STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1503

In the Matter of the Welfare of the Child of:
B. H. and D. H., Commissioner of Human Services, Legal Custodian.

Filed May 2, 2022
Affirmed
Worke, Judge

Ramsey County District Court
File No. 62-JV-20-296

Mark D. Fiddler, Rachel Osband, Fiddler Osband, LLC, Edina, Minnesota (for appellants N.M. and R.M.)

John J. Choi, Ramsey County Attorney, Robert Hamilton, Stephanie Wiersma, Assistant County Attorneys, St. Paul, Minnesota (for respondent Ramsey County Social Services)

Nicole M. Moen, Rachel L. Dougherty, Fredrikson & Byron, P.A., Minneapolis, Minnesota; and

Debra Kovats, Children's Law Center of Minnesota, St. Paul, Minnesota (for child)

Patra Siedlecki, St. Paul, Minnesota (guardian ad litem)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellants challenge the district court's (1) determination that they failed to finalize an adoption and (2) decision to rule them out as an adoption-placement option, arguing that notice and an evidentiary hearing were required. Appellants also argue that the district

court erred by determining that the failure to finalize the adoption within the prescribed timeframe was attributable to appellants. Finally, they argue that the district court's decision to rule them out as an adoption-placement option is supported by neither the law nor the record. We affirm.

FACTS

In April 2019, B.H., then eight years old, was removed from his mother's home and placed on a 72-hour child protective hold. Respondent Ramsey County Social Services Department (Ramsey County) filed a Child in Need of Protection or Services (CHIPS) petition for B.H. B.H.'s mother faced allegations of abuse, substance use, and neglect. B.H. did not attend school until removed from his mother's care and has special needs arising from his traumatic childhood, during which he suffered repeated instances of abuse and neglect.

The Minnesota Commissioner of Human Services (commissioner) placed B.H. with appellants N.M. and R.M., as a nonrelative foster placement. When B.H. was placed with appellants, their two biological children were ages seven and four. In August 2020, the district court involuntarily terminated B.H.'s father's parental rights. Two months later, on October 5, 2020, B.H.'s mother signed a consent-to-adopt agreement, which designated appellants as B.H.'s prospective adoptive home.[1] Appellants signed the adoption-

[1] *See* Minn. Stat. § 260C.607, subd. 7 (2020) (detailing the procedure to finalize an adoption following the biological parent's consent to adopt under Minn. Stat. § 260C.515, subd. 3 (2020)).

placement agreement on January 12, 2021, and continued working toward finalizing the adoption process.

On January 25, 2021, appellants requested to have B.H. removed from their care. The request for removal came after B.H. disclosed that he had exposed himself to appellants' biological daughter. B.H. also disclosed to appellants that he had had sexual contact with his younger relatives before his placement in appellants' home. At the time of the removal request, Ramsey County noted that "it was clear that [appellants] wanted to have [B.H.] removed from their care and were very afraid that [B.H.'s] behaviors would escalate."

On January 29, 2021, however, appellants withdrew their request for removal of B.H. Appellants, both independently and jointly with Ramsey County, searched for residential treatment programs that could meet B.H.'s behavioral needs. Ramsey County, the child's guardian ad litem (GAL), and a foster-home-licensing employee met with appellants to discuss B.H.'s treatment options. But no programs were immediately found that would accept B.H. due to his low IQ and his young age.

In April 2021, appellants requested for the second time that B.H. be removed from their care. Appellants claimed that B.H. was sexually grooming their daughter and that his placement in their home was no longer safe. Appellants relayed that they had reached the limit of their supervisory skills and that "[d]espite how much we don't want this to have happened, we must put in our notice for removal, as soon as possible."

In a report, the GAL noted that "concerns regarding behavior in [B.H.'s] pre-adoptive home escalated to the extent that a formal request was made for his removal while

waiting for admission into residential [treatment] programming." The report also mentioned that B.H. had already been denied admission into multiple programs due to his young age and low IQ.

On May 14, 2021, B.H. was placed in a new foster home. B.H.'s new foster placement was a home comprised of a single male foster parent with no other children under his care. B.H. has not returned to appellants' care since then, but appellants initially remained in contact with B.H. after he transitioned into his new foster placement and continued to search for a "suitable treatment program" for B.H.

Ramsey County submitted a report stating that "[appellants] are not currently being considered as an adoptive resource; therefore, it seems ill advised to continue contact" between B.H. and appellants. Ramsey County then informed appellants that they could no longer have contact with B.H. In a subsequent report, the GAL noted that B.H. had not asked about appellants, nor about his adoption.

At a review hearing, appellants requested that their visitation with B.H. resume. The district court detailed their options to obtain that result, which included "seek[ing] intervention if they feel it is supported by law."

