STATE OF MINNESOTA
IN COURT OF APPEALS
A10-35

In the Matter of the Petition of: D. T. to adopt: B. T.
In the Matter of the Petition of: P. S. to adopt: N. S.

Filed July 13, 2010
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-JV-FA-09-82/27-JV-FA-09-194

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Considered and decided by Peterson, Presiding Judge; Stauber, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

PETERSON, Judge

In this case involving conflicting adoption petitions and the preference for adoption by a relative, appellant-relative argues that the district court (1) made and weighed best-interests findings in a manner not supported by the record, (2) failed to give the statutorily required relative preference sufficient weight, and (3) either improperly excluded expert testimony or failed to give it adequate weight in the ultimate decision. We affirm.

FACTS

On July 5, 2007, six days after B.T. was born, respondent Hennepin County Human Services and Public Health Department (HSPHD) filed a petition alleging that B.T. was a child in need of protection or services (CHIPS). B.T. has been in continuous out-of-home placement since then and has resided with five different caregivers. In May 2008, the district court terminated all parental rights and appointed the Commissioner of Human Services B.T.'s legal guardian and custodian.

HSPHD assessed B.T.'s maternal aunt, appellant D.T., as a placement candidate and, initially, declined to place B.T. with D.T. After an HSPHD employee visited D.T.'s home and determined that it was appropriate for placement, B.T. was placed with D.T. on October 22, 2007. In an application submitted by D.T. to serve as a relative foster-care placement for B.T., D.T. made misrepresentations, including that she had no history of mental-health problems. HSPHD recommended to the commissioner that it deny D.T.'s foster-care application and requested authorization from the district court to remove B.T.

from D.T.'s home. The district court denied HSPHD's request because the proceeding before the commissioner was still pending. In an August 2008 report, the guardian ad litem (GAL) opined that D.T. would be unlikely to be able to provide adequately for B.T.'s long-term needs due to D.T.'s mental-health problems and difficulties parenting her own four children. In October 2008, the commissioner denied D.T.'s foster-care application for numerous reasons, including that (1) D.T. gave false and misleading information, (2) D.T. failed to show the ability to provide basic services to foster children, (3) D.T. could not sign a health statement verifying the mental and physical ability to care for foster children, and (4) denying the application was necessary to protect the health and safety of potential foster children. D.T. did not appeal the denial.

In November 2008, HSPHD again requested authorization to remove B.T. from D.T.'s home. The district court continued the request twice to give D.T. an opportunity to obtain counsel. The district court ultimately granted HSPHD's request to remove B.T. from D.T.'s care, pending a 30-day stay to allow time for B.T. to be prepared for the move. On March 5, 2009, the district court granted HSPHD's ex parte motion to lift the stay because B.T's health, safety, and welfare were in immediate danger, and B.T. was removed from D.T.'s care.

D.T. petitioned to adopt B.T. HSPHD contested D.T.'s petition, and the commissioner withheld consent to adopt from D.T. The case was bifurcated for trial pursuant to Minn. R. Adopt. P. 42.03, subd. 2. The first phase on the issue of whether consent was unreasonably withheld was tried to the court in July 2009. The district court determined that consent was unreasonably withheld and ordered the case scheduled for

the second phase of trial to determine whether adoption by D.T. was in B.T.'s best interests.

Since May 8, 2009, B.T. has been residing in a pre-adoptive placement with respondent P.S., who also filed a petition to adopt B.T. The district court consolidated D.T.'s and P.S.'s petitions for trial.

As a result of prenatal exposure to drugs and alcohol, B.T. is at risk for learning disabilities and developmental delays. She is also at risk for developmental delays due to her placement with several different caregivers. At age 18 months, B.T. was using only two words and did not have a word that she used to refer to D.T., indicating a possible delay in language development. After being placed with P.S., B.T.'s language and other skills improved, and she began showing interest in various activities, which P.S. has provided opportunities for B.T. to pursue. A clinical social worker testified that before being placed with P.S., B.T. had language-development delays and rejected touching and nurturing. After B.T. was placed with P.S., those symptoms went away, and B.T. appeared to be thriving and developmentally on track.

