STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1547

In the Matter of the Petition of: C. V. and L. V., petitioners,
to Adopt A. V. and A. V.

In the Matter of the Petition of: K. J. A. and K. A., petitioners,
to Adopt A. V. and A. V.

Filed March 15, 2011
Affirmed
Toussaint, Judge

Olmsted County District Court
File Nos. 55-FA-10-2804, 55-FA-10-2819

Peter M. Banovetz, Banovetz Law Firm, Vadnais Heights, Minnesota (for appellants C.V. and L.V.)

Mark A. Ostrem, Olmsted County Attorney, Geoffrey A. Hjerleid, Senior Assistant County Attorney, Rochester, Minnesota (for respondent Olmsted County Community Services)

K.J.A. and K.A., Stewartville, Minnesota (pro se respondents)

Vicki Duncan, Rochester, Minnesota (guardian ad litem)

Considered and decided by Toussaint, Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

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

TOUSSAINT, Judge

Appellants C.V. and L.V. (grandparents) challenge a district court order granting the adoption petition of respondents K.J.A. and K.A. (foster parents), alleging that the district court failed to apply the relative preference expressed in Minn. Stat. § 259.29, subd. 2 (2010), applied the incorrect best-interest factors, ignored "red flags" surrounding foster parents' adoption petition, and was biased against grandparents. We affirm.

FACTS

Grandparents are the maternal grandparents of A.V. and A.J.V. (jointly, the children). A.V., born on December 3, 2004, is a special-needs child who was placed in the legal and physical custody of grandparents by court order in April 2006. A.J.V. is A.V.'s half brother and was born on July 13, 2007. The parental rights of the children's biological parents were terminated in prior proceedings.

In the fall of 2007, grandparents determined "on their own" to transition care of A.V. back to the biological mother, notwithstanding a court order that placed the child in their legal and physical custody. The record contains several indications that grandparents were, at least for a time, seeking to have the children be reunited with the children's biological mother, despite respondent Olmsted County Community Services having found signs that the children were being neglected at the biological mother's home.

In late January 2008, the children's social worker became aware that an agreed-upon safety plan was not being followed and the children were being left without

supervision. The social worker requested that the children's biological mother and grandparents allow the placement of A.V. in voluntary foster care due to the breakdown of the safety plan and the family's demonstrated inability to consistently provide for the safety of the children. Grandparents signed a voluntary out-of-home placement agreement on February 8, 2008. From February until August 2008, the children resided at three different foster homes before being placed with the foster parents involved in the instant case.

Foster parents filed a petition to adopt the children on April 16, 2010. Grandparents followed with their own adoption petition on April 19. By written order, the district court granted the adoption petition of foster parents implicitly denying grandparent's petition.

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).

I.

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). In pursuit of

this goal, the legislature has provided that the authorized child-placing agency shall consider placement with a relative or relatives of the child or an important friend with whom the child has resided or had significant contact, in this respective order. Minn. Stat. § 259.29, subd. 2. Grandparents argue that by granting the adoption petition of foster parents over that of grandparents, the district court "failed to apply the relative preference" and thereby rendered the preference for placement with a relative meaningless.

Grandparents base their argument on the supreme court's opinion in *D.L.* *D.L.* involved the adoption of a two-year-old child who had lived with foster parents since four days after she was born. 486 N.W.2d at 376. After the child's biological parents' parental rights were terminated, the foster parents and the child's maternal grandparents filed competing petitions to adopt the child. *Id.* The supreme court held that "adoptive placement with relatives is presumptively in a child's best interests, unless good cause to the contrary or detriment to the child are shown." *Id.* at 377. The court went on to find that separation from long-term foster parents, while potentially initially painful to a child, is not sufficient good cause to defeat the preference for adoption by a relative. *Id.* at 381.

Grandparents argue that because the district court found that both grandparents and the foster parents "have the capacity and disposition to give [the children] love, affection and guidance," the district court's reluctance to "disrupt the [children's] placement with the foster family" was erroneous. This argument, however, is inconsistent with Minnesota caselaw and the record as a whole. "Even though earlier versions of the [relative-preference] statute may have created a stronger preference for

relatives, the resulting caselaw still required that the best interests of the child take priority over any other statutory considerations." *In re T.L.A.*, 677 N.W.2d 428, 431 (Minn. App. 2004). "While the plain language of [the statute] requires that relatives be given preference for adoptive placement, the preference is clearly lost if contrary to the best interests of the child . . . ." *Id.* at 432.

While the district court did make findings indicating that grandparents were capable and willing to care for the children, it also "incorporate[d] . . . all of the Findings of Fact contained in Exhibit 9 as those findings are relevant to the adoptive placement with [the foster parents] and also bear on the best interests of the children as it relates to the competing adoption petitions." Exhibit 9 is a district court order in the child-protection case regarding the children. In this order, the district court made a number of findings that, taken as a whole, indicate that placement of the children with grandparents is contrary to the children's best interests. These findings include grandparents not being aware of an incident of abuse against the older child until well after its occurrence, grandparents deciding on their own to transfer the older child to his biological mother's full-time care despite the court order placing the child in their physical and legal custody, and indications that grandparents were unable to put the children's needs "above their desire to have [the biological mother] have a parent-child relationship" with the children. Most notable among these findings is the district court's conclusion that keeping the children in foster care, thereby not placing them with grandparents, "serves the best interests and safety of the children."

