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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0680**

In re the Marriage of: Thor Richard Asfeld, petitioner,
Appellant,

vs.

Brittany Lyn Asfeld,
Respondent Below,

and

Corinna Moeller, et al., intervenors,
Respondents.

**Filed November 13, 2017
Affirmed in part and reversed in part
Larkin, Judge**

Stearns County District Court
File No. 73-FA-15-7448

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appellant)

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Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Stauber,
Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellant-father challenges the district court's order granting respondent-maternal-grandmother and respondent-maternal-step-grandfather visitation with his child following the dissolution of his marriage to mother and termination of mother's parental rights to the child. Because maternal grandmother had standing to request grandparent visitation under the plain language of Minn. Stat. § 257C.08, subd. 2(a) (2016), and the district court did not abuse its discretion in ordering maternal grandmother's visitation schedule, we affirm in part. But because maternal step-grandfather did not have standing to request grandparent visitation under the statute, we reverse in part.

FACTS

Appellant-father Thor Asfeld and Brittney Lyn Asfeld (mother) married in October 2014.¹ Father and mother are the biological parents of A.L.A., born in 2014. Mother is also the biological mother of T.F.T., born in 2010. In August 2015, the district court adjudicated A.L.A. and T.F.T. children in need of protection or services (CHIPS). The children were placed in foster care with respondents Corinna Moeller (maternal grandmother) and Lee Moeller (maternal step-grandfather) in September 2015.

During the CHIPS proceedings, father, maternal grandmother, and maternal step-grandfather participated in a family group decision making conference in December 2015. During the conference, the parties discussed visitation between A.L.A. and father before

¹ The case caption in the district court identifies mother as "Brittany Lyn Asfeld."

father's upcoming trial home visit, as well as visitation between A.L.A. and T.F.T. after the trial home visit. The parties discussed a schedule that would allow visitation between the children every other weekend and on holidays.

In April 2016, the district court terminated mother's parental rights to T.F.T. The district court also dissolved the marriage of father and mother and awarded father sole legal and sole physical custody of A.L.A. In May, the district court terminated mother's parental rights to A.L.A. The CHIPS petition regarding A.L.A. was dismissed, leaving A.L.A. in father's custody. In November 2016, maternal grandmother and maternal step-grandfather adopted T.F.T. The record indicates that there has not been any visitation between maternal grandmother, maternal step-grandfather, and A.L.A., or between T.F.T. and A.L.A., since approximately May 2016.

After the dissolution, maternal grandmother and maternal step-grandfather moved to intervene in the dissolution case and requested grandparent visitation with A.L.A. Father opposed intervention and visitation, arguing that maternal grandmother and maternal step-grandfather did not have standing to intervene, that grandparent visitation would interfere with father's parent-child relationship with A.L.A., that grandparent visitation was not in A.L.A.'s best interests, and that if the district court allowed visitation, father should be present at the visits.

The district court concluded that maternal grandmother and maternal step-grandfather could seek visitation under Minnesota's grandparent-visitation statute, Minn. Stat. § 257C.08 (2016). The district court granted their motion to intervene, and appointed a guardian ad litem (GAL) to report to the court regarding their request for visitation. The

GAL submitted a report recommending that maternal grandmother and maternal step-grandfather have visitation with A.L.A. every other weekend and that the parties follow the original holiday visitation plan from the family group decision making conference. Following a hearing, the district court ordered one overnight visit between A.L.A. and maternal grandmother and maternal step-grandfather the first full weekend of every month, as well as on certain holidays. The district court imposed several conditions on visitation, addressing concerns that father had raised in opposition to visitation. Father appeals.

D E C I S I O N

Father challenges the district court's order for grandparent visitation. He contends that maternal grandmother and maternal step-grandfather lacked standing to request visitation under Minnesota's grandparent-visitation statute and that if maternal grandmother and maternal step-grandfather had standing, the visitation schedule is inappropriate. We address each contention in turn.

I.

Father contends that the district court erred by concluding that maternal grandmother and maternal step-grandfather had standing to request visitation with A.L.A. "Standing is a legal requirement that a party have a sufficient stake in a justiciable controversy to seek relief from a court." *Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007). "Standing may be conferred by statute or it may exist by reason of judicial recognition of a particular relationship between a person and an actionable controversy." *In re Complaint Against Sandy Pappas Senate Comm.*, 488 N.W.2d 795, 797 (Minn. 1992).

