

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1118**

In the Matter of the Welfare of the Child of:
S. A. W. and F. N.,

Commissioner of Human Services,
Legal Custodian.

**Filed February 16, 2021
Affirmed
Cochran, Judge**

Benton County District Court
File No. 05-JV-18-179

Y. V. W., Brooklyn Park, Minnesota (pro se appellant)

Philip Miller, Benton County Attorney, William V. Faerber, Assistant County Attorney,
Foley, Minnesota (for respondent)

Lisa Gertken, Waite Park, Minnesota (guardian ad litem)

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and
Gaïtas, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges the district court's denial of her motion for permissive intervention in a child-protection proceeding involving her grandson, as well as the district court's denial of her request to be considered as an adoptive placement for her grandson. Because the district court had already ruled out appellant as a placement option, and

because the district court did not abuse its discretion by deciding that appellant's intervention was not in the child's best interests, we affirm.

FACTS

This case began in March 2017 when respondent Benton County filed a petition alleging that the child, J.N., was in need of protection or services¹ due to concerns of neglect by the child's mother, S.A.W. At the time, S.A.W. (mother) was the child's primary caregiver. The county removed J.N. and his two siblings from mother's care after the children were adjudicated as children in need of protection or services. The county placed all three children together with a foster family. In September 2017, mother gave birth to a fourth child and, in October, the county filed an additional CHIPS petition. The district court granted that petition and the fourth child was placed with the child's siblings. Appellant's son, F.N. (father), is the father of J.N. but not the three other children.

In January 2018, the county filed a petition to terminate mother's parental rights to J.N. The county also filed a petition to terminate father's parental rights to J.N. Father was incarcerated at the time. The county filed similar petitions relating to the other three children.

In June 2018, the district court held a consolidated trial regarding the county's petitions to terminate mother's parental rights to all four children and the parental rights of the respective fathers. Both mother and father appeared and testified. The fathers of the

¹ A petition alleging that a child is in need of protection or services is commonly referred to as a CHIPS petition. *In re Welfare of Children of J.D.T.*, 946 N.W.2d 321, 324 (Minn. 2020).

other children did not appear, and, as a result, the district court orally granted the county's request to find the other named-fathers in default.

In July 2018, the district court issued a written order involuntarily terminating mother's parental rights to all four children. The district court did not terminate father's parental rights to J.N. at that point because father was working on a reunification case plan to the best of his ability despite his incarceration. While working with father on his case plan, the county also worked on a permanency plan for the children. After considering several placement options, including appellant (grandmother), the county determined that it was in the children's best interests to place all four children with J.G., the paternal grandmother of one of the four siblings. In May 2018, grandmother moved to intervene as a party in the child-protection proceeding and requested that she be considered as a permanency placement for her grandson, J.N., and his siblings. In July 2018, grandmother filed an amended motion to intervene. The district court granted grandmother's motion to intervene at this stage in the proceedings.

In November 2018, the district court held a contested hearing on grandmother's motion to be appointed the permanency placement option. Grandmother's counsel requested that the district court transfer custody of the child and his siblings from the county to grandmother. Grandmother testified that she was involved in the lives of the three oldest children, including her grandson, prior to the children being removed from mother's care. Grandmother further testified that when Benton County social workers informed her that mother was pregnant again in 2017 and asked if she was "interested in getting the baby," she initially said, "No, I don't want any more kids. I just want the

three” Three or four months later, grandmother changed her mind and informed the county that she would take all four children. Grandmother testified that she had a strong bond with her grandson and was able to care for all four children.

At the hearing, an attorney for the county informed the district court about the process that the county used to decide on the best placement option for the children. The placement team “seriously considered” grandmother as a placement option. The team also considered three other options: (1) the children’s maternal grandmother, (2) the original foster parents, and (3) J.G., the paternal grandparent of one of the children, with whom all four children were ultimately placed. In making its determination, the county considered the statutory best interests factors. *See* Minn. Stat. § 260C.212, subd. 2(b) (Supp. 2019) (enumerating ten best interests factors).

