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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0918**

In the Matter of the Welfare of the Child of: D. L. P. and J. A. P.,
Commissioner of Human Services,
Legal Custodian.

**Filed December 2, 2024
Reversed and remanded
Larkin, Judge**

Chippewa County District Court
File No. 12-JV-22-341

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Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant uncle challenges the district court's denial of his motion for adoptive placement of the child who is the subject of this proceeding, BAP, without an evidentiary hearing. Because the district court abused its discretion by concluding that appellant failed

to make a prima facie showing that respondent county had been unreasonable in failing to make the requested adoptive placement, we reverse and remand for an evidentiary hearing.

FACTS

DLP (mother) and JAP (father) are the biological parents of BAP, born in June 2022. In 2019, mother's parental rights to two other children were involuntarily terminated, and in 2020, she voluntarily terminated her rights to a third child. Upon BAP's birth, the county filed a request for emergency protective care, and the district court granted the request and ordered BAP to be "placed in an appropriate care setting." After BAP was released from the hospital, the child was placed with respondents CT and KT (the foster parents).

Respondent Chippewa County Family Services (the county) petitioned to terminate mother's and father's parental rights to BAP. In an August 2022 placement plan, the county indicated that it was "conducting a relative search to identify possible relatives to be a permanency option." Around this time, appellant TR, BAP's maternal uncle, expressed interest in adopting the child.

In October 2022, a letter from mother dated September 29, 2022, was filed with the court. In the letter, mother claimed that TR was not fit to have custody of BAP because TR sexually abused mother when she was between the ages of nine and thirteen. Mother also claimed that later, when she was placed with TR in relative foster care around 2014, TR sexually abused her multiple times and infected her with chlamydia.

Following a trial on the county's petition, the district court terminated mother's and father's parental rights and granted custody of BAP to the commissioner of human services. The parents appealed, and this court reversed and remanded, concluding that the district

court had applied an incorrect standard. *In re Welfare of Child of D.L.P.*, No. A22-1594, 2023 WL 2847355, at *1 (Minn. App. Apr. 10, 2023).

In November 2022, the county informed the district court that two relative permanent-placement options had come forward. The county was waiting for background checks and home studies for those relatives.

On November 18, 2022, TR moved to intervene as a party and for visitation with BAP. In an accompanying affidavit, he stated that he hoped BAP would be placed with his family and that he had applied for a foster-care license and had initiated an adoption home study. The district court granted TR party status. Later, TR filed his home study with the district court. The home study indicated that TR met the standards for foster-care licensure and adoption. The home study addressed mother's sexual-abuse allegations against TR as follows:

[TR] reports [mother] stole money from [him and his wife] and after they confronted her, she became angry and told [protective services] that he had touched her inappropriately. This resulted in an immediate removal of [mother] from their home and an investigation. During this [protective services] investigation, [TR] had to be supervised around his infant daughter. [TR] said it was one of the most difficult times in his life because he missed out on some bonding experience with his first daughter and felt betrayed by his sister for her false accusations. [TR] said he has never touched [mother] in a sexual nature intentionally. *[TR] and [his wife] cooperated with [protective services] and ultimately, no charges were pressed[,] and the case was closed. [TR] does not have any other history with the criminal justice or social service system.*

(Emphasis added.) It is undisputed that mother's allegations were investigated, that no criminal charge was ever brought, and that no maltreatment determination was made.

In December 2022, the county informed the district court that TR would start having two one-hour supervised visits per month with BAP. A January 2023 report from the guardian ad litem (GAL) indicated that the GAL had concerns regarding BAP's potential placement with TR.

On March 17, 2023, the county filed a letter, dated March 16, with the district court supporting permanent placement of BAP with the foster parents. The county noted that three families had expressed interest in adopting BAP and that both the foster parents and TR had submitted an approved home study. The county stated that it had met with the GAL, reviewed the two home-study reports, and considered applicable statutes and the best-interest factors. The county indicated that it had also considered mother's letter alleging sexual abuse by TR and a letter from the adoptive family of BAP's siblings, which stated that they would not support an ongoing relationship between the siblings and BAP if the child was adopted by TR. Finally, the county indicated that it had considered interactions between the child and TR's family and that it had concerns regarding TR's failure to ask about BAP's well-being.

