STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0838

In re the Matter of:
William Erwin Templin, petitioner,
Respondent,

vs.

Claudine Hansena Nelson,
Appellant.

Filed November 4, 2008
Affirmed
Bjorkman, Judge

Isanti County District Court
File No. 30-FA-05-212

Ellen M. Schreder, Carson, Clelland and Schreder, 6300 Shingle Creek Parkway, Suite 305, Minneapolis, MN 55430 (for respondent)

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Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

In this custody dispute, appellant challenges the district court's decision (1) awarding sole physical custody of the parties' minor child to respondent, and (2) determining that their child will attend school in respondent's school district. We affirm.

FACTS

Appellant Claudine Nelson gave birth to D.W.N. in October 2005. Nelson and respondent William Templin were never married, but Templin acknowledged his paternity of D.W.N. by signing a recognition of parentage. Templin subsequently initiated an action to establish custody and parenting time.

After an initial hearing, the district court established temporary parenting time for Templin. However, the district court prohibited contact between D.W.N. and Templin's father because of criminal-sexual-conduct charges pending against Templin's father alleging contact with one of Nelson's daughters. The district court also ordered the parties to submit to a custody evaluation and appointed a guardian ad litem.

After a two-day trial in June 2007, the district court awarded the parties joint legal custody of D.W.N. and awarded Templin sole physical custody, subject to Nelson's parenting time. The district court based its custody decision on numerous factors, including: both parents' request for sole physical custody; potential safety concerns in Nelson's home; the history of drug abuse and sexual abuse among Nelson's daughters; the lack of attention to education within Nelson's home; the availability of more suitable

childcare at Templin's home; the substantial needs of Nelson's four daughters; and Nelson's history of restricting Templin's access to D.W.N. The district court also ordered that D.W.N. "shall attend school in the school district where [Templin] resides," and lifted the prohibition against access to D.W.N. by Templin's father. Nelson moved for a new trial, which the district court denied. This appeal followed.

D E C I S I O N

A district court has broad discretion to provide for the custody of children. *Durkin v. Hinich*, 442 N.W.2d 148, 151 (Minn. 1989). Our review of custody decisions is limited 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) (quotation omitted). 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). Even when the record could support a different custody determination, we may not substitute our judgment for that of the district court. *Zander v. Zander*, 720 N.W.2d 360, 368 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006).

Nelson challenges the district court's award of sole physical custody to Templin. She argues that the district court (1) made erroneous and irrelevant findings of fact regarding the statutory best-interests factors, (2) erred by not following the independent

evaluators' recommendations for joint physical custody,[1] and (3) erred in determining where D.W.N. should attend school. We address each argument in turn.

I. Custody analysis

In determining custody, the district court must examine 13 factors relevant to the best interests of the child. Minn. Stat. § 518.17, subd. 1(a) (2006). The district court's findings of fact are afforded substantial deference. *Sefkow*, 427 N.W.2d at 210. We will sustain the district court's findings of fact unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). We view the record in the light most favorable to the findings and decline to disturb the challenged findings absent a "definite and firm conviction that a mistake has been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

A.

Nelson first challenges the district court's findings regarding "the interaction and interrelationship of [D.W.N.] with a parent or parents, siblings, and any other person who may significantly affect [his] best interests." Minn. Stat. § 518.17, subd. 1(a)(5). The district court made numerous detailed findings with respect to various family members who do or might play a role in D.W.N.'s life, including findings as to their respective ages, employment, and mental and physical health. The district court specifically

[1] Nelson argues that it is in D.W.N.'s best interests for her to have sole physical custody or, in the alternative, for the parties to share joint physical custody. It is not our role to weigh the evidence to independently determine the child's best interests. *Gustafson v. Gustafson*, 376 N.W.2d 290, 293 (Minn. App. 1985). Since Nelson also challenges the district court's findings and the decision not to follow the independent evaluators' recommendations for joint physical custody, those arguments are addressed more fully below.

discussed each of D.W.N.'s four half-sisters, noting concerns about his eldest sister's history of drug abuse, two sisters' failure to complete school, and the history of sexual abuse against three of the sisters.

Nelson largely does not challenge the district court's findings on this factor, but argues they are deficient because they do not discuss the quality of D.W.N.'s interactions with his family members, particularly his half-sisters. But merely demonstrating that the record could support findings other than those made by the district court does not show that the district court's findings are erroneous. *Vangsness*, 607 N.W.2d at 474. Templin did not dispute the fact that D.W.N. is happy with his half-sisters. The district court noted that both the custody evaluator and guardian ad litem testified that D.W.N. is comfortable at both parents' homes. The district court's findings regarding D.W.N.'s relationships with his family members are not clearly erroneous.

