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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2099

In the Matter of the Welfare of the Children of:
C. F., Parent.

Filed August 3, 2020
Affirmed
Ross, Judge
Concurring specially, Reyes, Judge

Hennepin County District Court
File No. 27-JV-17-3800

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Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reyes, Judge.

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

ROSS, Judge

The Hennepin County Human Services and Public Health Department removed three children from the care of foster parents, declined their request for adoptive placement, and placed the children with different foster parents instead. The first foster parents filed a motion for adoptive placement and the district court granted it, concluding that the

department was unreasonable in having failed to make the placement and that the first foster parents offered the most suitable adoptive home to meet the children's needs. The second foster parents argue on appeal that the district court misapplied the law and made clearly erroneous findings requiring reversal. Because we discern no error of law, and because the district court's findings are adequately supported by the record, we affirm.

FACTS

This case concerns the adoptive placement of three children: A.Q.F. (Boy One), a nine-year-old African American boy; A.S.F. (Girl), a nine-year-old African American girl; and C.W.W. (Boy Two), an eight-year-old African American boy (the children). In 2013, the Hennepin County Human Services and Public Health Department learned that the children's brother C.W. (who is not a subject of this appeal) suffered severe child abuse. The district court adjudicated the children in need of protection or services (CHIPS). The department removed the children from their mother C.F.'s (Mother's) care in November 2014 and placed them in foster care with respondents S.P. and V.P. (Primary Fosters), a married, heterosexual, African American, Baptist couple. In November 2017, the department placed the children with appellants M.R. and B.R. (Replacement Fosters), a married, female, same-sex, Caucasian, Lutheran couple. After the district court terminated Mother's parental rights, the Primary Fosters filed a motion for adoptive placement under Minnesota Statutes section 260C.607, subdivision 6 (2018), and the

district court conducted multiple evidentiary hearings. We now summarize the evidence relevant to this appeal.[1]

Placement with the Primary Fosters

The department placed the children, who faced behavioral, emotional, and mental-health problems, with the Primary Fosters in late 2014 and appointed social worker Erika Posthumus to the case. The children's problems varied. Boy One struggled with emotional dysregulation, toileting habits, forced vomiting, and other issues. Girl exhibited developmental delays, attention-seeking behaviors, and inappropriate sexual behaviors. Boy Two suffered night terrors and struggled with dressing himself and toileting. Department Social Worker Sarah Brunner began working with the children in October 2015 and observed that the Primary Fosters were meeting the children's needs while maintaining a positive, loving relationship. The children were active in school and activities, maintained contact with their relatives, and were being raised in a Christian faith tradition consistent with Mother's wishes. By late 2015, Boy One began therapy and received multiple diagnoses, including a stressor-related disorder. Girl was impulsive, cried frequently, and exhibited inappropriate sexual behavior. Boy Two had nightmares and was imitating some of Boy One's problematic behaviors.

The Primary Fosters initially expressed interest in adopting the children, but they later told department employees that they were not an option for permanent placement.

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[1] The children's maternal grandmother S.B. (Grandmother) also moved for adoptive placement, but the district court denied her motion. Grandmother took no appeal and no party challenges the district court's denial of her motion.

Adoption Resource Worker Ginna Kellett testified, “When people aren’t certain about adopting it is a concern. We want people to have a commitment to children and be committed lifelong.” The Primary Fosters testified that they believed Mother’s parental rights would be terminated immediately if they expressed a willingness to adopt, and so they waited, believing that Mother was progressing toward reunification.

Brunner testified that sometime around April 2016, the Primary Fosters’ and Mother’s relationship soured as they began arguing about the children’s clothing and Mother giving the children sugar. But Primary Foster Mother believed the conflict was overblown and that Posthumus was creating discord between her and Mother. Child therapist Alisabeth Kuol became Girl’s therapist in late 2016. Some of Boy One’s behaviors had ceased by this time, such as his forced vomiting and self-inflicted nosebleeds. But in December 2016, Boy One threatened to cut himself with scissors or to strangle himself with a scarf at school.

Brunner left on maternity leave in August 2017, leaving Posthumus to cover her cases. Mother gave birth to another child, J.N. (Boy Three), in September 2017. Posthumus contacted the Replacement Fosters to ask whether they would foster Boy Three and the children. According to the Primary Fosters, Posthumus never asked if they would foster Boy Three.

Posthumus wrote the Primary Fosters on October 5, 2017, “to try to coordinate a meeting . . . to sit down and connect about things with the children and to talk about starting respite weekends for the kids with the new family that has [Boy Three].” On October 16, 2017, the Primary Fosters, the Replacement Fosters, the children’s therapists, and several

department representatives met. Different witnesses testified to different understandings of the meeting's purpose. The department employees generally testified that they had intended to discuss plans to transition the children from the Primary Fosters' care into the Replacement Fosters' home. The Primary Fosters believed the meeting was intended to simply address the children's ongoing difficulties. All the witnesses agreed that the Primary Fosters stated during the October 16 meeting that they were willing to adopt the children. But a conference summary indicated a plan to transition the children to the Replacement Fosters' home.

Removal from the Primary Fosters' Home & Licensing Issues

On November 15, 2017, Posthumus notified the district court, "There is a licensing issue in [the Primary Fosters' home] and other concerns have arisen over the course of this case (including a pattern of conflict between [the Primary Fosters and Mother]). The Department will be moving the children to live with their sibling [Boy Three] . . . ." Posthumus and Kellett arrived at the Primary Fosters' home on November 17 to take the children for what the Primary Fosters testified they believed was merely an overnight visit with the Replacement Fosters. Posthumus allegedly did not inform them that the children were being permanently removed until after they had gone. The next day Posthumus prepared a notice to the district court representing that the Primary Fosters had informed her that they did not want the children to return to them. The Primary Fosters denied ever having told Posthumus that. On November 19, 2017, the Primary Fosters authored a letter explaining their opposition to the children's removal and stating that they would adopt the children (and Boy Three) if the district court terminated Mother's parental rights. Relying

on information provided by Posthumus, Foster Licensing Worker Hung Tran cited the Primary Fosters for three foster-care licensing violations.

