

*This opinion is nonprecedential except as provided by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
A22-0422**

In the Matter of the Welfare of the Children of:
S. D., Commissioner of Human Services, Legal Custodian.

**Filed August 15, 2022
Affirmed
Smith, John, Judge ***

Ramsey County District Court
File No. 62-JV-19-606

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Minnesota (for appellants)

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Considered and decided by Worke, Presiding Judge; Gaïtas, Judge; and Smith, John,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court’s denial of appellants’ motion for permanent adoptive placement because (1) the county’s selection of the foster parents was not unreasonable, (2) Minnesota statutes do not require that children be placed with relatives, and (3) the district court properly analyzed the statutory factors and properly determined that it was in the best interests of the sisters to stay with the foster parents.

FACTS

This dispute involves two sisters and their extended family. Older sister was born in 2010, and younger sister was born in 2017. The sisters share a mother but have different fathers.

In March 2018, Ramsey County Social Services Department (the county) filed a child-in-need-of-protection-or-services petition on behalf of both sisters. The county was delegated temporary legal custody. The agency placed the sisters with younger sister’s paternal grandparents.¹ Younger sister’s paternal uncle and his fiancée (appellants) also lived with grandparents during this time. Between June 2019 and June 2020, the mother’s and both of the fathers’ parental rights were involuntarily terminated.

After roughly half a year in grandparents’ custody, grandparents requested that older sister be removed from their home over claims that she was attempting to harm younger sister. Grandmother also called older sister a “monster” and “a school shooting waiting to

¹ Grandparents expressed interest in being a permanency option for the sisters in February 2018.

happen.” The county offered remedial services to grandparents, but grandparents refused. Even after the agency informed grandparents that older sister’s removal would likely result in younger sister’s removal, the grandparents insisted that older sister be removed from their care.

The sisters were placed together in a foster home with foster parents in September 2019. Appellants stated their desire to be a permanency option in October 2019. Appellants attended a court hearing where the county discussed the process for adoption. The county and the guardian ad litem informed appellants that adoptive placement with them would be unlikely if they still lived with grandparents. In January 2020, appellants got their own housing separate from grandparents.

Since living with the foster parents, older sister, who is unrelated to appellants, has expressed that she does not desire contact, visitation, or adoption from grandparents or appellants.

On August 12, 2021, appellants filed a motion for permanent adoptive placement of both sisters. The district court held an evidentiary hearing in December 2021 and two more in January 2022.

Following the hearing, the district court denied appellant’s motion. In an order, the district court discussed the post-permanency placement considerations and contested adoptive placement statutes before moving on to the statutory factors. The district court highlighted that the appellants did not initially identify themselves as a potential adoptive placement and did not protect older sister from the forced removal from grandmother’s house, and concluded that in light of those facts the county acted reasonably in not placing

the sisters with appellants. The district court also emphasized that the environment was not safe for older sister, older sister's request to live with foster parents, and the need to keep the sisters unified. The district court then thoroughly assessed all the listed statutory factors in the adoptive-placement statute for each sister (with the sole exception of older sister's interests and talents) before concluding that it was in the best interests of both sisters to remain with foster parents.

DECISION

I. The district court properly concluded that the county's denial of adoptive placement to appellants was not unreasonable.

First, appellants challenge the district court's conclusion that the agency was not unreasonable in not making an adoptive placement with appellants.

Appellate courts review a district court's decision to rule out a relative as a placement option for an abuse of discretion. *In re Welfare of Child. of M.L.S.*, 964 N.W.2d 441, 458 (Minn. App. 2021). A district court abuses its discretion by "making findings of fact that are unsupported by the evidence, misapplying the law or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)).

Underlying this case is the adoptive-placement statute, which explains that, following an evidentiary hearing, if the court finds either (1) "that the agency has been unreasonable in failing to make the adoptive placement" with that relative, and (2) "the child's foster parent is the most suitable adoptive home to meet the child's needs" under the statutory factors, the court "may" order the responsible social-services agency to make

an adoptive placement in the home of the relative or the child's foster parent. Minn. Stat. § 260C.607, subd. 6(e) (2021).

In another statute describing hearing procedures for adoption proceedings, one subdivision gives guidance to the district court on what to consider for adoptive placement, stating:

In reviewing adoptive placement and in determining appropriate adoption, the court shall consider placement . . . and in the following order, with (1) a relative or relatives of the child, or (2) an important friend with whom the child has resided or had significant contact.

Minn. Stat. § 259.57 subd. 2(c) (2020). The Minnesota Supreme Court reviewed the language of this statute in *In re S.G.*, 828 N.W.2d 118, 124 (Minn. 2013). There, the court explained that “the language directing the order of consideration does not require that the district court prefer a relative over a nonrelative in determining the best interests of the child, nor does it establish a preference for relatives in the same way that earlier versions of the statute did.” *S.G.*, 828 N.W.2d at 124.

