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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0451**

In the Matter of the Welfare of the Child of: R. R. B.,
Commissioner of Human Services, Legal Custodian.

**Filed November 8, 2021
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-JV-18-3250

D.S., Minneapolis, Minnesota (pro se appellant grandmother)

Michael O. Freeman, Hennepin County Attorney, Mary Lynch, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent county)

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

NONPRECEDENTIAL OPINION

FRISCH, Judge

On appeal from an order denying a petition for adoptive placement, appellant-grandmother argues that the district court abused its discretion by concluding that she failed to prove that respondent-county acted unreasonably in not placing child with her and by admitting inadmissible evidence. We affirm.

FACTS

Out-of-Home Placement Proceedings

Child was born in 2017. In January 2018, respondent Hennepin County Human Services (the county) filed a petition alleging that child was a child in need of protection or services (CHIPS). In May 2018, child was adjudicated to be CHIPS. Two months later, the county filed a petition to terminate mother and father's parental rights.

Child has been in court-ordered out-of-home placement since January 13, 2018. Child was initially placed in a short-term shelter for five days before being placed with mother's former foster parent for approximately three months. In early April, child was placed with respondent K.O. (foster mother).

County's Relative Outreach, Grandmother's Child-Protection History, Grandmother's Foster-License Home Study, County's Placement Decision, and Grandmother's Initial Petition

The county conducted a thorough investigation of child's relatives, ultimately concluding that foster mother was best suited to child's needs. In February and March 2018, in response to child being placed out-of-home, the county mailed relative-notification letters to a dozen of child's relatives to assess whether any relative was interested in becoming a licensed foster parent or possible caregiver for child. See Minn. Stat. § 260C.221(a) (2020) (requiring that the county notify child's relatives). Of those relatives, five expressed interest in serving as a potential permanency option for child: mother's cousin, two of child's paternal great aunts (great aunt I and great aunt II), child's paternal great uncle, and appellant, child's paternal grandmother.

In March 2018, the county received a letter from grandmother expressing interest in being a caregiver and permanency option for child. At the time, grandmother lived in Ohio. The county's kinship worker telephoned grandmother to discuss her day-to-day life, work, and housing, and to determine whether any potential barriers to licensure existed. Grandmother stated that she was recently unemployed but searching for new work and that she lived with and had custody of her three grandchildren.¹ Grandmother also stated that she had a child-protection history, explaining that her daughter entered the foster-care system at 16 and aged out of foster care without grandmother regaining custody.

Grandmother's brief description of her child-protection history was concerning to the kinship worker. The fact that grandmother's "daughter went into foster care at the age of 16 and then was still in foster care when [she] turned 18" indicated to the kinship worker that "it wasn't a small issue that the [daughter] went into foster care for, that it was a rather serious issue."² The kinship worker was also concerned that "the [daughter's case] . . . didn't resolve by the [daughter] coming back into [grandmother's] custody." The kinship worker relayed this child-protection history to the county's social worker, who was also concerned by grandmother's daughter's foster placement because such a child-protection

¹ As evidence of her suitability for care of child, grandmother repeatedly references the fact that she gained legal custody of her three grandchildren and that she obtained a favorable home study to gain their custody. However, the record shows that the relevant Ohio child-protection agency stated that it "was not involved or consulted regarding this decision." Grandmother never provided the county with documentation showing how she gained custody of her grandchildren.

² The facts in this opinion are summarized from the record of grandmother's February 2021 evidentiary hearing.

history can serve as a barrier to grandmother obtaining a foster-care license and because it called into question grandmother's ability to be a safe caregiver for child.

The social worker then conducted an internet search of grandmother and discovered a 2010 kidnapping charge initiated by the State of Ohio against grandmother. The social worker was very concerned by this "major" charge because it called into question grandmother's ability to become licensed and to safely care for child. In July 2018, the social worker contacted grandmother and stated that she had discovered the kidnapping charge. Grandmother responded that the charge had been dismissed.³

Because grandmother lived out-of-state, she needed to receive approval under the interstate-compact-for-placement-of-children (ICPC) process to gain placement of child. See Minn. Stat. § 260.851 (2020) (requiring that an out-of-state relative be approved through ICPC prior to placement of a foster child). The social worker informed grandmother that her "child protection history and possible criminal history" prevented the county from conducting the ICPC process with her.