Children's Time with the Replacement Fosters

Kuol described that the transition from the Primary Fosters' home and into the Replacement Fosters' home was traumatic for the children. The Replacement Fosters reported to Kuol that the children were refusing to leave one another and wanting to sleep in the same bed. Kuol attributed this to the children feeling insecure. Boy Two became aggressive toward his siblings, avoided school work, and made "frequent medical complaints." Girl began crying regularly, had difficulty regulating her emotions, and began threatening to harm herself and others. Boy One was struggling in school, was bossy, and angered easily.

Child therapist Julie Hormann testified that she began providing therapy services to the children in 2018. The children were each diagnosed with posttraumatic stress disorders and struggled to regulate their emotions. Boy One was regressing in toileting habits, having self-inflicted nosebleeds, testing boundaries with adults, and bullying other children. Girl had "severe maladaptive behaviors in recent months," self-harm ideations, and suicidal ideations. But Hormann described a general trend of improvement in therapy. She made significant progress with Girl, and the frequency and intensity of her problematic behaviors decreased. Boy Two also improved. Hormann faced greater difficulty with Boy One, who closed himself off emotionally. His progress was slow and halting.

The Replacement Fosters described their attempts to meet the children's cultural needs by mirroring familiar foods, activities, and schedules; curating African American art,

books, and movies; celebrating Kwanza; attending a retreat for interracial families; and initiating conversations acknowledging and addressing how the Replacement Fosters were racially different from the children. Brunner, having returned from her leave, observed that the Replacement Fosters were meeting all of the children's physical- and mental-health needs, including therapy to address the children's behavioral difficulties. The Replacement Fosters and the children were active in the Replacement Fosters' Lutheran community. The children remained active in school and activities, and the Replacement Fosters had enrolled them in additional activities.

After initial visits with the Primary Fosters, the children reportedly made statements about the Replacement Fosters' homosexuality and referenced having been "stolen" from the Primary Fosters. The Primary Fosters denied having made any derogatory comments about the Replacement Fosters. The Replacement Fosters claimed that the department told them to suspend any contact with the Primary Fosters, while Kellett testified that the Replacement Fosters and the department reached that decision jointly. The Replacement Fosters had not established relative contacts for the children, and said that they were waiting to do so.

The district court terminated Mother's parental rights to the children on March 30, 2018. Primary Foster Mother sent a message to Brunner, repeating her desire to adopt the children. In May 2018, department employees met to discuss the children's permanency options. Social Worker Supervisor Emily Palmer recalled that the department decided not to consider the Primary Fosters as a permanency option because of the pending licensing issues. But she testified that she eventually understood that other factors influenced the

decision: the Primary Fosters had not been consistently committed to adoption, Boy Three had been placed with the Replacement Fosters, and the Primary Fosters had been having conflicts with Mother.

The department formally recommended that the Minnesota Department of Human Services (DHS) revoke the Primary Fosters' foster-care license on May 31, 2018. DHS revoked the Primary Fosters' license in December 2018 based on allegations that the Primary Fosters had failed to wash the children's clothing, refused to allow the children to return to their home after visiting the Replacement Fosters, and refused to return some of the children's belongings to them. The Primary Fosters appealed that revocation.

In early 2019, Boy Two and Girl were reportedly making significant progress toward their treatment goals. But Boy One was referred to more intensive treatment due to the Replacement Fosters' "continuing concerns around aggressive and defiant behaviors in the home setting and [Boy One] 'not making any progress in therapies in the past year.'" He made steady progress regulating his emotional reactions and reducing the duration of angry and aggressive behavior.

In May 2019, one day before the Replacement Fosters were scheduled to finalize their adoption, the department decided that the relatives must be notified about the adoptive placement. Kellett recounted how the children were disappointed and upset by the delay. Hormann testified that she observed marked regressions in the children's behaviors generally aligning with the delay of their anticipated adoption.

On June 5, 2019, an administrative-law judge issued findings, conclusions, and a recommendation determining that the department had failed to establish reasonable cause

to believe that the Primary Fosters had committed any licensing violations. It found that Posthumus was not credible "as a result of the personal conflict she had" with the Primary Fosters. The Primary Fosters filed their motion for adoptive placement on June 26, 2019.

Replacement Foster Mother B.R. testified that, sometime around July 2019, the children were again struggling emotionally. They were yelling, pushing, screaming, stiffening their bodies, threatening self-harm, threatening others, banging on doors and walls, and crying. Updates to the children's diagnostic assessments in August 2019 indicated some regression. Girl exhibited "[s]ome regression in engaging emotion coping skills when needed in the home setting," and "[s]ome regression in reducing the frequency and intensity of anxiety response in the home setting." Boy Two continued "to struggle with emotion coping," with problematic behaviors occurring "multiple times a day with a duration of over one year and a high level of intensity," and with "[s]ome regression complying with expectations in the home setting."

Also in August 2019, the district court ordered that the Primary Fosters be allowed visits with the children. The Primary Fosters testified that the children warmed quickly to them. The guardian ad litem observed that they remained connected to the Primary Fosters. Later that month, the Minnesota Commissioner of Human Services generally adopted the administrative-law judge's recommendation in a final order, rescinding the revocation of the Primary Fosters' license.

By late 2019, Hormann and the guardian observed more difficulties in the children's behaviors and functioning. Girl was demonstrating more frequent outbursts and had begun to struggle more in school. Boy Two was having frequent outbursts and exhibiting defiance

at home and at school. Boy One was also struggling with anger and was facing difficulties in school. Replacement Foster Mother B.R. testified that Boy One was struggling with bed-wetting (which had been "nearly resolved" in the past) and high anxiety, requiring medication. Hormann believed that the children were "moving in the direction of what [she] would consider a secure attachment [with the Replacement Fosters] but they [were] not there yet."

