

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1913**

In re the Matter of the Welfare of the Child of:
N. A. L. and D. E. S., Parents.

**Filed May 13, 2019
Affirmed
Bjorkman, Judge**

Martin County District Court
File No. 46-JV-17-99

Rachel Osband, Fiddler Osband, LLC, Edina, Minnesota (for appellant foster parents B.T. and S.T.)

Taweh Anderson, TVA Law Office, Brooklyn Center, Minnesota (for respondent adoptive parents D.S. and S.B.)

Adam L. Hinz, Martin County Attorney, Fairmont, Minnesota (for respondent Human Services of Faribault and Martin Counties)

Thomas Nolan, Minneapolis, Minnesota (for guardian ad litem)

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

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

BJORKMAN, Judge

Appellant-foster parents challenge the denial of their motion for adoptive placement of the child in their care, arguing that the district court (1) erred by denying respondent-county's motion to be relieved of its obligation to conduct a relative search and (2) abused

its discretion by determining the child's best interests favor adoption by respondent-relatives. We affirm.

FACTS

S.L. was born on July 27, 2017, and immediately taken into emergency protective care after he and his mother tested positive for methamphetamine. S.L.'s mother signed an adoption consent agreement with New Horizons Adoption Agency, Inc. and selected appellants B.T. and S.T. as his potential adoptive parents.

Four days later, an emergency protective-care hearing was held. The district court found S.L. in need of protection and placed him in the custody of respondent Human Services of Faribault and Martin Counties (county). New Horizons sought to intervene and requested that S.L. be placed with appellants. The county initially asked that S.L. be placed with his paternal grandmother, but later withdrew its objection to New Horizons' request. The district court ordered S.L. placed in foster care with appellants, directed the county to conduct a relative search, and terminated the parental rights of S.L.'s parents involuntarily.

County social worker Tiffany Gullord began the relative search in mid-September, shortly after she was assigned to the case. Mother was known to the county because her parental rights to N.L. and two other children had been terminated in August 2016. Gullord soon learned S.L. had six siblings who lived with extended family. Sister N.L. was in the care of grandmother; two older maternal half-siblings were placed with maternal aunt, M.M.; and three paternal half-siblings resided with their respective mothers. M.M. and grandmother each expressed interest in adopting S.L., and were licensed foster-care

providers. M.M. ultimately acquiesced to S.L.'s placement with grandmother. Gullord did not identify respondents D.S. and S.B., S.L.'s paternal aunt and fiancé, in the initial relative search.

In December, appellants moved for an order placing S.L. with them for adoption under what is now Minn. Stat. § 260C.607, subd. 6(b) (2018). The following month, the county moved to deny appellants' motion and transfer S.L.'s foster-care placement to grandmother. The district court determined that appellants had established a prima facie case under Minn. Stat. § 260C.607, subd. 6(c) (2018), and set the matter for an evidentiary hearing. In interim orders, the district court established and increased visitation between S.L. and grandmother but required S.L. to remain in foster care with appellants pending resolution of their adoption motion.

By January 2018, Gullord was recommending that S.L. be placed with grandmother for adoption. Because of the complexity of managing a case involving competing private adoption and county-led relative adoption efforts, Gullord sought input from her supervisor and staff from the Minnesota Department of Human Services. She was advised to review the statutory best-interests factors and to "follow[] state law regarding placement with siblings and relatives." She submitted an affidavit to the district court on January 3 that documents her efforts to balance S.L.'s attachment to appellants with his opportunity to grow up with a sibling and extended family members who share his cultural heritage and socialize together frequently.¹ During this same period of time, the guardian ad litem spoke

¹ S.L. is African American and Hispanic. Appellants are Caucasian.

with an outside consultant and likewise recommended that S.L. be placed for adoption with a relative.

The evidentiary hearing on appellants' adoption motion began on April 5. But the next scheduled hearing date was postponed after the district court learned of a recent domestic incident at grandmother's house. On May 24, the Martin County Attorney provided the district court with additional details of the incident in which S.L.'s father and his uncle had gotten into an altercation at grandmother's house. It was alleged that both men, who are predatory offenders, were living at grandmother's house and that S.L.'s father had attacked the uncle with brass knuckles. The parties agreed to continue the evidentiary hearing while the county completed its investigation. In the meantime, the district court removed N.L. from grandmother's home. The county initially placed N.L. with M.M., but then moved her to the home of D.S. and S.B., who were in the process of obtaining a foster-care license from Ramsey County, where they live.

