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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1275**

In re the Matter of the Welfare of the Child of:
A. R. H., R. W. G., and M. L. R., Parents.

**Filed March 2, 2020
Affirmed
Bratvold, Judge**

Chisago County District Court
File No. 13-JV-17-136

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Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Bryan, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

This is an appeal from a district court order denying appellant-paternal grandmother's motion for adoptive placement of her grandson and the district court's order denying appellant's motion for amended findings. Appellant filed her motion one month

after the district court terminated parental rights. The district court stayed appellant's motion during the yearlong appeal of the termination of parental rights. After the appeal concluded, the district court held a nine-day evidentiary hearing and denied appellant's motion.

Appellant argues that the district court abused its discretion in three ways: (1) by failing to conduct an evidentiary hearing while the parents appealed the termination of their parental rights; (2) by determining that respondent-agency was not unreasonable in failing to place the child with her; and (3) by determining that it was in child's best interests to be placed with his foster parents rather than with appellant. We conclude that the district court did not abuse its discretion and thus affirm.

FACTS

The following summarizes the district court's findings of fact, which are in 190 separately numbered paragraphs spanning 37 pages and followed by 14 pages of legal conclusions. T.R. was born in March 2016, and is the son of A.R.H. (mother) and M.L.R. (father). T.R. is biracial; mother is Caucasian, and father is African American and Caucasian. Appellant-grandmother L.R. (grandmother) is T.R.'s paternal grandmother and is also biracial. Grandmother and father were at the hospital when T.R. was born.

T.R. was born with health issues stemming from prenatal drug exposure. Respondent Chisago County Health and Human Services (the agency) opened an investigation, placed T.R. on a 72-hour hold, and assigned a child-protection investigator to oversee T.R.'s placement. When the 72-hour hold lapsed, father and grandmother met with the child-protection investigator to discuss emergency placement options for T.R.

upon his discharge from the hospital. Grandmother said that she wanted to be a placement option. Father requested a DNA test to establish paternity.

The hospital discharged T.R. into the care of a foster family on April 1, 2016. T.R. was not transferred to grandmother's care for several reasons: father's paternity had not yet been confirmed by the DNA test, grandmother had a harassment restraining order against mother, father lived with grandmother, and there was a domestic-abuse no-contact order between mother and father. Grandmother told the child-protection investigator that she would begin the process of applying for a foster-care license. The record is unclear when the DNA test results returned, but they confirmed paternity sometime in April 2016.

Grandmother and father met with an agency case manager to discuss transitioning T.R. to father by the end of April 2016. Father lived in grandmother's home at that time. The case manager later "suspended" T.R.'s transition to father because mother told the case manager about a recent physical altercation between mother and father.

Over the next several months, grandmother told the case manager that she wanted to be a placement option for T.R. and that she wanted to have her own visitation schedule. In September 2016, mother told the case manager that she was "very against" grandmother being a permanent placement option for T.R. because she had concerns about T.R.'s safety if he was placed with grandmother. Mother asked that T.R.'s foster family be a permanent placement option.

Grandmother moved homes several times between August 2016 and April 2017. In August 2016, grandmother's home was foreclosed. Grandmother told the case manager that she and her children were going to stay with family and friends. Grandmother moved

into a townhome by late September 2016. She stayed in the townhome for six months before moving to her current home in April 2017. During this time, the agency worked to reunify T.R. with mother but still considered grandmother as a placement option.

In April 2017, the agency petitioned to terminate mother's and father's parental rights for T.R.¹ T.R.'s foster mother told the case manager the following month that she was interested in adopting T.R. if mother's and father's parental rights were terminated. Grandmother became foster-care licensed in August 2017.

After a termination-of-parental-rights (TPR) trial, the district court issued an order in November 2017 terminating mother's and father's parental rights to T.R. The district court ordered that legal custody and guardianship of T.R. and sister be transferred to the Minnesota Commissioner of the Department of Human Services (commissioner). Two weeks later, in December 2017, grandmother moved to intervene and for the district court to grant her the right to participate in adoption proceedings. Mother and father appealed the TPR.

The district court held a post-TPR hearing in January 2018. Foster mother orally moved to intervene at the hearing. The district court granted grandmother's and foster mother's motions to intervene and stayed grandmother's motion to order adoptive placement pending the conclusion of the TPR appeal. The district court found that it was in T.R.'s best interest to remain with the foster parents. In March 2018, after denying

¹ The TPR petition also sought termination of mother's rights to her daughter, L.M.-R.G. (sister), who has a different father. Sister's paternal grandparents adopted her. Sister's adoption is not at issue in this appeal.

grandmother's motion for increased visitation, the district court ordered that an assessment be completed to evaluate T.R.'s placement options with grandmother and the foster family.

