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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0222**

In Re the Welfare of the Children of: M. J. K. and J. O., Parents

**Filed July 2, 2018
Affirmed
Kalitowski, Judge***

Lincoln County District Court
File No. 41-JV-17-4

William J. Toulouse, Quarnstrom & Doering, P.A., Marshall, Minnesota (for appellants)

Glen A. Petersen, Lincoln County Attorney, Tyler, Minnesota (for respondent Southwest Health and Human Services)

Shanna Latterell, Redwood Falls, Minnesota (guardian ad litem)

Considered and decided by Smith, Tracy M., Presiding Judge; Bratvold, Judge; and
Kalitowski, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant-grandparents challenge the district court's determination that respondent agency did not act unreasonably when it did not place appellants' grandchildren with appellants for adoption. We affirm.

FACTS

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

M.J. is the mother¹ and J.O. the father of a son, A., now four years old, and a daughter, L., now almost two years old. Respondent Southwest Health and Human Services (the agency) became involved with the family at L.'s birth in August 2016, when she tested positive for THC, the active ingredient in cannabis, at a very high level. A. and L. were placed on a 72-hour protective hold with a foster family, where they remained and have subsequently thrived.

The agency filed a petition to adjudicate A. and L. as children in need of protection or services (CHIPS). Their parents made admissions and were given a stay of adjudication, contingent upon their compliance with a case plan that required them to abstain from marijuana, submit to testing, and complete chemical-use treatment. Neither parent abstained from marijuana or otherwise complied with the case plan. They voluntarily terminated their parental rights in March 2017.

Appellants and the children's foster parents both expressed an interest in adopting A. and L. The agency interviewed both the foster parents and appellants as prospective adoptive parents and conducted home studies on both households. The foster parents' petition for adoptive placement was granted based on the unanimous recommendations of 13 professionals: a social worker, a foster care licensor, a child-protection services worker, six social-services supervisors, a social-services division director, a guardian ad litem, and two child-protection social workers.

¹ Both M.J. and her father, appellant M.J.K., have the same initials. In this opinion, she will be identified as M.J.

In June 2017, after appellants were notified that adoptive placement with someone else had occurred, they moved to have adoptive placement transferred to them and for an order stating that the agency had been unreasonable in not placing the children with them. Following an evidentiary hearing at which a child-protection social worker, a social-services supervisor, the foster care licenser, the guardian ad litem (GAL), and appellant D.K. (the children's maternal grandmother) testified, the district court filed an order approving the agency's decision that appellants' home was not an appropriate placement for the children.

Appellants challenge that order, arguing that the district court abused its discretion in determining that appellants did not meet their burden of proving, by a preponderance of the evidence, that the agency was unreasonable in failing to make the children's adoptive placement with appellants.

D E C I S I O N

An appellate court reviews a district court's decision of whether to grant an adoption petition for an abuse of discretion. *In re S.G.*, 828 N.W.2d 118, 125 (Minn. 2013). When doing so, the appellate court recognizes both (1) the substantial latitude conferred on the district court by the statutory and best-interests factors involved in addressing whether a particular adoption should be by a relative or nonrelative and (2) that a district court's exercise of its discretion must be supported by findings showing that the children's best interests are being served. *Id.* at 126.

An evidentiary hearing is required when the district court determines that a party moving to adopt has made a prima facie basis for the adoption. Minn. Stat. § 260C.607, subd. 6 (c) (2016).

At [that] hearing, the . . . agency shall proceed first with evidence about the reason for not making the adoptive placement proposed by the moving party. The moving party then has the burden of proving by a preponderance of the evidence that the agency has been unreasonable in failing to make the adoptive placement.

Minn. Stat. § 260C.607, subd. 6 (d) (2016). Here, following the evidentiary hearing, the district court concluded that “there are multiple reasons why placement with [appellants] is not in the best interests of the children” and that “[the agency] has been reasonable in deciding to place the children with someone other than relatives [appellants].” Determining whether a decision was reasonable requires asking whether “the reasons given by the [agency] were legally sufficient” and whether “the reasons had a factual basis in the record.” *RDNT, LLC, v. City of Bloomington*, 861 N.W.2d 71, 75-76 (Minn. 2015) (discussing reasonableness in the context of a city’s decision to deny a conditional-use permit application).

