family-law appeal), *rev. denied* (Minn. Apr. 17, 2018). Thus, father's involvement with the child has been inconsistent, and the district court has concerns about father's use of illegal drugs while parenting the child and whether father's home is a safe environment for the child. The district court also expressed concerns about father's willingness to promote the child's relationships with grandmother and the child's extended family, and father's willingness to advance the child's educational and religious studies.

Even if father's is arguing that the district court's findings are inadequate to support a rejection of the parenting-time presumption, we reject that argument. As described above, we believe the findings are sufficient for this purpose. On this record, we are convinced that if we remanded for additional findings of fact regarding father's parenting time, the result would not change.[2] Therefore, any lack of findings specifically addressing

[2] *See Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (refusing to remand child-custody case when "on remand, the [district] court would undoubtedly make findings that comport with the statutory language" and reach the same result); *Tarlan v. Sorensen*, 702 N.W.2d 915, 920 n.1 (Minn. App. 2005) (refusing to remand issue of custodial parent moving children to another state when doing so "would be futile"); *see also Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (stating that appellate courts "will not reverse a correct

the point is harmless, and we decline to remand. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Goldman*, 748 N.W.2d at 285 (applying rule 61 in a family-law appeal). Under these circumstances, we cannot say that the district court abused its discretion by deeming any presumption that father should receive at least 25% of the parenting time to be rebutted.

Affirmed.

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decision simply because it is based on incorrect reasons"); *Sinda v. Sinda*, 949 N.W.2d 170, 176 (Minn. App. 2020) (applying *Katz*).