Appellate courts review decisions regarding standing de novo. *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011).

Minnesota's grandparent-visitation statute provides that

[i]n all proceedings for dissolution . . . after the commencement of the proceeding, or at any time after completion of the proceedings, and continuing during the minority of the child, the court may, upon the request of the parent . . . of a party, grant reasonable visitation rights to the unmarried minor child, after dissolution of marriage . . . during minority if it finds that: (1) visitation rights would be in the best interests of the child; and (2) such visitation would not interfere with the parent-child relationship.

Minn. Stat. § 257C.08, subd. 2(a). Thus, the grandparent-visitation statute “provides standing for the parent of a party in a dissolution proceeding to seek visitation with a grandchild” over the objection of the child’s parent. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995); see Minn. Stat. § 257C.08, subd. 2(a).²

Prior to enactment of the grandparent-visitation statute, grandparent-visitation rights were recognized only under common law. *In re Matter of the Welfare of R.A.N.*, 435 N.W.2d 71, 72 (Minn. App. 1989). Under common law, grandparent-visitation rights are derived solely through a grandparent’s children. *Id.* Thus, if a party’s parental rights are terminated, that party’s parents lose their common-law derivative right to grandparent visitation. *Id.* at 73; see also Minn. Stat. § 260C.317, subd. 1 (2016) (providing that upon

² *Olson* discussed an earlier version of the grandparent-visitation statute, Minn. Stat. § 257.022, subd. 2 (1994), which has since been renumbered as Minn. Stat. § 257C.08, subd. 2 (2016). *Id.* at 548. The relevant language in the grandparent-visitation statute regarding the family members who may seek visitation following a dissolution has not changed since the supreme court decided *Olson* in 1995. Compare Minn. Stat. § 257.022, subd. 2 (1994), with Minn. Stat. § 257C.08, subd. 2(a) (2016).

the termination of parental rights, “all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated and the parent shall have no standing to appear at any further legal proceeding concerning the child”). The district court’s termination of mother’s parental rights to A.L.A. therefore extinguished any common-law derivative visitation rights that maternal grandmother and maternal step-grandfather may have had.

This court has described the grandparent-visitation statute as an “exception” to common-law derivative grandparent-visitation rights. *R.A.N.*, 435 N.W.2d at 73. Yet father argues that Minn. Stat. § 257C.08, subd. 2(a), does not allow a grandparent to seek visitation following termination of her child’s parental rights. Specifically, father argues that any right to seek visitation under the statute ended when mother’s parental rights were terminated and that the statutory exception to common-law derivative visitation rights “does not apply to situations where the rights of the parent have been terminated before the grandparent petitions for visitation rights.” The district court rejected that argument, reasoning that the clear language of Minn. Stat. §§ 257C.08, subd. 2(a), .317, subd. 1, does not prevent a third party from seeking statutory visitation despite a prior termination of parental rights. Father argues “that the opposite should be true,” relying on “legislative background.” Father asserts that “if the Legislature had intended the non-derivative parental rights to continue after termination of parental rights prior to a dissolution of marriage, . . . the Legislature would have said so expressly.”

Father raises an issue of statutory interpretation, which an appellate court reviews de novo. *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 716 (Minn. 2014). The goal of statutory interpretation is “to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2016); *Founders Ins. Co. v. Yates*, 888 N.W.2d 134, 136 (Minn. 2016). “Where the legislature’s intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute’s plain meaning.” *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

The supreme court has twice held that Minn. Stat. § 257C.08’s language identifying the classes of persons who can petition for visitation is unambiguous, and the supreme court has applied its plain language. *Rohmiller v. Hart*, 811 N.W.2d 585, 590-92 (Minn. 2012); *Olson*, 534 N.W.2d at 550. This court has similarly held that the grandparent-visitation statute is clear and that this court cannot expand its provisions creating exceptions to common-law derivative visitation. *R.A.N.*, 435 N.W.2d at 73.³ We therefore apply the plain language of the grandparent-visitation statute, which does not preclude a request for visitation after the parental rights to a minor child have been terminated.