In August 2018, grandmother moved to Minnesota with her three grandchildren, and therefore she no longer needed to obtain ICPC approval to have child placed with her.⁴ Once in Minnesota, grandmother only needed to obtain a Minnesota foster-care license to

³ Grandmother later submitted a one-page document to the county showing that her kidnapping charge had been dismissed.

⁴ Grandmother testified that she believed that she needed to move to Minnesota to gain placement of child. The county's kinship worker testified that she never told grandmother that she should move to Minnesota to obtain placement of child.

become eligible to have child placed with her. Grandmother began working with a private agency to obtain the license, completing a series of foster-parent trainings in early 2019.

From January 2018 through April 2019, the county continued to work on reunifying child with mother.⁵ In April 2019, however, a district court held a trial regarding whether to terminate parents' parental rights. Mother voluntarily terminated her parental rights and the district court involuntarily terminated father's parental rights.

Around that same time, in April 2019, the county requested grandmother's child-protection records from Ohio. Two weeks later, the county received a summary of grandmother's child-protection history from Ohio.⁶ The summary "outlined ongoing child protection history which alleged that . . . [grandmother] physically abused her children, that there was emotional abuse . . . that she wasn't ensuring that their mental health needs were addressed or followed through, and at times that she abandoned her children." The social worker testified that she did not feel comfortable placing child with grandmother after reviewing these records because she "did not believe that [grandmother] could provide a safe home for [child]."

⁵ Father was incarcerated at the time and would continue to be incarcerated for the foreseeable future.

⁶ The county did not receive the full set of grandmother's Ohio child-protection reports—more than 500 pages—until October 2020. The county's adoption-resource worker and the guardian ad litem testified that the Ohio child-protection summary was consistent with grandmother's full child-protection history. The district court agreed, finding that the full child-protection record "further corroborate[d the summary that] was previously received."

Also in April 2019, the county contacted great aunt I to inquire whether she was willing to adopt child “if necessary.” Great aunt I indicated that she was interested in child being placed with her and authorized the county to conduct a background check.

In May 2019, the county held a family group conference, gathering all interested family members together to discuss which relative should become licensed as a foster parent to obtain placement of child. Seven or eight relatives attended this conference, including mother and grandmother, as well as the county’s case workers for child. Grandmother informed the group that she had cleared her background check and would be licensed shortly. The family decided that great aunt I should also become licensed in the event that grandmother was not able to take child into her care.⁷

On June 14, 2019, the county requested that the district court rule out grandmother as a suitable permanency-placement option for child because of its concerns regarding her “lengthy child protection history” and its belief “that [grandmother] was [not] an appropriate or safe caregiver for [child].” The district court denied the county’s motion without reaching the merits. Despite requesting to rule out grandmother, the county continued to consider her as a placement option for child.

In July 2019, grandmother received an approved home study from the private foster-licensing agency and was approved for a foster-care license. The county received the records from grandmother’s home-study application and became concerned “because

⁷ The county repeatedly attempted to contact great aunt I to complete the licensing paperwork over the following nine months. Great aunt I did “not seem motivated to get her license” and eventually removed herself from consideration.

a lot of the things that [it] had been informed of were not included in the home study.” Specifically, the materials did not include grandmother’s prior kidnapping charge, only included an interview of one of grandmother’s four children and neither of grandmother’s children who had been placed in foster care, lacked “a lot of child protection history,” and “there was just not a lot of detail” in the report.

In September 2019, the county contacted child’s other relatives who had initially expressed interest in being caregivers for child.⁸ The county telephoned mother’s cousin twice in September to see if she would be a placement option for child and “asked that she follow up . . . if she wanted to proceed with the licensing process.” Mother’s cousin never followed up with the county. The county telephoned great aunt II to see if she was still interested in being a placement resource. Great aunt II stated that she was still interested, and the county initiated the ICPC process that would be required to place child out-of-state. Great aunt II’s ICPC application was denied three months’ later. The county also telephoned great uncle to see if he was interested in serving as a placement resource. Great uncle affirmed his interest in being an adoptive resource for child and the county initiated the ICPC process for him. Great uncle later “withdrew his interest in being studied for placement” and his ICPC application was denied.

In October 2019, the county conducted a home-study follow-up meeting at grandmother’s house “to more thoroughly review that child protection history that wasn’t discussed in the home study.” At this meeting, the county’s adoption-resource worker

⁸ Around this time, grandmother submitted a motion to obtain visitation rights with child. The district court granted grandmother one supervised visit per week.

