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STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1559

In the Matter of the Welfare of the Children of:
S. D., Mother

Filed June 28, 2021
Affirmed
Gaïtas, Judge

Ramsey County District Court
File No. 62-JV-19-606

Lucas J.M. Dawson, Halberg Criminal Defense, Bloomington, Minnesota (for appellants M.K. and R.K.)

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Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellants M.K. and R.K. (grandparents) appeal from the district court's dismissal of their motion for adoptive placement without an evidentiary hearing. We affirm.

FACTS

S.D. is the mother of two daughters. S.D. had L.T.D. (child 1) with father L.T. in 2010, when she was 13 years old. She had L.D.K. (child 2) with father C.K. in 2017. After

child 2's birth, grandparents—who are C.K.'s parents and biologically unrelated to child 1—cared for both children. The children were placed with grandparents in February 2018 and weeks later were adjudicated children in need of protection or services.

Grandparents communicated to respondent Ramsey County Human Services Department (the county) that they wanted to adopt both children. The county considered grandparents as a permanent placement option for the children.

In fall 2018, however, grandparents grew increasingly worried about then eight-year-old child 1's behavior towards child 2, who was a toddler. Grandparents shared with the county that child 1 admitted to shaking and poking child 2 to scare her; child 1 told child 2 that she hated her; child 1 tripped child 2 to make her fall; child 1 prevented child 2 from sleeping by "fake coughing"; and child 1 "knew" when the baby monitor camera was on and off in the children's shared bedroom, and would tailor her behavior accordingly. Grandparents also told the county that child 1 admitted that she "left items on the floor with the intention that [child 2] would find the items, place them in her mouth, and choke."[1]

The county offered safety planning to make the home safe for the children. But grandparents declined. They believed that child 1 required intensive in-home mental- and behavioral-health interventions, which were not offered. Because the county did not address the concerns about child 1 to their satisfaction, grandparents asked the county to

[1] Grandparents were particularly concerned about child 1's admission because their infant grandson had recently passed away following a tragic accident while in the care of his parents.

remove child 1 from their home. The county warned grandparents that the removal of child 1 would also require the removal of child 2. Grandparents did not want child 2 removed from their care.

In early December 2018, grandparent M.K. wrote to child 1's therapist that she was "very concerned for the safety of [child 2] when it comes to [child 1]." M.K. stated that she and grandparent R.K. were at "the point that we cannot trust her to be alone with her for a minute in fear that she will hurt her in some way. She has completely lost our trust." In a letter to a district court judge, M.K. called child 1 a "monster" because of her behavior towards child 2. M.K.'s letter stated that she wanted to separate the children to protect child 2.

Shortly after M.K.'s communications to the therapist and the judge, the county removed child 1 from grandparents' home. Child 1 was initially placed in a shelter. In July 2018, child 1 was placed in foster care with a non-relative adult she knew—a coach from school. Grandparents believe child 1 was placed in this home because she could not be around other children.

After child 1 was removed from grandparents' home, she continued to have visits with grandparents, including two overnight visits. During the second overnight visit, child 1's mother S.D. called. Although S.D's parental rights had been recently terminated, grandparents allowed child 1 to speak with her. Grandparents also told child 1 that they were interested in adopting her. Based on these incidents, the county suspended grandparents' visits with child 1.

While the children were separated, the county searched for a placement that would accept both siblings. The county eventually identified a suitable non-relative foster home. In September 2019, the county removed child 2 from grandparents' home and placed both children in this foster home.

After child 2 was removed from their home, grandparents and child 2 had regular visits. Eventually, the county reduced grandparents' visits with child 2 to one day per week. According to grandparents, child 2 protests returning to the foster home at the end of these visits; she cries, clings to grandparents, and resists getting ready. Grandparents also allege that she tells the foster parents that she wants to stay with grandparents.

