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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1090**

In the Matter of the Welfare of the
Children of: R. S. P., Parent.

**Filed January 16, 2018
Affirmed
Bjorkman, Judge**

Blue Earth County District Court
File No. 07-JV-15-4430

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Considered and decided by Reyes, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellants challenge the district court's determination that respondent county did not act unreasonably by refusing to place appellants' grandchildren with them for adoption following termination of parental rights. We affirm.

FACTS

Appellants B.S. and B.A.S. (collectively, grandparents) are the paternal great-grandmother and the paternal grandfather of J.P.S., born June 16, 2014, and K.P.S., born June 5, 2015. Grandparents live together. R.S.P. is the mother and C.S.B. is the father of the children. Both mother and father have longstanding chemical-dependency issues. When J.P.S. was six months old, he was placed with grandparents as emergency foster-care providers. Respondent Blue Earth County Human Services (the county) instructed grandparents to apply for a foster-care license.

Before the licensing decision was made, mother gave birth to K.P.S. Mother was living in a halfway house that permitted residents to have their children with them; the county transferred J.P.S. from grandparents to mother's care in July 2015. K.P.S. never lived with grandparents, but they provided occasional respite care for her.

In August 2015, mother became overwhelmed with two children and asked the county to place K.P.S. in a non-relative foster-care/pre-adoptive home that mother selected. When mother later relapsed, the county placed J.P.S. in the same home.

In December 2015, the Minnesota Department of Human Services (DHS) denied grandparents' foster-care license application. When grandparents applied one year earlier, they failed to disclose that another grandson, S.S.W., and B.S.'s 97-year old mother were living with them. S.S.W. is disqualified from having "direct contact with, or access to, persons receiving services from a licensed foster care program" by virtue of his criminal history and drug use. And B.S.'s mother had not undergone a background check. DHS concluded that grandparents had submitted false or incomplete information in their

application. Grandparents appealed the denial and requested an administrative hearing. Following the hearing, the commissioner upheld the license denial.

After reunification efforts failed, the county petitioned to terminate the parents' rights to the two children. Mother voluntarily terminated her parental rights to both children in January 2016, and father did so in February 2016. B.S. was present at both hearings. The district court filed a termination order on February 28, 2016. On February 29, the foster parents signed an adoption-placement agreement, which was approved by the commissioner in May 2016. Although the county failed to inform grandparents of the agreement, they learned of it and moved under Minn. Stat. § 260C.607, subd. 3 (2016), to intervene in this adoption proceeding. They also requested adoptive placement, alleging that the county had unreasonably refused to place the children with them.

The county declined to conduct an adoption home study for grandparents. County social worker Kathy Kopka testified that after DHS denied grandparents' application for a foster-care license, she did not consider them a suitable adoptive home. Grandparents hired an independent agency to do a home study, which approved grandparents for adoption.

In October 2016, the district court permitted grandparents to intervene in this adoption proceeding and determined that grandparents were entitled to an evidentiary hearing because they made a prima facie showing that the county had acted unreasonably by failing to notify them of the pre-adoptive placement with the foster family, as required by Minn. Stat. § 260C.613, subd. 1(c) (2016), and to conduct a comprehensive relative search, as required by Minn. Stat. § 260C.221 (2016). The parties agreed that the district court was required to first address whether the county acted unreasonably by failing to

make an adoptive placement with grandparents. Only if the district court answered that question affirmatively would it consider whether adoption by grandparents is in the children's best interests. Following the evidentiary hearing, the court concluded that the county had not acted unreasonably by refusing to place the children with grandparents, and denied grandparents' adoptive-placement motion. Grandparents appeal.

