STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1682

In re: the Petition to Adopt A. G. R.

Filed June 22, 2020
Reversed
Larkin, Judge

Ramsey County District Court
File No. 62-AD-FA-18-134

Brittany Shively, Vincent & Shively, P.A., Minneapolis, Minnesota (for appellant T.M.K.)

John Choi, Ramsey County Attorney, Stephanie L. Wiersma, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

T.T.M., St. Paul, Minnesota (self-represented respondent)

Considered and decided by Larkin, Presiding Judge; Rodenberg, Judge; and Jesson, Judge.

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

LARKIN, Judge

Appellant grandmother adopted her grandson after his mother's parental rights were terminated by the district court. In granting the adoption, the district court approved and ordered an adoption contact agreement that allowed contact between the child and two of his siblings, but not with the child's oldest sibling. Later, the district court modified the

adoption contact order to require contact between the child and his oldest sibling, over grandmother's objection. Because that modification was unauthorized, we reverse.

FACTS

In 2017, the district court terminated B.M.'s parental rights to A.G.R. This appeal stems from attempts by A.G.R.'s adult sibling, respondent T.T.M., to obtain court-ordered visitation with A.G.R. The relevant procedural history follows.

A.G.R. was born in August 2012. In May 2015, the district court adjudicated A.G.R. and his five siblings children in need of protection or services (CHIPS). The Ramsey County Social Services Department (the county) placed respondent T.T.M., the oldest sibling, and A.G.R., the youngest sibling, in separate foster homes. The county placed A.G.R. with his grandmother, appellant T.M.K. Initially, T.T.M. had visits with A.G.R., but grandmother did not allow T.T.M. to visit A.G.R. after December 2015. In December 2016, the district court placed T.T.M. in extended foster care (EFC) under the legal responsibility of the county. In January 2017, the district court terminated B.M.'s parental rights to A.G.R.

In September 2017, the district court placed A.G.R. under the guardianship of the commissioner of human services. In March 2018, in anticipation of A.G.R.'s adoption by grandmother, the county entered into an adoption contact agreement with grandmother, the adoptive parent of A.G.R.'s siblings F.L.T. and R.L.T., and the guardian ad litem assigned to A.G.R. Although that agreement permitted A.G.R. to have contact with his siblings F.L.T. and R.L.T., it expressly prohibited contact between A.G.R. and T.T.M.

In August 2018, the district court held an EFC review hearing regarding T.T.M. Counsel appeared with T.T.M. and informed the district court that contact with A.G.R. was important to T.T.M. and that the county had ignored T.T.M.'s requests for contact. The county agreed to work towards facilitating visits between T.T.M. and A.G.R. The district court directed the county to begin visitation between T.T.M. and A.G.R. before an EFC review hearing scheduled for February 1, 2019, or to provide a "concrete answer why it hasn't happened at that stage."

On January 18, 2019, a different district court judge granted the county's October 2018 petition for A.G.R.'s adoption by grandmother, which was based on an adoption placement agreement between grandmother, the county, and the commissioner of human services. That district court judge also approved and ordered the adoption contact agreement that the county had joined in March 2018, which permitted contact between A.G.R. and his siblings F.L.T. and R.L.T. but prohibited contact between A.G.R. and T.T.M.

On February 1, 2019, an EFC review hearing regarding T.T.M. occurred before another district court judge. T.T.M. objected to the adoption contact order that had been entered in A.G.R.'s adoption file and requested visitation with A.G.R. On February 8, the district court notified the parties in A.G.R.'s adoption case of T.T.M.'s request, construed the request as a motion to modify the adoption contact order, and scheduled a hearing on that motion.

At the ensuing motion hearing, T.T.M. moved to intervene as a party to the adoption contact agreement. On April 24, the district court granted T.T.M.'s motion to intervene.[1] The district court determined that modification of the contact order was "appropriate based on the best interest of [A.G.R.] and the extraordinary circumstances of this case."[2] The district court ordered the county, T.T.M., and grandmother to participate in mediation regarding contact between T.T.M. and A.G.R., and scheduled a review hearing for August 5.

The county requested reconsideration, which the district court denied. The county also requested a continuance of the August 5 review hearing to comply with the mediation portion of the district court's order. The district court continued the hearing to September 16.

On September 5, the county notified the district court that mediation had been scheduled for September 6 but that T.T.M. had contacted the mediator and the county and indicated that she wanted to "drop everything." The mediator canceled the planned mediation, and the county requested dismissal of T.T.M.'s motion and cancellation of the review hearing.