In June 2019, S.D.'s parental rights to both children were terminated by default. L.T., father of child 1, executed a consent of parent to adoption by the non-relative foster parents in December 2019; his parental rights were terminated that same month. The district court terminated the parental rights of child 2's father, C.K., by default in June 2020.

The foster parents signed an adoption placement agreement to adopt both children. The guardian ad litem (GAL) recommended to the district court that the children continue their placement in the foster home and be adopted by the foster parents. According to the GAL, the children were doing well and the placement was "a great fit."

Grandparents filed a motion for adoptive placement in the district court in September 2020. In support of their motion, they submitted a lengthy affidavit detailing the history of their involvement with the children, their decision to remove child 1 from their home, failings by the county in handling the removal of child 1, the suspension of

visits with the children after their removal, their close bond with child 2 and love for child 1, and their commitment to adopting both child 1 and child 2. They also submitted letters that M.K. had sent to the district court about child 1's behavior, notes M.K. had prepared for child 1's therapist, and certificates from numerous courses they had completed on adoption and child trauma. Grandparents requested an evidentiary hearing on their motion, asserting that their submissions made a prima facie showing of the county's unreasonableness in rejecting them as the adoptive placement for both children. *See* Minn. Stat. § 260C.607, subd. 6(b) (2020).

The county opposed grandparents' motion for adoptive placement, asking the district court to dismiss it without an evidentiary hearing. According to the county, grandparents did not satisfy their preliminary burden of showing that the county had acted unreasonably.

The district court dismissed grandparents' motion for adoptive placement without an evidentiary hearing. The district court determined that grandparents had failed to make a prima facie showing that the county acted unreasonably in not placing the children for adoption with them.

Grandparents appeal.

DECISION

Grandparents argue that the district court erred in dismissing their motion for adoptive placement without an evidentiary hearing. They contend that their motion and submissions satisfied their minimal burden under Minnesota law to obtain an evidentiary hearing—making a prima facie showing that the county was unreasonable in failing to

place the children with them. Grandparents ask us to reverse and remand to the district court for an evidentiary hearing on their motion.

The county has a contrasting view of the allegations in grandparents' submissions. The county asserts that, even if grandparents' allegations are taken as true, they do not show that the county acted unreasonably in not placing the children for adoption with grandparents. The county therefore contends that it was appropriate for the district court to dismiss grandparents' motion outright without an evidentiary hearing.

Before turning to these arguments, we provide a brief overview of the law governing adoption proceedings in Minnesota. "Adoption is a creation of statute and therefore the [district] court's authority in matters relating to adoption is limited to the authority set forth by statute." *In re Adoption of C.H.*, 554 N.W.2d 737, 740 (Minn. 1996); *see* Juvenile Court Act, Minn. Stat. §§ 260C.001-.637 (2020).

When a child has been placed under the guardianship of the commissioner of human services after the parents' rights have been terminated, an agency acting on behalf of the commissioner must make "reasonable efforts" to finalize an adoption. Minn. Stat. §§ 260C.601, subd. 2, .605, subd. 1. Reasonable efforts include identifying an appropriate prospective adoptive parent in accord with the child's best interests, performing an up-to-date relative search, and ultimately finalizing the adoption. Minn. Stat. § 260C.605, subd. 1(d). To determine the needs and best interests of the child, the agency must consider various factors:

> (1) the child's current functioning and behaviors;
> (2) the medical needs of the child;
> (3) the educational needs of the child;

> (4) the developmental needs of the child;
> (5) the child's history and past experience;
> (6) the child's religious and cultural needs;
> (7) the child's connection with a community, school, and faith community;
> (8) the child's interests and talents;
> (9) the child's relationship to current caretakers, parents, siblings, and relatives;
> (10) the reasonable preference of the child, if the court, or the child-placing agency in the case of a voluntary placement, deems the child to be of sufficient age to express preferences[.]

