

*This opinion is nonprecedential except as provided by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
A22-1663**

In re the Matter of:

Darrell Perry, et al., petitioners,
Appellants,

vs.

Carrie Ann Swatlowksi,
Respondent.

**Filed January 22, 2024
Affirmed
Connolly, Judge**

Polk County District Court
File No. 60-FA-19-2575

Sarah M. Kyte, Kyte Law Office, Grand Forks, North Dakota (for appellants)

Carrie Ann Swatlowksi, East Grand Forks, Minnesota (pro se respondent)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Florey,
Judge.*

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellants challenge the district court's determination that Minn. Stat. § 518.18
(2022) does not apply to grandparent-visitation cases, which led to its denial of appellants'

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

motion to dismiss respondent's petition as untimely, its not holding an evidentiary hearing, and its termination of appellants' grandparent visitation; they also argue that Minnesota lacks subject matter jurisdiction over this matter. We affirm.

FACTS

Kristin Swatlowski and Kyle Perry, of Grand Forks, North Dakota, are the parents of A.S., born in March 2011, and E.S., born in June 2012. Their parental rights were terminated in September 2012. In February 2013, respondent Carrie Swatlowski, the children's maternal grandmother, adopted the children in Grand Forks, and took them to live with her in East Grand Forks, Minnesota.¹ The children's paternal grandparents, appellants Darrell and Teresa Perry, of Grand Forks, had inconsistent contact with the children until 2015 and no contact from then until 2019.

In December 2019, appellants filed a motion for reasonable visitation with A.S. and E.S., then 8 and 7 years old. In January 2020, respondent requested dismissal of the motion. In March 2021, following mediation, a temporary stipulation providing a graduated visitation schedule was filed with and approved by the district court.

The visitation schedule involved communication by video or letter between appellants and the children for one month (February), then online visits every two weeks for two months (March and April), then in-person visits of up to two hours every two weeks. Two in-person visits occurred in May, but disagreements about appellants' desire

¹ Respondent takes no part in this appeal.

to have the children visit other relatives, including their father, prevented any further visits for nine months.

In February 2022, a stipulation resolving all pending issues was filed with and approved by the district court. Appellants were granted two-hour in-person visits twice per month; in the summer, they were granted a two-hour visit once per month, with the option of a second two-hour visit once per month on a weekday, and one-hour Zoom video conferences at 10:00 a.m. on Thanksgiving Day and Christmas Eve. Conditions for the in-person visits included having exchanges occur at a public location; not involving other family members in the visits, and having visits either in a public place or in appellants' home, provided no one else was present. After nine months, the parties would participate in further mediation to determine if additional visitation would be in the children's best interests.

In March 2022, Teresa Perry attended A.S.'s basketball game with her daughter. During another March visit, appellants showed the children pictures of their son, the children's biological father, and told the children they could meet him soon. A.S. was upset and crying after this visit. Respondent filed a request for an emergency ex parte order requesting immediate suspension and termination of visitation. The district court denied her request and scheduled a review hearing for April 13, 2022. The issues addressed at the hearing were whether visitation should be suspended pending the final hearing on termination and whether the final hearing would be a motion hearing or an evidentiary hearing. The district court concluded that immediate suspension of grandparent visitation

should be denied and “ordered that the final hearing be set as a motion hearing (not an evidentiary hearing).”

After the final motion hearing in July 2022, the district court issued an order: determining that Minn. Stat. § 518.18 does not apply to grandparent visitation, which is governed by Minn. Stat. § 257C.08, subd. 2 (2022); finding that appellants had not complied with the conditions of the visitation plan and that their decisions have adversely impacted the children; determining that termination of grandparent visitation is in the children’s best interests; and terminating visitation.

Appellants challenge the order, arguing that the district court erred in: determining that Minn. Stat. § 518.18 does not apply to modification of grandparent visitation and therefore denying their motion to dismiss respondent’s motion as untimely under Minn. Stat. § 518.18, denying the evidentiary hearing required by Minn. Stat. § 518.18, and terminating appellants’ grandparent visitation by not invoking the standards of Minn. Stat. § 518.18; they also argue that Minnesota lacks subject matter jurisdiction over this matter.

DECISION

Appellate courts review an order denying grandparent visitation for an abuse of discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). However, the central issue here is whether Minn. Stat. § 518.18, concerning modification of custody and parenting time determinations, applies to the termination of grandparent visitation rights. The interpretation and construction of statutes are questions of law that appellate courts review de novo. *Lewis-Miller v. Ross*, 710 N.W.2d 565, 568 (Minn. 2006).