The May 24 letter also questioned whether the county should be relieved of its duty to place S.L. with relatives. Citing the child's age and his strong attachment to appellants, the county attorney observed that the case may have reached a "tipping point, where the benefits of relative placement are outweighed by the costs of removal." At the next hearing, on May 30, the county informed the district court that it did not want to be relieved of the duty to conduct a relative search and was exploring placement of S.L. with D.S. Appellants and New Horizon urged the district court to relieve the county of its duty to search for a relative placement and to approve appellants' adoption motion. The district court directed the parties to submit post-hearing memoranda. In a June 18 order, the district

court denied appellants' request to relieve the county of its "relative search/placement efforts."

The evidentiary hearing resumed in October after the county obtained information regarding D.S. as a possible adoption placement. At the hearing, the district court received testimony from case workers and supervisors from Martin and Ramsey Counties, New Horizons staff members, the guardian ad litem, N.L.'s therapist, and the two sets of parents interested in adopting S.L. The court also received into evidence numerous reports, including a sibling assessment that identified no reasons why S.L. and N.L. should be placed separately. The parties agreed that there was a strong attachment between S.L. and appellants. And it was undisputed that both appellants, and D.S. and S.B., would provide care, support, and love to S.L.

Following the hearing, the district court determined that the county was "not unreasonable in its decision not to place [S.L.] with [appellants] for adoption." The court also found adoption by D.S. and S.B. serves S.L.'s best interests, although it noted that the decision was extremely difficult because of both families' "exceptional qualifications" and "sincere love" for S.L. At the time the order was entered, S.L. was nearly 16 months old and had lived almost his entire life with appellants. Appellants challenge the order on appeal.

DECISION

I. The district court did not abuse its discretion by directing the county to continue its relative search in May 2018.

When a child is placed in foster care, the responsible county must conduct a relative search for both foster and permanent placement that is “comprehensive in scope.” Minn. Stat. § 260C.221(a) (2018). The search must encompass “maternal and paternal adult relatives of the child.” *Id.* (b) (2018). The relevant statutes impose notice and reporting requirements that focus on the expeditious permanent placement of the child. *Id.* (b)(2)-(5). When it becomes apparent that the child will not be reunited with his parents, the county must notify the child’s relatives. *Id.* (h) (2018). In exercising its duty to periodically review the county’s efforts, the district court may find that the county has made reasonable efforts and relieve the county of the continuing duty to search for relatives, or “may” order the search to continue if it is not satisfied that the agency has exercised due diligence in conducting the search. *Id.* (f) (2018). We review a district court’s decision whether to relieve a county of relative search efforts for abuse of discretion. Minn. Stat. § 645.44, subd. 15 (2018) (stating “may” is permissive); *see State v. Banks*, 875 N.W.2d 338, 344 (Minn. App. 2016) (noting that the use of “may” in a statute “gives the district court discretion”), *review denied* (Minn. Sept. 28, 2016).

Appellants argue that the district court erred by denying the county’s request to be relieved of its duty to search for a relative for foster-care and adoptive placement in May 2018. This argument miscasts the record. As noted above, the county’s May 24 letter raised the question because of permanency concerns arising from the fact S.L. had been

out of home for almost ten months. But at the next hearing, the county answered that question; as reflected in the district court's May 31 order, the county "advised the Court that they [were] not requesting to be relieved of relative placement efforts, but rather they wish to continue to explore potential relative options." Accordingly, there was no motion by the county for the district court to grant or deny.

Moreover, we are not persuaded that the district court should have accepted appellants' separate invitation to end the search for a relative placement at that time. Although the county's efforts to identify an appropriate relative were initially delayed, by January, the county had recommended placement of S.L. with grandmother and a sibling. While that proposed placement was disrupted due to violence in grandmother's home, the county had already identified D.S., with whom S.L.'s sibling was also eventually placed. On this record, we discern no abuse of discretion by the district court in continuing to hold the county to its obligation to conduct a comprehensive relative search under Minn. Stat. § 260C.221(a).

II. The district court acted within its discretion by determining that the county did not act unreasonably in failing to support appellants' adoption motion.