About three months later, this court remanded the district court's order terminating mother's and father's parental rights for additional findings of fact and conclusions of law. The district court issued Amended Findings of Fact, Conclusions of Law, and Order in June 2018 (TPR order). Mother and father appealed the district court's amended TPR order.

In June 2018, Deena McMahon, a licensed social worker who specializes in childhood trauma, child development, and child attachment, submitted an assessment report that had previously been ordered by the district court. McMahon concluded that the agency's visitation plan for grandmother was "unreasonably punitive and restrictive." McMahon recommended that T.R. be transitioned to grandmother's home within six weeks. McMahon found that the foster parents could not "provide [T.R.] with a rich and meaningful experience of what it means to grow up as a biracial man" and it was likely that T.R. would "be denied meaningful contact with his biological family" if he remained with the foster parents. An agency permanency worker submitted a report disagreeing with McMahon's recommendation that T.R. be transitioned to grandmother's home.

Grandmother moved the district court to transition T.R. into her home and increase visitation. The motions were heard at a post-TPR hearing. The district court granted grandmother's motion for increased unsupervised visitation but denied the request that T.R. be immediately transitioned to grandmother's home. The district court ordered that an evidentiary hearing be set to address the issue of permanent placement. The hearing was set and then rescheduled for September 2018.

T.R.'s foster parents executed an Adoption Placement Agreement in early September 2018.² Two days later, the foster parents moved the district court for an order designating them as T.R.'s adoptive placement. In a written order, the district court found that the "matter is not ripe for an evidentiary hearing, as there has not been a final Order issued from the Court of Appeals in this matter." The district court converted the previously scheduled hearing into a post-TPR hearing. The district court also ordered that, once the TPR appeals concluded, it would "evaluate whether [grandmother's] Motion and supporting documents make a prima facie showing that the agency has been unreasonable in failing to make the requested adoptive placement of the child."

The following month, grandmother moved for an order for adoptive placement of T.R. under Minn. Stat. § 260C.607, subd. 6(a) (2018). This court affirmed the termination of mother's and father's parental rights in November 2018. The district court scheduled a pretrial hearing for January 2019. After the hearing, the district court found that grandmother made a prima facie showing that the agency had "been unreasonable in failing to make the adoptive placement with her" and ordered an evidentiary hearing.

The evidentiary hearing occurred on March 6, 7, 11, and 28, and April 1-5, 2019. The district court heard testimony from 19 witnesses. Grandmother testified that her culture and heritage are very important to her and that she thought it was in T.R.'s best interest to live with blood relatives. Grandmother expected that she would allow T.R. to have ongoing contact with the foster parents if she were awarded custody. She did not expect that T.R.

² The Department of Human Services approved the agreement in December 2018.

would have contact with father. Grandmother testified that she thought the foster family was not culturally competent, citing an instance when the foster family dressed T.R. as a monkey for Halloween in 2017. She testified that this was “disrespectful” and that “today you don’t dress a biracial child up as a monkey.”

Foster mother testified that T.R. calls her “mom” and sometimes cries before visiting with grandmother. She believed that it was in T.R.’s best interests to continue having contact with grandmother and that she would maintain contact between T.R. and grandmother. Foster mother testified that T.R. receives therapy for anxiety that developed when his visits with grandmother became unsupervised. She said that she and her family have attended camps to become more culturally aware and they continue to educate themselves about cultural competence. Foster mother intends to include grandmother to help T.R. with his cultural needs in the future.

T.R.’s guardian ad litem (GAL), who was appointed shortly after T.R.’s birth, testified that she had no concerns with grandmother’s support for T.R. and that T.R. is a part of his foster family. The GAL said that T.R. has a mother-child relationship with foster mother and a primary attachment with his foster family. She had no concerns about grandmother’s care for T.R. but was worried that breaking T.R.’s primary attachment with his foster family could cause lasting harm. She believed it was in T.R.’s best interest to remain with his foster family and have grandmother involved in his life. The GAL disagreed with McMahon’s June 2018 report recommending that T.R. be transferred to grandmother’s care.

Three of the agency's employees testified. The case manager and the child-protection investigator testified to the timeline of events discussed above. The agency permanency worker testified that it was in T.R.'s best interests to be adopted by his foster parents, partly because the foster parents are the only parents T.R. has known.

Several experts testified, submitted reports, and opined about whether T.R. should be placed with grandmother or the foster parents. First was Lauren Sinn, a licensed marriage and family therapist who specializes in early childhood mental health. Sinn works with T.R. twice per week and performed a mental-health assessment of T.R. when he was two years old. Sinn diagnosed T.R. with generalized anxiety disorder. Sinn testified that T.R. has a primary attachment to his foster mother and that breaking that primary attachment would "cause trauma" and negatively impact T.R.'s behavioral development. Sinn believed it was in T.R.'s best interest to stay with his foster parents and have an ongoing relationship with grandmother.