Best-Interests Opinions

Brunner, Hormann, Kellett, Palmer, and the guardian believed that remaining with the Replacement Fosters was in the children's best interests, generally because it would avoid the trauma of another home transition and because the Replacement Fosters were meeting the children's needs. Hormann testified that it was important for children to have male role models in their lives and caregivers who look like them. But she clarified that it was more important for the children to have emotionally responsive, loving caregivers.

Numerous witnesses testified regarding the children's cultural needs as African Americans. The children's cousin doubted whether the Replacement Fosters understood struggles unique to African Americans or could teach Boy One and Boy Two "what they need to be able to survive . . . when a society looks at them like they have done something wrong just because they have brown skin." B.J.B., who was raised for several years in the Primary Fosters' home, testified that being part of the black community and "being around [one's] culture . . . makes you feel [safer]; you get to feel [freer]; you get to . . . be yourself around your own community." Primary Foster Father testified that it was important to teach young African American boys "that you [have] one strike against you already for being

black," and that he believed the Replacement Fosters would be unable to teach the children those types of lessons. A longtime friend of the Primary Fosters testified, "It's difficult walking around with a brown face . . . . It's too difficult out here walking around with the skin that we have at times. And for young men, it's really almost impossible for them to get it sometimes without knowing another man like the[m]selves or their color or whatever."

Findings, Conclusions & Order Granting the Primary Fosters' Motion

The district court issued an 82-page order and a 15-page memorandum resolving factual disputes and outlining its conclusions of law. In them, the district court granted the Primary Fosters' motion for adoptive placement on December 12, 2019, determining first that the department was unreasonable in failing to make the Primary Fosters' requested adoptive placement, and concluding second that placement with the Primary Fosters was in the children's best interests. It found that the department knew that the Primary Fosters were willing to adopt the children by October 16, 2017. It credited the Primary Fosters' explanation that they did not present themselves as a permanency option sooner because they believed that doing so would have precipitated the more immediate termination of Mother's parental rights. The district court found that Posthumus's court-notification "claim regarding the licensing issue was false" and that "the claim regarding the pattern of conflict [between the Primary Fosters and Mother] was exaggerated to the point of falsehood." Regarding Boy Three, it found that "[n]o professional involved in this case ever asked [the Primary Fosters] if they would be willing to accept placement of [Boy Three], either as a foster placement or foster-to-adopt."

The district court rejected each of the department's proffered reasons for not placing the children with the Primary Fosters. It determined that the pending licensing action and alleged conflicts between the Primary Fosters and Mother lacked an evidentiary basis and instead reflected Posthumus's misrepresentations. It rejected the department's concerns about the Primary Fosters' hesitancy to be a permanency option as contrary to law. It did so citing Minnesota Statutes section 260C.221(b)(2) (2018), which provides in part: "A decision by a relative not to be identified as a potential permanent placement resource or participate in planning for the child at the beginning of the case shall not affect whether the relative is considered for placement of the child with that relative later." And it rejected the department's proffered interest in placing the children with Boy Three because the "situation was brought about by Posthumus's placing [Boy Three] apart from his siblings . . . contrary to law."

The district court also concluded that the Primary Fosters offered the most suitable adoptive home to meet the children's needs. It weighed several factors equally between the two foster homes and weighed interests in consistency and existing community connections in the Replacement Fosters' favor. But it found that the children's functioning and behaviors, cultural needs, and relationships weighed strongly in the Primary Fosters' favor.

It discredited witness testimony alleging a trend of overall improvement in the children's behaviors and mental health while in the Replacement Fosters' care, instead relying on contemporaneous records documenting the children's increased difficulties. Specifically, the district court found that the transition into the Replacement Fosters' home disrupted their progress and caused severe regression, leaving the district court with "the

strong conviction that the children [were] not thriving in the care of [the Replacement Fosters].”

The district court also found that the children’s cultural needs weighed in favor of placing the children with the Primary Fosters. It credited testimony addressing racial prejudice and societal bias facing the African American community. It found that Primary Foster Father “taught the children about growing up in this society as a black child, noting they have one strike against them already.” And because the Primary Fosters are African American, the district court reasoned that “they share that aspect of culture and can teach the children about it.” The district court recognized the Replacement Fosters’ efforts to meet the children’s cultural needs, but found that the Replacement Fosters had failed to ensure that the children had any African American role models in their lives, either male or female. The district court explained its reasoning as follows:

> In a number of ways, [the Primary Fosters] have already proven their ability to help the children understand their racial background and what it means to be a black child growing up today in America. [The Replacement Fosters] have not proven the ability to teach these lessons. [The Primary Fosters], as well as other African-American people to whom they have exposed the children, including therapists, fellow churchgoers, and members of the children’s extended family, also provide a mirror for the children. As the children’s current therapist testified, having a caregiver who looks like the children ethnically or racially is one of the things that is important for children. Also enlightening was the lay opinion of the very impressive, well-spoken young man who had spent much of his young life growing up in [the Primary Fosters’] home, who testified that it is important to see people who look like you; being around one’s culture helps a person to feel safe, free, and to be oneself. [The Replacement Fosters] have not, in the Court’s view, made a sufficient effort to give these children

> access to communities that share racial or ethnic aspects of culture with them.

The district court additionally weighed the children's relationships to their current caretakers, parents, siblings, and relatives in favor of placement with the Primary Fosters. It found that the children had a healthy, loving attachment to the Primary Fosters; that the Primary Fosters had ensured the children had relationships with biological family members while the Replacement Fosters had not; and that the children did "not yet have a secure attachment with [the Replacement Fosters]."

The Replacement Fosters appeal.

DECISION

The Replacement Fosters ask us to reverse the district court's order granting the Primary Fosters' motion for adoptive placement, arguing that the district court abused its discretion by misapplying the law and making clearly erroneous findings. Because we discern no misapplication of the law, and because the district court's findings are supported by the record, we affirm the district court's order.