On September 10, the law clerk for the district court judge who had granted T.T.M.'s motion to intervene and ordered the review hearing contacted T.T.M. to ascertain whether she wished to proceed with her motion to modify the adoption contact order. On

[1] T.T.M. was discharged from EFC in April 2019 when she turned 21 years old.
[2] The district court judge who presided over T.T.M.'s February 1, 2019 EFC review hearing and post-adoption efforts to obtain contact with A.G.R. was not the judge who ordered A.G.R.'s adoption and the attendant adoption contact order.

September 11, T.T.M. responded that grandmother was "harassing [her] family," that the county was biased, that she did not have legal representation, and that she did not "feel comfortable or safe proceeding with this any further." The law clerk informed T.T.M. that the district court judge believed it would be in T.T.M.'s best interests to attend the review hearing and "have a safe environment where you can communicate your experiences to the Judge when others are forced to listen." On September 13, T.T.M. confirmed she would attend the hearing, and the district court arranged for a mediator to be present at the hearing.

At the September 16 review hearing, the parties engaged in mediation, but T.T.M. and grandmother did not reach an agreement regarding modification of the adoption contact order. Even though grandmother opposed contact between T.T.M. and A.G.R., the district court modified the adoption contact order to permit T.T.M. to have contact with A.G.R. under the same terms governing contact between T.T.M. and his siblings F.L.T. and R.L.T. Grandmother appeals.[3]

D E C I S I O N

"An adopting parent and a relative . . . of the child may enter into an agreement regarding communication with or contact between the adopted child, adopting parent, and the relative . . . ." Minn. Stat. § 260C.619(a) (2018). "An agreement regarding communication with or contact between the child, adoptive parents, and a relative . . . is enforceable when the terms of the agreement are contained in a written court order." *Id.*

[3] Neither T.T.M. nor the county filed a brief, and this court ordered the appeal to proceed under Minn. R. Civ. App. P. 142.03 (providing that if a respondent fails to file a brief, the case shall be determined on the merits).

(b) (2018). The court shall not enter a proposed order unless "the terms of the order have been approved in writing by the prospective adoptive parents, the birth relative, . . . or legal custodian of the child's sibling who desires to be a party to the agreement, and the responsible social services agency" and the court finds that the communication or contact, "as agreed upon and contained in the proposed order, would be in the child's best interests." *Id.* (d), (f) (2018).

The district court shall not modify a communication or contact order under Minn. Stat. § 260C.619 (2018) "unless it finds that the modification is necessary to serve the best interests of the child, and: (1) the modification is agreed to by the parties to the agreement; or (2) exceptional circumstances have arisen since the order was entered that justified modification of the order." *Id.* (i).

Here, the district court reasoned that the "best interests of [A.G.R.]" and "[e]xceptional circumstances arising since entry of the Contact Agreement" supported modification of the contact order. Grandmother argues that the district court erred by allowing T.T.M. to intervene and that, even if intervention was appropriate, the district court's modification of the contact order was neither in A.G.R.'s best interests nor justified by exceptional circumstances arising since entry of the contact order.[4]

[4] As to best interests, grandmother relies on a letter in the record from A.G.R.'s psychologist opining that A.G.R. "is likely to be retraumatized by visits with his biologic[al] family members and at-risk for exacerbation of emotion[al] and behavioral regulation difficulties" and that "[v]isits with his biologic family are not recommended at this time, for this reason."

Grandmother's arguments are based, in part, on the district court's application of the standard for modification under Minn. Stat. § 260C.619(i). We review application of statutory language to undisputed facts de novo. *Jones v. Jarvinen*, 814 N.W.2d 45, 47 (Minn. App. 2012). If a statute is unambiguous, then appellate courts must apply the statute's plain meaning. *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010).

Once again, the district court may not modify an adoption contact order "unless it finds that the modification is necessary to serve the best interests of the child, and: (1) the modification is agreed to by the parties to the agreement; or (2) exceptional circumstances have arisen since the order was entered that justified modification of the order." Minn. Stat. § 260C.619(i). Here, the parties to the agreement did not agree to the proposed modification. Thus, the district court relied on exceptional circumstances to justify modification.

