

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0542**

In re the Matter of the Welfare of the Children of:
A. M. F., J. G.-T. N., and C. L. B., Parents.

**Filed August 19, 2019
Affirmed
Florey, Judge**

Beltrami County District Court
File No. 04-JV-18-1233

Lucas J.M. Dawson, Groshek Law, Minneapolis, Minnesota (for appellant great grandmother L.O.)

David L. Hanson, Beltrami County Attorney, Elysia Nguyen, Assistant County Attorney, Bemidji, Minnesota (for respondent Beltrami County)

Jose Hernandez, International Falls, Minnesota (for respondent guardian ad litem)

Considered and decided by Reyes, Presiding Judge; Smith, Tracy M., Judge; and Florey, Judge.

S Y L L A B U S

The plain language of Minn. Stat. § 260C.607, subd. 6(a)(1) (2018), requires a relative or foster parent to have, at the time the relative or foster parent moves for an order for adoptive placement, a completed adoption home study under Minn. Stat. § 259.41 (2018), approving the relative or foster parent for adoption.

O P I N I O N

FLOREY, Judge

On appeal from the district court's denial of her motion for permanent adoptive placement, appellant L.O., the maternal great grandmother of the children at issue, E.D.F.

and E.M.F., argues that the district court erred in concluding that Minn. Stat. § 260C.607, subd. 6(a)(1), required her to have a completed home study at the time she filed the motion because, according to appellant, the home study was not due until the time of placement. We affirm.

FACTS

In February 2017, respondent Beltrami County Health and Human Services (BCHHS) received a report that A.M.F., the mother of E.D.F. and E.M.F., was under the influence of drugs. Following a welfare check by law enforcement, the children were placed in out-of-home care, and a relative search was conducted. In April 2017, appellant responded to the relative search, stating that she could not be a placement option due to her and her husband's health concerns.

In April 2018, BCHHS filed a petition for termination of parental rights. The district court granted the petition and transferred guardianship and legal custody of the children to the commissioner of human services. At the time, E.D.F. and E.M.F. were staying in a pre-adoptive relative home with their maternal great aunt, R.F. However, in August 2018, BCHHS was notified that R.F. was using drugs, and, consequently, the children were moved out of R.F.'s home and transferred to a new foster-care placement.

In September 2018, BCHHS informed appellant that it was considering a non-relative-adoptive placement. At a review hearing on October 30, 2018, appellant expressed an interest in adoption. A few days later, appellant and her husband met with BCHHS case manager, Jody Wilkinson. During the meeting, appellant expressed her desire to be considered as an adoptive option for the children. Due to appellant's stated interest,

BCHHS sent a home-study referral to North Homes. North Homes declined the referral, however, concluding that its involvement with the children's great aunt, R.F., created a conflict.

On November 16, 2018, E.D.F. and E.M.F. were placed in a pre-adoptive foster-care home with R.E. and K.E., referred to in the record as, Foster Parent 6. On November 27, 2018, a review hearing was held. At the hearing, appellant stated that she had hired an attorney and wished to be a permanency option for the children. Following the hearing, BCHHS sent a home-study referral to Kindred Family Focus.

At the recommendation of Wilkinson, on December 18, 2018, appellant met with the prospective adoptive parents, Foster Parent 6. According to Wilkinson's affidavit, during a meeting that day between Wilkinson and appellant, appellant indicated that "she was unsure if she would choose to complete a home study, or if she would be comfortable with maintaining a relationship through the pre-adoptive placement." BCHHS continued to pursue a referral for a home-study assessment. After not hearing from Kindred Family Focus, BCHHS sent a home-study referral to Lutheran Social Services on January 10, 2019.

On January 28, 2019, the Department of Human Services approved an adoption-placement agreement for Foster Parent 6 to adopt E.D.F. and E.M.F. BCHHS notified appellant of the adoptive placement, and on February 7, 2019, appellant spoke with Wilkinson about the agreement. During the conversation, appellant expressed her intent to move forward with adopting the children.

On March 4, 2019, appellant filed a motion for permanent adoptive placement. *See* Minn. Stat. § 260C.607, subd. 6(a)(1). In her affidavit accompanying the motion, appellant attested, “I understand that, as part of the statute, I am supposed to file a home study with my initial paperwork.” Appellant’s motion requested that the court “waiv[e] the requirement that a home study be provided with the initial filing due to the actions of [the county].” BCHHS filed a responsive motion requesting that the court deny appellant’s motion. On March 12, 2019, a motion hearing was held.