The placement team ruled out the maternal grandmother because of a concern that she was not able to set adequate boundaries with mother. The placement team did not favor placing the children, who are biracial, with the foster parents because of a concern about the lack of ethnic diversity in the area in which they lived. And, the placement team determined that placing the children with grandmother was not in the children’s best interests. The placement team recognized that grandmother was a good placement option because she had a relationship with the children and owned a large enough residence to accommodate the children. But the placement team identified the following concerns: one of the children voiced a desire not to have contact with her, she showed favoritism towards her grandson that the other children noticed and brought up, she initially stated that she only wanted to adopt her grandson, she minimized the trauma that the children suffered,

and mother did not want the children to go to grandmother. The county attorney acknowledged that grandmother later stated that she would adopt all four children and not just her grandson, but argued that her later statements needed to be considered in light of her earlier statement where she indicated that “she wanted only her grandchild.”

The placement team ultimately decided that the other paternal grandparent, J.G., was the best permanency placement option for the children. The team’s decision was unanimous. The placement team placed the children in the custody of the other paternal grandparent because she was related to one of the four children, had a residence large enough for all the children, and “had experience in adopting a sibling of these children and had shown her ability to work with the [c]ounty and services to achieve what is best for the sibling.” The other paternal grandparent “understood and verbalized the needs of the children to transition once they were placed with her,” and mother approved of the children going to her. Because placing so many children with a single caregiver was a concern to the county, it explored the possibility of “separat[ing] some siblings to each grandmother,” but the state informed the county that was not an option. The placement team then concluded that placing all four children with the other paternal grandparent was in the children’s best interests.

The guardian ad litem (GAL) testified that he agreed with the county’s placement decision. The GAL opposed placing the children with grandmother for reasons similar to those articulated by the county attorney. The GAL testified that he had visited the children in their current home with the other grandmother, that they were “thriving” there, and that he did not support the children being disrupted out of that home.

After hearing from grandmother, the county attorney, and the GAL, the district court expressed empathy for grandmother's position, but it explained that the court's job was "to find what is in the best interests of these children." Based on the county attorney's explanations, the district court stated: "I can't tell you that the [c]ounty hasn't carefully considered all of [the] ten [best-interests] factors appropriately and made the right decision." The district court explained: "I am not in a position to substitute my judgment for the [c]ounty's judgment in making this permanency determination." The district court reiterated its desire for grandmother to remain involved with the children through visitation, but denied her motion to be appointed the permanency placement option.

In early December 2019, the county filed another petition seeking to terminate father's parental rights to the child. The county filed the petition because father ceased to make progress on his case plan following his release from prison in April 2019. Because father was no longer incarcerated, the district court changed grandmother's status in the case from party to participant. Grandmother moved to intervene as a party. The district court denied grandmother's motion, explaining that "[grandmother] was previously determined not to be a viable placement option for the [c]hild in the underlying child protection matter."

In February 2020, the district court involuntarily terminated father's parental rights after he failed to appear for a pretrial hearing despite having notice. The district court found that termination was in the child's best interests and that the criteria for termination under Minn. Stat. § 260C.301, subd. 1(b)(2), (5) (2018) were satisfied. At that point, because the parental rights of both parents had been terminated, the county undertook

adoption efforts for the child. The county recommended to the court that the child be adopted by J.G., the other paternal grandparent with whom he was living, so that the child could remain in a home with his siblings.

Grandmother filed a motion to intervene in April 2020—her third motion to intervene. The district court denied that motion in an order dated May 4, 2020. Grandmother did not appeal the denial of that motion. In August 2020, grandmother filed another motion to intervene—her fourth motion. The motion also sought an order to consider her as an adoptive placement for her grandchild and requested an evidentiary hearing. The district court denied that motion in all respects.² Grandmother now appeals the district court’s denial of her August 2020 motion to intervene and to be considered as an adoptive placement.