D E C I S I O N

We review a district court's decision whether a responsible county agency unreasonably failed to make an adoptive placement for an abuse of discretion. *See* Minn. Stat. § 260C.607, subd. 6(e) (2016) (stating that district court "may" order a relative adoptive placement if an agency unreasonably fails to make the placement); *see also In re Welfare of L.L.P.*, 836 N.W.2d 563, 570-71 (Minn. App. 2013) (comparing motions for adoptive placement to motions for custody modification, and concluding that an appellate court reviews such decisions for an abuse of discretion). In the district court, the agency must produce evidence supporting its decision not to make a proposed adoptive placement, but the petitioning party has the burden of proving, by a preponderance of the evidence, that the agency acted unreasonably. Minn. Stat. § 260C.607, subd. 6(d) (2016). The statute does not define "reasonableness" or "unreasonableness," but the concepts generally involve two factors: (1) whether an agency's reasons for acting in a certain manner are legally sufficient and (2) whether the legally sufficient reasons have a factual basis in the record. *See RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75-76 (Minn. 2015).

I. The county’s reasons for not placing the children with grandparents for adoption are legally sufficient and supported by the record.

Grandparents argue that the county acted unreasonably because it did not conduct the statutorily required comprehensive relative search or notify them of its intent to place the children for adoption with the foster parents. We address each argument in turn.

A. Relative Search

Minn. Stat. § 260C.221(a) requires a county to conduct a “comprehensive” search for suitable relatives with whom to place a child who has been removed from a parent’s home. The search should encompass “maternal and paternal adult relatives of the child,” including grandparents, legal parents and guardians, and “any other adult relatives suggested by the child’s parents.” Minn. Stat. § 260C.221(b).¹ When the county removed J.P.S. from mother’s care in October 2014, he was placed on an emergency basis with grandparents. This complied with the statutory preference for relative placement and demonstrated that the county has been aware of grandparents as a possible placement option from the time it became involved with this family.

The district court found that the county did not consider any other family members for possible adoptive placement and did not conduct the robust relative search that the statute requires. But the court nonetheless concluded that the county’s decision not to place

¹ “Relative” is defined to include “a person related by blood, marriage, or adoption; the legal parent, guardian, or custodian of the child’s siblings; or an individual who is an important friend with whom the child has resided or had significant contact.” Minn. Stat. § 260C.007, subd. 27 (2016). This would include the foster parents. See Minn. Stat. § 260C.007, subd. 10 (2016) (defining “custodian” as a “person who is under a legal obligation to provide care and support . . . or who is in fact providing care and support for a minor.”).

the children with grandparents is reasonable because (1) grandparents' foster-care licensure application was denied; (2) grandparents' family "experienced, and could continue to experience, long-standing chemical dependency problems"; and (3) further delay in the adoption proceedings was not in the best interests of the children. And the district court noted the county was also required to both honor mother's expressed preference that the children be adopted by the foster family and to place the children together, if possible. *See* Minn. Stat. §§ 260C.193, subd. 3(e) (providing that a district court "shall" honor a parent's request that a child not be placed with a relative if the request is consistent with the child's interests and section 260C.221); .212, subd. 2(d) (requiring that siblings "be placed together for foster care and adoption at the earliest possible time") (2016). These reasons are legally sufficient to support the county's decision not to pursue a more comprehensive relative search.

The record supports the county's reasons for denying grandparents' placement request. In early August 2015, mother voluntarily placed K.P.S. in a non-relative foster-care/pre-adoptive home. Kopka testified that mother selected the home as a possible adoptive placement² and "physically took [K.P.S.] and handed her over to this family for placement." Mother specifically stated that she did not want K.P.S. to be placed with grandparents. Kopka acknowledged that mother had indicated, just one month earlier during the family decision-making conference, that grandparents' home would be a suitable placement. But mother later told Kopka, in private, that she felt unable to tell

² Kopka was told by the director of a Blue Earth County adoption agency that mother had contacted the agency, signed release papers, and chosen an adoptive home.

grandparents directly that she prefers that the children not be placed with them. Shortly after the family decision-making conference, the county removed J.P.S. from mother's care and placed him in the same foster home mother had selected for K.P.S.

