STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1644

In the Matter of the Welfare of the Children of:
M.L.S., C.V.R., and P.H.,
Commissioner of Human Services, Legal Custodian.

Filed June 28, 2021
Reversed and remanded
Bratvold, Judge

Olmsted County District Court
File No. 55-JV-19-6526

Karen V. Bryan, Peter Basilious, KB Law PLLC, Minnetonka, Minnesota (for appellant B. R.-H.)

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Vicki Duncan, Rochester, Minnesota (guardian ad litem)

Considered and decided by Hooten, Presiding Judge; Bratvold, Judge; and Connolly, Judge.

SYLLABUS

In deciding whether the best interests of the child favor granting a motion for permissive intervention in adoption proceedings under Minn. Stat. §§ 260C.601-.637 (2020), which governs adopting a child under the guardianship of the Minnesota Commissioner of Human Services, the district court weighs all relevant circumstances including, among other things, whether the movant is a relative of the child, whether the motion is timely, and whether any needs of the child bear on the child's best interests in granting the motion.

OPINION

BRATVOLD, Judge

In this juvenile-protection matter, appellant B.R.-H. (aunt) challenges the district court's denial of her motion for permissive intervention in adoption proceedings involving her six-year-old niece, X, who is under the guardianship of the commissioner of human services. Aunt argues that the district court abused its discretion by denying her motion to intervene permissively, ruling her out as a placement option, and relieving the county of relative-search efforts.

We first conclude that, because the district court erred in its analysis of the child's best interests in intervention, the district court abused its discretion by denying aunt's motion. Next, we conclude that the district court abused its discretion by ruling out aunt, determining that the county was not unreasonable in failing to place X with aunt, and relieving the county of relative-search efforts. For these reasons, we reverse and remand with instructions to allow aunt to intervene and for further proceedings consistent with this opinion. Our ruling is limited to whether the district court should have granted aunt's motion for permissive intervention. We express no opinion on whether aunt should seek adoptive placement of X. Nor do we express any opinion regarding how the district court should resolve the merits of any motion for an adoptive placement of X, should aunt choose to so move.

FACTS

The following summarizes the record on aunt's motion for permissive intervention, which includes the district court's order terminating parental rights as to X and appointing

the commissioner of human services as her guardian. Because aunt's motion pertained only to X's adoption proceedings, this opinion focuses on X, but we also refer to X's siblings to provide context.

Child-protection and termination proceedings

X's family has a history with child protective services in four counties. Sometime after Hennepin County filed a children in need of protection or services (CHIPS) petition for the children of M.L.S. (mother), the family moved to Olmsted County, which received referrals for protective services. In July 2019, respondent Olmsted County Health, Housing, and Human Services (the county) filed a CHIPS petition for three children: D and K, twins born in 2013; and X, born in 2014. The children have different fathers. P.H. is the biological father of D and K; C.R. is X's father and aunt's brother.[1] At the same time the CHIPS petition was filed, all three children were removed from mother's home.

After the children were removed from mother's home, they had several different placements. At first, the county placed the children with P.H. and his mother. A county social worker visited P.H.'s home, became concerned for the children's safety, and moved for an emergency protective order to remove the children and place them into a foster home.

The county next placed the children together in one foster home, but later sought to separate the children because of behavioral issues. The district court approved the sibling

[1] The county encountered many difficulties during these proceedings. First, paternity was unclear at the outset, although it was eventually determined. Second, C.R. is a registered sex offender and was in and out of jail at the beginning of the child-protection proceedings. Third, the biological parents did not cooperate with the county's efforts to reunite the family and, ultimately, were precluded from contacting the children.

separation as in the best interests of each child under Minn. Stat. § 260C.617. X had five different foster-family placements before she was placed with her current foster family in October 2019. X first met her current foster family in 2017 when they helped her family through a volunteer organization that provides crisis care to vulnerable families. The district court found that X has flourished during her foster placement.

After the county received reports from medical professionals of "trauma response behaviors" in all three children, the county petitioned to terminate the parental rights of mother and C.R.; the petition was later amended in October 2019 to also terminate the parental rights of P.H.

In its amended termination petition, the county described its placement planning and relative-search efforts. Regarding X's placement, the county stated that it had sent letters to "three maternal and eight paternal relatives" and noted that, during the child-protection case, no relatives "have provided support to the children or family. This continues to be explored." The out-of-home placement plan for X, signed by the parents in fall 2020, stated that the county has "started the process to coordinate [a] family group conference to see if there is any family options for the children."

In April 2020, the county filed an updated out-of-home placement plan for X and stated: "The family conference has occurred and a family option was identified for [X] and [the county] is making progress on this decision."