B.T. calls P.S. "mom" and has developed close relationships with P.S.'s relatives. P.S. is Caucasian, but she lives in a culturally diverse neighborhood, has a culturally diverse group of friends, and has received training about raising a child in a culturally diverse home.

The GAL visited B.T. 10 to 12 times while she was placed with D.T. and 6 times since B.T. has been with P.S. The GAL opined that it was in B.T.'s best interests to remain with P.S. The GAL was very concerned about D.T.'s long history of untreated

mental illness, incidents at D.T.'s home that resulted in 911 calls, lifestyle choices by D.T. that showed bad judgment, and D.T.'s failures to meet her own children's needs. The GAL testified that since B.T. has been placed with P.S., B.T. has become a very happy and self-confident child, who has a trusting, affectionate relationship with P.S.

Following a six-day trial, the district court concluded that D.T. had failed to prove that adoption by D.T. was in B.T.'s best interests and that P.S. had proved that adoption by P.S. was in B.T.'s best interests. The district court denied D.T.'s petition to adopt B.T. and ordered P.S.'s petition to be scheduled for an adoption hearing for the adoption to be finalized. This appeal followed.

D E C I S I O N

"Appellate courts review a district court decision on whether to grant an adoption petition for abuse of discretion. A reviewing court will not disturb a district court's factual findings unless they are clearly erroneous. This court reviews the district court's interpretation of adoption statutes and rules de novo." *In re Petition of K.L.B. to Adopt L.J.D.*, 759 N.W.2d 409, 412 (Minn. App. 2008) (citations omitted), *review denied* (Minn. Feb. 26, 2009).

1. Best-interests analysis.

The touchstone of any adoption analysis is the child's best interests. *Id.*; s*ee* Minn. Stat. § 260C.212, subd. 2(b) (2008) (listing best-interests factors); *see also* Minn. Stat. §§ 260C.193, subd. 3(b) (requiring individualized determination as required under Minn. Stat. § 260C.212, subd. 2), 259.29, subd. 1(b) (2008) (applying Minn. Stat. § 260C.193, subd. 3(b) to adoptive placements).

A. Current functioning and behavior.

D.T. argues that the district court clearly erred in inferring that B.T. suffered from developmental delays as a result of being placed with D.T. because the only area that B.T. was deficient in at her 18-month evaluation was language skills and that deficiency could have resulted from another cause. The district court did not find that B.T.'s language delay was a result of the placement with D.T., and the evidence supports the district court's finding that B.T.'s functioning improved after her placement with P.S.

B. Medical, educational, and developmental needs.

D.T. argues that the district court clearly erred in finding that D.T. would be unable to meet B.T.'s medical, educational, and developmental needs. But D.T. relied on a social worker to schedule B.T.'s appointments, child-services workers saw no educational or age-appropriate toys for B.T. in D.T.'s home, and D.T. has failed to meet her own children's medical and educational needs. As to developmental needs, the record contains evidence that placement with D.T. would increase B.T.'s risk for developmental delays.

C. History and past experience.

D.T. argues that the district court erred in considering how removing B.T. from P.S.'s home would affect B.T. rather than considering B.T.'s past history with D.T. The potential effect of another move is based on B.T.'s past history of placements with five different caregivers and attachment breaks. D.T. also objects to the district court's reference to an emergency removal from D.T.'s home because the emergency removal was based on an affidavit, which the district court found to be inaccurate. The district

court noted a single inaccuracy in that affidavit, a statement that B.T.'s birthmother was residing in D.T.'s home.