As to maternal step-grandfather, father argues that maternal step-grandfather is not a “parent . . . of a party” under Minn. Stat. § 257C.08, subd. 2(a), because he is not a blood

³ *R.A.N.* discussed Minn. Stat. § 257.022 (1988), an earlier version of the grandparent-visitation statute, which, as noted above, has since been renumbered as Minn. Stat. § 257C.08 (2016). 435 N.W.2d at 72-73. The relevant language in the grandparent-visitation statute regarding the family members who may seek visitation following a dissolution has not substantively changed since this court decided *R.A.N.* Compare Minn. Stat. § 257.022, subd. 2 (1988), with Minn. Stat. § 257C.08, subd. 2(a) (2016).

relative of mother or A.L.A. At oral argument, maternal step-grandfather conceded this point and agreed that he does not have standing under Minn. Stat. § 257C.08. We appreciate maternal step-grandfather's candor on this point, and we agree that he lacks standing: the plain language of Minn. Stat. § 257C.08, subd. 2(a), does not authorize a step-parent of a party to seek visitation. *See Rohmiller*, 811 N.W.2d at 590-94 (holding that the statutory language of Minn. Stat. § 257C.08 is plain and refusing to interpret the language to allow relatives who are not expressly listed in the statute to request visitation under a provision other than Minn. Stat. § 257C.08, subd. 4). The district court therefore erred in ruling that maternal step-grandfather had standing to seek visitation under Minn. Stat. § 257C.08, and we reverse the district court's order for visitation between maternal step-grandfather and A.L.A.

As to maternal grandmother, there is no dispute that she is a parent of a party to father's dissolution or that she moved for grandparent visitation following the dissolution. Her request for visitation was authorized under the plain language of Minn. Stat. § 257C.08, subd. 2(a). The district court therefore did not err in determining that maternal grandmother had standing to request visitation under the grandparent-visitation statute.

II.

We next review the district court's award of visitation to maternal grandmother. A grandparent-visitation order is reviewed for an abuse of discretion. *Olson*, 534 N.W.2d at 550. An appellate court considers whether the district court "made findings unsupported by the evidence or improperly applied the law." *SooHoo v. Johnson*, 731 N.W.2d 815, 825 (Minn. 2007).

“[W]hat is at issue in grandparent visitation cases is the right of the child to know [his] grandparents, and not the interests of the grandparents.” *Olson*, 534 N.W.2d at 549 (quotation omitted). The best interests of the child are the primary concern. *Id.* Minn. Stat. § 257.08, subd. 2(a), authorizes grandparent visitation only if the district court finds that “(1) visitation rights would be in the best interests of the child; and (2) such visitation would not interfere with the parent-child relationship.”

“A parent’s right to make decisions concerning the care, custody, and control of his or her children is a protected fundamental right” under the Due Process Clause of the Fourteenth Amendment. *SooHoo*, 731 N.W.2d at 820 (citing *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054, 2060 (2000) (plurality opinion)). As noted above, a grandparent may request visitation with a grandchild over the objection of the child’s parent under Minn. Stat. § 257C.08, subd. 2(a). In determining whether to grant such visitation, the district court “shall consider the amount of personal contact between the parents . . . of the party and the child prior to the application.” Minn. Stat. § 257C.08, subd. 2(a). A grandparent seeking visitation rights “must prove by clear and convincing evidence that visitation would not interfere with the parent-child relationship.” *In re C.D.G.D.*, 800 N.W.2d 652, 656 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). Lastly, because of the importance of a parent’s fundamental right to make decisions regarding the parent’s children, the district court must give “special weight” to a fit custodial parent’s wishes regarding visitation. *Id.* at 661-62; *cf. SooHoo*, 731 N.W.2d at 821 (noting that a third-party visitation statute “must give some special weight to the fit custodial parent’s decision regarding visitation” to survive a constitutional challenge).

We note that father does not challenge the district court’s factual findings in support of its visitation order. And he appears to concede that if maternal grandmother has standing to request visitation under the grandparent-visitation statute, she is entitled to some visitation with A.L.A. However, father argues that the district court abused its discretion by ordering overnight visits because overnight visits interfere with his fundamental right to care for his child. Father argues that grandparent visitation “should have been structured in a way that minimized the level of interference with his right to care for his child in the way that he thinks is proper while still granting [maternal grandmother] time with [her] grandchild.” Father further argues that there “is not clear and convincing evidence that the requirement of overnight visitation does not interfere with [his] fundamental right to care for his child in a manner that he deems appropriate, and which on the face of it is not unreasonable.” Father specifically argues that “at the end of each day” he should be able to “put [A.L.A.] to sleep in his own bed.”