The county informed the district court that it was not aware of mother's sexual-abuse allegations when it sent relative-search letters and that if it had been aware, "[TR] would not have been included in the relative[-]search process based on statute," citing to Minn. Stat. § 260C.221, subd. 5(b) (2022).¹ The county requested relief from its obligation to pursue a permanent relative placement for BAP with TR.

¹ We observe that the county lacked authority to exclude TR from its relative-search process without district court authorization, and the record does not reveal such

On July 26, 2023, following this court’s reversal and remand, the district court received additional evidence. The district court once again filed an order terminating mother’s and father’s parental rights. The parents appealed, and this court affirmed the termination of their parental rights. *In re Welfare of Child of D.L.P.*, No. A23-1347, 2024 WL 688447, at *1 (Minn. App. Feb. 14, 2024), *rev. denied* (Minn. Mar. 22, 2024).

In a September 2023 permanency update to the district court, the GAL stated that there had been nine visits between TR and BAP. In October 2023, the district court filed an order expanding TR’s visits with BAP, specifically, authorizing visits up to four hours long.

On December 19, 2023, TR moved for adoptive placement, arguing that the county had “been unreasonable in failing to make [his] requested adoptive placement,” and he requested an evidentiary hearing. He also requested two four-hour unsupervised visits per month. He included several supporting affidavits with his motion. He asserted, in part, that the county had unreasonably refused to place BAP with TR because he was BAP’s “family” and the law prioritizes placement with relatives.

In a February 2024 report, the GAL asked the district court to rule out TR as a placement option for BAP. The GAL noted that after visits with TR, BAP “shows

authorization. See Minn. Stat. § 260C.221, subd. 5(b) (“If a parent makes an explicit request that a specific relative not be contacted or considered for placement due to safety reasons, including past family or domestic violence, *the agency shall bring the parent’s request to the attention of the court to determine whether the parent’s request is consistent with the best interests of the child.* The agency shall not contact the specific relative *when the juvenile court finds* that contacting or placing the child with the specific relative would endanger the parent, guardian, child, sibling, or any family member.” (emphasis added)).

increased agitation, tearfulness, and that he will cling to the foster mother's leg, body, and pull her hair in order to stay close to her." Also, foster parent KT filed an affidavit expressing concern about TR being a placement option. KT attached a 2019 communication from Kandiyohi County indicating that Kandiyohi County was requesting to be relieved from exploring TR as a placement option for two of mother's previous children based on mother's sexual-abuse allegations.

The district court did not rule out TR as a placement option. Instead, on February 28, 2024, the district court ordered the following services: an attachment study for BAP, a parental-capacity assessment for TR, and observed visitation for TR. But the district court denied a request that TR complete a psychosexual evaluation.

On May 22, 2024, the district court summarily denied TR's motion for adoptive placement and ordered that TR's visitation with BAP immediately cease. The court concluded that the county was not "unreasonable, irrational or capricious" in failing to consider TR for adoptive placement. The court reasoned that the county's submissions showed that the county made a well-reasoned decision to place BAP with the foster parents, and not TR. The court noted that the county had considered "the positives and negatives" of permanent placement with the foster parents and permanent placement with TR. The court also noted the county's consideration of mother's sexual-abuse allegations, which had resulted in the Kandiyohi County district court relieving that county from its obligation to consider TR as a placement option.

TR appeals the district court's denial of his request for adoptive placement.

DECISION

TR contends that the district court abused its discretion in denying his motion for adoptive placement of BAP without an evidentiary hearing.

“The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child.” Minn. Stat. § 260C.001, subd. 2(a) (2022). However, Minnesota law requires that relatives be prioritized when considering the permanent placement of a child. *In re Welfare of Child. of M.L.S.*, 964 N.W.2d 441, 449-50 (Minn. App. 2021); *see* Minn. Stat. § 260C.001, subd. 3(2) (2022) (noting preference for permanent placement with relatives). In *M.L.S.*, we summarized the ways in which Minnesota law requires a county to prioritize relatives when making placement decisions. We explained that:

When making permanency placement decisions for a child who is the subject of a juvenile-protection proceeding, Minnesota law provides that the county “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) (2020). Minnesota law also directs that placement efforts shall prioritize consideration of relatives as placement options by stating that the county shall consider[] placement with relatives and important friends in the following order:

- (1) with an individual who is related to the child by blood, marriage, or adoption; or
- (2) with an individual who is an important friend with whom the child has resided or had significant contact.