B.

Nelson also challenges the district court's findings regarding "the permanence, as a family unit, of the existing or proposed custodial home." Minn. Stat. § 518.17, subd. 1(a)(8). Nelson focuses on one finding, that "[t]he permanence of [Nelson]'s home, based on history . . . , is uncertain," to support her argument that the district court's findings with respect to this factor are clearly erroneous. This argument fails. The record reflects that Nelson moved 11 times since leaving her parents' home and had lived with various boyfriends or husbands throughout her daughters' lives. But the district court's findings as to the permanence of the parties' homes did not substantially impact the best

interests determination. The district court expressly found that Nelson "appears to have 'settled down' and the lack of permanency in her lifestyle is not a significant factor."

C.

Nelson next challenges the district court's findings regarding "the length of time [D.W.N.] has lived in a stable, satisfactory environment and the desirability of maintaining continuity." Minn. Stat. § 518.17, subd. 1(a)(7). In addressing this issue, the district court considered the record evidence, including the reports and testimony of the custody evaluator and guardian ad litem, and made detailed findings regarding each parent's home, education, and employment. The district court concluded that this best-interests factor favors Templin.

The record evidence shows Nelson's home is "significantly cluttered and appears to be potentially unsafe for a toddler, unless there is constant adult supervision." Nelson has moved 11 times during her daughters' lives. Other indicia of instability include the facts that Nelson quit high school in the tenth grade, her two eldest daughters did not graduate from high school, and current school records for Nelson's two youngest daughters "confirmed that there is little involvement with school work at home and that school is not stressed at home." Stability of a child's care and environment is an important consideration when determining custody. *Geibe v. Geibe*, 571 N.W.2d 774, 780 (Minn. App. 1997) (stating that "Minnesota law rests on a presumption that stability of custody is in a child's best interests."). There is ample evidence supporting the district court's finding that this best-interests factor favors Templin.

D.

Nelson challenges several of the district court's findings regarding past sexual abuse against her daughters. She first argues that the findings regarding the sexual abuse her daughters S.V. and D.P. experienced in the past are irrelevant to D.W.N.'s best interests because they "do not reflect what the environment is with [D.W.N.] now at the Nelson home." This argument has merit. A district court may not consider conduct that does not affect the proposed custodian's relationship with the child. Minn. Stat. § 518.17, subd. 1(b) (2006). Because the district court did not identify any connection between its finding as to S.V. and D.P. and D.W.N.'s best interests, these findings are outside the proper scope of the best-interests analysis.

However, "where the record as a whole is sufficient to support the [district court's] decision, error in any one of the findings not affecting the result is harmless error and immaterial to the decision on appeal." *Rosendahl v. Nelson*, 408 N.W.2d 609, 612 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987). Because the district court's findings regarding the sexual abuse S.V. and D.P. experienced were a limited part of its findings and Nelson has not identified any prejudice resulting from them, the district court's inclusion of these findings does not require reversal. *See* Minn. R. Civ. P. 61 (instructing this court to disregard harmless error).

Nelson next challenges the district court's consideration of her daughter L.B.'s allegations against Templin's father. Nelson specifically disputes the district court's finding that "no prosecution ensued against [Templin's father]." Prosecution means "[a] criminal proceeding in which an accused person is tried." *Black's Law Dictionary* 1237

(7th ed. 1999). Templin's father was charged with criminal sexual conduct in connection with L.B., but the charges were dismissed for lack of probable cause. The district court's finding that "no prosecution ensued against [Templin's father]" is not clearly erroneous.

Nelson also suggests that the district court "failed to put this event in proper perspective" when evaluating Templin's suitability as a custodial parent. But the district court found "no evidence here which would warrant any prohibition against [D.W.N.] being in the presence or care of his paternal grandfather." Indeed, there is scarce record evidence about the alleged incident involving L.B. Neither L.B. nor Templin's father testified, so the district court could not assess their credibility.[2] Rather, the district court had to weigh Nelson's testimony against Templin's testimony that he did not believe the allegations. We defer to the district court's credibility determinations. Minn. R. Civ. P. 52.01; *Sefkow*, 427 N.W.2d at 210. On this record, the district court did not abuse its discretion in concluding there are no grounds to prohibit Templin's father from having contact with D.W.N.

