STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2305

Christina Marie Sandberg, petitioner,
Respondent,

vs.

Ryan James Sandberg,
Appellant.

Filed April 19, 2011
Affirmed
Wright, Judge

Aitkin County District Court
File No. 01-FA-08-1404

James Kempainen, Bloomington, Minnesota (for respondent)

Ronald B. Sieloff, Emily E. Gleiss, Sieloff & Associates, Eagan, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Wright, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

WRIGHT, Judge

In this child-custody dispute, appellant-father challenges the district court's decision to award sole physical custody of his minor daughter to respondent-mother, asserting that the district court abused its discretion by (1) making findings of fact that fail to address the requisite statutory factors and are unsupported by the record,

(2) disregarding evidence that supports an alternative custody determination, and (3) awarding custody in a manner that splits custody of the couple's two children. We affirm.

FACTS

Appellant-father Ryan Sandberg and respondent-mother Christina Sandberg married in 2001. Their daughter, C.S., was born in Las Vegas, Nevada, on May 31, 2002. Father and mother also have a son, G.S., who was born almost 10 years earlier on December 20, 1992. The family lived together in Las Vegas until February 2005 when mother and both children moved to Minnesota to be closer to her family and friends. Father planned to join them when either or both of the parties secured employment in Minnesota. G.S. returned to Las Vegas to live with father during the summer of 2005.

In 2005 and 2006, mother and C.S. resided with various relatives in Minnesota. Mother began a romantic relationship with J.D.M. and subsequently began living with him in Mentor in early 2006. Father initiated marital-dissolution proceedings in Nevada in June 2006. And mother and J.D.M. had a child together, J.M., in September 2007.

Father and G.S., who continued to live in Las Vegas, had minimal and sporadic contact with C.S. and mother between 2006 and 2009. Father saw C.S. once in April 2006 and again in May 2009. In 2007, father attempted to visit C.S. in Minnesota. Although mother assented to the visit, when father arrived from Las Vegas, mother evaded father, who ultimately was unable to visit C.S.

In September 2008, mother petitioned to establish custody and parenting time for C.S. Mother sought joint legal custody with father and sole physical custody. At the time of trial in June 2009, C.S. was seven years old and G.S. was 16 years old. Mother lived with J.D.M., J.M., and C.S. in Mentor. Father lived with G.S. in Las Vegas. The district court received testimony from mother, father, G.S., other family members, and a guardian ad litem appointed by the district court to assess C.S.'s best interests. The guardian ad litem advised the district court that it is in C.S.'s best interests for mother and father to have joint legal custody and father to have sole physical custody. The guardian ad litem also submitted several reports documenting her observations. The district court granted joint legal custody and conferred sole physical custody to mother. This appeal followed.

D E C I S I O N

We limit our review of a custody decision to determining whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. *Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996); *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). In doing so, we view the evidence in the light most favorable to the findings of fact, and we will not reverse absent a firm and definite conviction that a mistake was made. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). Because we afford the district court's findings of fact substantial deference, we do not independently weigh the evidence or draw contrary conclusions about witness credibility. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). That the record might support findings other than those of the district court does not

demonstrate that the district court's findings are defective. *Vangsness*, 607 N.W.2d at 474. Although we apply a deferential standard of review in custody matters, the basis for the district court's decision must be set forth with a high degree of particularity. *Durkin v. Hinich*, 442 N.W.2d 148, 151 (Minn. 1989).

The best interests of the child is the controlling principle in every custody determination. *Pikula*, 374 N.W.2d at 711. To assure proper consideration of the child's best interests, the legislature has identified 13 factors that a district court must consider when making a custody determination. Minn. Stat. § 518.17, subd. 1, 3 (2010). A district court must "make detailed findings on each of the factors and explain how the factors led to its conclusions and to the determination of the best interests of the child." Minn. Stat. § 518.17, subd. 1. When considering the child's best interests, no single factor is determinative. *See* Minn. Stat. § 518.17, subd. 1 ("The court may not use one factor to the exclusion of all others."); *Lemcke v. Lemcke*, 623 N.W.2d 916, 920 (Minn. App. 2001) (same), *review denied* (Minn. June 19, 2001).