At the motion hearing, appellant’s counsel asked that the court “waive the requirement of [a] completed approved home study.” Appellant’s counsel argued, “Due to the [c]ounty’s failure in making timely referrals to the home studies, . . . the [c]ourt [should] waive the requirement of [a] completed approved home study, permit the motion to move forward and set the matter for an evidentiary hearing.”

The county requested that the motion be dismissed in its entirety. The county argued that appellant failed to complete a home study, that appellant’s delay in obtaining the home study was due to her own actions, and that further delay would not be in the children’s best interests. The guardian ad litem agreed with the county’s request, explaining that the children were doing well in their pre-adoptive foster-care placement. Agreeing with BCHHS’s arguments, the district court denied appellant’s motion. Appellant appealed.

ISSUE

Does Minn. Stat. § 260C.607, subd. 6(a)(1) (2018), require a relative or foster parent to have, at the time the relative or foster parent moves for an order for adoptive placement, a completed adoption home study approving the relative or foster parent for adoption?

ANALYSIS

Statutory interpretation involves a question of law subject to de novo review. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 54 (Minn. 2004). “The goal of statutory interpretation is to ascertain the intention of the legislature.” *In re Application of J.M.M.*, 890 N.W.2d 750, 753 (Minn. App. 2017). “We are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). We begin our analysis by determining “whether the statute’s language, on its face, is clear or ambiguous.” *Id.* “A statute is ambiguous if it is susceptible to more than one reasonable meaning.” *J.M.M.*, 890 N.W.2d at 753. If the legislature’s intent is clear from the plain and unambiguous language of the statute, we need not engage in further construction. *See State v. Bluhm*, 676 N.W.2d 649, 651 (Minn. 2004).

Minn. Stat. § 260C.607, subd. 6 (2018), which outlines the requirements for filing a motion for adoptive placement, provides, “(a) At any time after the district court orders the child under the guardianship of the commissioner of human services, but not later than 30 days after receiving notice . . . that the agency has made an adoptive placement, a relative . . . may file a motion for an order for adoptive placement” if the relative:

- (1) *has an adoption home study under section 259.41 approving the relative . . . for adoption* and has been a resident of Minnesota for at least six months before filing the motion; the court may waive the residency requirement for the moving party if there is a reasonable basis to do so; or
- (2) is not a resident of Minnesota, but has an approved adoption home study by an agency licensed or approved to complete an adoption home study in the state of the

individual's residence and the study is filed with the motion for adoptive placement.

(Emphasis added.)¹

The language of subdivision 6(a) is not susceptible to more than one reasonable meaning. Indeed, at oral argument before this court, appellant's counsel conceded that section 260C.607, subdivision 6, is unambiguous. Appellant maintains, however, that the plain language of subdivision 6(a) does not require that the home study be completed prior to filing an adoptive-placement motion. We disagree. Consistent with our previous decisions applying the provision to adoption proceedings, the plain language of subdivision 6(a)(1) makes clear that, as a prerequisite to filing an adoptive-placement motion, relatives or foster parents must have a completed home study approving them for adoption.

In *In re Welfare of the Children of J.L.G.*, a case cited by both parties, we explained: "Relatives of children under guardianship of the commissioner of human services may file a motion for an order for adoptive placement of a child, *provided they have an approved home study.*" 924 N.W.2d 9, 15 (Minn. App. 2018) (emphasis added) (citing Minn. Stat. § 260C.607, subd. 6(a)(1)). In *In re M.M.L.*, an appeal brought by a child's great aunt and great uncle, we affirmed the district court's summary dismissal of the appellants' adoption petition. No. A13-1005, 2014 WL 621614, at *1 (Minn. App. Feb. 18, 2014). In interpreting subdivision 6(a)(1), we concluded that the "appellants were not authorized to move for adoptive placement because they did not have an adoption home study approving

¹ The parties agree that appellant's adoptive-placement motion was filed in a timely manner pursuant to Minn. Stat. § 260C.607, subd. 6(a).

them for adoption,” which, we held, was “a statutory requirement.” *Id.* at *4. We observed that, while “nothing in the record suggest[ed] that [the] appellants [were] not suitable prospective adoptive parents,” the best interests of the child “did not justify a departure from the plain language of section 260C.607.” *Id.* at *6, 8 (explaining that an additional delay in the pending adoption, in order to explore the possibility of placement with the appellants, was not in the child’s best interests). Although not precedential authority, we find the reasoning in *M.M.L.* to be persuasive, and we adopt it here. See *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993) (holding that, although not binding precedent, unpublished opinions may be persuasive).