DECISION

A two-pronged process begins when a child is adjudicated to be in need of protection or services. *In re Welfare of Children of J.L.G.*, 924 N.W.2d 9, 12 (Minn. App. 2018). The first prong involves efforts aimed at reunifying the child with the parents. Minn. Stat. § 260.012(a) (2018). The second, called concurrent permanency planning, identifies a permanent home for the child in case the reunification efforts are not successful. Minn.

² Following the denial of her motion to intervene and the filing of her notice of appeal, grandmother moved the district court to stay the adoption pending this appeal. The district court denied that motion because it concluded that grandmother lacked standing to bring the motion. Grandmother then asked this court to review the district court’s denial of her motion to stay the adoption. In an order, this court concluded that the district court did not abuse its discretion in denying a stay.

Stat. § 260C.223, subd. 1(b) (2018). In making such decisions, the ultimate touchstone is the best interests of the subject child, as articulated by the following ten factors:

- (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.

Minn. Stat. § 260C.212, subd. 2(b).

In addition to the ten above factors, other public policies weigh upon the responsible social services agency’s decision. The agency is instructed to prioritize placing the children with a relative if possible. *See id.*, subd. 2(a) (Supp. 2019) (giving preference to “an individual who is related to the child by blood, marriage, or adoption”). The responsible social services agency is also instructed to keep siblings together if possible. *See, e.g., id.*, subd. 2(d) (Supp. 2019) (providing that “[s]iblings should be placed together for foster care and adoption” unless it would be “contrary to the safety or well-being of any of the siblings or unless it is not possible”); Minn. Stat. §§ 260C.613, subd. 3 (directing the responsible social service agency to keep siblings together unless doing so would not be in the best interests of the children), .617 (directing the responsible social service agency to

“make every effort to place siblings together for adoption”) (2018). With this background in mind, we turn to grandmother’s arguments.

Here, grandmother argues that (1) the district court erroneously failed to provide her with notice of review hearings regarding the county’s efforts to find an adoptive home for her grandson, (2) the district court should have held an evidentiary hearing on her request to be considered an adoptive placement, and (3) the district court abused its discretion by denying her motion to intervene. Grandmother’s arguments are interrelated because all of her claims ultimately implicate the question of whether the district court had previously ruled her out as a permanency option. We address each argument in turn.

I. The district court was not required to give grandmother notice of hearings regarding the county’s efforts to find an adoptive home for the child.

First, grandmother argues that the district court failed to meet its obligation under Minn. Stat. § 260C.607, subd. 2(5) (2018) to provide her notice of court hearings regarding the county’s efforts “to finalize adoption” of her grandchild after the court terminated father’s parental rights. Under Minn. Stat. § 260C.607, subd. 2(5), relatives who have kept the court informed of their whereabouts and who have indicated a willingness to provide an adoptive home must be notified of review hearings regarding adoption efforts, “*unless* the relative has been previously ruled out by the court as a suitable foster parent or permanency resource for the child.” (Emphasis added.) The county argues that grandmother was ruled out as a permanency resource at the November 2018 motion hearing. We agree with the county that grandmother was previously ruled out by the

district court and, therefore, conclude that the district court was not required to provide grandmother notice of hearings regarding efforts to place the child in an adoptive home.

“The interpretation of a statute is a question of law that we review de novo.” *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). We interpret statutes to determine the intent of the legislature. *Kremer v. Kremer*, 912 N.W.2d 617, 623 (Minn. 2018). Where the legislature’s intent “is clear from the plain language of the statute, further statutory construction is not necessary.” *Id.*

We recently had the opportunity to consider the meaning of the phrase “previously ruled out by the court” in the context of Minn. Stat. § 260C.607, subd. 2(5). *J.L.G.*, 924 N.W.2d at 14-15. In *J.L.G.*, a grandmother sought to adopt her grandchildren following termination of their parents’ parental rights. *Id.* at 10. The county placed the children with a foster family for adoption and did not notify the grandmother because it believed that the district court had previously ruled her out. *Id.* at 12. The district court denied the grandmother’s motion for adoptive placement because it concluded that she had not shown that the county was unreasonable in failing to place the children with her. *Id.* The grandmother appealed, arguing that she had never been ruled out as a placement option. *Id.* at 13. We concluded that the words “ruled out” in Minn. Stat. § 260C.607, subd. 2(5) unambiguously required the district court “to make a *ruling* to that effect.” *Id.* at 14. We reversed the district court because it had not expressly ruled out the grandmother as a permanency resource. *Id.* at 16.