1. Statutory determination

Under Minn. Stat. § 257C.08, subd. 6 (2022), a district court may grant visitation rights to grandparents of a child who has been adopted by a stepparent if (1) the grandparent seeking visitation is the parent of a child whose parental relationship was terminated by a decree of adoption and (2) the court determines that the visitation is in the best interest of the child and would not interfere with the parent-child relationship. The parental rights of appellants' son were terminated; respondent adopted his children, and appellants were granted grandparent visitation. Respondent moved to terminate appellants' visitation rights 39 days later.

Appellants claim that respondent's motion violated Minn. Stat. § 518.18(a), which provides: "Unless agreed to in writing by the parties, no motion to modify a custody order or parenting plan may be made earlier than one year after the date of the entry of a decree of dissolution or legal separation containing a provision dealing with custody." They argue that Minn. Stat. § 518.18(a) applies to a motion to terminate grandparent visitation, that respondent therefore had no right to move to terminate their visitation until a year after the stipulation was filed and approved, i.e., February 9, 2022, and that respondent's motion to terminate on March 20, 2022, only 39 days after that date, should not have been accepted.

For this argument, appellants rely on Minn. Stat. § 257C.06 (2022), which provides that "[t]he procedures in section 518.18 for modification of a custody order also govern modification of an order under this chapter." But chapter 257C pertains to de facto custody and third-party custody. *See, e.g.,* Minn. Stat. § 257C.02(a) (2022) (providing that "[c]hapters 256, 257, and 518 . . . apply to third party and de facto custody proceedings

unless otherwise specified in this chapter.” This court has recently construed Minn. Stat. § 257C.02: “Because the statute is clear, we conclude that the unambiguous text of section 257C.02 incorporates chapter 518 for interested third-party custody and de facto proceedings, not a grandparent-visitation order.” *Ewald v. Nedrebo*, ____ N.W.2d ____, ____, 2023 WL 8533713, at *3 (Minn. App. Dec. 11, 2023) (emphasis omitted). Thus, “the reference to chapter 518 in section 257C.02 does not apply to a grandparent-visitation order.” *Id.*

Like their argument that respondent’s motion to terminate was brought too soon, appellants’ arguments on the denial of the evidentiary hearing and on terminating visitation without having found endangerment or interference with the parent-child relationship are based on the premise that Minn. Stat. § 518.18 applies to motions to terminate grandparent visitation. Absent that application, those arguments fail.

Moreover, Minn. Stat. § 518.18(c) provides that, if there has been “persistent and willful denial of or interference with parenting time,” the requirement to wait a year before moving to modify does not apply. Analogously, appellants’ “persistent and willful” disregard of the requirement that they not involve other family members in visits supports the district court’s finding that they

do not appear willing to abide by [r]espondent’s parenting decisions or even this Court’s Order. [Appellants’] actions took place within days of the Court issuing the existing Order in this case. What this tells the Court is that there will be ongoing litigation regarding the terms of grandparent visitation. Ongoing litigation is not in the children’s best interests.

The children did not have contact with [appellants] for many years. Respondent attempted to work on a compromise visitation plan that considered [appellants'] desires and provided protection to the children. [Appellants] were unable to comply with those agreed upon provisions. [Appellants'] decisions have adversely impacted the minor children. The Court finds that [r]espondent has proven, by clear and convincing evidence, that termination of grandparent visitation is in the children's best interests and that the existing grandparent visitation schedule has interfered with the parent/child relationship.

Minn. Stat. § 518.18 does not apply to termination of grandparent visitation rights, and the district court did not abuse its discretion in denying appellants' motion to dismiss respondent's petition as untimely.

2. Jurisdiction

The district court found that “[r]espondent and the minor children reside in East Grand Forks, Minnesota. This court has jurisdiction over this matter as [r]espondent and the minor children reside in Polk County, Minnesota.” In 2019, appellants filed their motion for visitation in Minnesota; the matter has been conducted in the Minnesota courts since then. Appellants argued for the first time at the July 2022 hearing that North Dakota has exclusive jurisdiction over this matter, relying on N.D. Cent. Code § 14-14.1-13 (2022), which provides that “a court of this state which has made a custody determination . . . has exclusive, continuing jurisdiction over the determination until . . . [a] court of this state or of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.” Because the district court found that respondent and the children reside in Minnesota, the North Dakota statute does not apply.

Affirmed.