We first outline the procedure for transition from foster placement to adoptive placement and our standard of reviewing the district court's decisions. "[A]fter the district court orders [a] child under the guardianship of the commissioner of human services . . . a relative or the child's foster parent may file a motion for an order for adoptive placement . . . if the relative or the child's foster parent" has an adoptive home study approving the relative or foster parent. Minn. Stat. § 260C.607, subd. 6(a). On a prima facie showing that the agency has been unreasonable in failing to make the requested placement,

the district court conducts an evidentiary hearing. *Id.*, subd. 6(b)–(c). At the hearing, the agency first presents evidence explaining why it did not make an adoptive placement with the movant. *Id.*, subd. 6(d). "The moving party then has the burden of proving by a preponderance of the evidence that the agency has been unreasonable in failing to make the adoptive placement." *Id.* If the district court concludes that the agency was unreasonable in failing to make the adoptive placement, it must also consider whether "the relative or the child's foster parent is the most suitable adoptive home to meet the child's needs" by applying statutory best-interests factors. *Id.*, subd. 6(e). The district court then "may order the responsible social services agency to make an adoptive placement." *Id.* We review the district court's grant of a motion for adoptive placement for an abuse of discretion. *See id.* (stating "the court *may* order" (emphasis added)). A district court abuses its discretion if its findings are clearly erroneous, *see In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660–61 (Minn. 2008), or if it misapplies the law, *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 654 (Minn. App. 2018). We address the district court's unreasonableness and suitability determinations separately.

I

The district court concluded that the department acted unreasonably by failing to grant the Primary Fosters' requested adoptive placement. The Replacement Fosters contend that the district court misapplied the law by failing to defer to the department's decision and that the department acted reasonably by placing the children with the Replacement Fosters.

We are not persuaded by the Replacement Fosters' argument that the district court misapplied the law by failing to defer to the department. The argument requires us to interpret section 260C.607, a task we undertake de novo. *See In re Welfare of Children of A.M.F.*, 934 N.W.2d 119, 122 (Minn. App. 2019). A motion for adoptive placement requires the district court to determine whether "the agency has been unreasonable in failing to make the [movant's requested] adoptive placement." Minn. Stat. § 260C.607, subd. 6(e). The statute does not define the term "unreasonable," so we construe the term according to its plain and ordinary meaning. *See State v. Leathers*, 799 N.W.2d 606, 609 (Minn. 2011). We look to dictionary definitions and apply them in their statutory context. *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016). A plain-language definition of "unreasonable" is, "Not guided by reason; irrational or capricious." *Black's Law Dictionary* 1772 (10th ed. 2014). The term "unreasonable" is not ambiguous in the statute's context, and the statute therefore required the district court to consider whether the department's decision was unguided by reason, irrational, or capricious.

The district court applied a plain-language definition together with the standard of review applicable to agency decisions described by the supreme court in *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71 (Minn. 2015). Under that standard, a reviewing court follows a two-step analysis to determine whether an agency's decision is unreasonable, arbitrary, or capricious: it must consider first whether the given reasons are legally sufficient, and it must decide second whether those reasons have a factual basis in the record. *Id.* at 75–76. We think the *RDNT* standard aligns generally with the inquiry required by Minnesota Statutes section 260C.607, subdivision 6, but we are mindful that the context

of adoptive-placement proceedings obviously differs from the denial of a conditional use permit at issue in *RDNT*, 861 N.W.2d at 72. To the extent the Replacement Fosters contend that the district court was bound to accept the department's stated factual bases as *true*, we reject the contention. The statute contemplates a movant's ability to demonstrate by a preponderance of the evidence that an agency has been unreasonable, requiring the district court to weigh evidence and make factual determinations despite the fact that the agency "shall proceed first with evidence about the reason for not making the adoptive placement." Minn. Stat. § 260C.607, subd. 6(d).

The Replacement Fosters insist that the district court "should have simply determined whether there was a factually sufficient basis to support the [department's] determination." But by determining that some of the department's reasons rested on fabrications, the district court was properly determining whether the departmental reasoning had a factual basis in the record. *See RDNT*, 861 N.W.2d at 76. And by rejecting certain reasons as contrary to law, the district court also determined whether the department's reasoning was legally sufficient. *See id.* at 75–76. The district court was not substituting its judgment for the department's judgment.

The Replacement Fosters insist that the Primary Fosters failed to demonstrate their willingness to adopt the children until October 2017. But the Replacement Fosters fail to challenge or acknowledge that the district court concluded that the reason was impermissible as a matter of law under Minnesota Statutes section 260C.221(b)(2). The Replacement Fosters bear the burden of demonstrating error on appeal, *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464–65 (Minn. 1944), and we do not reach issues that are not

adequately briefed. *In re Civil Commitment of Kropp*, 895 N.W.2d 647, 653 (Minn. App. 2017), *review denied* (Minn. June 20, 2017). The district court's unchallenged legal determination resolves this issue.

We discern no error in the district court's determining that some of the department's reasons lacked a factual basis. The district court found that Posthumus misrepresented the circumstances underlying the Primary Fosters' licensing issues, a finding supported by the Primary Fosters' testimony and buttressed by the commissioner's findings and order rescinding the license revocation. The district court's finding that Posthumus exaggerated the Primary Fosters' conflict with Mother to the point of falsity is supported by testimony.

The district court also rejected the department's claim that the placement with the Replacement Fosters would reunify the children with Boy Three, reasoning that the department had failed to inquire whether the Primary Fosters would accept Boy Three's placement and concluding that Boy Three's placement was "brought about by Posthumus's placing the baby apart from his siblings in the first instance" in contradiction of Minnesota Statutes section 260C.212, subdivision 2(d) (2018) ("Siblings should be placed together for foster care and adoption at the earliest possible time . . . ."). The Replacement Fosters raise no specific argument undermining the district court's decision rejecting this reason. The district court's findings are also not clearly erroneous, and its reasoning is sound.

The Replacement Fosters repeatedly attempt to characterize the district court's decision as one improperly focused on the department's alleged misconduct regarding the Primary Fosters rather than its reasoning supporting placement with the Replacement Fosters. This framing ignores the statutory directive for the district court to consider

whether the agency was unreasonable in failing to make the *requested* placement, *see* Minn. Stat. § 260C.607, subd. 6(b)–(d), placing the focus on the department's reasoning as to the movant. The district court properly focused its analysis on the department's reasoning for failing to make the Primary Fosters' requested placement.