In August 2021, appellants submitted a permissive-intervention motion.[2] Appellants also submitted an affidavit to the district court, which stated "[o]n April 13, 2021, we found out that B.H. had been sexually grooming our daughter. With everyone's

[2] *See* Minn. R. Juv. Prot. P. 34.02 ("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.").

safety in mind . . . we put in a 30-day removal notice" for Ramsey County to relocate B.H. to another foster placement.

Ramsey County then moved the district court seeking a determination that it was no longer bound by the consent to adopt because the adoption could not be finalized within the prescribed timeframe; it also requested that the district court rule appellants out as adoptive placement for B.H. Included in its motion, Ramsey County informed the district court that when B.H. was removed from appellants' home and "placed in another foster home," he was then "placed on the State Adoption Exchange and assigned an adoption recruiter in an effort to locate another adoptive home."

The district court held a hearing on the parties' motions on September 22, 2021. During the hearing, the district court heard arguments from the GAL, Ramsey County, and B.H.'s attorney that placement with appellants was no longer in B.H.'s best interests. Appellants argued that B.H. could be placed with them following his successful completion of behavioral treatment. On September 24, the GAL submitted a report stating that "[B.H.'s] safety and security is best supported by living in a home without other children present." The GAL's report also noted that B.H. "wants to continue living with his current foster provider. [B.H.] has stated that he would like to be adopted by either this provider or his maternal relatives." On September 27, Ramsey County submitted a report stating that it "has not changed the position that ongoing contact with [appellants] is not in [B.H.'s] best interests."

The district court extended the time to issue its decision on the parties' motions considering the additional post-hearing reports and to allow appellants to submit more

information. It then denied appellants' motion to intervene and granted the state's motion to rule out appellants as adoptive placements for B.H.[3] This appeal follows.

DECISION

Evidentiary hearing

Appellants argue that the district court deprived them of their due-process rights by ruling them out as a suitable adoptive placement and determining that they failed to finalize the adoption within the required timeframe without holding an evidentiary hearing.

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time in a meaningful manner." *In re Child of P.T.*, 657 N.W.2d 577, 586 (Minn. App. 2003) (quoting *Brooks v. Comm'r of Pub. Safety*, 584 N.W.2d 15, 19 (Minn. App. 1998)), *rev. denied* (Minn. Apr. 15, 2003). To obtain relief on appeal, a party must show both error by the district court and that the (alleged) error prejudiced the complaining party. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975); *see In re Welfare of Child. of J.B.*, 698 N.W.2d 160, 166 (Minn. App. 2005) (applying *Midway Ctr. Assocs.*, on appeal in a juvenile protection matter). These requirements apply to due-process claims in juvenile protection matters. *See In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008) (stating that "prejudice as a result of [an] alleged violation is an essential component of" a due-process claim). Additionally, to obtain relief on appeal, the prejudice to the complaining party must be more than de minimis. *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (refusing to remand for de minimis error).

[3] Appellants do not challenge the district court's denial of their motion for permissive intervention.

Here, we have doubts about whether the district court erred in denying appellants an evidentiary hearing. But, for purposes of this appeal, we assume that the district court did, in fact, err on this point. On this record, however, we must still affirm the district court. Appellants have shown neither that they were prejudiced by the (assumed) error, nor that any prejudice they (allegedly) suffered was substantial. Specifically, (a) appellants' motion to permissively intervene under Minn. R. Juv. Prot. P. 34.02, included supporting documents; (b) appellants were represented by counsel at the nonevidentiary hearing addressing their motion, and their counsel responded to arguments made by Ramsey County, GAL, and B.H.'s attorney; (c) after the hearing, appellants made additional submissions to the district court; and (d) after that, the district court, invoking Minn. R. Juv. Prot. P. 9.01 and in the interests of justice, extended the time to file its order addressing the parties' motions so that appellants would have yet another opportunity to submit information and argument to the court. Consistent with their multiple opportunities to make submissions and argument to the district court, appellants, on appeal, identify neither any additional information they would have submitted if the district court had held an evidentiary hearing, nor any additional legal arguments they would have made on this point. Absent appellants' demonstration of a substantially prejudicial error, relief on appeal is neither required nor appropriate. *Midway Ctr. Assocs.*, 237 N.W.2d at 78; *J.B.*, 698 N.W.2d at 166; *see B.J.-M.*, 744 N.W.2d at 673. For this reason, we decline to address whether appellants were, in fact, improperly denied an evidentiary hearing.

Finalize the adoption

Appellants argue that the district court erred by determining that they were responsible for the failure to finalize the adoption within the prescribed timeframe. We review the district court's findings of fact for clear error. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012); *see In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (discussing, in detail, the clear error standard for reviewing a district court's findings of fact); *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n. 6 (Minn. App. 2021) (applying *Kenney* on appeal in a juvenile protection case), *rev. denied* (Minn. Dec. 6, 2021). "A finding is clearly erroneous if it is manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *J.K.T.*, 814 N.W.2d at 87 (quotations omitted).