Here, unlike in *J.L.G.*, the district court explicitly ruled out grandmother as a permanency placement option. In November 2018, the district court held a full contested

hearing on the issue of permanency placement. After hearing from grandmother, the district court expressly ruled grandmother out as a permanency option. Grandmother subsequently moved to be considered as a permanent placement option again in December 2019, April 2020, and August 2020. On each occasion, the district court denied grandmother's request. In the August 2020 order, which is the focus of this appeal, the district court noted that grandmother had filed similar motions in the past and "the Court repeatedly den[ied] the previous motions after the parties had a full and fair contested hearing." The district court also specifically noted that grandmother "was determined not to be the preferred placement option for the child or his siblings as a more suitable placement was found." Because the district court previously ruled grandmother out as a placement option, the district court was not required to provide grandmother notice of adoption-related review hearings under Minn. Stat. § 260C.607, subd. 2(5).

II. The district court properly denied grandmother's request for an evidentiary hearing.

A relative who is not being considered by the responsible social services agency can move the district court for an order of adoptive placement to place the child with them. Minn. Stat. § 260C.607, subd. 6(a) (2018). To succeed on such a motion, the relative must "make a prima facie showing that the agency has been unreasonable in failing to make the requested adoptive placement." *Id.*, subd. 6(b) (2018). If the relative's 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.” *Id.*, subd. 6(c) (2018). If the relative makes the required showing, the court will hold an evidentiary hearing. *Id.*

Upon review of a district court’s dismissal of a motion for adoptive placement without an evidentiary hearing, we review de novo whether the district court properly treated the parties’ supporting documents. *J.L.G.*, 924 N.W.2d at 15 (citing *In re Welfare of Children of L.L.P.*, 836 N.W.2d 563, 570 (Minn. App. 2013)). But we review the district court’s determination of whether an appellant established a prima facie showing that the agency was unreasonable for an abuse of discretion. *Id.* A district court abuses its discretion “if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law.” *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (quotation and citations omitted).

In support of her motion to be considered as an adoptive placement and requesting an evidentiary hearing, grandmother submitted a memorandum setting out her position. Grandmother also submitted an affidavit detailing her involvement in the children’s lives and her efforts to provide a safe home for them.

On appeal, grandmother argues that the district court abused its discretion by failing to hold a hearing after she filed her August 2020 motion because (1) the district court “did not rule on whether or not she had made a prima facie” showing, and (2) the county was unreasonable in failing to place the child with her because she is his biological grandmother. The county argues that the district court implicitly determined that grandmother failed to make a prima facie showing that the county was unreasonable in not placing the child with her. The county notes that the district court denied grandmother’s

August 2020 motion because the district court previously found that the county acted reasonably when it decided not to place the child with grandmother.

We agree with the county's reading of the district court's August 2020 order. While the district court did not explicitly state that grandmother failed to make the required prima facie showing, it denied her motion because the county previously showed that placing the child with grandmother was not in the child's best interests. And the district court previously found that placement with J.G., the other paternal grandparent, was in the child's best interests. The logical implication of the district court's determination that placing the child with grandmother was not in the child's best interests is that grandmother failed to show that the county was unreasonable in not placing the child with her.

In her reply brief, grandmother argues that the November 2018 motion hearing cannot have resolved the merits of her August 2020 motion because she did not move to be considered as an adoptive placement in November 2018. But grandmother's burden on appeal is to show that the district court abused its discretion by ruling that she failed to make a prima facie case that the county acted unreasonably "in failing to make the requested adoptive placement." Minn. Stat. § 260C.607, subd. 6(b). Grandmother did not provide any new information with her August 2020 motion that calls into question the district court's prior determination that placement with grandmother is not in the child's best interests. Consequently, the district court's prior determination stands as a barrier to grandmother's current argument that the county was unreasonable in failing to place the child with her.