McMahon testified about the recommendations she made in her June 2018 assessment report. McMahon submitted an updated assessment report in January 2019 after observing T.R.'s behavior during a transition to grandmother for a scheduled visit. She observed that T.R. "shook his head no" when he learned it was time to see grandmother, "clung on" his foster mother, and cried when he left the foster family's home, but seemed happy upon arriving at grandmother's home. McMahon testified that she did not offer a recommendation in her updated assessment because she "lack[ed] the clarity as to the right thing to do." McMahon stated that T.R. "is not as resilient as she had first thought" and that he would suffer traumatic harm if the foster family was no longer

available to him. She further stated that, “in an ideal world,” it would be best for T.R. to remain with his foster family and maintain contact with grandmother.

Dr. Carol Siegel, a clinical psychologist, did not interview T.R. but testified that T.R.’s foster parents are his parents “in his mind.” She opined that T.R. would suffer “bereavement, grief, and loss” if he lost his foster parents. Susan Haugen, a family therapist, also testified about the importance of a child’s attachment to their primary caregiver during the early years of life.

Cemina Gordon, a licensed independent clinical social worker, testified. She did not meet with T.R. or observe him. Gordon testified generally that a child with a primary caregiver can successfully transfer to a new home if they are able to have a continuing connection with the primary caregiver. Gordon also testified that children who are adopted into a transracial family “with no participation from their biological family” can experience lasting identity issues. She opined that it is important for biracial children to have peers and role models that reflect their identity. The district court expressly found Sinn’s and McMahon’s testimony to be more credible and persuasive than Gordon’s testimony because Gordon had no contact with the parties. The other witnesses who testified at the hearing include T.R.’s foster father, two friends of grandmother, grandmother’s niece, and T.R.’s babysitter.

On June 25, 2019, the district court denied grandmother’s motion to order adoptive placement. The district court concluded that the agency was not unreasonable in failing to place T.R. with grandmother and that T.R.’s most suitable home is with the foster parents.

Grandmother moved for amended findings and judgment. After a hearing, the district court denied grandmother's motion. Grandmother appeals.

D E C I S I O N

I. The district court did not abuse its discretion by staying grandmother's motion for adoptive placement or by conducting an evidentiary hearing four months after the TPR appeal concluded.

Grandmother argues that the district court abused its discretion by “substantially delay[ing]” proceedings after she filed her motion for adoptive placement. First, grandmother contends that the district court abused its discretion when it stayed her motion while mother and father pursued an appeal of the order terminating their parental rights. Second, grandmother argues that the district court abused its discretion when it did not begin evidentiary hearings until four months after this court affirmed the TPR order. We address each argument in turn.

A. The district court's decision to stay grandmother's motion while mother and father appealed the TPR order

Grandmother first argues that the district court erred when it “misapplied the plain language” of Minn. Stat. § 260C.607, subd. 1(c) (2018) and stayed her motion to order adoptive placement while the parents appealed the TPR order. 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). We review a district court's interpretation and application of the law de novo. *In re Guardianship of O'Brien*, 847 N.W.2d 710, 714 (Minn. App. 2014).

Grandmother focuses on her motion to intervene and for adoptive placement, which she filed on December 5, 2017, shortly after the district court terminated mother's and father's parental rights for T.R. and appointed the commissioner as T.R.'s guardian. Mother and father appealed the TPR order on December 6 and December 8, 2017, respectively. The district court held a post-TPR hearing on January 5, 2018; foster mother attended and orally moved to intervene at the hearing. The district court granted grandmother's and foster mother's motions to intervene and stayed grandmother's motion for adoptive placement "pending the appeal of this matter." At the same hearing, the district court determined that it was in T.R.'s best interest to remain in his current placement with his foster parents. Because mother's and father's TPR appeals were remanded for further findings, this court did not issue its final decision affirming the TPR order until November 13, 2018.

Minn. Stat. § 260C.607 (2018) governs judicial review of an agency's progress towards finalizing adoption of a child under the commissioner's guardianship. Minn. Stat. § 260C.607, subd. 1(a). The district court must conduct review hearings "at least every 90 days" to review the responsible social services agency's "reasonable efforts to finalize adoption." *Id.* The agency must make "progress toward adoption" even if a party appeals the district court's order for guardianship. *Id.*, subd. 1(b)-(c). The agency's "reasonable efforts to finalize the adoption must continue during the pendency of the appeal and all progress toward adoption shall continue *except that the court may not finalize an adoption while the appeal is pending.*" *Id.*, subd. 1(c) (emphasis added).