Kopka testified that she did not consider grandparents as a potential adoptive placement because they had been denied a foster-care license and she wanted to honor mother's placement wishes. Mother voluntarily terminated her parental rights and consented to adoption by the foster parents. When a parent has consented to adoption, "only the person identified by the parent and agreed to by the agency as the prospective adoptive parent qualifies for adoptive placement of the child." Minn. Stat. § 260C.607, subd. 7 (2016). The guardian ad litem (GAL) reported that mother "continues to support the children remaining in their current placement." And while father at one point expressed his preference that the children be placed with grandparents, his voluntary-termination petition acknowledged that the children could be adopted without his further consent.

Moreover, the concerns underlying DHS's denial of grandparents' foster-license application were borne out by subsequent events. Grandparents assured Kopka in the summer of 2015 that father and S.S.W. had been excluded from their home. But almost a year later, father and S.S.W. engaged in an altercation in grandparents' home that resulted in police intervention. The responding officers believed both men were under the influence of drugs.

While we do not condone the county's neglect of its statutory duties, we affirm the district court's conclusion that the county was not unreasonable in failing to conduct a more comprehensive relative search. The county was aware of grandparents' availability and

willingness to care for the children. But mother had expressed a strong preference for placement with the foster parents. The district court's conclusion that the county was not unreasonable in failing to conduct a more comprehensive relative search is supported by record evidence and was not an abuse of discretion.

B. Notice

Minn. Stat. § 260C.221(h) requires a county to notify relatives that it is seeking a permanent placement of children once it becomes clear that they will not be returned to their parents. It is undisputed that the county did not provide the requisite notice to grandparents. But, as the district court found, grandparents were present at nearly every child-protection and permanency hearing involving the children. B.S. was present when mother and father advised the district court that they were voluntarily terminating their parental rights. And while the county did not timely advise grandparents of the adoption-placement agreement, the record demonstrates that grandparents were permitted to intervene in this case and were accorded an evidentiary hearing, at least part of the reason for the notification requirement. *See In re M.O.*, 838 N.W.2d 577, 581-82 (Minn. App. 2013) (discussing in context of adoption proceedings notice procedures that expedite appellate process that are in child's best interests in permanency), *review denied* (Minn. Oct. 23, 2013).

Under the circumstances of this case, the county's failure to notify did not impact grandparents' rights. *See generally In re Welfare of S.R.A.*, 527 N.W.2d 835, 838 (Minn. App. 1995) (refusing to reverse a termination of parental rights for harmless error).³

Moreover, Minn. Stat. § 260C.221(g) relieves the county of the duty to notify relatives if the children are placed in a "foster home that has committed to adopting the child or taking permanent legal and physical custody of the child and the agency approves of that foster home for permanent placement of the child." The children were placed in a pre-adoptive foster home approved by both mother and the county.

II. The district court made all of the required findings.

Grandparents contend that the district court did not make independent findings and wholly failed to consider the ten best-interests factors required under Minn. Stat. § 260C.212, subd. 2(b) (2016). We are not persuaded. It is not our role to second-guess a district court's credibility determinations. *See Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). And our review of the record demonstrates the district court did reject some of the county's evidence. For example, the court expressly rejected Kopka's testimony that the children were upset after visiting grandparents, noting the children's disruptive behavior that followed their contacts with Kopka and the GAL.

With respect to the best-interests findings, the parties stipulated before the evidentiary hearing to a two-step process. First, the district court would determine whether the county's decision not to place the children with grandparents was unreasonable.

³ Grandparents' counsel acknowledged during oral argument that the notice defects did not adversely affect grandparents' interests.

Second, if the county's actions were found to be unreasonable, the court would apply the best-interests factors to decide if grandparents were a suitable adoption placement. Because the district court rejected grandparents' reasonableness argument, there was no need to evaluate the children's best interests.⁴

Like the district court, we do not "question [grandparents'] interest in the well-being of the children," or their "love for their grandchildren." And we agree that "[n]othing in [the district court's] Order prohibits the parties from agreeing to enter into a communication or contract agreement between the adopting parents and the grandparents." But on this record, we discern no abuse of discretion by the district court in concluding that grandparents failed to sustain their burden of proving by a preponderance of the evidence that the county was unreasonable in failing to place the children with them for adoption.

Affirmed.

⁴ We note the district court made general best-interests findings in support of its determination that the county's placement decision was reasonable.