Minn. Stat. § 260C.212, subd. 2(b). After considering these factors when a prospective adoptive parent has been established, the agency may execute an adoptive placement agreement. Minn. Stat. § 260C.613, subd. 1.

A relative or foster parent with a competing interest in adopting the child may, within the statutory time period, move the district court for an adoptive placement of the child. Minn. Stat. § 260C.607, subd. 6(a). "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). If the district court determines that the movant's motion and supporting documents fail to make that prima facie showing, "the court *shall* dismiss the motion." *Id.*, subd. 6(c) (emphasis added). If, however, the district court determines that a "prima facie basis is made," then "the court *shall* set the matter for evidentiary hearing." *Id.* (emphasis added). Thus, whether the district court must set an evidentiary hearing on the movant's motion hinges on whether the movant's motion and supporting documents make a prima facie showing that the agency acted unreasonably in

failing to make the adoptive placement requested by the movant. *See* Minn. Stat. § 645.44, subd. 16 (2020) (stating that "'[s]hall' is mandatory").

At an evidentiary hearing on the movant's motion, the agency presents evidence to support its decision not to make the adoptive placement with the movant. Minn. Stat. § 260C.607, subd. 6(d). Thereafter, "[t]he moving party 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.* The district court "*may*" order the agency to make an adoptive placement of the child with the movant if, at the end of the hearing, the district court "finds" both that (1) "the agency has been unreasonable in failing to make the adoptive placement" sought by the movant and (2) the movant provides "the most suitable adoptive home to meet the child's needs using the factors in section 260C.212, subdivision 2, paragraph (b)." *Id.*, subd. 6(e) (emphasis added); *see* Minn. Stat. § 645.44, subd. 15 (2020) (stating that "'[m]ay' is permissive").

A district court's dismissal of an adoptive-placement motion is an appealable order. *In re Welfare of L.L.P.*, 836 N.W.2d 563, 570 (Minn. App. 2013). We review the dismissal of an adoptive-placement motion without an evidentiary hearing in three parts. *See id.* First, we apply de novo review in examining whether the district court treated the parties' supporting documents "properly." *Id.* (citing *Boland v. Murtha*, 800 N.W.2d 179, 185 (Minn. App. 2011)). Second, we consider whether the district court abused its discretion in determining that the movant failed to make a prima facie showing that the county was unreasonable in failing to make the requested adoptive placement. *Id.* And third, we apply de novo review in considering the district court's denial of an evidentiary hearing. *Id.*

(noting that the failure to make a prima facie showing resolves the need for an evidentiary hearing).

Applying these standards of review, we conclude that the district court did not err in its dismissal, without an evidentiary hearing, of grandparents' motion for adoptive placement. We address each part of the analysis in turn.

A. The district court did not err in its treatment of grandparents' submissions.

As noted, the first step in reviewing the district court's decision requires us to determine, applying de novo review, whether the district court treated grandparents' motion and supporting documents "properly." *See id.* A district court treats an adoptive-placement motion and supporting documents "properly" by accepting the facts alleged by the movant as true, disregarding any contrary allegations, and only considering the respondent's allegations and the procedural history to the extent either "explain[s] or provide[s] context." *Id.* Grandparents argue that the district court erred in its treatment of their motion and submissions.

First, grandparents contend that the district court failed to accept the facts they alleged as true and improperly considered the county's contrary allegations. We disagree. The district court accurately cited the law regarding its obligation to assume the truth of grandparents' allegations. And the district court's order reveals that the district court followed the law. All of the facts included in the district court's order are based on grandparents' own submissions. While some of those facts are not favorable to grandparents, they are taken directly from the materials that grandparents presented to the district court, including grandparents' affidavit, M.K.'s letters to another district court

judge, and notes for child 1's therapist. Grandparents do not identify any contrary facts included in the district court's order. Moreover, although grandparents argue that the district court did not accept the truth of their allegations, they do not point to specific instances where the district court erred in this regard, and in our review of the district court's order we found no such errors.