Finally, Nelson argues that the district court "misstated" her testimony regarding her concerns about L.B. spending unsupervised time with D.W.N. because of L.B.'s history of sexual abuse.[3] The district court found that Nelson "acknowledged that she has expressed concerns to [Templin] about [L.B.] spending time alone with [D.W.N.] for fear

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[2] Nelson asserts that the district court that dismissed the charges against Templin's father found L.B. to be "truthful and credible." Nelson did not present any such evidence to the district court. The record on appeal is limited to the materials presented to the district court. Minn. R. Civ. App. P. 110.01.

[3] The record shows L.B. was sexually abused by multiple individuals prior to the alleged incident with Templin's father.

that she may engage in sexually inappropriate contact with [D.W.N.], in light of her own history." Based on our review of the record, this finding is consistent with the testimony of both Templin and Nelson. Nelson's challenge to this finding fails.

II. Failure to follow recommendations of independent evaluators

The district court is not bound by an independent evaluator's recommendation. *Pikula*, 374 N.W.2d at 712; *see also Rutanen v. Olson*, 475 N.W.2d 100, 104 (Minn. App. 1991) (acceptance of an independent evaluator's recommendation is discretionary with the district court). However, when the district court rejects a custody recommendation, we require the district court to either expressly articulate its reasons for rejecting the recommendation or make "detailed findings that examine the same factors the custody study raised." *Rogge v. Rogge*, 509 N.W.2d 163, 166 (Minn. App. 1993) (citing *Rutanen*, 475 N.W.2d at 104), *review denied* (Minn. Jan. 28, 1994).

While the district court did not explain why it rejected the recommendations of the custody evaluator and the guardian ad litem, it thoroughly addressed all 13 statutory best-interests factors. The district court noted the evidence the guardian ad litem and custody evaluator provided and specifically acknowledged that both parties requested sole physical custody. Moreover, the testimony and reports of the guardian ad litem and custody evaluator support the district court's decision to award sole physical custody to Templin. The custody evaluator expressed concern that Nelson had interfered with Templin's access to D.W.N., one of the statutory criteria for determining whether joint physical custody is appropriate. Minn. Stat. § 518.17, subd. 2 (2006). Both the custody evaluator and guardian ad litem strongly recommended that the permanent custody

decision provide for significantly more contact between D.W.N. and Templin. And, as discussed below, the guardian ad litem recommended that D.W.N. primarily reside with Templin once D.W.N. starts school.

The district court's findings demonstrate that it "conscientiously and thoroughly considered" the statutory best-interests factors and strongly suggest that remanding for an express determination as to joint physical custody would yield the same result. *Rutanen*, 475 N.W.2d at 104; *see also Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand for further findings when "the [district] court would undoubtedly make [the necessary] findings" and, therefore, "remand for further proceedings would not further the legislative purpose of Minn. Stat. § 518.18"). On this record, the district court's failure to explain why it rejected the joint-physical-custody recommendation is not grounds for reversal. *Rutanen*, 475 N.W.2d at 104.

III. School district determination

Nelson also challenges the district court's decision as to where D.W.N. should attend school. She argues that (1) the district court erred by resolving the issue at this time and (2) the record does not support the finding that sending D.W.N. to school in Templin's school district is in D.W.N.'s best interests.

When joint legal custodians cannot agree on schooling questions, the district court must resolve the dispute consistent with the child's best interests. *Novak v. Novak*, 446 N.W.2d 422, 424 (Minn. App. 1989), *review denied* (Minn. Dec. 1, 1989). "The law makes no distinction between general determinations of custody and resolution of specific issues of custodial care," such as where a child will attend school. *Id.* All

custody-related decisions are reviewed for an abuse of discretion. *Silbaugh*, 543 N.W.2d at 641.

Nelson points out that the custody evaluator testified that it was too early to make a decision regarding where D.W.N. should attend school. But the custody evaluator also testified that, barring a substantial change in either parent's circumstances before that time, she would strongly recommend that D.W.N. reside primarily with Templin during school because "the environment in Mr. Templin's home seems to facilitate that better, along with the history of the school concerns of Ms. Nelson's other kids."

The guardian ad litem also testified regarding the significance of the schooling issue. He opined that it would be in D.W.N.'s best interests to have his life stabilized from this point forward and that making a decision at this time as to where D.W.N. will attend school is an important part of providing that stability. Based on his observations and review of documents, the guardian ad litem recommended that D.W.N. reside with Templin during his school years.

There is ample support in the record for the district court's decision to resolve the schooling issue now and for the finding that it is in D.W.N.'s best interests to live primarily with Templin while attending school. The district court did not abuse its discretion.

Affirmed.