A district court must provide notice of the review hearings to the agency, the child, the GAL, relatives who have kept the court informed of their whereabouts, and the current foster parents, among others. *Id.*, subd. 2. At the review hearing, the district court is directed to review the agency's reasonable efforts to finalize adoption and the child's current out-of-home placement including visitation, medical care, and education. *Id.*, subd. 4.

At "any time" after the district court places a child under the commissioner's guardianship, "but not later than 30 days after receiving notice" of a fully executed adoption placement agreement, "a relative or the child's foster parent may file a motion for an order for adoptive placement." Minn. Stat. § 260C.607, subd. 6(a). If the district court determines that "the motion and supporting documents do not make a prima facie showing . . . [that] the agency has been unreasonable in failing to make the requested adoptive placement, the court shall dismiss the motion." *Id.*, subd. 6(c). "If the court determines a prima facie [showing] is made, the court shall set the matter for evidentiary hearing." *Id.*

Grandmother contends that the district court had authority to dismiss her motion or grant an evidentiary hearing, but lacked authority to stay her motion. We disagree. While it is true that the plain language of section 260C.607, subdivision 6(c) authorizes a district court to dismiss or grant an evidentiary hearing under certain conditions, the statute does not limit the district court's broad discretion to manage its docket. *See TC/Am. Monorail, Inc. v. Custom Conveyor Corp.*, 840 N.W.2d 414, 418 (Minn. 2013). Docket management

is particularly important in time-sensitive matters, like those involving the custody of children.

Here, a stay was appropriate for several reasons. First, the district court could “not finalize an adoption” while the TPR appeal was pending. *See* Minn. Stat. § 260C.607, subd. 1(c). Second, before finalizing T.R.’s adoption, the district court needed current information on T.R.’s adoptive placement. *See* Minn. Stat. § 260C.212, subd. 2(b)(1), (9) (2018) (requiring district court to consider child’s “current functioning and behaviors” and “relationship to current caretakers, parents, siblings, and relatives” when determining adoptive placement). Thus, by staying grandmother’s motion, the district court avoided conducting duplicative evidentiary hearings, which not only threaten limited court resources, but also would have placed unnecessary strain on the families involved. Simply put, a district court does not abuse its discretion by staying a motion for adoptive placement until the TPR appeal is resolved, so long as the agency otherwise continues “reasonable efforts to finalize the adoption” during the pendency of the appeal. *See* Minn. Stat. § 260C.607, subd. 1(c).

Grandmother argues that the district court’s decision to stay her motion undermined the purposes of the rules governing adoption proceedings and contends that the rules of juvenile protection procedure apply to these proceedings. We disagree. Generally, the Minnesota Rules of Adoption Procedure govern the “adoptions of children under the guardianship of the commissioner of human services pursuant to Minnesota Statutes, sections 260C.601 to 260C.637.” Minn. R. Adopt. P. 1.01. The statute governing motions for adoptive placement contains two exceptions to this general rule, but those exceptions

pertain to the rules for serving the motion and for appealing the district court's decision on the motion. Minn. Stat. § 260C.607, subd. 6(b), (g). The exceptions do not pertain to the district court's authority to stay the motion or schedule an evidentiary hearing. Grandmother moved to order adoptive placement under Minn. Stat. § 260C.607. Thus, the Minnesota Rules of Adoption Procedure apply to the district court's discretion to stay grandmother's motion.

More importantly, the district court's decision to stay grandmother's motion did not undermine the purposes of the applicable rules. The rules of adoption procedure are meant to ensure that "the best interests of adopted persons are met in the planning and granting of an adoption." Minn. R. Adopt. P. 1.02(a). The district court kept its focus on T.R.'s best interests throughout many review hearings.

It is undisputed that the district court held the required 90-day review hearings, provided the required notices, and conducted the review hearings as outlined by statute. *See* Minn. Stat. § 260C.607, subds. 1(a), 2, 4. After each of these hearings, the district court issued an order that found that the agency had made reasonable efforts to find an adoptive placement for T.R.

And during each 90-day review hearing, the district court found that it was in T.R.'s best interests to remain with the foster parents. The district court's findings were supported by the recommendations of those participating in the TPR trial and the review hearings. For example, when the district court terminated mother's and father's parental rights, the GAL recommended that it was in T.R.'s "best interest to continue to be cared for in [his]

current placement” because of the “stability and consistency of care” provided by the foster parents. The district court continued this placement at the January 2018 review hearing.