Appellant further contends that she was entitled to an evidentiary hearing wherein, pursuant to statute, BCHHS would be required to present “evidence about the reason for not making the adoptive placement proposed by the moving party.” Minn. Stat. § 260C.607, subd. 6(d). Appellant’s argument presumes, however, that her adoptive-placement motion was properly before the district court.

Pursuant to section 260C.607, subdivision 6(b), in order to receive an evidentiary hearing on her adoptive-placement motion, appellant was required to make a prima facie showing that BCHHS was unreasonable in failing to place the children in her care. *J.L.G.*, 924 N.W.2d at 15 (citing Minn. Stat. § 260C.607, subd. 6(b), (c)). Subdivision 6(c) provides that, “[i]f the motion and supporting documents do not make a prima facie showing for the court to determine whether the agency has been unreasonable in failing to make the requested adoptive placement, the court shall dismiss the motion.” But, “[i]f the

court determines a prima facie basis is made, the court shall set the matter for [an] evidentiary hearing.” Minn. Stat. § 260C.607, subd. 6(c).

In *M.M.L.*, we concluded that, because the appellants did not have a home study approving them for adoption, “the district court properly dismissed [their] adoption petition as unauthorized,” and their argument “regarding the need for an evidentiary hearing [was] unavailing.” 2014 WL 621614, at *6. That logic applies here. Because appellant did not have a home study approving her for adoption at the time she filed her adoptive-placement motion, the motion was not properly before the district court, and, consequently, appellant was not entitled to an evidentiary hearing.

Before we close, we emphasize that the children, E.D.F. and E.M.F., have been in out-of-home care since February 2017—nearly two and a half years. They have been residing with their pre-adoptive foster parents, Foster Parent 6, since November 2018—almost an entire year—and all evidence suggests that the children are doing well and adjusting in a positive manner. While we are mindful that the legislature has directed child-placing agencies to consider relatives as placement options before non-relatives, *see* Minn. Stat. § 260C.212, subd. 2(a) (2018), “the preference is not to be applied so as to override the overall best interests of the child.” *In re Adoption of C.H.*, 554 N.W.2d 737, 742 (Minn. 1996). Generally, additional delays in the adoption of a child under the guardianship of the commissioner are not in the child’s best interests. *See* Minn. Stat. § 260C.601, subd. 1(a)(2) (2018); *see also* Minn. R. Juv. Prot. P. 1.02(f), (i) (noting that the purpose of the rules of juvenile protection procedure is to “provide a just, thorough, speedy, and efficient

determination of each juvenile protection matter,” and to “reduce unnecessary delays in court proceedings”).

“Under our law, children are not to be kept waiting, uncertain who will raise them or where they will grow up.” *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 135 (Minn. 2014); *see also In re Welfare of J.J.B.*, 390 N.W.2d 274, 279 (Minn. 1986) (observing “the importance of emotional and psychological stability to a child’s sense of security, happiness and adaptation, as well as the degree of unanimity among child psychologists regarding the fundamental significance of permanency to a child’s development”). While we acknowledge that appellant successfully completed a home-study assessment following the district court’s order denying her motion for permanent-adoptive placement, the decision of the district court was based on the children’s best interests, which, in this case, was to prevent any further delay in permanency.

D E C I S I O N

Section 260C.607, subdivision 6(a)(1), is unambiguous, and its statutory mandate is clear: at the time a relative or foster parent moves for an order for adoptive placement, the relative or foster parent must have a completed adoption home study approving the relative or foster parent for adoption. Because appellant did not have a completed home study approving her for adoption at the time she filed a motion for an order for adoptive placement, the district court’s summary denial of her motion was not error.

Affirmed.