Second, grandparents argue that the district court improperly weighed the procedural history of the case against them—in particular, their request to have child 1 removed from their home. Again, we disagree. We initially question whether grandparents' request to remove child 1 was merely "procedural history" in this case. Grandparents' request, and the county's subsequent removal of child 1 based on grandparents' insistence, was the focus of grandparents' own submissions in support of their motions. But even if grandparents' request to remove child 1 was simply part of the procedural history, it provided critical context for the district court in deciding whether grandparents made a prima facie showing of the county's unreasonableness. Grandparents were the initial permanency option for the children until they asked the county to remove child 1. Their motion alleged that the county was unreasonable in subsequently failing to support them as the adoptive placement. In determining whether grandparents made a prima facie showing of unreasonableness, the district court certainly was entitled to consider this history—placed in issue by grandparents—for context.

Third, grandparents allege that Minnesota Statutes section 260C.221(b)(2)—which states that a "decision by a relative not to be identified as a potential 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"—barred the district court from considering their request to remove child 1. But this statute, which governs the search for relatives that an agency must conduct before placing a child, does not apply here. When grandparents sought removal of child 1, not only had the county already identified grandparents as a permanency option, but the county had already placed the children with grandparents. Moreover, when grandparents sought the removal of child 1, the county specifically warned grandparents that removing child 1 would ultimately result in removal of child 2. Thus, on this record, we cannot say that grandparents' request to remove child 1 occurred at "the beginning of the case," which is the relevant time period under section 260C.221(b)(2). The district court accordingly did not contravene this statute in considering grandparents' request to remove child 1.

Finally, grandparents argue that two of the district court's comments in its order—which characterized grandparents' judgment as "limited" and "poor"—reveal that, instead of accepting grandparents' allegations as true, the district court improperly weighed the evidence in considering their motion. Again, we disagree. We initially observe that the district court's remarks related to undisputed facts alleged in grandparents' own submissions—specifically, grandparents' assertions that they told child 1 they wanted to adopt her and allowed child 1 to speak with S.D. on the phone after S.D.'s parental rights had been terminated. Furthermore, the district court only made these comments in explaining its legal conclusion that grandparents had failed to make a prima facie showing that the county acted unreasonably in not placing the children for adoption with them. The district court concluded that grandparents' "decision to have the children removed and

subsequent lapses in judgment in how they interacted with Child 1 during overnight visits demonstrate that [the county] was not unreasonable, irrational or capricious in its decision to find an adoptive placement for the children other than [grandparents]." Because the district court's remarks were based on grandparents' own allegations, and the remarks were included simply to explain the court's legal conclusion that grandparents had failed to make a prima facie showing of the county's unreasonableness, they were not improper.

Based on our de novo review of the district court's treatment of grandparents' motion papers, we see no error. The district court treated grandparents' motion and submissions properly.

B. The district court did not abuse its discretion in determining that grandparents failed to make a prima facie showing of unreasonableness.

We next consider whether the district court abused its discretion in determining that grandparents failed to make a prima facie showing that the county was unreasonable in failing to make their requested adoptive placement of the children. *See L.L.P.*, 836 N.W.2d at 570. Generally, a district court abuses its discretion if it makes findings of fact that are unsupported by the record, it improperly applies the law, or it otherwise resolves the discretionary question in a manner that is contrary to logic and facts on the record. *See In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010); *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). In determining whether a movant has made a prima facie case, however, the district court accepts the movant's assertions as true and disregards contrary assertions of the nonmoving party. *L.L.P.*, 836 N.W.2d at 571. Therefore, at the prima facie case stage of the proceeding, the district court does not find facts. And the

"facts" relevant to the district court's assessment of whether the movant's motion and supporting documents make a prima facie case are those alleged by the movant. *See id.*

To obtain an evidentiary hearing on their motion for adoptive placement, grandparents were required to "make a prima facie showing that the agency has been unreasonable in failing to make the requested adoptive placement." Minn. Stat. § 260C.607, subd. 6(b). Section 260C.607, subdivision 6(b), does not define the term "unreasonable." In considering grandparents' motion, the district court used a dictionary definition of the term—defining it as "not guided by reason; irrational, or capricious." *Black's Law Dictionary* 1851 (11th ed. 2019). Both parties agree with the district court's definition.