I.

We first address father's argument that the district court's factual findings are inadequate because (1) the district court failed to expressly find that awarding physical custody to mother is in C.S.'s best interests and failed to explain how its findings support the physical-custody determination, (2) the district court's language fails to convey determinative findings, and (3) several findings lack record support.

When determining which custody arrangement is in C.S.'s best interests, the district court made findings addressing each of the 13 best-interests factors. *See* Minn.

Stat. § 518.17, subd. 1. These findings amply support the award of physical custody to mother. The district court found that mother has been C.S.'s primary caretaker since at least 2005, and likely longer; mother and C.S. have a close relationship and have an emotional bond; C.S. has a close relationship with her younger half-sister J.M., with whom she lives in Minnesota; mother appears to be in a stable relationship with J.D.M., who provides financial and caretaking support for C.S; C.S. has lived with mother and J.D.M. for nearly two years and appears comfortable with her surroundings; J.D.M.'s parents live near the residence that J.D.M. and mother share and provide daycare for C.S.; a diagnostic assessment determined that C.S. is well adjusted and has progressed in a developmentally appropriate manner; and C.S. is comfortable with both mother and father. The district court also found that C.S. was alienated from father for several years before trial, father is chemically dependent, and, shortly before trial, father completed treatment as a result of his conviction of driving under the influence of alcohol. Our careful review of the record establishes evidentiary support for these findings. Although the district court did not expressly find that it is in C.S.'s best interests for mother to have physical custody, the decision, which addresses each of the 13 best-interests factors in a careful and detailed fashion, clearly evinces the district court's determination that physical custody with mother is in C.S.'s best interests.

Father also argues that the district court's use of the word "appear" to introduce selected facts and the word "indicate" to describe certain witness testimony fails to convey a factual finding. A district court's findings "must be affirmatively stated as findings of the [district] court." *Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App.

1989). Mere recitations of the parties' allegations "may be helpful in understanding what the [district] court considered in making its findings" but are not proper findings. *Id.* Here, the district court used definitive language to convey critical findings and to explain its rationale. When the findings are considered in their entirety, the district court's use of words such as "appear" and "indicate" is limited and appropriate. The district court's findings as to what a witness "indicates" or how something "appears" are affirmative statements of the district court's observations, based on the testimony presented and the district court's credibility assessments. Such findings explain both the context in which the district court is considering a statutory factor and how the district court perceives the evidence. The district court's findings are appropriately determinative.

Father also asserts that several of the district court's findings are unsupported by the evidence. He first challenges the district court's finding that mother has a large extended family located throughout Minnesota. In doing so, he argues that this finding misrepresents the extent to which mother's family members provide a support network, particularly in light of the proximity of father's family to his home in Las Vegas. The record reflects that mother's family lives several hours from her home in Mentor. But the district court's findings reflect its consideration of C.S.'s local family connections and support network. In addition to recognizing mother's extended family in Minnesota, the district court found that J.D.M, J.D.M.'s mother, and C.S.'s maternal grandmother provide a support network and are actively involved in caring for C.S. in Minnesota. There is ample record support for these findings, including evidence that mother and C.S. frequently visit relatives throughout the state. Thus, the district court's findings as to

mother's support network and family relationships as well as the location in which mother's Minnesota relatives reside are not clearly erroneous.

Father also challenges the district court's findings that neither party has promoted telephone contact between the other parent and child or consistently communicated about the children. But each party testified that attempts to facilitate communication were frustrated by the other, and the guardian ad litem observed that the parties' communication efforts were limited. Therefore, father's challenge to the district court's findings addressing the parties' limited communication efforts is unavailing.

II.

We next consider father's argument that the district court disregarded evidence supporting a different custody decision. Father first contends that the district court erroneously failed to address and give adequate weight to the guardian ad litem's observations and recommendation to grant father physical custody. It is within the district court's broad discretion to reject recommendations made in a child-custody study. *Rutanen v. Olson*, 475 N.W.2d 100, 104 (Minn. App. 1991); *Lawver v. Lawver*, 360 N.W.2d 471, 473 (Minn. App. 1985). "However, the circumstance enlarges the need for particularized findings." *Lawver*, 360 N.W.2d at 473. When a district court rejects a custody recommendation, the district court is expected to "either (a) express its reasons for rejecting the custody recommendation, or (b) provide detailed findings that examine the same factors the custody study raised." *Rogge v. Rogge*, 509 N.W.2d 163, 166 (Minn. App. 1993), *review denied* (Minn. Jan. 28, 1994).