We conclude that the district court did not abuse its discretion by determining that the department was unreasonable in failing to make the Primary Fosters' requested placement.

II

We are likewise unconvinced by the Replacement Fosters that the district court erroneously concluded that the Primary Fosters would provide the most suitable adoptive home to meet the children's needs. "[I]f the [district] court finds that the agency has been unreasonable in failing to make the adoptive placement and that the relative or the child's foster parent is the most suitable adoptive home to meet the child's needs using the [best-interests] factors in [Minnesota Statutes section 260C.212, subdivision 2(b) (2018)], the [district] 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). The district court considered ten relevant best-interests factors, but its determination favoring placement with the Primary Fosters turned on three specific factors: the children's current functioning and behaviors, the children's cultural needs, and the children's relationships. *See* Minn. Stat. § 260C.212, subd. 2(b)(1), (6), (9). The Replacement Fosters argue that the district court made clearly erroneous findings and engaged in prohibited consideration of race. We have reviewed the district court's

best-interests determination for an abuse of discretion. *See In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). We identify no clearly erroneous findings, and we do not read the district court's references to racial concerns as reflecting any abuse of discretion.

The district court did not clearly err by finding that the children's functioning and behaviors worsened in the Replacement Fosters' care.

One factor the district court must weigh is the children's "current functioning and behaviors." Minn. Stat. § 260C.212, subd. 2(b)(1). The district court found that this factor weighed heavily in the Primary Fosters' favor based on its "strong conviction" that the children were not thriving in the Replacement Fosters' care and its finding that the children's mental-health troubles had worsened after being placed with the Replacement Fosters. The Replacement Fosters argue that the district court's findings are clearly erroneous because the district court "minimize[d] or fully ignore[d] the progress that the children made in the care of [the Replacement Fosters], while playing up any reports of troublesome behavior made by [the Replacement Fosters]." We reject the argument because the district court's findings are adequately supported.

Findings are clearly erroneous if they are "either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *T.R.*, 750 N.W.2d at 660–61 (quotation omitted). The Replacement Fosters describe the district court's findings as "baffling" and unsupported, emphasizing testimony tending to show that the children's functioning and behaviors actually improved over time. But the district court chose to credit contemporaneous records over witness recollections, and we are in no

position as an appellate court to reweigh evidence or disturb a district court's credibility determinations. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

The Replacement Fosters also understate the evidentiary support for the district court's findings. Testimony and contemporaneous records indicated that the children suffered numerous behavioral and mental-health issues immediately after being removed from the Primary Fosters' home. The record documents a series of problematic behaviors that evolved, sometimes improving and sometimes worsening. The district court did not disregard the fact that the children made some behavioral and mental-health progress after placement with the Replacement Fosters. But it relied primarily on continuing instances of troubling behaviors, mental-health conditions, and regression that continued through the time of trial. By emphasizing the children's progress, the Replacement Fosters essentially argue that the district court failed to assign greater weight to the evidence most favorable to the children's placement with them. Again, we defer to the district court's weighing of the evidence. *See In re Welfare of J.H.*, 844 N.W.2d 28, 39 (Minn. 2014). The district court's findings are not manifestly contrary to the weight of the evidence and are reasonably supported by the record. *See T.R.*, 750 N.W.2d at 660–61.

The district court did not abuse its discretion by impermissibly considering race.

The district court must consider "the child's religious and cultural needs." Minn. Stat. § 260C.212, subd. 2(b)(6). The district court found that the children's cultural needs weighed in favor of placing the children with the Primary Fosters, reasoning that the Primary Fosters had "proven their ability to help the children understand their racial background and what it means to be a black child growing up today in America," that the

Primary Fosters and others in their community would "provide a mirror for the children," and that the Replacement Fosters failed to give the children "access to communities that share racial or ethnic aspects of culture with them." The Replacement Fosters argue that the district court violated Minnesota Statutes section 260C.613, subdivision 4 (2018), by giving the Primary Fosters preference for adoptive placement based upon race. They implicitly argue that racial considerations are per se improper, and we see no support for this implication in the law.

We review questions of law de novo. *J.H.*, 844 N.W.2d at 34–35. The Replacement Fosters cite federal and state law. But neither prohibits a court from considering race as a component of a child's culture in relation to potential foster parents. Federal law instead prohibits states and state entities who receive federal funding from *denying* or *delaying* foster placements "on the basis of the race, color, or national origin of the [caregiver], or of the child." 42 U.S.C. § 671(a)(18) (2018); *see also* 42 U.S.C. § 1996b(1) (2018). State law likewise provides, "Placement of a child cannot be delayed or denied based on the race, color, or national origin of the prospective parent or the child." Minn. Stat. § 260C.613, subd. 4; *see also* Minn. Stat. §§ 259.57, subd. 2(c), 260C.193, subd. 3(f), .212, subd. 2(c) (2018). The supreme court has explained that, despite the statutory prohibition on delaying or denying placement based on race or color, the cultural-needs factor "demonstrates that those aspects of one's identity that are informed by racial and ethnic heritage, cultural values, and traditions passed across generations are relevant factors in determining the child's best interests." *In re S.G.*, 828 N.W.2d 118, 127 n.7 (Minn. 2013). The district court's comments appear to us to have properly considered race in this context, and do not

suggest that it improperly refused to place the children with the Replacement Fosters based on race.

Minnesota Statutes section 260C.212 does not define the phrase "cultural needs," nor the term "culture." One definition of culture is, "The set of predominating attitudes and behavior that characterize a group or organization." *The American Heritage Dictionary* 443 (5th ed. 2011). The Minnesota Department of Human Services has published a bulletin regarding the treatment of race and color in the adoption context, favorably citing the following definition of culture:

> [T]he customary beliefs, social forms, and material traits of a racial, religious, or social group; the characteristic features of everyday existence . . . shared by people in a place or time; the integrated pattern of human knowledge, belief, and behavior that depends upon the capacity for learning and transmitting knowledge to succeeding generations.

