This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1195

In the Matter of the Welfare of the Children of:
D. K., T. R., and D. J., Parents.

Filed December 17, 2018
Affirmed
Ross, Judge

Mower County District Court
File Nos. 50-JV-17-334; 50-JV-17-333; 50-JV-17-1368

Natalie S. Martinez, Donnelly Law Office, Austin, Minnesota (for appellant)

Kristen Nelson, Mower County Attorney, Aaron Jones, Assistant County Attorney, Austin, Minnesota (for respondent Mower County Human Services)

Thomas J. Nolan, Jr., Minneapolis, Minnesota (for guardian ad litem)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

Mower County discontinued its study of Lawrence McElroy's home for adoptive placement of his grandchildren after the guardian ad litem concluded that McElroy was not committed to his relationship with them. After the children's foster parents agreed to adopt the children, McElroy objected and requested a hearing. The district court denied McElroy a hearing because he failed to make a prima facie showing that the county acted

unreasonably by failing to place the children with him, a showing that requires a movant to submit a completed home study. McElroy appeals, arguing that he was never told that the county discontinued its home study. We affirm because McElroy identifies no exception to the statutory prerequisite of filing an adoptive home study.

FACTS

In February 2017 Mower County placed the children of T.R., Lawrence McElroy's daughter, with foster parents. The district court terminated T.R.'s parental rights three months later. McElroy, who lives in Wisconsin, sought to adopt his grandchildren through Mower County Human Services. The county referred McElroy's request to the Wisconsin Department of Children and Families, which initiated a home study to review the suitability of McElroy's home for adoptive placement. The agency visited McElroy's home and requested that he remove some doors and install a gate, which McElroy did. During the home study, McElroy visited the children, but less frequently than the county's suggestion of visits at least twice monthly. In late November 2017, the county informed McElroy that it was no longer considering his home for an adoptive placement. The county explained to McElroy that the guardian ad litem felt that McElroy was "not committed and the children were bonding with the foster parents." The home study ended without completion on that day. The children's foster parents signed adoption-placement agreements in December 2017, and the department of human services executed the agreements in February 2018.

McElroy filed a motion the next month purporting to object to the adoptive placement. The county responded by treating McElroy's objection as a motion for an order to place the children with him, because the statute provides no procedure for objecting to

an adoptive placement. The county argued that McElroy failed to complete the home study required by statute and failed to make a prima facie case that the county had acted unreasonably by declining to place the children with him. It asked the district court to dismiss his motion without a hearing. The district court also treated McElroy's motion as one seeking adoptive placement, and it denied the motion without an evidentiary hearing.

McElroy appeals.

D E C I S I O N

McElroy appeals from the district court's denial of his motion objecting to the adoptive placement of his grandchildren, raising two issues. He argues first that the district court should have allowed him to move for adoptive placement even though he failed to submit the adoption home study required by statute, an omission he says was caused by the county's failure to notify him that it had discontinued its home study. He argues second that the district court erred when it held that he did not make a prima facie showing that the county acted unreasonably by failing to place the children with him. Both arguments challenge the district court's denial of McElroy's motion for an order of adoptive placement without a hearing, a decision we review for an abuse of discretion. *See In re Welfare of L.L.P.*, 836 N.W.2d 563, 570 (Minn. App. 2013). We consider each argument.

McElroy contends that the district court should have allowed him to move for an order for adoptive placement even though he failed to complete and include an adoption home study. The district court relied on the statutory language to conclude that it could not make such an exception. We review de novo the district court's application of a statute. *Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008).

The district court concluded as a matter of law that a relative who is not a Minnesota resident may move for an order for adoptive placement only if the relative completed an approved home study and filed it with his adoption-placement motion. The district court applied the following statute when it rejected McElroy's motion for failing this requirement:

> [A] relative . . . may file a motion for an order for adoptive placement of a child . . . if the relative . . . is not a resident of Minnesota, but has an approved adoption home study by an agency licensed or approved to complete an adoption home study in the state of the individual's residence and the study is filed with the motion for adoptive placement.