Minn. Stat. § 260C.212, subd. 2(a) (regarding selection of family foster home). *See [In re] S.G.*, 828 N.W.2d [118,] 125 [Minn. 2013] (“[I]f both the relative and nonrelative petitioners are equally qualified to adopt and the best interests analysis

renders an equivalent result as to each party, the relative would benefit from being considered first.”).

To fulfill the legislature’s intent to prioritize consideration of relatives as placement options, Minnesota law provides, “The responsible social services agency shall exercise due diligence to identify and notify adult relatives prior to placement or within 30 days after the child’s removal from the parent. The county agency shall consider placement with a relative under this section without delay” Minn. Stat. § 260C.221(a) (2020). The relative search must be “comprehensive in scope” and the county “has the *continuing responsibility* to appropriately involve relatives,” even after the district court finds that the county has made reasonable relative-search efforts. *Id.* (emphasis added). The district court “[a]t any time” may direct the county “to reopen its search for relatives when it is in the child’s best interest to do so.” *Id.*

The county also has the duty to report its relative-search findings to the district court. “Within three months of the child’s placement, the agency shall report to the court regarding the agency’s due diligence to identify and notify relatives under Minnesota Statutes, section 260C.221.” Minn. R. Juv. Prot. P. 27.04, subd. 1(a). “The report shall include information about identification and notice to relatives,” including the names of all identified relatives and whether they “were considered for placement under [Minn. Stat. § 260C.212, subd. 2(a)-(b) (2020)] and the result of that consideration.” *Id.*[,] subd. 2(a)(2), (b)(1).

If, as happened here, parental rights are terminated, and the district court appoints the commissioner of human services as the guardian of a child, then relatives who will commit to being a permanent placement for a non-Indian child continue to receive priority consideration for placement. *See* Minn. Stat. § 260C.605, subd. 1(b) (2020) (providing that reasonable efforts to finalize adoption include placement considerations under section 260C.212, subd. 2 (2020)). Under Minn. Stat. § 260C.607, subd. 2(5) (2020), relatives who have kept the court informed of their whereabouts and who have indicated to the county 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.”

M.L.S., 964 N.W.2d at 449-50 (footnote omitted).

TR moved for adoptive placement under Minn. Stat. § 260C.607, subd. 6(a)(1) (2022), which authorizes a relative to request court-ordered adoptive placement if the relative has been a Minnesota resident for six months and has a qualifying adoption home study approving the relative for adoption or a qualifying affidavit. “The motion and supporting documents must make a prima facie showing that the agency has been unreasonable in failing to make the requested adoptive placement.” *Id.*, subd. 6(b) (2022). If the motion and supporting documents fail to make the necessary prima facie showing, “the court shall dismiss the motion,” but “[i]f the court determines a prima facie basis is made, the court shall set the matter for evidentiary hearing.” *Id.*, subd. 6(c) (2022). Thus, the prima facie determination is dispositive of whether the district court must hold an evidentiary hearing on a motion for adoptive placement.² *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007); see *In re Welfare of Child. of L.L.P.*, 836 N.W.2d 563, 570 (Minn. App. 2013) (citing *Szarzynski* in a child placement dispute).

“At the prima-facie-case stage of the proceeding, [the movant] need not establish anything. [The movant] need only make allegations which, if true, would allow the district court to grant the relief he seeks.” *Amarreh v. Amarreh*, 918 N.W.2d 228, 231 (Minn. App. 2018) (emphasis omitted).

² At oral argument, appellant’s counsel urged this court to provide greater clarity regarding the prima facie standard in Minn. Stat. § 260C.607, subd. 6(b). Doing so would raise an issue of statutory interpretation, which appellant has not adequately briefed. See *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (“This issue was not argued in the briefs and accordingly must be deemed waived.”).