After some delays because of the COVID-19 pandemic, the district court conducted a termination trial in June 2020 that included mother and C.R.; P.H. did not appear and was found in default. Later that month, the district court issued an order terminating the parental

rights of mother, C.R., and P.H. in a detailed 69-page opinion. The district court noted that it was "gravely concerned about the full extent of the trauma the children have experienced." Relevant to permanent-placement planning for X, the district court determined that the county "is relieved of further relative search efforts as relatives were not and should not be with the children. There have been no relatives that have provided support to the children or family." The district court also determined that the county had "made appropriate efforts to identify relatives who may be appropriate placement options, but there are no options at this time." The court's order made no mention of the "family option" described in the out-of-home placement plan filed in April 2020. The termination order also transferred custody of the children to the commissioner of human services. No appeal was taken.

Post-termination placement for X

On September 8, 2020, the county adoption worker sent the district court a letter stating, "We have recently been contacted by a paternal aunt to [X]. She did attend the [family group conference] and expressed some interest in adopting [X]." The letter explained that the county social worker, guardian ad litem (GAL), and adoption worker met with aunt "prior to the TPR." The adoption worker added that because of X's "high level of needs," moving her "would be detrimental" and "[w]e are also concerned with the fact that this relative [may] not fully understand[] the implications of her brother being a sex offender and how to monitor that situation." The adoption worker also noted that X feels that her current foster family "is her forever family."

Also on September 8, the county filed an updated out-of-home placement plan for X and stated that the permanency plan was twofold—seeking adoption with a relative or nonrelative. The relative-search summary stated that the county had identified and informed relatives of their rights and "the Judge relieved the agency of relative search efforts and made a strong recommendation that any relative placement for these kids would not be in their best interests given their history." The "permanency efforts" stated that X "is being adopted by her foster family." The GAL report that was filed one week later stated, "a paternal family member . . . came forward as a possible permanency option" for X. Following a hearing, the district court approved the updated out-of-home placement plan.

Aunt's letter to the county

Aunt sent a letter to the county, dated October 19, 2020, which the county filed with the district court on November 2, 2020, asking for reconsideration of X's adoption by the foster family and summarizing her contacts with the county. In the letter, aunt recounts that in October 2019 the county contacted her about X, and she replied that she "wanted to foster [X] and if that did not work, [she] wanted to adopt [X]." The county held a family group conference on December 6, 2019, where aunt stated that "if the parents' rights are terminated, [she] want[ed] to adopt [X]." The social worker told aunt that X should not be moved again because X had been in five homes. Aunt asked to visit X, but the county did not respond to her request. On December 15, 2019, the social worker contacted aunt and asked if she was still interested in adopting X; aunt replied that she was. When the social worker next contacted aunt, her "husband was not ready," and they "wanted to ask more

questions." Soon after, still in December 2019, aunt and her husband contacted the county and confirmed they wanted to adopt X.

Aunt's letter states that she met with the county on March 13, 2020, where she again confirmed that she wanted to adopt X and wanted to visit her. On April 13, 2020, the social worker told aunt that the courts were "on hold" because of the COVID-19 pandemic, and that adoptive placement would be decided once the courts opened again. After April 13, 2020, aunt did not hear from the county until July 2020 when she learned her brother's parental rights were terminated. Later, she learned the county preferred that X be adopted by her current foster family.

Rule-out request and aunt's motion to intervene

On October 28, 2020, the county social worker filed a letter with the district court asking the court to "rule out [aunt] as a permanency option" because "it is in [X's] best interest to be adopted by her current foster family." The social worker explained that X "lived a life of unpredictability and inconsistency until being placed in her current foster home. Another move will likely create an unnecessary attachment break and affect the connections she made to date with her foster family."

On November 6, 2020, aunt moved for permissive intervention in the adoption phase of the juvenile-protection proceedings. She stated that she had tried to foster or adopt X since October 2019 and that the county never allowed her to do either. Aunt stated that she "is biologically related to [X], it is in [X's] best interest that she be connected and directly living with [aunt] to understand her background and feel a sense of identity, as well as learn more about her ancestry." Aunt explained that she has a "Master's Degree in

Mental Health, and has approximately twelve (12) years of experience in dealing with children that have behavioral issues."

On November 9, 2020, the district court issued a notice of judicial determination with one comment: "[X] shall remain in her current placement and this shall be the permanency option, not [aunt]."

On December 3, 2020, the district court heard aunt's motion for permissive intervention. Aunt's attorney argued that she has "a right to intervene" and "a right to potentially adopt" X. The county argued that the motion should be denied because the county believed it is in X's best interests "to remain with the foster parents." In her remarks, the GAL did not mention aunt's motion to intervene permissively but noted that she had met aunt and aunt's family and they are "very great people." Still, the GAL ended her remarks with support for the county's position that X should be adopted by her foster family.

The district court acknowledged receiving aunt's letter and expressed concern about X's contact with her biological family. The district court described aunt's letter as "thoughtful" and noted her professional background, among "some other things, suggest that this is . . . a wonderful family that does care about this little girl. There's no doubt in my mind." The district court also explained, "The case was kind of a jumbled mess because we had multiple fathers and all kinds of things going on. So there was a lot of static . . . . But [aunt's family] seem[s] like wonderful people." After hearing from the parties, the district court suggested that it would deny the motion because "it's not in this

little girl's best interest to have her placement disrupted or her life disrupted any further than it is."