At the June 2018 review hearing, the district court considered McMahon’s recommendation that T.R. be immediately transitioned to grandmother’s care. But the district court also considered the agency’s and the GAL’s recommendation that moving T.R. from his foster home would cause harm because he would grieve the loss of his foster parents and that there was “no guarantee that he [would] settle into another home and continue to thrive.” The agency’s permanency worker also recommended that it was not in T.R.’s best interests to move to grandmother’s care. The district court granted grandmother’s motion for increased visitation, but denied an immediate transition of placement based on its evaluation of T.R.’s best interests.

The district court did not abuse its discretion by misapplying Minn. Stat. § 260C.607 or by staying grandmother’s motion while mother and father appealed the TPR order.

B. The district court’s decision to schedule an evidentiary hearing beginning in March 2019

Grandmother next argues that “the district court erred when it further delayed the evidentiary hearing” after this court affirmed the TPR order in its November 2018 opinion by scheduling an evidentiary hearing beginning in March 2019. The agency responds that section 260C.607, subdivision 6, “does not include timelines for conducting an evidentiary hearing on a motion for adoptive placement, or for issuing a final order following the hearing.” We agree with the agency that the decision about when to schedule an evidentiary hearing is entrusted to the district court’s sound discretion.

The party moving for adoptive placement under Minn. Stat. § 260C.607, subd. 6, is entitled to an evidentiary hearing after the district court determines that she has made a prima facie showing that the agency was unreasonable in failing to make the requested adoptive placement. Minn. Stat. § 260C.607, subd. 6(c); *cf. Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) (“Whether a party makes a prima facie case . . . is dispositive of whether an evidentiary hearing will occur” under Minn. Stat. § 518.18 regarding modification of custody). Subdivision 6 is silent about the timeframe within which the evidentiary hearing must occur. *See* Minn. Stat. § 260C.607, subd. 6.

Generally, a district court has authority to continue a scheduled hearing if it makes written or oral findings on the record that the continuance was necessary for “the accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown.” Minn. R. Adopt. P. 5.01.

On October 4, 2018, while the TPR appeal was still pending, grandmother filed a second motion for adoptive placement and scheduled an evidentiary hearing for November 2018. The TPR appeal concluded when this court issued its decision affirming the TPR order on November 13, 2018.

On January 23, 2019, the district court found that grandmother made a prima facie showing that the agency was “unreasonable in failing to make the adoptive placement with [grandmother] and [that grandmother] is entitled to an evidentiary hearing.” The district court then scheduled an evidentiary hearing for several days in March and April 2019. The evidentiary hearing began on March 6, but on March 7, 2019, the district court found good cause to continue the hearing because the GAL’s attorney was ill.

Grandmother does not argue that the district court abused its discretion when it issued its January 23 decision that she made the required prima facie showing. Indeed, grandmother was not entitled to an evidentiary hearing before January 23, 2019, because the district court had not yet made the required prima facie determination. *See* Minn. Stat. § 260C.607, subd. 6(c). Thus, grandmother’s argument asks us to find an abuse of discretion in the district court’s decision to schedule the evidentiary hearing beginning on March 6. We discern no abuse of discretion in scheduling an evidentiary hearing involving 19 witnesses beginning less than six weeks after the January 23 determination that grandmother had made a prima facie showing.

The district court continued only one of the scheduled dates for the evidentiary hearing over grandmother’s objection: when it found that good cause existed for the continuance of the March 7 hearing because the GAL’s attorney was ill. Stated differently, the district court found on the record that the continuance was necessary to protect the rights of the GAL (and by extension the rights of T.R.). By doing so, the district court complied with the requirements for continuing hearings under Minn. R. Adopt. P. 5.01 and did not abuse its discretion. *See generally Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977) (in a dissolution case, “[t]he granting of a continuance is a matter within the discretion of the [district] court and its ruling will not be reversed absent a showing of clear abuse of discretion”).

We also reject grandmother’s argument that the district court was required to issue its order within 15 days of the evidentiary hearing. Grandmother relies on rules governing contested adoption trials, which provide that “[w]ithin fifteen (15) days of the conclusion

of the *trial* in a contested matter, the court shall issue findings of fact, conclusions of law, an order for judgment, and an adoption decree.” Minn. R. Adopt. P. 44.06, subd. 1 (emphasis added). But grandmother filed her motion for adoptive placement under section 260C.607, subd. 6(c), in which the statute provides for an “evidentiary hearing” and not a “trial.” See Minn. Stat. § 260C.607, subd. 6(c). Moreover, rule 1.01 of the adoption rules specifically states that rule 44 regarding contested adoptions does “not apply to children under the guardianship of the commissioner of human services.” Minn. R. Adopt. P. 1.01. Thus the 15-day written-decision deadline did not apply to this case.