D. Religious and cultural needs.

D.T. challenges the district court's finding that B.T. is biracial and that P.S. can meet B.T.'s cultural needs. The record contains evidence that B.T. may be part Caucasian. Essentially, D.T. argues that P.S. is incapable of meeting B.T.'s cultural needs because P.S. is Caucasian. But under Minnesota law, "[p]lacement of a child cannot be delayed or denied based on race, color, or national origin of the foster parent or the child." Minn. Stat. § 260C.212, subd. 2(c) (2008). Also, P.S. lives in a culturally diverse neighborhood, has a culturally diverse group of friends, and has received training about raising a child in a culturally diverse home.

E. Connection with community, school, and faith community.

D.T. argues that the district court's findings on B.T.'s connection with community, school, and church imply that D.T. is socially isolated because she lives in a predominantly white neighborhood. The district court found that D.T. did not have strong ties to the community because she had recently moved there and that she had shown a willingness to disrupt her own children's ties to their school, making it likely that she would be willing to disrupt B.T.'s too. These findings are supported by the fact that D.T. recently moved and by D.T.'s testimony that she does not have friends and sees only family members and evidence that neighbors have called the police regarding D.T. The district court acknowledged that D.T. and her family have strong ties to their church.

F. Interests and talents.

D.T. argues that the district court unreasonably relied on D.T.'s lack of toys for B.T. because ownership of toys is tied to financial circumstances. The district court cited evidence that D.T. had no toys designed to stimulate B.T.'s interests or develop her talents. But the district court also cited the lack of evidence that D.T. had enrolled her own children in extra-curricular or other activities outside of school. In contrast, since moving into P.S.'s home, B.T. has shown interests in activities, and P.S. has provided opportunities for B.T. to pursue those interests.

G. Relationship to current caretakers, parents, siblings, and relatives.

D.T. challenges the district court's finding that there was no evidence of "an actual attachment" with D.T. She asserts that an HSPHD employee testified during the first phase of the trial that she thought B.T. had "a nice attachment" with D.T. The district court, however, acknowledged that B.T. had ties to D.T. and other relatives while residing with D.T. and that the family sincerely wanted B.T. returned to them. And D.T. does not dispute that the evidence supports the district court's finding that B.T. has a strong attachment to P.S. and that breaking that attachment by moving B.T. would cause damage that would not be in B.T.'s best interests.

The district court's detailed analysis of the best-interests factors supports its conclusion that D.T. failed to prove that adoption by D.T. is in B.T.'s best interests and that P.S. proved that adoption by P.S. is in B.T.'s best interests.

2. Relative preference

D.T. correctly states that Minnesota has "longstanding legislative and common law preferences for placing a child in the permanent care and custody of a relative." *In re Welfare of D.L.*, 479 N.W.2d 408, 416 (Minn. App. 1991), *aff'd*, 486 N.W.2d 375 (Minn. 1992). D.T. argues that the district court misapplied the law by erroneously minimizing the application of the relative preference and by failing to afford the preference proper consideration when determining B.T.'s best interests. D.T. contends that "[a]fter reviewing the history and development of the adoption statute, the District Court wrongly inferred that the relative preference was greatly altered when the statute 'changed dramatically in 1997.'"

Before 1997, the adoption statute stated that

> in determining appropriate adoption, the court shall give preference, in the absence of good cause to the contrary, to (a) a relative or relatives of the child, or, if that would be detrimental to the child or a relative is not available, to (b) a family with the same racial or ethnic heritage as the child, or if that is not feasible, to (c) a family of different racial or ethnic heritage from the child that is knowledgeable and appreciative of the child's racial or ethnic heritage.

Minn. Stat. § 259.57, subd. 2 (1996).

In 1997, the statute was amended to its current form, and it now states that

> in determining appropriate adoption, the court shall consider placement, consistent with the child's best interests and in the following order, with (1) a relative or relatives of the child, or (2) an important friend with whom the child has resided or had significant contact. Placement of a child cannot be delayed or denied based on race, color, or national origin of the adoptive parent or the child.