Aunt, who was represented by counsel, asked to speak directly to the district court. After receiving permission, aunt stated that she "was never given a fair chance to even see" X and that she waited to intervene because the social workers said they would follow up with her about the termination proceedings but never did. Aunt also explained that she was "mislead" by the county when it delayed referring her for a home study for over a year, and, as a result, she only recently completed the home study. She also confirmed that she has had no contact with C.R., her brother. The district court responded that "probably" there were "missteps along the way" but concluded that X is "in a safe, nurturing, healthy environment. That's where she's been for over a year. And for me to disrupt that, in my opinion, is not in [X's] best interest. That's not a reflection upon you or your family or your sister's family."

In a December 15, 2020 order, the district court denied aunt's motion for permissive intervention. The district court first noted that X and her siblings "experienced significant and chronic abuse, neglect and trauma at the hands of their parents and others which can properly be characterized as a form of torture." The court also recounted how the current foster parents "unhesitatingly stepped in" for X at a "critical juncture." "With the passage of time, [X] has developed a healthy attachment with skilled, caring and nurturing foster parents who should adopt and raise this little girl." The court concluded that the county "has not been unreasonable in declining to consider [aunt] as a permanency option." The court also granted the county's request that X have no contact with her parents "or their

family members," specifically ordering aunt and her husband to not contact X's foster family. The district court ordered the adoption of X "be finalized as soon as possible."

Appeal

Later in December 2020, aunt appealed the denial of her motion to intervene and moved the district court to stay its order pending this appeal. The district court denied the motion for a stay pending appeal, and aunt sought review of that denial. This court questioned whether the order denying aunt's motion to intervene permissively was appealable and remanded the denial of the motion for a stay pending appeal.[2] After the parties submitted informal memoranda, this court determined it had jurisdiction and ordered the appeal to proceed. *In re Welfare of Children of M.L.S.*, 956 N.W.2d 257, 260 (Minn. App. 2021).

ISSUES

I. Did the district court abuse its discretion by denying aunt's motion for permissive intervention in these adoption proceedings?

II. Did the district court abuse its discretion by ruling aunt out as a placement option, determining the county was not unreasonable in failing to place X with aunt, and relieving the county of relative-search efforts?

ANALYSIS

To frame the legal issues, we begin by discussing the relevant child-protection statutes. "The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2(a) (2020); *see also Valentine v. Lutz*, 512 N.W.2d 868, 871 (Minn. 1994) (emphasizing that courts must be

[2] The county's brief notes that X's adoption is "on hold" pending this appeal.

guided by the best interests of the child). When a child is adjudicated as in need of protection or services, a two-tracked process begins. *In re Welfare of Children of J.L.G.*, 924 N.W.2d 9, 12 (Minn. App. 2018). One track involves efforts aimed at reunifying the child with the parents. Minn. Stat. § 260.012(a) (2020). Simultaneously, a second track, called concurrent permanency planning, identifies a potential permanent home for the child in case the reunification efforts fail. Minn. Stat. § 260C.223, subd. 1(b) (2020); Minn. Stat. § 260.012(k) (2020).

When making permanency placement decisions for a child who is the subject of a juvenile-protection proceeding, Minnesota law provides that the county "is to ensure that the child's best interests are met by requiring an individualized determination of the needs of the child and of how the selected placement will serve the needs of the child being placed." Minn. Stat. § 260C.212, subd. 2(a) (2020). Minnesota law also directs that placement efforts shall prioritize consideration of relatives as placement options by stating that the county shall

> consider[] placement with relatives and important friends in the following order:
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> (1) with an individual who is related to the child by blood, marriage, or adoption; or
>
> (2) with an individual who is an important friend with whom the child has resided or had significant contact.

Minn. Stat. § 260C.212, subd. 2(a) (regarding selection of family foster home).[3] *See S.G.*, 828 N.W.2d at 125 ("[I]f both the relative and nonrelative petitioners are equally qualified

[3] Important friends include foster families. *In re S.G.*, 828 N.W.2d 118, 125 (Minn. 2013) (affirming placement with foster family as "important friend" after analyzing identical terminology in Minn. Stat. § 259.57, subd. 2(c) (2012)).

to adopt and the best interests analysis renders an equivalent result as to each party, the relative would benefit from being considered first.").

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

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

If, as happened here, parental rights are terminated, and the district court appoints the commissioner of human services as the guardian of a child, then relatives who will

commit to being a permanent placement for a non-Indian child continue to receive priority consideration for placement. *See* Minn. Stat. § 260C.605, subd. 1(b) (2020) (providing that reasonable efforts to finalize adoption include placement considerations under section 260C.212, subd. 2 (2020)). Under Minn. Stat. § 260C.607, subd. 2(5) (2020), relatives who have kept the court informed of their whereabouts and who have indicated to the county a willingness to provide an adoptive home must be notified of review hearings regarding adoption efforts, "unless the relative has been previously ruled out by the court as a suitable foster parent or permanency resource for the child." If a relative is ruled out by the court, then that relative simultaneously loses their right to notice of the hearings, and is not required to participate in review hearings unless ordered by the court. *See* Minn. Stat. § 260C.607, subd. 3 (2020); *see also J.L.G.*, 924 N.W.2d at 11 ("A district court need not provide a relative with notice, however, if the court 'ruled out' the relative as a suitable adoptive placement.").