Appellants argue by implication that (1) their home and the foster parents’ home were equally desirable as placements and (2) appellants, as relatives, were entitled to the placement. But appellants provide no legal support for either implication, and the standard is the best interests of the children, not the rights of their relatives. See Minn. Stat. § 260C.601, subd. 2 (2016) (the responsible agency “shall ensure that: (1) the best interests of the child are met in the planning and granting of adoptions”).

The district court made a number of best interest findings that supported the agency's placement with the foster parents. In particular, there were two major areas of concern that supported the agency's decision not to place the children with appellants: first, the combination of the parents' continuing use of marijuana and access to appellants' home, and second, appellants' inability to fulfill the role of parents. Evidence in the record provides a factual basis for the agency's concerns for not placing the children with appellants and supports our conclusion that the district court did not abuse its discretion in determining that the agency acted reasonably.

A child-protection social worker testified that: (1) when L. was born, "the cut-off [for THC] was 50 nano-grams per gram" and "she [L.] was in the thousands"; (2) a hair-follicle test done on A. when he was two and a half years old showed that he also "was positive for THC" and "had been around someone using marijuana"; (3) when the children were put on a 72-hour hold, their parents "were residing with [appellants]" and "if [the parents] were using marijuana as consistently as their tests were showing, then they were using it at [appellants'] . . . residence"; (4) appellant D.K.'s reaction to the parents' use of marijuana was to "brush [it] off" and say many other people were using it; (5) D.K. said that when M.J. was pregnant, she "was so sick she didn't have any other options" and self-medicated with marijuana; (6) D.K. knew that M.J. used marijuana to treat her symptoms; (7) appellants' unsupervised visitation with the children was not recommended because the parents "can't guarantee sobriety prior to the visit" and were still present in appellants' home; and (8) "the amount of marijuana used by the parents and the [parents'] access to

the children . . . [in appellants' home]" were the most important reasons for not recommending adoptive placement with appellants.

In addition, the social-services supervisor testified that: "[appellant D.K.] just did a lot of justifying about the marijuana use . . . based on the medical reasons that were previously testified to that [M.J.] had expressed and that there was no other treatment that worked," and she affirmed that appellant D.K. "had a knowledge that marijuana use was happening with [M.J]."

The social-services supervisor also testified about having grandparents as foster parents of children whose biological parents have voluntarily terminated their parental rights:

When biological parents remain involved . . . fair boundaries [need to be] set with the . . . adoptive family and the parents. And that . . . was a big concern in meeting with [appellants] and their inability to describe how they would be able to set up those boundaries and limitations for the parents in this case.

. . . .

[I]t is not realistic for [appellants] to . . . completely cut . . . their child out of their lives and, therefore, if they are going to be the parents of their grand[children] they need to establish clear boundaries and ensure that their grandchildren's needs are put above [those] of their [child]

. . . .

[When] asked how it was going to look [to the children] for [appellants to be] moving from grandparents to parents[,] . . . [D.K. was] unable to go into detail how that transition . . . would look and—made comments that 'we're always just going to be grandparents.' . . . There was discussion that their house is an open-door house and that they would continue to invite their children [including M.J.] into their home at any time.

Finally, appellant D.K.'s testimony conflicted with that of other witnesses. "When evidence relevant to a factual issue consists of conflicting testimony, the district court's decision is necessarily based on a determination of witness credibility, which we accord great deference on appeal." *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009). The district court explicitly "found a number of statements made by [D.K.] to not be believable" and "did not find [D.K.'s] testimony to be credible." Specifically, the district court found that "[D.K.] would not admit that she knew [M.J.] was using [marijuana] while pregnant." The court did not find this to be believable. However, if it is believed, the court found it equally concerning "because [it shows] she lacks the knowledge to protect the children. This clearly created credibility issues."

The record shows that D.K.'s testimony about whether M.J. lived with her was inconsistent with what D.K. told the G.A.L.

D.K. answered in the negative when asked if she knew prior to L.'s birth that M.J. was using drugs and said she had learned about the drug use after L.'s birth, when the two children were placed on a 72-hour hold. But two other witnesses testified that D.K. told them not only that she knew M.J. was using marijuana during her pregnancy, but also that she knew why M.J. was using. When asked why there was testimony that she seemed to condone M.J.'s use of smoking marijuana, D.K. answered "I don't know."

In sum, we conclude the district court did not abuse its discretion in determining that appellants did not meet their statutory burden of proving, by a preponderance of the

evidence, that the agency was unreasonable in failing to make the children's adoptive placement with appellants. *See* Minn. Stat. § 260C.607, subd. 6(d).

Affirmed.