Grandmother's next argument is likewise unavailing. She argues that because she is the child's biological grandmother, she should have preference over the paternal grandparent of one of the child's siblings, and thus she demonstrated that the county was unreasonable in failing to place the child with her. Grandmother is correct that state policy supports placing a child with relatives—but only to the extent that doing so is in the child's best interests. *See J.L.G.*, 924 N.W.2d at 15 (indicating that the legislature directed child-placing agencies to consider relatives first, so long as doing so is “consistent with the child's best interests”); Minn. Stat. § 260C.212, subd. 2(a)-(b). And, grandmother's argument ignores that the other paternal grandparent is also a relative of one of the children. As the county notes, after mother's parental rights were terminated and prior to grandmother's August 2020 motion, the other paternal grandparent adopted the child's half-siblings. By doing so, the other paternal grandparent became a direct relative of the child. *See* Minn. Stat. § 260C.007, subd. 27 (2018) (defining “relative” to include, among others, a person who is “the legal parent, guardian, or custodian of the child's siblings”). Moreover, the placement statutes do not prioritize biological relation over the child's best interests. *See* Minn. Stat. §§ 260C.212, subd. 2(b) (providing for placement decisions based on the best interests of the child), .613, subds. 1, 3 (requiring consideration of the child's best interests in adoptive-placements and generally requiring placement of siblings together) (2018); *see also In re Welfare of Children of A.M.F.*, 934 N.W.2d 119, 124 (Minn. App. 2019) (noting that while the legislature has indicated a preference for placement with relatives, such a preference does not “override the overall best interests of the child” (quotation omitted)). For these reasons, we are not persuaded by grandmother's argument

that she made a prima facie showing that the county acted unreasonably by failing to place the child with her, a biological relative.

Because the district court did not abuse its discretion by implicitly ruling that grandmother failed to make the required prima facie showing, the district court properly dismissed grandmother's August 2020 motion without an evidentiary hearing. Minn. Stat. § 260C.607, subd. 6(c).

III. The district court did not abuse its discretion by denying grandmother's motion to intervene.

Grandmother argues that the district court abused its discretion by denying her motion for permissive intervention because it failed to consider whether she was an appropriate placement option for the child. The county argues that the district court properly denied grandmother's motion for intervention because she "had already been determined not to be the preferred permanency placement option after" the November 2018 motion hearing. We agree with the county.

The Rules of Juvenile Protection Procedure provide that "[a]ny person may be permitted to intervene as a party if the court finds that such intervention is in the best interests of the child." Minn. R. Juv. Prot. P. 34.02. A district court's decision to deny "a request to permissively intervene will be reversed only when a clear abuse of discretion is shown." *State v. Deal*, 740 N.W.2d 755, 760 (Minn. 2007) (quotation omitted). As noted above, a district court abuses its discretion "if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law." *T.A.M.*, 791 N.W.2d at 578 (quotation and citations omitted).

In its August 2020 order, the district court denied grandmother's request to intervene because the issue that she sought to have heard—the placement of the child—had already been litigated in November 2018. The district court emphasized that grandmother had previously “filed multiple motions seeking to have the Court reopen the issue of placement for the child and the Court has repeatedly denied the requests as the issue has been fully litigated and decided by the Court.” And, as discussed above, grandmother failed to make a prima facie showing to support a new evidentiary hearing on the issue of placement. Accordingly, because grandmother failed to demonstrate any basis for another evidentiary hearing on her request for placement, grandmother has not shown that the district court abused its discretion by denying her motion to intervene.

In sum, grandmother was not entitled to notice of the adoption-related court hearings because she had been previously ruled out as a permanency resource. And grandmother was not entitled to an evidentiary hearing because she failed to make a prima facie showing that the county was unreasonable in failing to place the child with her. Finally, grandmother has not shown that the district court abused its discretion by denying her motion to intervene.

Affirmed.