In juvenile-protection matters, "any person entitled to notice of any adoption proceeding involving the child" is considered a party. Minn. R. Juv. Prot. P. 32.01, subd. 3(b). Thus, any relative who has informed the court of their whereabouts and willingness to adopt is a party unless they are ruled out. Minn. R. Juv. Prot. P. 32.02(e) (providing that parties have right to bring motions).

The right to move for permissive intervention, however, is broad: "*Any person* may be permitted to intervene as a party if the court finds that such intervention is in the best

interests of the child." Minn. R. Juv. Prot. P. 34.02 (emphasis added).[4] When the juvenile-protection rules are read together, they suggest that, after a relative has been ruled out, they may regain party status if the district court grants the ruled-out relative permission to intervene. *See generally In re Welfare of L.L.P.*, 836 N.W.2d 563, 572 n.3 (Minn. App. 2013) (noting section 250C.607 "does not address whether a relative or foster parent must intervene to become a party in order to move to be considered an adoptive placement"). With this background in mind, we turn to the procedural posture of this case and aunt's arguments.

Here, shortly after the county asked the district court to rule out aunt as a permanent-placement option and stated its preference for the current foster family to adopt X, aunt moved to intervene permissively as a party so she could pursue adopting X. Aunt did not move for adoptive placement, but stated that she intended to do so. In its order denying aunt's motion, the district court explained that it "previously ordered that relatives be excluded as placement options for all of the children" and incorporated its findings, conclusions, and orders from the termination trial to the order denying aunt's motion to intervene. Also, the district court stated, "[The county] requested that *the court rule out* [aunt] as a suitable permanency option and find that [the county] has not been unreasonable in declining to consider [her] a permanency option, *which this Court agrees*." (Emphasis added.) The district court later concluded the county was not unreasonable in failing to

[4] We note that aunt could not intervene as a matter of right because, under Minn. R. Juv. Prot. P. 34.01, only the child, parents, grandparents, and social-services agency may intervene as a matter of right.

place X with aunt. Finally, the district court directed that X's adoption by the foster parents "be finalized as soon as possible as it is in [X's] best interest." In taking jurisdiction over aunt's appeal, this court determined that the district court's order "effectively bar[red] [aunt] from being considered as an adoptive placement for the child." *M.L.S.*, 956 N.W.2d at 260.

Aunt challenges the district court's denial of her motion for permissive intervention, arguing that the district court abused its discretion, first, by denying her motion, and second, by ruling her out, determining the county was not unreasonable in failing to place X with aunt and relieving the county of relative-search efforts. The county argues that the district court did not abuse its discretion by denying aunt's motion to intervene because intervention was not in X's best interests. We address aunt's arguments in turn.

I. The district court abused its discretion by denying aunt's motion for permissive intervention.

"Any person may be permitted to intervene as a party if the [district] court finds that such intervention is in the best interests of the child." Minn. R. Juv. Prot. P. 34.02. We review permissive-intervention rulings for abuse of discretion. *Norman v. Refsland*, 383 N.W.2d 673, 676 (Minn. 1986). A district court abuses its discretion by "making findings unsupported by the evidence or by improperly applying the law." *In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002). An appellate court will reverse the denial of a request to permissively intervene only when a clear abuse of discretion is shown. *State v. Deal*, 740 N.W.2d 755, 760 (Minn. 2007).

Aunt argues that the district court abused its discretion when it denied her motion to intervene because it: (1) misapplied the best-interests-of-the-child analysis and focused on X's permanent placement instead of aunt's motion to intervene; (2) lacked any support in the record for its implicit determination that her motion was untimely; and (3) erred when it determined that aunt equivocated about adopting X. We discuss each argument.

A. Best interests of the child

Aunt contends that the district court misapplied the law when, in addressing her motion for permissive intervention, it focused its best-interests analysis on whether permanent placement of X with aunt was in the child's best interests, rather than whether aunt's participation in the adoption proceedings was in X's best interests.[5]

Generally, the rules of civil procedure do not apply to juvenile-protection matters. Minn. R. Juv. Prot. P. 3.01. Still, we note that, generally, civil practice favors permissive intervention. *Norman*, 383 N.W.2d at 678 ("It is our policy to encourage intervention wherever possible."). We are unaware of any Minnesota appellate decision holding