Although some of the guardian ad litem's recommendations and observations may support an alternative custody award, it is not our role to find facts in support of a different custody determination. *See In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990) (allowing independent review of the record only under extraordinary circumstances); *Moylan v. Moylan*, 384 N.W.2d 859, 865 (Minn. 1986) (noting that independent review of record by an appellate court is improper when it is unclear whether district court considered statutory factors); *Kucera v. Kucera*, 275 Minn. 252, 254, 146 N.W.2d 181, 183 (1966) ("It is not within the province of [appellate courts] to determine issues of fact on appeal.").

Here, the district court conducted an independent analysis of the statutory best-interests factors, considered the guardian ad litem's report, and issued a decision that is supported by the record. The guardian ad litem's observations are plainly reflected in the district court's findings regarding the intimacy of C.S.'s relationship with mother, C.S.'s reunification with her father and brother before trial, C.S.'s relationships with her paternal grandmother, C.S.'s adjustment to her school, the length of time C.S. has lived in a stable and satisfactory environment, the custodial home, mother and father's mental health, C.S.'s cultural background, and the degree to which mother and father facilitate communication and contact. Because the district court conducted a detailed examination of the statutory factors addressed by the guardian ad litem, the district court did not abuse its discretion by declining to adopt the guardian ad litem's recommendation. *See Rogge*, 509 N.W.2d at 166.

We also reject father's contention that the district court disregarded evidence that mother has made questionable parenting decisions and has intentionally alienated C.S. from father. The district court's decision demonstrates its consideration of this evidence. The district court found that mother interfered with C.S.'s relationship with father by failing to facilitate contact, made questionable decisions, and has relocated and changed employment frequently. And the district court acknowledged witness concerns that the nature of the relationship between mother and C.S. is that of friends rather than that of mother and daughter. But such findings do not require the district court to award custody to father when to do otherwise is in C.S.'s best interests. *See Lemcke*, 623 N.W.2d at 920 (stating that a finding of parental alienation does not preclude award of custody to offending parent because "[c]hildren are not responsible for their parents' misconduct, and their best interests should not be sacrificed merely to punish a misguided parent"). As we have explained, the district court's detailed decision clearly establishes its consideration of the best-interests factors, and the decision supports the physical-custody determination. Neither our decision nor the district court's condones mother's past conduct of denying father contact with C.S., but we observe that the district court can take measures to enforce both parents' obligations to obey the custody order and prevent further parental alienation.[1] *See Maxfield v. Maxfield*, 452 N.W.2d 219, 223 (Minn. 1990) (observing that district court may enforce mother's promise to permit father access to children). The district court did not abuse its discretion by awarding physical custody

[1] In its order, the district court warned the parties that further parental alienation would not be permitted and that failure to comply with its order would be grounds for a change of custody.

to mother notwithstanding the evidence that mother interfered with father's parental relationship.[2]

III.

Father also challenges the district court's decision to award physical custody to mother even though the custody award splits the custody of C.S. and G.S. He argues that the findings do not support the custody decision and that the district court erred as a matter of law by rendering a decision that results in split custody.