In its initial order modifying the adoption contact order, the district court explained:

> Several exceptional circumstances have arisen since entry of the Contact Agreement. Most notably, [the county] failed to inform the Court at [A.G.R.'s] adoption that the [county] did not obtain written consent from a qualified party who desired to be a party to the agreement and repeatedly expressed her desire for contact. The [county] failed to inform [T.T.M.] of the adoption date or of the Contact Agreement so that she could participate. The [county] failed to inform [T.T.M] or the Court at her most recent review hearing two (2) weeks after the adoption that the [county] agreed to intentionally exclude [T.T.M.] from the Contact Agreement, knowing of her request to be included. The [county] failed to inform the [adoption] Court that it had agreed to but failed to initiate visits between [T.T.M.] and [A.G.R.] or to provide any concrete reason for its failure.

> . . . Furthermore, [the county] concealed the adoption date and concealed the existence of the Contact Agreement from [T.T.M.], hindering her ability to participate in negotiations. [The county's] actions and failures toward [T.T.M.] raise exceptional circumstances that support modification of the Contact Agreement.

In its order denying reconsideration, the district court again focused on the county's failure to disclose its inconsistent positions:

> Assuming [T.T.M.] was made aware of the issue in early August 2018, prior to the review hearing, she came to the hearing with the intent of addressing the issue of visitation and informed her attorney, who brought the matter to the attention of the Court. During the hearing, neither [the county] nor its counsel informed the Court that its verbal Order conflicted with their position or that the adoption would include a contact agreement excluding [T.T.M.] from any and all visitation with [A.G.R.].
>
> Between [T.T.M.'s] August 17, 2018, and February 1, 2019 hearings, [the county] and its counsel took action directly in conflict with its representations made to the Court and with the Court's verbal order to initiate visitation between [T.T.M.] and [A.G.R.].

Neither Minn. Stat. § 260C.619 nor the relevant definitional statute, Minn. Stat. § 260C.603 (2018), defines "exceptional circumstances." But this court has defined similar language in the third-party-custody context as "circumstances of a grave or weighty nature." *See In re Custody of A.L.R.*, 830 N.W.2d 163, 170-71 (Minn. App. 2013) (defining "extraordinary circumstances" under Minn. Stat. § 257C.03, subd. 7(a)(1)(iii) (2012), with reference to earlier caselaw that used the phrase "exceptional circumstances").

We understand the district court's frustration with the county's actions in this case. The county told T.T.M. and the district court judge who presided over T.T.M.'s August

2018 EFC review hearing that it would work towards facilitating visits between T.T.M. and A.G.R. But the county apparently failed to tell the district court judge in A.G.R.'s adoption case that it had agreed to facilitate such visitation. Moreover, by agreeing to the proposed adoption contact agreement in A.G.R.'s adoption case, the county effectively informed the district court judge in that case that the county opposed contact between A.G.R. and T.T.M. If that is what happened, the county's conduct likely constitutes exceptional circumstances.[5] But that conduct does not provide a basis to modify the adoption contact order under Minn. Stat. § 260C.619(i), because it *preceded* the district court's entry of the order. *See* Minn. Stat. § 260C.619(i) (stating that modification based on exceptional circumstances must be based on circumstances that "have arisen since the order was entered").

We commend the district court for its attempt to ensure contact between A.G.R. and his sibling T.T.M. at the permanency phase of the underlying child-protection proceeding. But we are not aware of authority that allows the district court to modify an adoption contact order issued under Minn. Stat. § 260C.619(b) to include contact with a third party over the adoptive parent's objection in spite of clear statutory language stating that the district court "*shall not* enter a proposed order unless the terms of the order have been approved in writing by the prospective adoptive parents."[6] Minn. Stat. § 260C.619(d)

[5] Grandmother suggests that the district court may have erroneously found that the county failed to disclose the adoption date and proposed contact agreement to T.T.M. Because those findings concern circumstances that preceded the district court's entry of the adoption contact order, they are immaterial, and we do not review them.

[6] Perhaps an order vacating the adoption contact order would have been appropriate, but that issue is not before us. *See* Minn. R. Adopt. P. 47.02 (allowing the district court to

(emphasis added); *see id.* (a) (providing that "[a]n adopting parent and a relative . . . of the child *may* enter into an agreement regarding communication with or contact between the adopted child, adopting parent, and the relative" (emphasis added)).

Because the circumstances here—concerning as they are—do not provide a basis for modification of the adoption contact order under Minn. Stat. § 260C.619(i), we reverse without addressing grandmother's other assignments of error.

Reversed.

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grant relief from an order based on mistake, surprise, newly discovered evidence, fraud, misrepresentation, misconduct of an adverse party, because the judgment is void, or based on "any other reason justifying relief from the operation of the order").