We pause to emphasize that we understand grandmother’s frustration with and concern over the lengthy procedural history of this case. Grandmother visited T.R. shortly after his birth and immediately expressed interest in caring for him. The agency placed T.R. with foster parents shortly after his birth. And grandmother filed her first adoptive-placement motion in December 2017, shortly after the TPR order was issued and before the TPR appeal began. Yet, the evidentiary hearing on grandmother’s motion began in March 2019.

Time is of the essence when determining where a child will live and in providing a stable and loving home for a child. It is unfortunate that the district court proceedings were extended by not just one, but two, appeals involving the TPR order. But our role on appeal is to review the record to determine if the district court improperly applied the law or made findings unsupported by the record. Based on that review, we conclude that the district court did not abuse its discretion by scheduling an evidentiary hearing beginning in March 2019 on grandmother’s motion for adoptive placement.

II. The district court did not abuse its discretion when it determined that the agency was not unreasonable in failing to place T.R. with grandmother.

Grandmother argues that the district court abused its discretion when it concluded that the agency did not act unreasonably when it failed to place T.R. with her, contending that each of the district court's reasons are legally and factually insufficient. The district court concluded, after making detailed findings, that the agency's refusal to place T.R. with grandmother "was not irrational and is supported by the record" and that grandmother failed to show by a preponderance of the evidence that the agency's decision was unreasonable.

We review a district court's decision whether a county agency unreasonably failed to make an adoptive placement for abuse of discretion. *See* Minn. Stat. § 260C.607, subd. 6(e) (stating that district court "may" order relative adoptive placement if the agency unreasonably fails to make requested placement); *see also In re Welfare of L.L.P.*, 836 N.W.2d 563, 570 (Minn. App. 2013) (reviewing for abuse of discretion a district court's decision that movants had not met their burden to obtain an evidentiary hearing on their motion for adoptive placement).

The party moving for adoptive placement bears the burden of proving by a preponderance of the evidence that the agency was unreasonable in failing to make the requested placement. Minn. Stat. § 260C.607, subd. 6(d). While the terms are not defined by statute, we generally review whether an agency's action was "reasonable" or "unreasonable" according to two factors: (1) whether the 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).

The district court identified four reasons supporting its determination that the agency acted reasonably when it did not alter T.R.’s placement with his foster family and instead place him with grandmother. We begin our analysis with the agency’s emergency placement of T.R. shortly after he was born. First, the district court found that the agency acted reasonably when it placed T.R. with the foster parents rather than with grandmother after T.R.’s discharge from the hospital. An agency may make an emergency placement of a child with a relative who is not licensed to provide foster care. Minn. Stat. § 245A.035, subd. 1 (2018). A “relative” is “a person related to the child by blood, marriage, or adoption.” Minn. Stat. § 260C.007, subd. 27 (2018). While grandmother expressed interest in having T.R. placed with her on an emergency basis, father disputed paternity shortly after T.R. was born and asked for a DNA test. Thus, at the time T.R. was discharged from the hospital, whether grandmother was even eligible to be an emergency placement option was unclear because it was not certain that she was T.R.’s “relative.” The agency’s decision not to place T.R. with grandmother upon discharge from the hospital is legally and factually sufficient.

Second, the district court also found that the agency acted reasonably in not changing T.R.’s placement to grandmother after father’s paternity was established because, after T.R.’s emergency placement with the foster parents, grandmother needed to have a foster-care license before T.R. could be placed with her. In contrast to being an eligible emergency placement option, where grandmother only needed to be foster-care *licensable*,

grandmother needed to be foster-care *licensed* before T.R. could be placed with her after the emergency placement with the foster parents. *Compare* Minn. Stat. § 245A.035, subds. 1, 3 (2018), *with* Minn. Stat. § 245A.03, subd. 1 (2018). Grandmother did not become foster-care licensed until August 2017. Thus, until at least August 2017, the agency’s decision not to place T.R. with grandmother is legally and factually sufficient.

Third, the district court found that the agency was appropriately concerned about changing T.R.’s placement while the TPR petition was pending because T.R. may have been reunified with mother or father as a result. The agency was required to exercise due diligence to reunify T.R. with his parents. *See* Minn. Stat. § 260.012, subd. (e)(1) (2018). The agency’s reunification efforts are factually supported until the TPR order was issued on November 22, 2017.

Fourth, the district court found that the agency acted reasonably when it did not place T.R. with grandmother while the parents appealed the TPR order because the parents may have reinstated their parental rights. The district court found that the agency “reasonably determined that disrupting a stable placement with the [foster parents] by placing [T.R.] with [grandmother] with the possibility of [the TPR being reversed] was not in child’s best interest.”

We agree with the district court that stability is a “competing interest of the child.” *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). Stability is also a common theme underpinning the statutory best-interest factors. *See* Minn. Stat. § 260C.212, subd. 2(a) (2018). Both before and during the TPR appeal, the district court was presented with evidence that it was in T.R.’s best

interest to remain with the foster parents because of the importance of stability and consistency in his care.