“asked [grandmother] about specific incidents” described in the Ohio child-protection summary report. “[M]ost of [grandmother’s] answers were either she didn’t recall any of that [child-protection information] or . . . that wouldn’t be in her nature to do the things that were alleged.” The adoption-resource worker testified that grandmother did not “accept responsibility” for any of the child-protection history that she did recall, instead blaming her daughter’s “behavioral issues” for grandmother’s child-protection record.

In February 2020, after all of child’s relatives other than grandmother had removed themselves from consideration or were denied ICPC approval, the county met to determine what placement was in child’s best interests. The county determined that permanent placement with foster mother was in child’s best interests. The county believed that it “had thoroughly explored [grandmother] at that point.” In March 2020, the county signed an adoption-placement agreement (APA) with foster mother.⁹

On May 6, 2020, the county mailed notice of the completed APA with foster mother to grandmother. Three weeks later, grandmother filed a motion with the district court for adoptive placement. Two weeks after grandmother’s motion, the district court conducted a preliminary hearing. The district court found, accepting grandmother’s alleged facts as true for purposes of her motion, that the county “took little to no action to investigate or consider Paternal Grandmother as a placement resource for the child” and that grandmother

⁹ Even after signing the APA with foster mother, the county continued to evaluate grandmother for suitability. If the county later changed its mind about foster mother, it could have canceled the APA.

“can provide a safe environment for the child to live.”¹⁰ The district court granted grandmother an evidentiary hearing.

In July 2020, after the private agency received grandmother’s additional Ohio child-protection history, it published a favorable home-study update. Even with this update, the county was still concerned with grandmother’s home study, and it determined that the study did not fully or accurately explain her history. “[S]ome of the language that [the agency] had used . . . was inaccurate [as] far as stating that the [county] had ruled out [grandmother] . . . [and] was missing some of the pertinent information, but had alleged some other information that was . . . incorrect.” Despite its concerns about the home-study update, the county continued to evaluate grandmother for placement.

District Court Evidentiary Hearing

In February 2021, the district court held a virtual six-day evidentiary hearing on grandmother’s motion for adoptive placement. The district court received extensive evidence from the county’s adoption workers affiliated with child’s case about their concerns with placing child in grandmother’s care and their doubts about grandmother’s ability to get licensed, a prerequisite to child being permanently placed in her care.

The county’s adoption workers testified that the summary of grandmother’s Ohio child-protection history raised serious concerns about grandmother’s ability to care for child and obtain a license. The county’s kinship worker testified:

¹⁰ The district court did not consider “the alleged facts about Paternal Grandmother’s Ohio child protection history” in its decision.

Child protection history is—is very important in the process of foster care licensing. . . . [T]hat there were maltreatment determinations, that [grandmother] lost custody of her daughter, and that she had at least two children that spent time in foster care would all be issues that would make it a barrier to becoming licensed as a foster parent.

Similarly, the county’s adoption-resource worker expressed significant concern over grandmother’s patterns of “stopping or not engaging in necessary mental health treatment for her children,” “threats or allegations of physical abuse towards her children,” and being “not cooperative with child protective services.” The county’s adoption workers testified that they relied on the summary of grandmother’s Ohio child-protection history in making decisions about child’s case.

Multiple witnesses also testified that foster mother is a “fantastic provider” to child who “go[es] above and beyond in meeting [child’s] needs.” The county and the guardian ad litem both testified that foster mother was best suited to be child’s provider based on the best-interests factors.

The trial testimony specifically highlighted foster mother’s praiseworthy effort to become a culturally competent foster parent to a Black child. Trial testimony showed that foster mother worked diligently to introduce child to people that looked like child, for example, placing child in a diverse daycare, bringing child to a Black barber, enrolling child in an afro-centric music class, and providing child with “books, dolls, and toys that reflect [child].” Foster mother also demonstrated a commitment to engage with child’s culture of origin and to reinforce his cultural identity as something positive and beautiful. Foster mother also expressed her assurance that she would maintain connections to

important people in child's life, including child's biological family. Moreover, trial testimony showed that foster mother has worked hard to understand the challenges of parenting a Black child, undergoing transracial foster-care training, educating herself on child's culture, and reaching out to friends and family who identify as Black, several of whom agreed to serve as "cultural mentors" for foster mother.