When, as here, a child's parent has consented to adoption, under Minn. Stat. § 260C.515, subd. 3, the person identified by the parent and social services agency is, at least initially, the exclusive potential adoptive placement. *See* Minn. Stat. § 260C.607, subd. 7. That exclusivity ends if the potential placement is not finalized within 12 months of the execution of the consent to adopt "unless the responsible social services agency certifies that the failure to finalize is not due to either an action or a failure to act by the prospective adoptive parent."[4] *Id.*

[4] We note that under another statute, Minn. Stat. § 260C.515, subd. 3(7), the social services agency shall seek alternative adoptive placements if an adoption is not finalized within six months of a consent to adopt. Because we conclude that the district court did not err by concluding that appellants failed to finalize within 12 months, we need not address the requirements of section 260C.515, subdivision 3(7).

Here, the district court found that appellants twice requested that B.H. be removed from their home and were unwilling to have him return unless he first engaged in treatment. These findings are supported in the record. Appellants hoped to "potentially" be "an adoptive placement in the future once [B.H.] receives treatment." Additionally, it is undisputed that B.H's mother executed the consent to adopt on October 5, 2020, and that a year had elapsed by the time the district court issued its decision. Notably, the statute does not require that a year elapse before the district court makes its determination; instead, the statute requires only that the district court determine that "it is not possible to finalize" the adoption within 12 months. *Id.* Given appellants' decision to remove B.H. from their care until after he received treatment—which would occur and be completed, if at all, at an unknown future time—it was not unreasonable for the district court to conclude that finalization was not possible prior to the October 5, 2021, finalization deadline. We discern no error in the district court's conclusion that the inability to finalize appellants' potential adoption of B.H. within 12 months of the consent to adopt was due to appellants' actions or failure to act.

Rule out

Appellants argue that the district court should not have ruled them out as an adoptive placement. We review a district court's decision to rule a relative out as an adoptive placement for an abuse of discretion. *In re Welfare Child of M.L.S.*, 964 N.W.2d 441, 458 (Minn. App. 2021). Under Minn. Stat. § 260C.007, subd. 27 (2020), a relative includes "an individual who is an important friend with whom the child has resided or had significant contact." Appellants are persons with whom B.H. has resided and had

significant contact. *See M.L.S.*, 964 N.W.2d at 458 (referring to a child's current foster placement as "important friends"). Thus, we conclude that appellants qualify as relatives for the purposes of Minn. Stat. § 260C.607, subd. 2(5).

Turning to whether the district court abused its discretion in ruling appellants out, we note that "[a]doption 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 [the Juvenile Court Act]." *In re Adoption of C.H.*, 554 N.W.2d 737, 740 (Minn. 1996); *see* Juvenile Court Act, Minn. Stat. §§ 260C.001-.637 (2020). "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).

The district court noted that "the intervention rule does not articulate which best-interest factors the [district] court should consider." In *M.L.S.*, this court recognized that the "best-interests factors a district court must consider will vary with the decision it is making and the circumstances of the child." *Id.* at 453-54. Under the applicable adoption statutes,

> the policy of the state is to ensure that the best interests of children in foster care, who experience transfer of permanent legal and physical custody to a relative . . . or adoption . . . are met by individualized determinations . . . of the needs of the child and of how the selected home will serve the needs of the child.

Minn. Stat. § 260C.193, subd. 3(a); *see also* Minn. Stat. § 259.29, subd. 1 (reiterating similar policy). The factors the district court may consider in determining the needs of the child include:

> (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; [and]
> (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); *see also M.L.S.*, 964 N.W.2d at 453-54. Additionally, delays in adoption of a child are not in the child's best interests. *In re Welfare of Child. of A.M.F.*, 934 N.W.2d 119, 124 (Minn. App. 2019); *see also* Minn. R. Juv. Prot. P. 1.02 (f), (i) (noting that the purpose of the juvenile protection rules is to provide just, thorough, speedy, and efficient resolution to juvenile protection matters and to avoid delays in court proceedings).

Here, the record supports the district court's conclusion that placement with appellants was not in the best interests of B.H. The district court's best-interests analysis considered B.H.'s exposure to significant trauma at a young age, B.H.'s behaviors that led to his removal from appellants' care, the risks these behaviors pose to the relationship between B.H. and appellants' family, the risks posed to B.H. and others by placing B.H. in a home with other children, B.H.'s desire to remain in his current placement, and B.H.'s desire to not see appellants again. The district court also noted that appellants proposed "wait and see" approach would further delay permanency for B.H. and therefore did not

serve B.H.'s best interests. We discern no abuse of discretion in the district court's decision to rule appellants out as potential adoptive placements.

Affirmed.