Minn. Stat. § 259.57, subd. 2(c) (2008); *see* 1997 Minn. Laws ch. 86, § 10, at 674 (amending statute).

Based on the current language in the statute, the district court determined that "[D.T.'s] petition shall be considered first and the fact she is a blood relative will be considered in the appropriate factor from [Minn. Stat. §] 260C.212, but if she fails to meet her burden of proving best interests of the child, [P.S.'s] petition shall be considered using the same best interest factors." Appellant argues that the district court's "subsequent application of the relative preference was flawed because it wrongly incorporated the relative preference into the best interest factors and then failed to discuss the preference under any of those factors."

Appellant contends that "[w]hen viewed in light of the statutory and case law, there is every reason to believe that an individualized and separate analysis of the relative preference is required in determining the child's best interests." But appellant does not cite any statute or case law that requires the district court to provide an individualized and separate analysis of the relative preference when determining the child's best interests.

Even before the statute was amended in 1997 and the district court was required to give preference to a relative (in the absence of good cause to the contrary), case law did not require the district court to perform its analysis of a child's best interest in any particular manner. In 1996, the supreme court explained that

> [i]n any particular case, . . . the trial court has a substantial degree of latitude in determining whether the relative preference of section 259.57 is controlling.

> "The terms 'best interests,' 'good cause to the contrary' and 'detriment' do not lend themselves to standardized definitions. The best interests of potential adoptees will vary from case to case, and the trial court retains broad discretion because of its opportunity to observe the parties and hear the witnesses. In exercising that discretion, a trial court must make detailed factual findings showing that the child's best interests are being served. But the nature of those findings is not subject to a precise formula because they will vary according to the fact situation."

In re Adoption of C.H., 554 N.W.2d 737, 743 (Minn. 1996) (quoting *In re Welfare of D.L.*, 486 N.W.2d 375, 380-81 (Minn. 1992)).

Although the district court's order does not explicitly state a conclusion with respect to relative preference, it is apparent that the district court considered relative preference. The district court specifically explained what it was going to do with respect to relative preference. Its findings with respect to B.T.'s relationship with her current caretakers, parents, siblings, and relatives state:

> The child had ties to [D.T.], her grandparents, cousins and sister while she resided with [D.T.] There is no evidence whether that was an actual attachment with [D.T.], however. The family sincerely wants her to return to them. The child has a strong attachment to her current caregiver, however, and intentionally breaking that attachment by moving the child will cause her damage that is not in her best interest.

These findings demonstrate that the district court specifically considered how placing B.T. with D.T. would maintain the child's ties to relatives, but, nevertheless, determined that a placement with D.T. would not be in the child's best interests. When determining the child's best interests, the district court was not required to provide a more specific analysis of the relative preference.

3. Evidentiary ruling

D.T. argues that the district court erred in excluding the testimony of her expert witness. Because the district court allowed the evidence, D.T.'s objection goes to the weight assigned to the testimony. Determining "[t]he weight to be given any testimony, including expert testimony, is ultimately the province of the fact-finder." *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 167 (Minn. App. 2005).

The district court provided valid reasons for finding the expert's testimony not credible, including that the expert did not list completing home studies on her curriculum vitae and had last worked directly with clients 10 to 15 years ago; it had been about 20 years since the expert last did foster-care licensing studies, and those were not in Minnesota; the expert did not follow the Department of Human Services format for adoption home studies; the expert chose to ignore, discount, or evade information that contradicted information provided by D.T.; the expert accepted D.T.'s claim that she had a finite seven-month period of situational depression in 2004; the expert's conclusion that there are no current mental-health concerns for D.T. was based on a single interview with D.T.; and the expert did not verify information about D.T.'s children's school issues that D.T. provided and did not review an individual education plan that was prepared for D.T.'s daughter.

Affirmed.