Minn. Dep't of Human Servs., *Consideration of Culture in Placement Decisions* 5 (2018). With these definitions in mind, we address the Replacement Fosters' arguments and the district court's reasoning.

The Replacement Fosters contend that the district court used the term "culture" as a stand-in for "race" and failed to consider what aspects of culture would be communicated to the children in the separate foster homes. In similar fashion, the concurrence criticizes the district court's cultural assessment in relation to race and asserts, "Culture can be taught. . . . If it is something that cannot be taught, then it is not culture." But the district court's analysis was more nuanced than these protestations suggest. The district court credited testimony that described problems of racial prejudice facing children in the

African American community and lessons that would help the children meet those prejudices. Witnesses opined without objection about these issues, and the district court relied on this testimony in determining that the children would "need to be taught how to survive in a society that thinks they have done something wrong just because of their brown skin," and that they would need "to learn to deal with the types of situations that result in black males, in particular, getting killed." We are satisfied that this testimony comprises beliefs and attitudes—aspects of culture—regarding African Americans' relations to broader American society. The district court specifically found that Primary Foster Father "taught the children about growing up in this society as a black child" in the context of likely biases against them. We do not view the district court's analysis as impermissibly "based on the race" of the children or either set of foster parents. We instead understand the district court as recognizing that the Primary Fosters and the children share a racial characteristic with cultural implications that would best facilitate "teach[ing] the children about" that aspect of culture.

We add that the record undermines the concurring opinion's accusation that the district court failed to recognize that considerations of race are proper only to the extent it informs culture. The district court expressly explained that the Primary Fosters had "already proven their ability to help the children understand their racial background and what it means to be a black child growing up today in America," while the Replacement Fosters had not. Those teachable lessons concerned how to navigate a society that witnesses described as rife with racial prejudices. The district court's statement that the "[Primary Fosters] are African[ ]American; thus, they share that aspect of culture and can

teach the children about it," followed and referred specifically to Primary Foster Father's testimony "about growing up in this society as a black child" and having "one strike against them already." The district court here described a set of experiences influenced by race, and beliefs informed by race, as it regards how a parent of black children can navigate related challenges. This is a teachable theory of African American culture, one that the district court found the Primary Fosters to have endeavored to impart to the children while, in contrast, the Replacement Fosters had not. The district court also implicitly perceived the Primary Fosters as better suited through their own experience to teach the children about these concerns.

Because the district court's reasoning as a whole included these clear cultural concerns, we are not troubled by the district court's statements that it was "important" that the children have caregivers who look like them and that other African Americans (the Primary Fosters and those in their community) would provide a "mirror" for the children. Absent the full context of the district court's analysis, perhaps we would doubt whether those remarks actually bear on cultural needs. But we have reviewed the district court's thorough and thoughtful analysis carefully, and for the reasons just discussed, we are unconvinced that its consideration of race violated section 260C.613, subdivision 4.

We add that the context of relevant witness testimony suggests that the discussion of race also implicated a different best-interests factor. Hormann, for instance, did not testify that racial similarity between child and caregiver is "important" to meet cultural needs; she was instead describing what is important to an ideal child-caregiver relationship. And if B.J.B.'s testimony about "being around [one's] culture" was not actually remarking

on a cultural need, he was describing the effect of feeling safer and freer. In this way, racial similarity in a caregiver or community is "important" in this case in the context of "the developmental needs of the child." *See* Minn. Stat. § 260C.212, subd. 2(b)(4).

We are not persuaded otherwise by the concurring opinion's lengthy quoting of what it describes as "impermissible" testimony by some witnesses. Neither the cited testimony nor even the district court's occasional crediting of some of the testimony is truly at issue. We are instead reviewing whether the district court improperly considered race in its analysis of culture to determine whether the district court denied foster placement with the Replacement Fosters based on race. And the record simply does not compel the conclusion that it did so or suggest that it ignored their efforts to meet the children's cultural needs. To the contrary, the district court recognized that their effort showed that they in fact attempted to meet the children's cultural needs. But in determining that the Primary Fosters were better suited to meet those needs, the district court did not abuse its discretion by including a discussion of how culture relates generally to race or specifically to the races of the potential adoptive parents.

The district court did not abuse its discretion by concluding that the children's relationships weighed in favor of a placement with the Primary Fosters.

The district court must weigh "the child's relationship to current caretakers, parents, siblings, and relatives." Minn. Stat. § 260C.212, subd. 2(b)(9). The district court found that this factor also weighed in the Primary Fosters' favor because the children previously had a secure and loving attachment to them, because the children did "not yet have a secure attachment" with the Replacement Fosters, and because, unlike the Replacement Fosters,

the Primary Fosters had ensured that the children maintained their connection with their extended family.

The Replacement Fosters argue that they credibly testified that they were waiting for the adoption to be finalized so the children had a sense of permanency and security before facilitating the children's relationships with their family. The argument does not undermine the district court's finding that, "despite being, by all accounts, open to relationships with relatives, [the Replacement Fosters] have not, in fact, facilitated any actual contact with relatives to date." The district court was not required to credit the Replacement Fosters' promise that they would eventually promote the children's relationships with relatives. Faced with one set of foster parents who actively helped the children maintain their familial relationships and another set who did not, we are not persuaded by the argument that the district court's reasoning was improper.

The Replacement Fosters suggest that the district court improperly relied on Kuol's lay testimony in considering whether the children had secure attachments with either set of foster parents. Any potential error was surely harmless because Hormann's expert opinion indicated that the children lacked a secure attachment to the Replacement Fosters. And the statutory best-interests factor concerns only "the child's relationship to current caretakers, parents, siblings, and relatives," *id.*, and the statute nowhere requires that relevant evidence on the issue must come from an expert.

In conclusion, the district court did not misapply the law, nor are its findings clearly erroneous. Our task on appeal is not to reweigh the evidence nor to substitute our judgment

for the district court's broad discretion. We conclude merely that the district court did not abuse that discretion, and so we affirm.

Affirmed.