District Court Order

The district court issued a thorough, detailed, and comprehensive 29-page order, holding that grandmother had "not proven by a preponderance of evidence that the [county] was unreasonable in failing to place the child with [grandmother] for adoption" and that "[e]ven if [grandmother] had proven unreasonableness, [grandmother] has not proven by a preponderance of the evidence that her home is the most suitable adoptive home to meet the child's needs." The district court found the county's adoption workers, foster mother, and guardian ad litem to be credible. In contrast, the district court found the home-study agency official and grandmother's testimony about her child-protection history to be not credible. The district court also found that the county reasonably relied on grandmother's Ohio child-protection records in concluding that foster mother was the preferable placement option for child.

Grandmother appeals.

DECISION

Grandmother argues that the district court abused its discretion by unreasonably refusing to place child with her, admitting inadmissible evidence, and violating several of

grandmother's constitutional rights as well as conducting a biased trial. We address each argument in turn.

I. The district court acted within its discretion by determining that the county did not unreasonably fail to place child with grandmother.

We review a district court's decision of whether a county agency unreasonably failed to make an adoptive placement for an abuse of discretion. See Minn. Stat. § 260C.607, subd. 6(e) (2020) (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). 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).

The party moving for adoptive placement bears the burden of proving by a preponderance of the evidence that the agency acted unreasonably by failing to make the adoptive placement. Minn. Stat. § 260C.607, subd. 6(d) (2020). We review whether an agency's action was reasonable according to two factors: (1) whether the agency's rationale for its action was legally sufficient, and (2) whether that legally sufficient rationale has a factual basis in the record. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75-76 (Minn. 2015); see *Hagen v. Schirmers*, 783 N.W.2d 212, 217-18 (Minn. App. 2010) (noting, in the context of reviewing a district court's discretionary, custody-related

decision, that “the district court must identify both its decision . . . as well as the underlying reason(s) for that decision”).

Minnesota law requires the county to first consider a child’s relatives for adoptive placement. Minn. Stat. § 260C.212, subd. 2(a)(1) (2020). And, contrary to grandmother’s assertions, the county did consider child’s relatives, and grandmother specifically, as placement options for child. The district court concluded that the county “immediately began its kinship search once the child was placed in foster care” and that the county “considered [grandmother] and made placement decisions with court oversight.” The record supports the district court’s conclusion. The county notified a dozen relatives of child’s out-of-home placement, identified five relatives who wished to be considered for placement, contacted those relatives numerous times, organized a meeting to ensure that the family decided which relatives should become licensed and made certain that the family had a back-up plan, and conducted additional outreach to other relatives when it appeared that the initially chosen relatives would not be suitable.

With respect to grandmother, in addition to the county’s actions described herein, the county contacted her multiple times to discuss its concerns regarding her child-protection history, allowed grandmother opportunities to explain this history, conducted a private meeting at grandmother’s house, suggested that grandmother obtain a foster-parent license to be eligible for placement, followed up with grandmother’s home-study agency to ensure that the agency accessed and properly considered all of grandmother’s history, and provided grandmother with access to supervised visits with child. The record shows that the county continued to consider grandmother as a placement

option throughout the entire adoption-placement process with child. Grandmother's contention that "[the county] had no intention of ever placing [child] with [her]" is not supported by the record.

Moreover, the county had a proper basis for its concern over child's safety if child was placed in grandmother's care. *See, e.g.*, Minn. Stat. § 260C.212, subd. 2(b) (2020) (describing best-interests factors, of which child safety is an underlying central component). The district court found that "there are legitimate safety concerns for children in [grandmother's] care" and that these safety concerns also "called into question [grandmother's] ability to be licensed." The district court noted that "the [county] gave [grandmother] the opportunity to explain her side of the story and instead she continued to deflect and deny [that] anything took place."

The county's safety concerns are supported by the record. The record shows numerous serious allegations from 2001 through 2016 of physical and mental abuse by grandmother against her four children. These allegations include not engaging in necessary mental-health treatment, physical abuse, abandonment, threats to kick children out of her home, neglect, and maltreatment. Two of grandmother's children were removed from grandmother's care and placed in the foster-care system. The district court did not abuse

its discretion in determining that the county's concerns regarding grandmother's ability to safely care for child were legally sufficient and supported by the record.¹¹

We therefore discern no abuse of discretion by the district court in its well-supported findings and conclusions that grandmother failed to meet her burden to prove that the county acted unreasonably.

II. The district court did not abuse its discretion by admitting certain of grandmother's Ohio child-protection records into evidence.