Generally, a county with temporary custody of a child oversees placement of the child in a permanent home. Minn. Stat. § 260C.601, subd. 2 (2018). The county must make reasonable efforts to place a child in an adoptive home "with a relative or foster parent." Minn. Stat. § 260C.605, subd. 1(a), (b) (2018). But the adoption statute also permits a relative or foster parent to independently seek court approval to adopt a child

under Minn. Stat. § 260C.607, subd. 6 (2018). This statute provides the basis for appellants' challenge to the county's placement decision and guides our analysis on appeal.

A foster parent may move for adoptive placement of a child in her care if the foster parent has (1) completed a home study and (2) made "a prima facie showing that the agency has been unreasonable in failing to make the requested adoptive placement." Minn. Stat. § 260C.607, subd. 6(a)(1), (b). If the prima facie showing is made, the matter proceeds to an evidentiary hearing. *Id.*, subd. 6(c). At the evidentiary hearing, the county must offer evidence to support its "reason for not making the adoptive placement proposed by the moving party," and the foster parent must prove by a preponderance of evidence "that the agency has been unreasonable in failing to make the adoptive placement." *Id.*, subd. 6(d). At the conclusion of the hearing, "if the court finds that the [county] has been unreasonable in failing to make the adoptive placement" and that the foster parent would provide "the most suitable adoptive home to meet the child's needs using the factors in section 260C.212, subdivision 2, paragraph (b)," the district court may order the county to place the child with the foster parent for adoption. *Id.*, subd. 6(e).

We review an order denying a foster parent's motion for adoptive placement for abuse of discretion. *See In re Welfare of Children of L.L.P.*, 836 N.W.2d 563, 570-71 (Minn. App. 2013) (stating that an appellate court reviews for abuse of discretion a district court's decision on whether a prima facie case for adoptive placement has been made under Minn. Stat. § 260C.607, subd. 6(b)). A district court "abuse[s] 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).

Appellants argue that the district court abused its discretion by finding that the best-interests factors set out in Minn. Stat. § 260C.212, subd. 2(b) (2018)² warrant placement of S.L. with D.S. and S.B. While the district court did make this finding, it did so only after determining that the county’s decision not to support appellants’ adoption of S.L. was not unreasonable. Accordingly, we first consider whether the district court abused its discretion in determining the reasonableness of the county’s actions. Only if we answer this question in the affirmative, do we consider the district court’s best-interests determination. See Minn. Stat. § 259.29 (2018) (requiring best-interests analysis in adoptive placements).

We begin by observing, as the district court did, that the county was faced with the unusual situation of two sets of parents who dearly wished to and were well-qualified to provide a loving permanent home to S.L. Based on the entire record of the proceedings and the evidence adduced at the evidentiary hearing, the district court concluded the county’s decision not to support appellants’ adoption motion was reasonable. The district

² Best-interests considerations include:

- (1) the child’s current functioning and behaviors; (2) the medical needs of the child; (3) the educational needs of the child; (4) the developmental needs of the child; (5) the child’s history and past experience; (6) the child’s religious and cultural needs; (7) the child’s connection with a community, school, and faith community; (8) the child’s interests and talents; (9) the child’s relationship to current caretakers, parents, siblings, and relatives; (10) the reasonable preference of the child

Minn. Stat. § 260C.212, subd. 2(b); see *In re S.G.*, 828 N.W.2d 118, 125 (Minn. 2013).

court noted that the county properly prioritized relatives and considered the statutory preference for sibling placement, but did not base its ultimate decision solely on those factors. Rather, the county evaluated the statutory directives and preferences in the context of S.L.’s best interests, noting that many of the best-interests factors revealed appellants, and D.S. and S.B., were “equally suited” to be the adoptive home. The district court ultimately determined the county’s decision not to support appellants’ proposed adoption placement was not “unreasonable,” but rather the product of careful consideration. For the reasons discussed below, we discern no abuse of discretion by the district court.

First, the county met its obligation of first considering whether relatives were available as potential adoptive placements. Minn. Stat. § 259.29, subd. 2; *see* S.G., 828 N.W.2d at 125 (requiring the county to “first consider adoption by relatives before considering adoption by nonrelatives”). At New Horizon’s urging, the county agreed to S.L.’s initial placement with appellants. But the county made it clear from the start that it would search for relatives. And once Gullord was assigned to the case, she located S.L.’s six siblings in accordance with Minn. Stat. § 260C.617(a) (2018) (establishing preference “to place siblings together for adoption”). The county properly adapted its relative search when it became clear grandmother was no longer a placement option, and when N.L.’s sister was placed with D.S. and S.B. The county’s decision to cast a broader net for possible relative placements in the early summer of 2018 was reasonable under the circumstances.