We recognize the tension between grandmother's love for T.R. and the agency's concern about moving T.R. between homes before and during the TPR appeal. On one hand, the agency was required by statute to continue "all progress toward adoption" while the TPR appeal was pending. *See* Minn. Stat. § 260C.607, subd. 1(c). On the other hand, the agency acted on evidence that it was in T.R.'s best interest to remain in a stable home during the TPR appeal because of T.R.'s lack of resiliency. We conclude that, on this record, the agency's concern that T.R. could be harmed by multiple placement changes before and during the TPR appeal is both legally and factually sufficient and therefore supports the district court's decision.

We are not persuaded by the district court's other reasons for concluding that the agency acted reasonably in failing to place T.R. with grandmother. For example, the district court cited the agency's concern about grandmother's changes in residence between August 2016 and April 2017. Specifically, the district court said that neither it nor the agency could "ignore the instability in [grandmother's] change in residences." We acknowledge that foreclosure may cause housing instability. But in this case, this basis is factually insufficient because there is no evidence in the record that grandmother was ever homeless or that T.R. would have been harmed by moving residences with grandmother. In short, we differentiate between placement changes and changes in a child's actual shelter. More fundamentally, grandmother filed her first motion for adoptive placement in December 2017—*after* her final move in April 2017.

The district court also relied on “both parents requesting that [T.R.] remain with” his foster parents. We recognize a parent’s ability to strike a possible placement for their child: “If the child’s birth parent or parents explicitly request that a relative or important friend *not be considered*, the court shall honor that request if it is consistent with the best interests of the child” Minn. Stat. § 260C.193, subd. 3(e) (2018) (emphasis added). Mother explicitly requested that T.R. stay with the foster parents and father told the agency that he preferred that T.R. stay with the foster parents for stability. This is not the same as explicitly requesting that grandmother *not* be considered as a placement option. *See id.* We also find it puzzling that the agency relies on this factor while simultaneously saying that it considered grandmother as a placement option throughout the proceedings. This basis is factually insufficient.

Lastly, the district court relied on the agency’s concern about the history of domestic violence on each side of T.R.’s family. The agency was required to ensure T.R.’s “safety and protection” during placement. *See* Minn. Stat. § 260.012, subd. (h)(1) (2018). In support of the agency’s decision to decline placement with grandmother, the district court identified several restraining orders between father, mother, grandmother, and one of father’s ex-girlfriends. But this record does not establish that these restraining orders amounted to a potential safety issue for T.R. if he was in grandmother’s care. Indeed, grandmother appears to have been protected by these restraining orders, which were intended to shield her from harm.

While we disagree with some of the district court’s reasons for finding that the agency acted reasonably in failing to place T.R. with grandmother and may have reached

a different placement decision were we the finders of fact, we conclude that the district court nonetheless identified legally and factually sufficient reasons supporting the agency's actions. We conclude that the district court did not abuse its discretion.

III. The district court did not abuse its discretion when it concluded that it was in T.R.'s best interests to be placed with his foster parents.

Grandmother argues that the district court erred when it balanced the best-interest factors. Appellate review of the best-interest factors is not required because we have upheld the district court's determination that the agency was reasonable in failing to place T.R. with grandmother. A district court may not grant a motion for adoptive placement *unless* it finds both that the agency was unreasonable in not placing the child with the moving party *and* that the moving party is the "most suitable adoptive home" based on a multi-factor analysis. *See* Minn. Stat. § 260C.607, subd. 6(e).

Still, we consider the district court's analysis of T.R.'s best interests due to the sensitive and weighty issues in this case. We review a district court's balancing of the best-interest factors for abuse of discretion and accord a district court "a substantial degree of latitude." *In re S.G.*, 828 N.W.2d 118, 125-26 (Minn. 2013). In exercising its discretion, "a trial court must make detailed factual findings showing that the child's best interests are being served." *Id.* at 126.

Following an evidentiary hearing on a motion for adoptive placement, a district court determines the suitability of the moving party's "adoptive home to meet the child's needs using the factors in section 260C.212, subdivision 2, paragraph (b)." *See* Minn. Stat. § 260C.607, subd. 6(e). While section 260C.607, subd. 6, does not expressly refer to a

“best-interests” analysis, it directs the district court to use 11 non-exclusive factors identified in section 260C.212, subdivision 2(b), which governs out-of-home placement.³

The 11 best-interest factors include, but are not limited to:

(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, if the court, or the child-placing agency in the case of a voluntary placement, deems the child to be of sufficient age to express preferences; and (11) for an Indian child, the best interests of an Indian child as defined in section 260.755, subdivision 2a.