When the district court's findings of fact in the child-protection case are integrated with the district court's order in the present case, the record is sufficient to support the district court's decision that the best-interests analysis overcame the relative-preference articulated in the statute. Grandparents' argument that the district court failed to apply the relative preference is therefore unavailing.

II.

The touchstone of any adoption analysis is always the best interests of the child. *In re Adoption of C.H.*, 554 N.W.2d 737, 743 (Minn. 1996) (approving best-interests-factor analysis of application of biological-family preference to resolve competing adoption petitions between foster parents and biological relatives); *see also In re Petition to Adopt S.T. & N.T.*, 512 N.W.2d 894, 898 (Minn. 1994) ("Our interpretation of these adoption statutes is guided by the fundamental purpose of the entire procedural scheme. That purpose is to determine the best interests of the child."); Minn. Stat. §§ 259.20, subd. 1(1) (stating that best interests of children is statutory purpose to be met in adoption law), .57, subd. 1(a), (b) (requiring district court to base its decision to grant or deny adoption petition on best interests of child) (2010).

Grandparents argue that the district court did not focus on the best-interests factors in the adoption statute. The term "best interests" does not lend itself to a standardized definition. *D.L.*, 486 N.W.2d at 380. Indeed, the adoption statutes do not define the term. Minn. Stat. §§ 259.20-.89 (2010). But the adoption statute indicates that the legislature intended for a child's best interests to be determined, at least in part, based on the best-interests analysis of the child-protection statutes. *See* Minn. Stat. § 259.29, subd.

1(b) ("Among the factors the agency shall consider in determining the needs of the child are those specified under section 260C.193, subdivision 3, paragraph (b)."). Section 260C.193, in turn, states that the "policy of the state is to ensure that the best interests of children . . . are met by requiring individualized determinations under section 260C.212, subdivision 2, paragraph (b)." Minn. Stat. § 260C.193, subd. 3(a) (2010). Section 260C.212, subdivision 2, provides a list of eight factors to be considered in determining the needs of a child. Minn. Stat. § 260C.212, subd. 2(b)(1)-(8) (2010). In the present case, the district considered each of the eight factors designated in the statute. Contrary to grandparents' assertion, the district court complied with the adoption statute's requirement to consider the children's best interests.

Grandparents also assign error to the district court "incorrectly" considering the best-interests factors in Minn. Stat. § 518.17 (2010). But the best interests factors outlined in the adoption and child-protection statutes are not exclusive. *See* Minn. Stat. §§ 259.29, subd. 1(b) (stating that the listed considerations are "*[a]mong* the factors the agency shall consider" (emphasis added)), 260C.212, subd. 2(b) (same); *see also In re Paternity of B.J.H.*, 573 N.W.2d 99, 102 (Minn. App. 1998) (holding, in paternity-dispute context, that the district court may properly consider factors beyond those listed in the child-custody statute to "properly weigh[] all the evidence"). To the extent that grandparents' argument requires this court to reweigh the best-interests factors, we decline to do so. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000) (stating that because there is no "articulated, specific standard of law" for reviewing best-interests determinations, the "law leaves scant if any room for an appellate court to

question the [district] court's balancing of best-interests considerations").

Grandparents also assert that the district court "ignored the conduct of the foster family in either intentionally or negligently allowing physical harm to the young children" and in doing so disregarded several "red flags" surrounding foster parents' adoption petition. But the district court found that there was "no credible evidence of any domestic abuse between either [of the foster parents] and either one or both of the boys." The district court further found that "the injuries sustained by the boys . . . while they were in the care of the [foster parents] were accidental in nature and not the result of either abuse or neglect." We defer to the credibility determinations of the district court. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Because grandparents' argument would require us to both (1) overrule the explicit credibility determination of the district court and (2) find that foster parents either intentionally or negligently allowed the children to be harmed, it is unavailing. *See Wright Elec., Inc. v. Ouellette*, 686 N.W.2d 313, 324 (Minn. App. 2004) ("[T]his court cannot serve as the fact-finder."), *review denied* (Minn. Dec. 14, 2004).

Grandparents also point to the May 2007 driving-under-the-influence conviction of one of the foster parents as a red flag that undercuts the adoption petition of foster parents. But the district court found that the conviction "has in no way affected [the foster parent's] relationship with either of the [children]." He has successfully completed his court-ordered probation and "credibly testified that he has not used alcohol since the date of the incident." Given our deference to the district court's opportunity to determine credibility and find facts, we decline to overturn the district court's conclusion that the

driving under the influence conviction is a "non-event event."

III.

Grandparents also argue that the district court was biased against them. Their argument on this issue consists primarily of their assertion that the district court determined that it would be in the best interests of the children to remain with the foster family. But grandparents are unable to point to any evidence indicating that the district court was biased towards them. "[I]t is presumed that judges will set aside collateral knowledge and approach cases with a neutral and objective disposition." *State v. Burrell*, 743 N.W.2d 596, 603 (Minn. 2008) (quotation and internal quotation marks omitted). In order to rebut this presumption, the party asserting judicial bias must "adduce evidence of favoritism or antagonism." *Id.* Grandparents have failed to do so in the present case—other than recasting their arguments already discussed—and their claim of judicial bias is therefore without merit.

Affirmed.