[5] Aunt also argues that although her "motion to intervene did not mention Minn. Stat. § 260C.515, it is clear that [aunt] could have moved for intervention pursuant to Minn. Stat. § 260C.515, subd. 4, which extends relatives a 'legal right' to be considered for custody in the dispositional phase of a district [court] proceeding." First, we note that the cited statute provides that a "court *may* order permanent legal and physical custody to a fit and willing relative in the best interests of the child" according to a list of ten requirements. Minn. Stat. § 260C.515, subd. 4 (emphasis added). Second, as aunt concedes in her brief, she did not make this argument during district court proceedings. Appellate courts rarely address issues not raised in the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see In re Welfare of D.D.G.*, 558 N.W.2d 481, 485 (Minn. 1997) (applying this aspect of *Thiele* in a juvenile-protection appeal). Because aunt did not argue Minn. Stat. § 260C.515, subd. 4, in support of her motion to intervene while in the district court, we decline to address it.

likewise as to permissive intervention in juvenile-protection proceedings. Because rule 34.02 allows "any person" to permissively intervene when the district court finds that "such intervention" is in the child's best interests, we will approach our analysis with the general view that permissive intervention should be granted liberally when doing so will advance the best interests of the child.

Rule 34.02 does not specify what circumstances a district court should consider in determining the best interests of the child in granting or denying intervention. The rule, however, provides that whatever is considered must be relevant to determining whether the requested intervention is in the best interests of the child. Certainly, when a district court considers a motion for permissive intervention in a juvenile-protection proceeding, the district court should consider all relevant circumstances. In placement matters, Minn. Stat. § 260C.212, subd. 2(a)'s preference for placements with relatives makes relevant the fact that the movant is a relative of the child. Thus, the best-interests test in rule 34.02 focuses on the intervention motion and should consider whether the movant is a relative, among other relevant circumstances.

In identifying the circumstances relevant to X's best interests, these parties agreed that the factors listed in Minn. Stat. § 260C.212, subd. 2(b), should guide the district court's analysis.[6] While we agree that some of the factors in subdivision 2(b) are relevant in this

[6] The parties apparently assume that the factors in Minn. Stat. § 260C.212, subd. 2(b) are "the best interests factors." This assumption is problematic for two reasons. First, it is state policy "to ensure that the child's best interests are met by requiring an individualized determination of the needs of the child and of how the selected placement will serve the needs of the child being place." Minn. Stat. § 260C.212, subd. 2(a). As for a county's assessment of the needs of a child, Minn. Stat. § 260C.212, subd. 2(b), states that the

case, we are not convinced that subdivision 2(b) fully illuminates the relevant best-interests considerations in deciding a motion for permissive intervention under rule 34.02 for three reasons.

First, rule 34.02 does not require the district court to address the factors listed in Minn. Stat. § 260C.212, subd. 2(b). Similarly, subdivision 2(b) states neither that it applies to rule 34.02, nor that the factors listed should be used to determine who should participate in juvenile-protection proceedings. Second, the factors in subdivision 2(b) focus on identifying the needs of a child for whom the county is seeking a *placement*, while a motion for permissive intervention focuses on who the district court believes should *participate* in

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factors listed are "[a]mong the factors the agency shall consider in determining the needs of the child." Thus, the factors that the parties agreed would guide *the district court's* analysis of X's *best interests* are actually a nonexhaustive list of the factors the *county* is to consider when it is determining the *needs* of a child for whom it is seeking a placement. Second, if the parties' use of the phrase "*the* best-interests factors" (emphasis added) assumes that there is a single, definitive list of best-interests factors applicable to all circumstances, that assumption is incorrect. Different authorities identify different best interests for different circumstances. *See, e.g.*, Minn. Stat. §§ 260C.329 (2020) (petition for reunification), .511 (distinguishing, for permanency proceedings, best interests of a child from best interests of an Indian child); Minn. R. Juv. Prot. P. 5 (continuances), 50.02 (withholding adjudicating child in need of protection or services), 58.04 (termination of parental rights); *In re Welfare of Child. of J.C.L.*, 958 N.W.2d 653, 657 (Minn. App. 2021) (distinguishing best interests under Minn. R. Juv. Prot. P. 58.04(b) for general permanency purposes from best interests under Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) for purposes of termination of parental-rights matters), *review denied* (May 12, 2021); *see also* Minn. Stat. § 518.17, subd. 1 (2020) (custody and parenting time); *In re Paternity of B.J.H.*, 573 N.W.2d 99, 102 (Minn. App. 1998) (distinguishing best interests for purposes of custody from best interests for purposes of resolving conflicting presumptions of paternity). Because these authorities recognize that what is relevant to a child's best interests for one purpose may differ from what is relevant to a child's best interests for another purpose, we conclude that the best-interests factors a district court must consider will vary with the decision it is making and the circumstances of the child.

the relevant portions of the case; here, adoption proceedings under Minn. Stat. §§ 260C.601-.637.

Third, while best-interests concerns pervade the statutes and rules related to juvenile protection and permanent placement of a protected child, rigid application of the factors a county uses to determine a child's placement-related needs in Minn. Stat.§ 260C.212, subd. 2(b), to motions for permissive intervention may put the movant at an unfair disadvantage. Specifically, the movant may lack access to the child and thus to information about the child relevant to the child's needs that would be required to address the needs factors in Minn. Stat. § 260C.212, subd. 2(b). Indeed, aunt made repeated requests to visit X but was not allowed to do so.[7]

In short, the lack of specificity in rule 34.02 should not be read to allow a district court to apply the needs factors in subdivision 2(b) in a manner that puts the movant at an unfair disadvantage. Rather, as the plain language of rule 34.02 states, the district court should be careful to evaluate the best interests of the child *in the motion to intervene*.