REYES, Judge (concurring specially)

I agree with the majority in affirming the district court's decision. However, I respectfully disagree with the majority's conclusion that the district court appropriately considered race when analyzing the culture factor in the best-interests analysis, which cannot be considered in an adoptive-placement decision apart from how it informs culture. I write separately to highlight the important distinction between culture and race, color, and national origin.

Facts

In this adoption case, appellant-foster parents M.R. and B.R. (foster parents) challenge the district court's order granting the motion of respondent-foster parents S.P. and V.P. (former foster parents) to adopt three of mother C.F.'s children: C.W.W., A.Q.F., and A.S.F. (the children).[2] I provide a brief summary of the facts relevant to the specific issue of culture as a best-interests factor.

The children are African American. The Hennepin County Human Services and Public Health Department (the department) originally placed the children with former foster parents, who are a retired, opposite-sex, Baptist-Christian, African American couple. They initially indicated that they were not interested in adopting the children. After the department filed a second petition to terminate mother's rights to newborn child J.N., it contacted foster parents, who are a same-sex, Lutheran-Christian, Caucasian couple, regarding their interest in being foster parents for the children and J.N. The department

[2] To remain consistent with the district court's terminology, I use the terms "foster parents" and "former foster parents."

placed the children in foster parents' home in November 2017. The district court terminated mother's parental rights to the children in March 2018. Foster parents signed an adoption-placement agreement in May 2018. Former foster parents filed a motion for adoptive placement in June 2019.

The department conducted a second best-interests assessment in July 2019 focused on reviewing the children's permanency options. The department concluded that remaining with foster parents served the children's best interests because foster parents met the children's needs and the children understood that they were going to adopt them. Department social worker Sarah Brunner, child therapist Julie Hormann, adoption-resource worker Ginna Kellett, social-worker supervisor Emily Palmer, and the guardian ad litem also all believed that remaining with foster parents served the children's best interests. The district court analyzed the best-interests factors, and it granted former foster parents' motion for adoptive placement in December 2019. This appeal by foster parents follows.

Discussion

Foster parents argue that the district court abused its discretion by relying on clearly erroneous findings and an impermissibly race-based analysis to determine that the placement served the children's best interests. Specifically, they argue that the district court violated Minn. Stat. § 260C.613, subd. 4 (2018), by giving former foster parents preference for adoptive placement based on race. We review questions of law de novo. *In re Welfare of J.H.*, 844 N.W.2d 28, 34 (Minn. 2014).

The proper consideration of culture under federal and Minnesota statutes and caselaw

Federal law prohibits states and state entities that receive federal funding from denying or delaying foster placements "on the basis of the race, color, or national origin of the [caregiver], or of the child." 42 U.S.C. § 671(a)(18) (2018); *see also* 42 U.S.C. § 1996b(1) (2018) (prohibiting denial or delay of adoption "on the basis of [] race, color, or national origin"). Minn. Stat. § 260C.613, subd. 4, likewise provides, "Placement of a child cannot be delayed or denied based on the race, color, or national origin of the prospective parent or the child." *See also* Minn. Stat. §§ 259.57, subd. 2(c), 260C.193, subd. 3(f), .212, subd. 2(c) (2018). The Minnesota Supreme Court has noted that the cultural-needs best-interest factor "demonstrates that those aspects of one's identity that are *informed by* racial and ethnic heritage, cultural values, and traditions passed across generations are relevant factors in determining the child's best interests." *In re S.G.*, 828 N.W.2d 118, 127 n.7 (Minn. 2013) (emphasis added).

Applying federal and state statutes and caselaw, the Minnesota Department of Human Services has published a bulletin noting the proper consideration of culture in adoption proceedings under the best-interests analysis:

> *[C]ulture is not the same as RCNO* [race, color, and national origin]. [The] Merriam-Webster [Dictionary] defines culture as "the customary beliefs, social forms, and material traits *of a racial, religious, or social group*; the characteristic features of everyday existence . . . shared by people in a place or time; the integrated pattern of human knowledge, belief, and behavior *that depends upon the capacity for learning and transmitting knowledge to succeeding generations*."

Minn. Dep't of Human Servs., Bull. No. 18-68-17, *Consideration of Culture in Placement Decisions* 5 (2018) [hereinafter *Bulletin*] (emphasis added). The bulletin further states that "culture is fluid; *it can be learned, developed and changed*." *Id.* (emphasis added). It concludes by stating that "[a] public agency's consideration of culture must comply with MEPA-IEP [The Multiethnic Placement Act-Interethnic Provisions, Minn. Stat. § 260C.613, subd. 4] in that *it may not use culture as a replacement for the prohibited consideration of RCNO* [race, color, and national origin]." *Id.* (emphasis added). In other words, agencies and courts are prohibited from considering the immutable characteristics of race, color, and national origin as factors on their own. They can be considered only to the extent that they "inform" culture. *S.G.*, 828 N.W.2d at 127 n.7. But culture is fluid; it may be taught by any foster or adoptive parents, and it may be learned by children.

The bulletin further contains examples of appropriate and inappropriate considerations of race, including how race may appropriately inform culture. An agency may not state that it is "looking for an African-American family for this child" because that statement is family-focused, too general, and would eliminate non-African American applicants from adoption. *Bulletin*, *supra*, at 5. An example of appropriate consideration of culture is as follows:

> MEPA-IEP requires child-focused recruitment. A caseworker can say, "I am recruiting an adoptive family for an 11-year-old boy *who is connected to his African-American culture. He celebrates Kwanza every year and enjoys attending African-American cultural celebrations* such as Juneteenth and Rondo Days. *I am looking for a family who is willing and able to meet his cultural needs*." *This description is child-focused and has identified specific cultural needs, rather than eliminating a broad base of prospective adoptive*

> *families*. This description would include families of the same culture as the child, *as well as families able and willing to learn about and celebrate occasions and events that are culturally important to the child*. The focus is on finding a family who can meet the needs of that child.

Id. (emphasis added). Thus race can only be used to inform and identify the child's cultural background. The focus is on the child, the child's culture, and how any family can learn about, teach, and celebrate the child's culture.