Father contends that the findings offer inadequate support for the custody decision because the district court failed to address the consequences of awarding custody in a manner that splits custody of C.S. and G.S., despite evidence that G.S. and C.S. have a close relationship and have been adversely affected by their separation. Although the district court made no express finding on the effect of splitting custody, it made detailed findings addressing C.S.'s relationship with both of her siblings—a factor that the district court must consider when determining the best interests of the child. *See* Minn. Stat. § 518.17, subd. 1 (requiring that district court consider the "interaction and interrelationship of the child with . . . siblings"). The district court found that G.S. has been traumatized by the circumstances that have interfered with his relationship with C.S., G.S. wanted custody awarded to father so that the siblings could be together, and

[2] Father also identifies an error in the district court's description of mother's role in thwarting father's attempt to visit C.S. in 2007. The district court found that "[t]he actions of the Respondent were totally without justification and quite shocking." Father was the respondent at trial. The parties concede, and we agree, that this finding contains a clerical error that applies to mother's actions, not father's. At oral argument, the parties stipulated to the error and to their commitment to move the district court to correct this clearly erroneous statement of fact.

the siblings "were delighted" to be reunited before trial. The district court also considered C.S.'s relationship with her younger half-sister, J.M., finding that the sisters are very close, they spend time together playing, and C.S. missed J.M. when they were apart. Based on the record as to C.S.'s relationship with both of her siblings, the district court found that, because C.S. is closer in age to J.M., who was 2 at the time of the order, than C.S. is to G.S., who was almost 17, J.M. likely will be "more available" to C.S. than G.S. will be. These findings establish that the district court considered C.S.'s relationship with both of her siblings.

The district court's findings as to C.S.'s sibling relationships are sustained by the evidentiary record. C.S. is significantly closer in age to J.M. than she is to G.S. When the custody decision was issued, G.S. would be in his father's custody for only one more year. By contrast, C.S. would remain in her mother's custody with J.M. for nearly 11 more years. Even the guardian ad litem expressed concerns about separating J.M. and C.S. and opined that C.S.'s relationship with J.M. should be nurtured. When the record is viewed in its entirety, there is ample evidentiary support for the district court's findings as to C.S.'s sibling relationships.

Father also asserts that the district court erred as a matter of law by rendering a custody decision that results in split custody. As a general matter, Minnesota courts disfavor splitting custody and find that the best interests of minor children are usually served by permitting them to remain together. *Sefkow*, 427 N.W.2d at 215; *see also Rinker v. Rinker*, 358 N.W.2d 165, 168 (Minn. App. 1984) (observing that split-custody decisions "are viewed as 'unfortunate' and are carefully scrutinized" (quoting *Schultz v.*

Schultz, 266 Minn. 205, 208, 123 N.W.2d 118, 121 (1963)). But "the welfare of the child is paramount" and a decision resulting in split custody is not conclusively erroneous. *Sefkow*, 427 N.W.2d at 215.

The best interests of the child is the controlling principle in every custody determination. *Pikula*, 374 N.W.2d at 711. In certain circumstances, split custody is in the best interests of the child. *See, e.g.*, *Maxfield*, 452 N.W.2d at 223 ("Split custody is not favored. Yet, as someone has said, children come into this world one by one, and in deciding their future, this, too, must be decided one by one."); *Sefkow*, 427 N.W.2d at 215 ("Other factors, such as bonding to a parent and stability of the home environment, outweigh the need for [siblings] to reside together."); *Doren v. Doren*, 431 N.W.2d 558, 561 (Minn. App. 1988) ("[When] other factors outweigh the need for siblings to reside together, split custody may be appropriate."). When the record supports the conclusion that a split-custody decision is in the best interests of the child, we decline to disturb the district court's split-custody decision. *See Chambard v. Chambard*, 348 N.W.2d 821, 823 (Minn. App. 1984) (observing that great deference is given when district court decision to split custody is supported by the record). The split-custody issue raised by father is now moot because G.S. is now 18 and a legal adult. *See Szarzynski v. Szarzynski*, 732 N.W.2d 285, 291 (Minn. App. 2007) (holding that appeal may be moot when an event occurs pending appeal that makes a decision on the merits unnecessary or an award of effective relief impossible). In light of G.S.'s age and the district court's careful consideration of C.S.'s sibling relationships and home environment, the district

court did not abuse its discretion by rendering a decision that results in split custody with one of her siblings.

In sum, the district court made detailed findings that reflect careful consideration of the 13 statutory best-interests factors. These findings are amply supported by the evidence and evince the district court's determination that awarding mother physical custody of C.S. is in C.S.'s best interests. Accordingly, the district court did not abuse its discretion by awarding sole physical custody to mother.

Affirmed.