Minn. Stat. § 260C.212, subd. 2(b) (2018). *See also* S.G., 828 N.W.2d at 125 (referring to these 11 factors as part of the best-interests determination for adoption under Minn. Stat. § 259.57).

The district court found that factors one (current functioning and behaviors), four (developmental needs), and nine (relationship to current caretakers) weighed in favor of the foster parents, factor six (religious and cultural needs) weighed in favor of grandmother, and the rest of the factors were either neutral or did not apply. Relying on testimony that if

³ The Minnesota Supreme Court has referred to these 11 factors for adoptive placement as a “best interests” analysis. S.G., 828 N.W.2d at 125. Additionally, Minn. Stat. § 260C.212, subd. 2(a) specifically states that Minnesota’s policy for out-of-home placement is “to ensure that the child’s best interests are met by requiring an individualized determination of the needs of the child and of how the selected placement will serve the needs of the child being placed.” Minn. Stat. § 260C.212, subd. 2(a). *See generally* *Pikula v. Pikula*, 374 N.W.2d 705, 711 (Minn. 1985) (stating that the best interest of the child is the “guiding principle” in all custody cases).

T.R. lost his primary attachment with his foster parents, it “would cause significant grief and loss and would be like the death of a parent,” the district court determined that it was in T.R.’s best interest to remain with the foster parents and that the foster parents were the most suitable adoption home for T.R.

Two prior appellate opinions are instructive. In *In re Welfare of D.L.*, an African American child was placed with a Caucasian foster family for two years before the child’s grandparents located the child and petitioned for adoption. 486 N.W.2d 375, 377 (Minn. 1992). The district court granted the grandparents’ petition based on several factors: the county’s recommendation, the grandparents had legal and physical custody of two of the child’s sisters, the statutory preference for family placement, and credible expert testimony that the trauma of breaking the child’s primary attachment would be temporary and leave no lasting harm. *Id.* at 377-78. The supreme court affirmed, holding that adoptive placement with a relative is presumptively in the child’s best interests absent a showing of good cause to the contrary or detriment to the child. *Id.* at 380.

More recently, in *S.G.*, grandparents petitioned for adoption of their two grandchildren who had been in foster care since birth. 828 N.W.2d at 119-20. The foster parents also petitioned for adoption. *Id.* The district court found that it was in the children’s best interests to be adopted by the foster parents, in part because the district court found “that there is a real risk of future emotional and developmental damage if the children are removed from the foster parents’ home.” *Id.* at 126 (internal quotation marks omitted). The supreme court affirmed because the district court’s order included “detailed findings and analysis demonstrating that the court focused on the best interests of the children” and the

evidence in the record supported the district court's findings. *Id.* at 126-27. This was so even when considering the children's cultural needs as African Americans being raised in a Caucasian household. *Id.* at 127.

This case is more like *S.G.* than *D.L.* The district court made detailed factual findings on the best-interest factors over ten pages. While weighing the factors, the district court gave careful consideration to "the challenges faced by biracial children" and understood that T.R. would "experience some difficulties in the future." Still, the district court found that the harm caused by removing T.R. from his primary attachment with his foster parents took priority over the potential cultural benefits of being placed with his grandmother, who is also biracial. The record supports the district court's conclusion: the agency's employees, the GAL, a family therapist, Sinn, McMahon, and Dr. Siegel had significant concerns about the harm to T.R.'s behavioral and emotional development if his primary attachment with his foster parents was broken. Given that caselaw "leaves scant if any room" for us to question the district court's balancing of the best-interest factors, *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000), we conclude that the district court did not abuse its discretion in determining that T.R.'s best interests favored adoptive placement with his foster parents and not with his grandmother.

As a final note, we agree with the district court's concluding words:

The decision as to who is better suited for [T.R.] is an extremely difficult decision that this Court has to make due to the sincere love and qualifications of both [grandmother] and the [foster parents]. The Court admires [grandmother]'s commitment and involvement in this process and her desire to do what is in [T.R.'s] best interest. However, given the facts of this case, the testimony of the experts as to the secure primary

attachment [T.R.] has formed with the [foster parents], testimony that losing such attachment would cause significant grief and loss and would be like the death of a parent, testimony that [T.R.] is not as resilient as originally believed . . . and concerns about his development if he loses the attachment with the [foster parents], the Court finds that it is in [T.R.]'s best interest that [he] remains with the [foster parents].

We also commend the grandmother and the foster parents. Both have stated that they intend to maintain contact with one another to foster meaningful ongoing relationships with T.R. after his adoption is finalized. This is a difficult path, but we sincerely hope that the parties will continue to work together for T.R.'s benefit.

Affirmed.