We recognize that maternal grandmother had the burden of proving that visitation will not interfere with the parent-child relationship. However, we observe that there is no evidence that a limited number of court-ordered overnight visits will interfere with father’s relationship with his child. Also, nothing in the record suggests that interference with father’s parent-child relationship is likely to occur just because overnight visits will occasionally prevent him from providing daily care that he deems appropriate.

As to any argument that the district court failed to give appropriate weight to father’s opposition to overnight visits, we note that the district court considered and addressed all of father’s concerns regarding visitation. For example, father testified that he was

concerned about transportation costs, maternal grandmother's and maternal step-grandfather's alcohol use, A.L.A. potentially having contact with mother, and A.L.A. interacting with maternal grandmother's adult son, a sex offender. To address these concerns, the district court designated an exchange location that reduced the distance father would have to travel and imposed several conditions on visitation, including that (1) no one may smoke or use alcohol or nonprescription drugs in the presence of the child, (2) mother may not have contact with the child, and (3) the child is never to be left alone with or transported by maternal grandmother's adult son.

As to the schedule, maternal grandmother proposed a 2017 visitation schedule, requesting that she have day visits with A.L.A. on Saturdays in March and April, weekend visits in May, with one or two overnights per visit, and visits every other weekend in July and through the end of 2017. Father testified that he preferred that maternal grandmother not have any relationship with A.L.A., but he acknowledged that it was important for A.L.A. and T.F.T. to maintain a relationship. Father testified that he was concerned about maternal grandmother having overnight visits with A.L.A. because the child had spent every night with father since the child was returned to him for the trial home visit. The GAL testified that not having enough overnight separation between a parent and child can create dysfunctional bonding, such that the child may not be able to soothe himself or may develop an unnatural and abnormal attachment. The GAL also testified that overnight visits with a grandparent are healthy for children because they allow a child to get to know extended family members on a deeper level and develop a healthy amount of independence from the child's parents.

The district court expressly found the GAL's testimony regarding overnight visitation credible, which we equate with persuasive. And this court defers to that credibility determination. See *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (“[A]ppellate courts defer to [district] court credibility determinations.”). The district court also found that before May 2016, “the nature and extent of the contact between [A.L.A.] and [maternal grandmother] was fairly extensive,” noting that A.L.A. lived with maternal grandmother from September 2015 until January 2016 and spent every other weekend with maternal grandmother from January 2016 until May 2016. The district court further found that “there is no indication that grandparent visitation with [maternal grandmother] would result in any negative effects on [A.L.A.’s] needs and development.” Lastly, the district court found that prior to A.L.A.’s return to father’s custody in January 2016, A.L.A. had lived with T.F.T. for his entire life, and credited the GAL’s testimony regarding the close relationship between the children, the importance of sibling interaction, and the anxiety that sibling separation can cause. Based on these findings, the district court reasoned that visitation with maternal grandmother was in the best interests of A.L.A. because it would allow A.L.A. to know and maintain a relationship with T.F.T., as well as maternal grandmother and his extended family.

However, the district court concluded that maternal grandmother’s proposed visitation schedule was excessive and could unreasonably interfere with father’s parent-child relationship. The district court therefore limited visitation to one overnight visit per month and an additional overnight visit coinciding with several holidays and birthdays. The district court noted that its visitation schedule “addresses [father’s] concerns, grants

appropriate deference to his concerns, and also serves the best interests of [A.L.A.] by allowing the Child to develop a healthier and more complete relationship with his grandparents and his half-brother.” We agree.

In ordering grandparent visitation, the district court correctly applied the law. It considered father’s wishes, balanced the child’s best interests against father’s wishes, and thoughtfully crafted a grandparent-visitation schedule that awarded maternal grandmother a reasonable amount of visitation with A.L.A. Although the district court awarded maternal grandmother more visitation than father would have liked, the district court did not abuse its discretion in doing so. We therefore affirm the district court’s award of visitation to maternal grandmother.

Conclusion

Because maternal step-grandfather did not have standing to request grandparent visitation under Minn. Stat. § 257C.08, subd. 2(a), we reverse the district court’s award of visitation to maternal step-grandfather. But because maternal grandmother had standing to request grandparent visitation under the plain language of the statute and the district court did not abuse its discretion in ordering maternal grandmother’s visitation schedule, we affirm the district court’s award of visitation to maternal grandmother.

Affirmed in part and reversed in part.