The district court's analysis of the best-interests factors

In its best-interests analysis, the district court found that several factors weighed equally between the parties, but it weighed four factors, including the cultural-needs factor, in favor of former foster parents. It recognized that foster parents made significant efforts to "mimic the foods and activities with which the children were familiar," "curated books, movies, and art around culture at their home," "celebrated Kwanzaa and attended a retreat for interracial families," attended a cultural training, learned about African American hair care, talked with the children about racial equity, and encouraged the children to feel pride in who they are. The statute, caselaw, and the bulletin recognize exactly these permissible cultural factors. *See Bulletin*, *supra*, at 5 (encouraging agency to look for families willing to meet cultural needs of child connected to his African American culture and who celebrates Kwanzaa and other cultural occasions).

The district court prefaced its analysis by recognizing that the law prohibits restrictions or delays in placement on the basis of race or ethnicity, but it then stated that "race and ethnicity can and should be considered in a home study; they are important in every case." This is an abuse of discretion. A district court cannot consider race and

ethnicity on its own, nor can it be considered in this manner in a home study, much less in every case. It can be considered only to the extent that it informs and provides context for the child's cultural needs.

The district court also credited the testimony of several lay witnesses, including the children's biological cousin T. S.-F., long-time friend of former foster parents R.H., and former foster father. They opined on race and color, contrary to the department's urging that race could not be considered. For example, T. S.-F. testified:

> Yes. I don't really like to say it but, I mean, the family that they're with [(foster parents)] *I have nothing against the way that they live their lives, but how can two white women raise two black -- a black man?* To teach him how society looks at him? Or to teach him how to be a man? *I don't think that they have what it takes* because, for one, they don't know the struggle of being African American. They don't know the things that we have to deal with just being -- just being black. You know, that's a struggle in itself.
>
> And to be a black male, you know, our black males get killed all the time, you know, and I *feel like they would give them a false pretense* of "Oh no, you just do what they want and you'll be fine," and that's not true all the time. *So, I don't know that they know how to deal with situations like that because they've never been faced with situations like that*.
>
> . . . .
>
> *I don't understand how they would possibly know the half of how to teach [the children] what they need to be able to survive in society when a society looks at them like they have done something wrong just because they have brown skin*.

(Emphasis added.) This lay testimony impermissibly considers race on its own. Culture can be taught. In particular, this lay testimony questioning "how can two white women raise . . . a black man?" would exclude any white parents from raising a black child.[3]

R.H. testified:

> It's difficult walking around with a brown face, even for African-American elderly people like me. . . . And I think for the children to be in a different environment and just jerked out of an environment, I am just overwhelmed with concern. . . . *It's too difficult out here walking around with the skin that we have at times. And for young men, it's really almost impossible for them to get it sometimes without knowing another man like themselves or their color or whatever.*

(Emphasis added.) R.H.'s testimony likewise focuses on the race and color of the parents and the need for the parents to look like the child. This testimony does not consider the child's cultural needs.

Former foster father testified:

> And I myself, well—being a black man—only way you can teach a kid -- especially young black boys, is that you got one strike against you already for being black. *And I don't . . . have any ill-feeling against [foster parents] or anything like that.* It's just that . . . being a black man in this world it's going to come down, you got one strike against you. *They can't teach you that. They can't teach any black kids that.*

(Emphasis added.)

[3] Distinguishing between permissible racially informed cultural considerations and impermissible racial considerations on their own is not intended to detract from the very significant concerns that the witnesses raise with respect to the challenges of being a Black person in America.

If it is something that cannot be taught, then it is not culture. *See Bulletin*, *supra*, at 5. This lay-opinion testimony, which assumes that foster parents cannot teach the children about culture on account of foster parents' race, reflects on race and color, which are impermissible considerations. *See* Minn. Stat. § 260C.613, subd. 4.

The district court credited R.H.'s lay-opinion testimony that it is important that children be around those who look like them and Hormann's testimony that having male role models in their lives and caregivers who look like a child is "important" for a child. The district court also credited the following testimony of T. S.-F. and R.H.:

> *Black children need to be taught how to survive* in a society that thinks they have done something wrong just because of their brown skin. They need to learn to deal with the types of situations that result in black males, in particular, getting killed. [] It is difficult to walk around with a brown face, and *is sometimes impossible for black young men without a black man in their lives*. [] It is important to see people who look like you; being around one's culture helps a person to feel safe, free, and to be oneself.

(Emphasis added.) This testimony appears to conflate culture with race by stating that it is impossible for a Black boy to be taught how to survive without a Black man in his life, which would exclude any non-Black parent from parenting a Black child.

The district court also reasoned that former foster parents, "as well as other African-American people to whom they have exposed the children, including therapists, fellow churchgoers, and members of the children's extended family, also *provide a mirror for the children*." (Emphasis added.) This reasoning is based on the testimony of Hormann and the lay witnesses that described the importance of the children being around people having a similar immutable physical appearance, which is an impermissible consideration of race

and color. To the extent the district court credited testimony that gave primacy to race and color and that assumed that white parents are unable to teach or facilitate the teaching of African American culture to African American children, the district court abused its discretion. To allow race to serve as a proxy for culture in this manner would reduce the best-interests factor of culture into one that looks only at the race of parents in relation to the race of a child.

I nevertheless concur in the majority opinion's affirmance of the district court's order. The district court also found that the children had a healthy, loving attachment to former foster parents that persisted despite the children's removal. It also found that former foster parents had ensured that the children had relationships with biological family members. The record amply supports the finding that former foster parents are loving, caring parents who are eminently qualified to adopt these children. Furthermore, the district court found that three other best-interests factors favored former foster parents.

The district court made careful and thorough findings of fact. Moreover, it is clear that the district court unquestionably tried to take into account the best interests of the children in this case and carefully evaluated both sets of loving and qualified foster parents. I commend the district court for its thorough and thoughtful analysis. But district courts must be cautious about crediting testimony that goes solely to race, color, or national origin, which is prohibited. Race may be considered to the extent that it provides context for the cultural needs of a child, but it is impermissible to exclude parents based on their being of a different race, color, or national origin than the child.