While we question the wisdom of using the needs factors of Minn. Stat. § 260C.212, subd. 2(b), as a proxy for the analysis of a child's best interests as required by rule 34.02, we will, in the interest of completeness, address some of aunt's challenges to the findings the district court made on those statutory factors. These statutory-needs factors are:

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

[7] This court discussed these concerns in an unpublished opinion, which we find persuasive. *See In re Welfare of K.-A.M.C.*, No. A13-0512, 2013 WL 4404720, at *4 (Minn. App. Aug. 19, 2013). While the rules of juvenile procedure have been renumbered since that opinion was released, the substance of rule 34.02 remains the same.

> (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; and
> (11) for an Indian child, the best interests of an Indian child . . . .

Minn. Stat. § 260C.212, subd. 2(b).

While the district court did not explicitly cite the 11 subdivision 2(b) factors in its order denying aunt's motion to intervene, its analysis tracks many factors listed and responded to the parties' arguments, which were tied to these factors. The district court identified three reasons to deny aunt's motion, the first of which is reflected in the subdivision 2(b) factors: (1) disruption of X's care and safety concerns about X being in contact with mother and C.R.; (2) timeliness of aunt's motion; and (3) aunt's early equivocation about adopting X. We consider each of the district court's reasons.[8]

[8] In her brief on appeal, aunt challenges each of the district court's three reasons and argues that "the district court did not analyze all the factors" in subdivision 2(b), particularly X's religious and cultural needs as a Black child (factor 6). The Minnesota Supreme Court has explained that "the requirement to consider a child's 'cultural needs' in the best-interests analysis 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." *S.G.*, 828 N.W.2d at 127, n.7 (citation omitted). Here, X, her parents, and aunt are Black. While not explicitly stated in the record, it can be inferred that the foster parents are of a different race. The district court did not address X's cultural and religious needs in its order, but did so at the motion hearing, stating:

Disruption of X's care and safety are valid concerns for placement decisions, including adoption. Indeed, the district court may consider the child's current functioning and behaviors as well as the child's history and experience, among other factors when assessing a child's needs related to stability. *See* Minn. Stat. § 260C.212, subd. 2(b)(1), (5); *see also* Minn. Stat. § 260C.221(c) (2020) (providing an exception to the county's relative-search obligations when "a parent makes an explicit request that a specific relative not be contacted or considered for placement due to safety reasons including past family or domestic violence" or "when the juvenile court finds that contacting the specific relative would endanger the parent, guardian, child, sibling, or any other family member").

But, here, the district court was not deciding whether to alter X's placement because aunt's motion was to intervene, not to alter X's immediate placement or to adopt X. Intervention in post-termination proceedings where the child is under the guardianship of the commissioner raises a specific concern: whether it is in the child's best interests for the movant to participate in the permanent-placement decision. Thus, intervention in this

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> I think there's cultural aspects, I think there's family aspects. It may be important for her to know who everybody is because she may decide when she's fifteen or sixteen she wants something different. I don't know.
>
> But she's in a safe, nurturing, healthy environment. . . . And for me to disrupt that, in my opinion, is not in her best interest. That's not a reflection upon you or your family[.] . . . I don't think it'd be healthy for her.

Thus, the district court addressed factor 6 but determined that any benefit X would receive from being placed with aunt would be outweighed by the disruption of changing X's placement. We need not resolve aunt's challenge to the district court's analysis of factor 6 because we remand for other reasons.

context precedes the final decision about where the child will be placed or whether the child will be adopted. Here, the district court did not tie its concerns about disruption of X's care and safety to the child's best interests in the motion to intervene.

Perhaps more importantly, the district court's emphasis on disruption of X's care and safety at the stage of a motion to intervene in the adoption proceedings placed aunt at an unfair disadvantage. At the time of the hearing on her motion to intervene, aunt had little or no contact with X and no information about X's care, despite aunt's requests to visit X. Aunt also had no opportunity to present evidence on the effects of altering X's placement or how to keep X safe by precluding contact with her biological parents. Thus, the district court abused its discretion by relying on disruption of X's care and safety without considering those concerns in the context of X's best interests in aunt's motion to intervene and by placing aunt at an unfair disadvantage.[9]

B. Implied finding that aunt's motion was untimely

The district court's second reason for denying aunt's permissive-intervention motion was its implicit determination that aunt's motion was untimely. The district court

[9] The county also argues that aunt presented no evidence of her relationship with X, and this weighs against aunt's motion based on factor 9. *See* Minn. Stat. § 260C.212, subd. 2(b)(9) (the child's relationship to current caretakers and relatives). The district court did not mention or make any findings about aunt's relationship with X, beyond noting their blood relationship. The county is correct that aunt did not present evidence about the nature of her relationship with X. But the county fails to acknowledge that aunt repeatedly requested visits with X, and the county did not respond. Additionally, we note that aunt asserted that she was estranged from X's father while he has been in and out of prison, which may explain aunt's lack of contact with X. We conclude that while aunt's relationship with X is relevant to the court's final decision on X's adoption, the district court's decision to deny aunt's intervention motion cannot be affirmed on this factor.