In considering whether the motion for adoptive placement makes a prima facie showing and the movant is entitled to an evidentiary hearing, the district court must accept the facts as true as set forth in the movant's supporting documents, disregard contrary allegations by the agency, and consider the agency's allegations only to the extent that they explain or provide context to the movant's allegations.

L.L.P., 836 N.W.2d at 565.

Whether the district court erred in ruling that a moving party failed to establish a prima facie case is reviewed for an abuse of discretion. *Id.* “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.’” *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quoting *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997)).

In his affidavit in support of his motion for adoptive placement, TR asserted that the county had been unreasonable in failing to place BAP with TR because the law prioritizes placement with relatives, the county failed to sufficiently consider his familial connection to the child, and the county failed to sufficiently investigate him as an adoption placement option. He also asserted that the county was unreasonable in basing its placement decision on mother's allegations of sexual abuse because the allegations “have been disproven multiple times” and because he had been granted a foster-to-adopt license with his approved home study. TR also submitted supportive affidavits from his wife and his mother.

The crux of TR's assertions in support of adoptive placement is that the county never genuinely considered him as a relative placement option for BAP. As to that point,

TR's affidavits—which must be taken as true at the prima facie stage—contained the following allegations: the county told the district court that they were not willing to place BAP with TR because of mother's sexual-abuse accusations, despite those allegations being disproven, and despite TR obtaining a foster-to-adopt license and approved home study; the county failed to discuss the allegations with TR; the county falsely reported that TR failed to ask about BAP's well-being; the county's correspondence showed that they always intended for the foster parents to receive BAP and showed bias against TR; the county's reports noted multiple interactions with the foster parents, but the first time the county observed a visit between TR and BAP was during a visit that had been court ordered; the county stated that the foster parents could presently offer BAP more support, and the county thereby failed to look at the future needs of the child; the county refused to consider the familial connection between TR and BAP and refused to “get to know” TR's family; the county failed to visit or observe TR's home; despite TR repeatedly asking for visitation with BAP, the county canceled the majority of scheduled visits, the county offered TR fewer than five visits before the child reached the age of one, and the initial visits were one hour long and supervised; the county ignored the fact that the foster parents referred to BAP by a different name (i.e., the foster parents renamed the child); the county failed to regularly communicate with TR, failed to adequately facilitate visitation between TR and BAP, and it sometimes took multiple weeks for TR to get a response from the county.

Taken as true, TR's allegations show that the county was unreasonable in its placement decision because it failed to give TR the benefit of statutory preference accorded

relatives. Accordingly, the district court’s determination that TR failed to make the necessary prima facie showing was an abuse of discretion.

Because TR made a prima facie showing that the county was unreasonable in failing to place BAP with TR, TR was entitled to a hearing on his motion for adoptive placement. We therefore reverse and remand for an evidentiary hearing on that motion. At that hearing, the district court can compare the competing placement options and determine which option is in BAP’s best interest. *See In re S.G.*, 828 N.W.2d 118, 119 (Minn. 2013) (holding that Minn. Stat § 259.57, subd. 2(c) (2012), “requires that the district court consider the adoption petition of a relative of the child before considering an adoption petition from a nonrelative but does not require that the court prefer a relative over a nonrelative when determining the best interests of the child”). Related decisions—such as visitation between TR and BAP—are also within the district court’s discretion on remand.³

Reversed and remanded.

³ Although the county submitted a brief in this appeal, it did not participate in oral argument. At oral argument, counsel for TR informed us that the county has changed its position and now supports BAP’s placement with TR and that the county has sought to reinstate visitation for TR. That assertion was not refuted by the lawyers who participated in oral argument on behalf of the GAL and foster parents. We do not rely on this extra-record information in deciding this appeal. *See* Minn. R. Civ. App. P. 110.01 (stating that the record on appeal consists of “[t]he documents filed in the [district] court, the exhibits, and the transcript of the proceedings, if any”); *Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977) (“It is well settled that an appellate court may not base its decision on matters outside the record on appeal, and that matters not produced and received in evidence below may not be considered.”).