The district court must generally follow the rules of evidence in juvenile-protection trials. Minn. R. Juv. Prot. P. 3.02, subd. 1. "We afford the district court broad discretion when ruling on evidentiary matters, and we will not reverse the district court absent an abuse of that discretion." *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). A district court "abuses its discretion if it improperly applies the law." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 93 (Minn. App. 2012), *rev. denied* (Minn. July 17, 2012).

Grandmother argues that the district court erred in admitting her Ohio child-protection documents into evidence because those documents were hearsay or, in the alternative, unfairly prejudicial.

¹¹ Even if the county's refusal to place child with grandmother was unreasonable, the district court did not abuse its discretion in holding that foster mother is best suited to care for child. The record shows that foster mother is an excellent caregiver to child and that there are legitimate safety concerns regarding grandmother as a caretaker.

Grandmother's primary objection to the district court's best-interests analysis is that it failed to properly consider cultural factors because she, like child, is Black, and should therefore be allowed to adopt child over a White foster parent. Our caselaw does not compel such a conclusion. *In re S.G.*, 828 N.W.2d 118, 126-27 (Minn. 2013) (finding that the district court's "detailed findings and analysis demonstrat[ed] . . . that it was in the [children's] best interests to be adopted by the foster parents," even though the Black children would be raised in a White household).

A. The child-protection records are admissible under the business-records exception or are otherwise non-hearsay.

Evidence offered for the truth of the matter asserted is hearsay when it includes an out-of-court statement made by someone other than the testifying declarant. Minn. R. Evid. 801(c). Evidence is not hearsay if it is not used to prove the truth of the matter asserted, but rather to explain a party's rationale for its actions. *Id.*; e.g., *Butler v. Leadens Investigations & Sec., Inc.*, 503 N.W.2d 805, 809 (Minn. App. 1993). Hearsay is inadmissible unless an exception applies. Minn. R. Evid. 802. One such exception is the business-records exception, which allows admission of an otherwise-hearsay report if, among other things, that report was made "in the course of a regularly conducted business activity." Minn. R. Evid. 803(6).

Here, the district court properly admitted grandmother's full Ohio child-protection records into evidence under the business-records exception to the hearsay rule. At trial, an Ohio records custodian authenticated these documents as records kept in the ordinary course of business. Each record contained verifying and authenticating information, including its date and author, and the district court found the custodian credible. The district court did not misapply the law or abuse its discretion in admitting these documents into evidence under the business-records exception.

The county also requested to admit the *summary* of grandmother's Ohio child-protection records into evidence. The district court repeatedly rejected the county's request and expressly found that the summary did not qualify as a business record because it was not produced contemporaneously with the events described in the summary as required by

the business-records exception and that the summary could not be properly authenticated. However, the district court did admit the county's *testimony* regarding this summary to the extent that the county relied upon the information in the summary in its decision-making. In other words, the district court properly considered non-hearsay evidence regarding the county's reliance on the information in the summary to explain "what the basis of [the county's] decision was," but the district court did not consider or receive into evidence the summary itself. We see no abuse of discretion in the district court's evidentiary ruling.

B. The district court did not abuse its discretion by determining that grandmother's child-protection history was not unfairly prejudicial.

Grandmother argues that the district court's consideration of her Ohio child-protection history was unfairly prejudicial and that it should have been excluded. Rule 403 provides that "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Minn. R. Evid. 403. This rule is necessarily discretionary—a district court "may" exclude certain evidence if it determines that the probative value is "substantially outweighed" by a qualifying concern. *See, e.g., State v. Hallmark*, 927 N.W.2d 281, 299 (Minn. 2019).

The district court did not abuse its discretion. While grandmother's Ohio child-protection records are certainly prejudicial, they are not unfairly prejudicial. The probative value of these records in determining whether the county acted reasonably in refusing to place child with grandmother is high. And grandmother was not unfairly prejudiced because she had a full and fair opportunity to address the evidence. We see no abuse of discretion by the district court.

III. We do not consider grandmother's constitutional and judicial-bias arguments because she did not raise them to the district court.

Grandmother raises several arguments on appeal which she did not raise before the district court. She summarily asserts four new legal theories: that “[t]he district court violated [her] Constitutional right to due process, equal protection[,] and right to face her accuser,” and that the district court was biased against her.

“A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quoting *Thayer v. Am. Fin. Advisers, Inc.*, 322 N.W.2d 599, 604 (Minn. 1982)). This bar on raising new issues at the appellate level applies to constitutional questions as well. *In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981). Grandmother did not raise these arguments at the district court and we therefore do not consider them for the first time on appeal.

Affirmed.