found that when the county placed X with the current foster parents on October 21, 2019, "there were no family options for foster care even though relative notification letters had been sent out," and that it did not "hear from [aunt] until on or about October 26, 2020" when it received aunt's letter requesting reconsideration. These findings and the district court's reasoning imply that it determined that aunt's motion, filed shortly after aunt's letter, was untimely. Aunt contends that she did not delay moving to intervene.

We initially note that, at least in time-sensitive juvenile-protection proceedings, whether a movant unduly delayed in making a motion is distinct from whether the motion is untimely; the former focuses exclusively on the movant's conduct, while the latter must consider the child's best interests. Regardless of this distinction, neither rule 34.02 nor associated caselaw expressly address how to evaluate the timeliness of a motion for permissive intervention. The nature of the proceedings, however, means that timeliness is a valid concern. S*ee* Minn. R. Juv. Prot. P. 1.02(b) (providing the rules are intended to provide a "just, thorough, *speedy*, and efficient determination" (emphasis added)); *In re Welfare of Child of R.K.*, 901 N.W.2d 156, 162 (Minn. 2017) ("We require an expeditious resolution of permanency because we will not allow children to linger in uncertainty."); *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 134 (Minn. 2014) (citing multiple authorities emphasizing the importance of prompt decisions in juvenile-protection matters). The district court's concern about the timeliness of aunt's motion is supported by both the law and its individualized findings about X's need for stability and permanent placement.

Having recognized the importance of timeliness in deciding an intervention motion, we next consider the district court's findings about aunt's motion. We begin by noting that the record supports the district court's finding that aunt's reconsideration letter was her first contact *with the court* and was received in October 2020. For two reasons, however, we conclude that the record does not support the district court's determination that aunt's intervention motion was untimely.

First, aunt's reconsideration letter details her repeated contacts *with the county* since October 2019 and her participation in the family group conference on December 6, 2019, where aunt confirmed that she wanted to adopt X. Aunt's letter summarizes additional contacts between her and the county in December 2019, March 2020, and April 2020. The county told aunt that proceedings were on hold because of the COVID-19 pandemic and she received no further update until she reached out to the county in July and learned her brother's parental rights had been terminated.

We also note that aunt's letter about her contacts with the county is corroborated by several of the out-of-home placement plans and GAL reports, with no indication that the county preferred the foster family until the county adoption worker's September 8, 2020 letter to the court. Further, the county conceded during oral argument before this court that aunt's reconsideration letter accurately related her contacts with the county.

We are genuinely disturbed by what this record suggests was the county's apparent failure to communicate with the district court about the county's ongoing contacts with aunt and her interest in adopting X. Despite the GAL's contact with aunt at the family conference in December 2019, the GAL told the district court at the hearing on intervention

that she "wish[ed] we would have known about [aunt] at the beginning." Similarly, the district court's termination order relieved the county of relative-search efforts and found that no relative placement options exist, even though the county acknowledges that, at that point, aunt repeatedly had shown interest in adopting X. In short, aunt's repeated contacts with the county and the county's failure to communicate those contacts to the district court are relevant context for determining the timeliness of aunt's motion for permission intervention.

Second, aunt's reconsideration letter and motion to intervene were filed promptly after she learned the county preferred adoption by the foster family and had requested that the district court rule her out as a placement option. The county asked the court to rule out aunt as a placement option on October 28, 2020. Aunt's motion to intervene was filed on November 6, 2020. Thus, while the district court correctly noted the importance of timeliness when considering aunt's motion to intervene, we conclude that its implicit finding that aunt's motion was untimely is unsupported by this record.

C. Aunt's equivocation about adoption

The district court's final reason for denying aunt's motion to intervene was that she equivocated about adopting X. In the district court's order denying aunt's motion to intervene, the court stated:

> [I]t is important to note that when contacted in October of 2019 with respect to possible placement of [X] in their home, [aunt] equivocated because of concerns by her husband. With the passage of time, [X] has developed a healthy attachment with skilled, caring and nurturing foster parents who should adopt and raise this little girl.