Second, the record demonstrates the county’s decision not to support appellants’ adoption motion was based on its careful assessment of S.L.’s best interests. Gullord

evaluated the various home studies, investigated an allegation of physical violence within the extended family, and sought expert assistance to evaluate the placement issues. Gullord learned that D.S. and S.B. both teach in St. Paul and are pursuing graduate degrees. They parent three other children, including S.L.’s sister, N.L. The county concluded both families were suitable adoptive homes, but found D.S. and S.B. “more suitable” to manage his medical needs, needs related to his past experiences, cultural needs, and relationship with his biological family. And the county considered the potential harm to S.L. from breaking the attachment he had with appellants and whether this harm would be outweighed by the benefits gained from being adopted by relatives. On this record, it is difficult to conclude anything other than that the county took its statutory obligations and S.L.’s needs and interests very seriously.

In essence, appellants argue that the county put too much weight on family preferences and cultural needs to the detriment of S.L.’s close attachment to appellants. While the notion of attachment is not expressly addressed in the statutory best-interests factors, it underlies the permanency requirements built into the child-protection scheme. *See* Minn. Stat. § 260C.607, subds. 1 (requiring review hearing every 90 days), 8 (permitting modification of review hearing timelines to encourage finalization of adoptions) (2018); *see also* Minn. Stat. § 260C.301, subd. 1(5)(i) (2018) (in termination-of-parental-rights proceedings, establishing six-month presumption that county’s family reunification efforts for children under eight have failed, and one-year presumption of failure for older children). In *In re Welfare of D.L.*, the supreme court recognized that harm may occur when a child is removed from foster parents with whom she has formed a

healthy attachment. 486 N.W.2d 375, 376-78 (Minn. 1992). In that case, an African American child had been living with Caucasian foster parents for two years when the child's grandparents, who had custody of the child's siblings, came to the county's attention. In affirming the district court's decision granting the grandparents' adoption petition, the supreme court noted that the "key issue at trial was the severity of any trauma" caused by "breaking the primary attachment" to the foster parents. *Id.* at 378. Recognizing that "the [district] court retains broad discretion because of its opportunity to observe the parties and hear the witnesses," the supreme court concluded that the loss of the attachment to the foster parents was "not good cause to defeat the family preference." *Id.* at 380-81.

We are mindful of appellants' criticism of the county's relative search. Although it may have appeared unnecessary to conduct a more extensive search initially—because at least two relatives came forward early to adopt S.L.—in hindsight, the county's failure to include D.S. in the initial relative search may have delayed advancement of the extended family's interest in adopting S.L. and made permanency for S.L. of greater concern. While the county may not have acted as quickly or effectively as it could have in identifying relatives, we cannot say that any deficiencies made its decision not to support appellants' adoption motion unreasonable.

We also cannot accept appellants' assertion that the district court's failure to make express findings regarding the guardian ad litem's opinion as to S.L.'s adoptive placement reflects an abuse of its discretion. A guardian ad litem plays an important role in the child-protection system because she is solely appointed to protect the child's interests. *See* Minn. Stat. § 260C.163, subd. 5 (2018); Minn. R. Gen. P. 905.01(b); *In re Welfare of J.R.*, 655

N.W.2d 1, 5 (Minn. 2003). But appellants cite no authority for the proposition that a district court has a duty to make particular findings or adopt the guardian ad litem's recommendations. The record demonstrates that the district court considered the opinions and testimony of all of the witnesses, including evidence provided by the guardian ad litem. At the time of S.L.'s removal from grandmother's home, the guardian ad litem began to support S.L.'s adoptive placement with appellants. The guardian ad litem's opinion changed over time and was based on permanency and attachment concerns of which the district court was well aware.

Ultimately, our standard of review constrains our analysis to whether the district court erred in its legal analysis or relied on unsupported factual determinations. We conclude it did neither. The evidence may have supported findings and conclusions that favored adoptive placement of S.L. with appellants, particularly in light of the length of time S.L. spent in appellants' home, and their demonstrated capacity to be exemplary parents. But the record supports both the county's determination and the district court's ruling to the contrary. Because the county properly applied the statutory preferences, carefully considered the circumstances of each proposed adoptive placement, and found placement with D.S. and S.B. would be in S.L.'s best interests, we discern no abuse of discretion in the district court's determination that the county did not act unreasonably in failing to support appellants' adoption motion.

Affirmed.