Appellants point to *M.L.S.* and Minnesota Statutes section 260C.212, subdivision 2 (2020) to argue that a district court must prioritize the consideration of a relative over a non-relative. The county did consider appellants as a placement option but rejected them due to its analysis of the factors listed in section 260C.212, subdivision 2, older sister's preference, and sibling unification. In reaching this conclusion, the district court also noted that the county acted reasonably in communicating with appellants (despite some COVID-19-related delays).

Additionally, Minnesota law only requires agencies to “consider[] placement with relatives.” Minn. Stat. §260C.212. And *M.L.S.* does not hold that there is a preference for relatives, or that, solely by virtue of being a relative seeking adoptive placement, the district court should ignore the statutory factors or statutory preference for siblings remaining in the same home. *See* Minn. Stat. § 260C.008, subd. 1(a)(1) (2020) (stating that siblings have a right to be placed in “foster care homes with the child’s siblings, when possible and when it is in the best interest of each sibling”).

Therefore, the district court did not abuse its discretion in concluding that the county was not unreasonable in its adoptive placement decisions.

II. The district court properly assessed the statutory factors.

Next, appellant argues that the county improperly analyzed the statutory factors. We review a district court’s determination of the best-interests’ factors for an abuse of discretion. *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011) (making this statement regarding review of a district court’s termination of parental rights), *rev. denied* (Minn. Jan. 6, 2012).

The statutory factors for child placement states:

Among the factors the agency shall consider in determining the needs of the child are the following: (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 (2020). We held that there is “scant if any room” for this court to question the balancing on the best-interests’ factors. *Vangsnness v. Vangsnness*, 607 N.W.2d 468, 477 (Minn. App. 2000) (making this statement in the context of a custody dispute in a dissolution hearing).

Appellant assigns three errors to the district court’s analysis: (1) the district court failed to address each statutory factor separately for each child; (2) the district court focused too much on the relationship between older sister and grandparents, and not the sisters with appellants; and (3) the district court improperly considered the appellants’ delay in identifying themselves for adoptive placement.

First, as to the failure to reach every factor in section 260C.212, there is no requirement that every factor be addressed. The statutory factors are non-exhaustive. *M.L.S.*, 964 N.W.2d at 452 n.6 (“[W]e conclude that the best-interests factors a district court must consider will vary with the decision it is making and the circumstances of the child.”). Even if addressing every listed factor was required, the district court thoroughly assessed all the listed factors for each sister with the sole exception of older sister’s interests and talents. Appellants do not mention this sole missed statutory factor or otherwise demonstrate how not discussing the older sister’s interests and talents prejudices them. *See In re Welfare of D.J.N.*, 568 N.W.2d 170, 176 (Minn. App. 1997) (declining to reverse termination of parental rights where appellants failed to demonstrate that a district court’s error caused prejudice); *In re Welfare of Child. of A.D.B.*, 970 N.W.2d 725, 731 (Minn.

App. 2022) (citing this aspect of *D.J.N.*); *see also Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (stating, in a marital dissolution appeal, that “error is never presumed,” and the burden of showing prejudice lies with appellant).

Second, appellants contend that the district court focused on older sister’s relationship with grandparents and not on older sister’s relationship with appellants. Further, they argue that any animosity between older sister and appellants stems from the county preventing contact with older sister. This assertion is not supported by the record for several reasons. Appellants could not identify any specific steps or plan to remedy older sister’s disinterest in them, nor did they ask for visitation or contact with older sister from December 2018 to September 2019. The district court found that appellants did not “meaningfully engage” with older sister while they lived in the same house, failed to protect her from grandparents, and still listed grandmother as a substitute caregiver for older sister despite the negative history. Appellants also do not point to evidence illustrating a positive relationship with older sister.

The district court also balanced the relationship between older sister and appellants by highlighting the relationship between older sister and her foster parents. With appellants, the court highlighted that older sister has expressed that she does not desire contact, visitation, or adoption with appellants. The court also highlighted that when asked how he has explored the sisters’ Hispanic heritage, appellant-uncle noted that he has “eaten at a lot of Mexican restaurants,” as well as taken Spanish classes. This was juxtaposed with the court’s assessment of foster parents, who have “demonstrated a commitment to ensuring that children in their home understand and take pride in their cultural

background.” Crucially, the district court noted that older sister wanted to stay with the foster parents and did not want to even speak to appellants.

Third, appellants argue that the district court improperly considered the delay in identifying themselves for adoptive placement. Appellants describe in detail the timing and correspondences between appellants and the county to show that they “quickly” made efforts after the adoptive placement with the foster parents in September of 2019. This argument only cements the district court’s concern, which was that beginning in 2017 the appellants made no effort to be considered as a permanent placement. The district court highlighted that the appellants did not identify themselves as an alternative placement for older sister when she was removed from grandparents’ home, and otherwise expressed no interest in being a home for either sister until they were removed from grandparents’ care. And despite appellants reciting their interpretation of the facts, they do not point to a challenge, whether it be erroneous facts, or any caselaw to the contrary—they just argue that the decision was improper.

In sum, because the statutory factors are non-exhaustive, the district court discussed the relationship between older sister and appellants, and appellants did not otherwise demonstrate prejudice, the district court did not abuse its discretion.

Affirmed.