Aunt admits that she and her husband hesitated in December 2019 but adds that their hesitation was brief and that they repeatedly affirmed their interest in adopting X in all later communications with the county. Importantly, the county does not dispute aunt's argument in this regard. While aunt and her husband had questions about the adoption process and wanted more information, they contacted the county to confirm they wanted to adopt X within days of expressing uncertainty. More importantly, aunt followed up with the county and GAL and expressed her firm interest in adopting X. Finally, the district court does not determine that aunt's brief hesitation affected X's best interests in the motion to intervene. We conclude that the district court abused its discretion by determining, on this record, that aunt's hesitation militated against her motion for permissive intervention.[10]

We conclude our analysis of the order denying aunt's motion for permissive intervention by reiterating that a district court should consider all circumstances relevant to a child's best interests when addressing a motion under rule 34.02. Relevant

[10] Aunt contends that the district court committed legal error by relying on her early hesitation to deny her motion to intervene. Aunt relies on Minn. Stat. § 260C.221(b)(2) (2020), which provides, "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." (Emphasis added.) Aunt's argument asks us to apply a statutory provision about X's placement to her motion to intervene. This is troubling for the reasons already discussed. Still, there is some merit to aunt's position. It is undisputed that aunt's hesitation occurred "at the beginning of the case" in December 2019. And because section 260C.221(b)(2) establishes that a relative's *early* decision "not to be identified" cannot affect whether that relative is a placement option, then perhaps a relative's early hesitation should not preclude them from moving to intervene in adoption proceedings. Still, we need not decide this issue because the record does not support the district court's determination that aunt's early and brief hesitation weighed against her motion for permissive intervention.

circumstances may include, among other things, the movant's status as a relative, the timeliness of the motion, and any needs-of-the-child factor(s) in Minn. Stat. § 260C.212, subd. 2(b), that bear on whether it would be in the child's best interests to grant the intervention motion.

Here, none of the district court's reasons support its decision to deny aunt's motion to intervene. First, the district court misapplied the best-interests test in rule 34.02 by using the factors in Minn. Stat. § 260C.212, subd. 2(b), and focusing on X's permanent placement, instead of X's best interests on the intervention motion. The district court's focus on disruption of X's care and safety failed to address X's bests interests *in the motion to intervene* and placed aunt at an unfair disadvantage because she has had little or no contact with X. Second, the district court appropriately considered whether aunt's intervention motion was timely, but the record does not support the court's determination that aunt's motion was untimely. Third, the record does not support the district court's determination that aunt's early and brief hesitation about adopting X defeated her motion to intervene. Because the district court's reasons for denying aunt's motion to intervene are not supported by the record, we conclude that the district court abused its discretion by denying aunt's motion for permissive intervention.

II. The district court abused its discretion by ruling out aunt as a placement option, determining that the county was not unreasonable in failing to place X with aunt, and relieving the county of relative-search efforts.

If a district court is going to rule out a relative as a placement option, the district court "must . . . explicitly exclude[e]" that relative "from being considered as a suitable adoptive placement option," and it errs if it relies "on an implicit ruling of ineligibility."

J.L.G., 924 N.W.2d at 16. Appellate courts review a district court's decision to rule out a relative as a placement option for abuse of discretion. *Id.* at 14. Here, we have grave doubts whether this district court's statement that it "agrees" with the county that aunt should be "ruled out" is the "explicit ruling" required by caselaw.

But even if we assume that the district court explicitly ruled out aunt as a placement option, we would conclude that the district court abused its discretion by doing so. Given the legislature's express directive to prioritize consideration of relatives for placement of a protected child, the county's acknowledgement of aunt's early engagement and her expressions of interest in adopting X since December 2019, and aunt's apparent fitness as a placement option (also credited by the district court), the district court's decision to rule out aunt was an abuse of discretion. For the same reasons, we also conclude that the district court abused its discretion by finding that the county was not unreasonable in failing to place X with aunt and by relieving the county of relative-search efforts.

We sincerely commend the district court for its ongoing efforts to ensure the best interests of X are met. We are troubled that the district court appears to have lacked access to information about aunt's contacts with the county. We also recognize that, given the horrific abuse suffered by X, the district court and the county were striving to find the best permanent-placement option for X, and that her current foster family has provided X with a safe and loving home.

But we urge the district court and the parties to follow the express direction of the legislature: when making permanent-placement decisions, the county shall place a child in a home selected by *first* considering placement with relatives *and then* considering

placement with important friends, such as X's current foster family. *See* Minn. Stat. § 260C.212, subd. 2(a)(1)-(2); Minn. Stat. § 260C.605. Given aunt's extensive contacts with the county and her repeated and explicit expressions of interest in adopting X, along with the county's failure to disclose aunt as a permanency option to the district court until after the county requested to rule her out, we cannot conclude that the county considered aunt before considering X's current foster family as a permanent-placement option. In short, the district court's decision to deny aunt's motion to intervene sidestepped aunt's statutory priority as a blood relative for consideration in X's placement. This was an abuse of discretion. We, therefore, reverse and remand the district court's decision with instructions to grant aunt's motion to intervene and for further proceedings consistent with this opinion. We express no opinion on the merits of any motion for adoptive placement.

DECISION

The legislature has directed that permanent placement of a protected child under the guardianship of the commissioner in adoption proceedings shall prioritize consideration of relative placement options. The district court, however, abused its discretion when denying aunt's motion for permissive intervention by failing to consider X's best interests in the motion to intervene. The district court also abused its discretion by ruling out aunt as a placement option for X, determining that the county was not unreasonable in failing to place X with aunt, and relieving the county of relative-search efforts.

Reversed and remanded.