We must also delineate the "prima facie showing" standard. "A motion for adoptive placement is analogous to a motion to modify custody." *L.L.P.*, 836 N.W.2d at 570. In the analogous context of a motion to modify custody, we have stated: "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 [the movant] seeks." *Amarreh v. Amarreh*, 918 N.W.2d 228, 231 (Minn. App. 2018), *review denied* (Minn. Oct. 24, 2018); *see Tousignant v. St. Louis County*, 615 N.W.2d 53, 59 (Minn. 2000) (stating that a prima facie case is "one that prevails in the absence of evidence invalidating it" (quotation omitted)). Thus, here, the district court was charged with determining whether grandparents' motion and supporting documents set forth allegations that, if true, could show that the county was not guided by reason, or was irrational or capricious, in failing to place the children with grandparents for adoption.

The district court concluded that grandparents failed to make a prima facie showing that the county was unreasonable. According to the district court, the county was not unreasonable in failing to make the adoptive placement requested by grandparents because grandparents sought removal of child 1 from their home knowing that child 2 would also be removed, declined the county's offer to help avoid child 1's removal, and demonstrated lapses of judgment when interacting with child 1.

Grandparents argue that this was an abuse of discretion for several reasons. First, they allege that both children have a significant attachment to them—particularly child 2, who spent her first few years in grandparents' home. They argue that severing those attachments would cause trauma for the children. Second, grandparents allege that it was unreasonable for the county to resume discussions with them about becoming a permanency option for the children in May 2019, only to reverse course and ultimately place the children for adoption by the foster parents. Finally, grandparents argue that it was unreasonable for the county "to remove both girls and shuffle them around through the system before dropping them into a non-relative foster home—all while [grandparents] fought for placement in their own home."

Grandparents love the children and have devoted substantial time and resources to caring for them; indeed, as noted, the county initially planned to place the children with grandparents for adoption. However, we cannot conclude that the district court abused its discretion here. Grandparents' submissions to the district court certainly show a strong bond with the children, particularly with child 2, the daughter of their biological son. But those submissions also show that they asked the county to remove child 1 from their home

and declined the county's offer to assist them in safely keeping child 1 in their care. Although grandparents state that they intended for child 1 to be returned to their home eventually, their other submissions to the district court show that they also considered child 1 to be a "monster" who had "completely lost [their] trust." Furthermore, grandparents sought removal of child 1 notwithstanding the warning that this would lead to removal of child 2 to preserve the sibling relationship. Given these circumstances—all set forth in grandparents' own submissions in support of their motion—the district court did not abuse its discretion by determining that grandparents failed to meet their burden of making a prima facie showing that the county was unreasonable. Although this burden was minimal, we are convinced that the district court was well within its discretion to conclude that grandparents' allegations, even if all true, were insufficient to show that the county acted unreasonably in failing to place the children for adoption with grandparents.

C. Because grandparents did not satisfy their threshold burden, no evidentiary hearing was required and the district court properly dismissed their motion.

Based on its determination that grandparents failed to make a prima facie showing of the county's unreasonableness, the district court denied grandparents' request for an evidentiary hearing and dismissed their motion for adoptive placement. Because grandparents did not make the threshold showing necessary for an evidentiary hearing, the district court correctly denied an evidentiary hearing. Likewise, the district court properly dismissed grandparents' motion for adoptive placement. *See* Minn. Stat. § 260C.607, subd. 6(c).

Affirmed.