Minn. Stat. § 260C.607, subd. 6(a)(2) (2018). The statute imposes two prerequisites to an out-of-state relative's motion for an adoptive-placement order: the relative must complete an approved adoption home study, and he must include the study with his motion. The district court construed this statute strictly by its terms. So must we. Because McElroy did not include an approved home study with his motion, he did not meet the motion prerequisites imposed by the statute.

McElroy argues that he should not have been precluded from filing a motion, asserting that the county had improperly failed to give him notice that it had withdrawn its home-study effort. McElroy's argument has some appeal as a matter of fairness. Conflicting with the guardian ad litem's position that McElroy was not committed to the adoption process, McElroy expressed considerable interest in adopting his grandchildren, submitted to a home study, and made compliant, physical changes to his home to make it suitable for children in response to comments made during the process. And we see nothing

in the record before the county ceased the home-study process that would have given McElroy any indication that the county was unsatisfied with the frequency of his visits to Minnesota from his Milwaukee home to see the children or that the county told him that failure to visit more frequently might result in his not being considered for adoptive placement. Had the county informed McElroy of its position, McElroy could have either attempted to meet the county's concerns or obtained and submitted his own home study at the same time the foster parents submitted theirs.

Despite the apparent equitable merit to McElroy's argument, the argument fails. Were the appeal to rest on notions of fairness (it does not), McElroy's position is weakened by the fact that the county had informed him in late November 2017 that it was no longer considering him for adoptive placement. The record does not suggest that McElroy took any action from that moment until March 2018, when he filed his motion challenging the adoptive placement. McElroy does not contend that he was precluded from obtaining his own home study from a different source in November, which was more than two months before the department of human services executed the foster parents' adoption-placement agreements. While McElroy's fairness argument has some merit, it is not overwhelming.

More important, we are not deciding the case on fairness grounds, but on legal grounds. McElroy identifies no legal authority establishing that the statute compels, or even allows, treating the purported unfairness of his circumstance as an exception to the statutory prerequisites to his moving for an order of adoptive placement. We see nothing in the statute requiring the county to complete home studies it has begun or to notify a prospective adoptive parent that it is discontinuing a home study. This lack of legal

authority for the proposition that the district court could except McElroy from the statutory home-study prerequisites defeats McElroy's position.

We are not persuaded otherwise by McElroy's reliance on Minnesota Statutes, section 260C.212, subdivision 2(a)(1) (2018). That statute announces the policy of the state to prefer placing children in the foster care of a relative. But that general policy favoring relatives does not alter the specific statutory prerequisites to a motion for adoptive placement. Had McElroy met those prerequisites and proved that he was an equally suitable adoptive placement option, the district court would have had some basis for considering the family preference in a placement contest between McElroy and the foster parents. Because he did not meet those specific prerequisites, the general policy statute does not entice us to reverse.

McElroy argues also that the district court abused its discretion by finding that he failed to make a prima facie case that the county's failure to place the children with him was unreasonable. We generally review a district court's determination whether a party has made a prima facie case for an abuse of discretion. *L.L.P.*, 836 N.W.2d at 570. But the same legal deficiency that defeats McElroy's primary argument undermines this one as well. The district court had no cause to consider whether it was reasonable to place the children with McElroy because McElroy did not meet the filing requirements of his motion for adoptive placement. The statute first requires an out-of-state relative to submit a home study with his motion for adoptive placement. *See* Minn. Stat. § 260C.607, subd. 6(a)(2). That presumably properly filed "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) (2018) (emphasis added). And the district court must dismiss the motion if the filing "and [its] *supporting documents* do not make a prima facie showing" that the county acted unreasonably. *Id.*, subd. 6(c) (2018) (emphasis added). Because McElroy never properly filed a motion accompanied by a home study, his argument about the alleged unreasonableness of denying his motion necessarily also fails. And as a practical matter, without a home study establishing the suitableness of his home, McElroy cannot show that it was unreasonable not to place the children in his home.

In sum, McElroy's failure to complete and submit a home study prevents us from reversing the district court's decision. Because McElroy did not complete a home study, he lacked the legal ground to submit an adoptive-placement motion. And for the same reason, he did not make a prima facie case that the county acted unreasonably by failing to place the children with him.

Affirmed.