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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1005

In the Matter of the Petition of M. M. L. and J. F. L. to adopt L. L. C.

Filed February 18, 2014
Affirmed
Larkin, Judge

Anoka County District Court
File No. 02-FA-13-482

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

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

LARKIN, Judge

In this proceeding to adopt a minor child to whom parental rights had been terminated, appellants argue that the district court erred by summarily dismissing their adoption petition. Because the district court's dismissal was appropriate under the plain

language of Minn. Stat. § 260C.607, subd. 5(a) (2012), and because the district court did not err in concluding that the child's best interests do not warrant a departure from statutory requirements, we affirm.

FACTS

This case arises from the district court's summary dismissal of appellants M.M.L. and J.F.L.'s petition to adopt L.L.C., who was born on March 18, 2009. L.L.C. was the subject of a CHIPS proceeding, which became an action for termination of parental rights against both parents. The district court terminated the parental rights of L.L.C.'s parents and entered judgment on May 15, 2012. This court affirmed the termination of parental rights on October 22, 2012. *In re Welfare of Child of K.-A.M.C.*, No. A12-0964 (Minn. App. Oct. 22, 2012).

The district court placed L.L.C. under the guardianship of the Commissioner of Human Services (the commissioner) with respondent Anoka County Human Services (the agency) as the local agent. The agency placed L.L.C. in a foster home with F.A.M. and J.A.M. (foster parents) in May 2012. The foster parents filed a petition for adoption on February 22, 2013. Appellants claim that they learned on March 9 that L.L.C. was under the guardianship of the commissioner and that L.L.C.'s adoption by the foster parents would be finalized in approximately two weeks. Appellants, identifying themselves as the great aunt and great uncle of L.L.C., filed their petition for adoption on March 15.[1]

[1] Throughout their brief, appellants assert that they petitioned for adoption before the foster parents. There is nothing in the record to support this assertion.

The district court consolidated the competing adoption petitions for a pretrial hearing and directed the parties to submit legal memoranda. The agency filed a letter brief arguing that appellants' petition must be dismissed because L.L.C. had not been placed for adoption with them, a prerequisite to a petition for adoption of a child under guardianship of the commissioner. *See* Minn. Stat. § 260C.607, subd. 5(a). The agency further argued that appellants did not qualify as "adopting parents" within the meaning of Minn. Stat. § 260C.603, subd. 2 (2012), because they had not executed an adoption placement agreement. Respondent guardian ad litem concurred with the agency's position. Appellants requested an evidentiary hearing on their petition under chapter 259, arguing that Minn. Stat. §§ 260C.601-.635 (2012) apply "only to those cases where the placement of the minor child occurred on or after August 2, 2012." Appellants also argued that the agency failed to conduct an adequate search for relatives prior to L.L.C.'s placement, as required by Minn. Stat. § 260C.221(a) (2012), and failed to determine whether the Indian Child Welfare Act (I.C.W.A.) applies in this proceeding.[2]

The district court rejected appellants' arguments and dismissed their adoption petition without an evidentiary hearing, in an order filed on May 8. This appeal follows.

D E C I S I O N

I.

Appellants argue that "the district court err[ed] in dismissing the relative adoption petition pursuant to Minn. Stat. § 260C.607[.]"

[2] Appellants do not raise their I.C.W.A. argument on appeal.

Section 260C.607 states, in relevant part:

> No petition for adoption shall be filed for a child under the guardianship of the commissioner unless the child sought to be adopted has been placed for adoption with the adopting parent by the responsible social services agency. The court may order the agency to make an adoptive placement using standards and procedures under subdivision 6.

Minn. Stat. § 260C.607, subd. 5(a). "'Adopting parent' means an adult who has signed an adoption placement agreement regarding the child . . . ." Minn. Stat. § 260C.603, subd. 2. "Adoption placement agreement" is defined at Minn. Stat. § 260C.603, subd. 3.

Appellants argue that this case presents an issue of statutory interpretation, which is reviewed de novo. *See In re Adoption of C.H.*, 554 N.W.2d 737, 742 (Minn. 1996). The supreme court recently summarized the principles that govern statutory interpretation as follows:

> The objective of statutory interpretation is to ascertain and effectuate the Legislature's intent. *City of Brainerd v. Brainerd Invs. P'ship*, 827 N.W.2d 752, 755 (Minn. 2013) (citing Minn. Stat. § 645.16 (2012)). If the Legislature's intent is clear from the statute's plain and unambiguous language, then we interpret the statute according to its plain meaning without resorting to the canons of statutory construction. *See id.*; *see also Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431, 435 (Minn. 2009) (distinguishing between "canons of interpretation," which are used to determine if a statute is ambiguous, and "canons of construction"). But, if a statute is susceptible to more than one reasonable interpretation, then the statute is ambiguous and we may consider the canons of statutory construction to ascertain its meaning. *See Lietz v. N. States Power Co.*, 718 N.W.2d 865, 870-71 (Minn. 2006); *see also* Minn. Stat. § 645.16 (listing canons of construction used to determine legislative intent for an ambiguous statute).

State v. Rick, 835 N.W.2d 478, 482 (Minn. 2013).

Appellants do not argue that the language of section 260C.607, subdivision 5(a), is in any way ambiguous. Because the legislature's intent is clear from the unambiguous language of section 260C.607, subdivision 5(a), we interpret and apply the statute according to its plain meaning. *See id.*

In dismissing appellants' adoption petition, the district court concluded that "[u]nder the plain language of [section] 260C.607, the adoption petition of [appellants] should not have been filed at all" because "[appellants] have not signed an adoption placement agreement," "[t]hey are not adopting parents as defined by the statute," and "Anoka County Social Services did not place the child with [appellants] and objects to their adoption petition."[3] The district court's conclusion is correct under the plain language of section 260C.607, subdivision 5(a). Appellants were not authorized to file a petition to adopt L.L.C. because the child had not been placed for adoption with appellants by the responsible social services agency.

Appellants argue that because the district court "accepted the . . . contention . . . that [Minn. Stat. §§ 260C.601-.635] was the applicable statute," they "were effectively foreclosed [from] bringing a [p]etition for [a]doption." Appellants point out that L.L.C. was placed with foster parents in May 2012, prior to the effective date of Minn. Stat.

[3] The district court also concluded that appellants' petition did not and could not meet the requirements set forth in section 260C.623, including that it be "filed by the responsible social services agency or by the 'adopting parent,'" state the date "the adopting parent acquired physical custody," and include an adoption study report. *See* Minn. Stat. § 260C.623, subds. 1, 3, 4 (setting forth requirements for an adoption petition).

§§ 260C.601-.635 on August 2, 2012, and that newly enacted Minn. Stat. § 260C.607, subd. 6(a), provides as follows:

> At any time after the district court orders the child under the guardianship of the commissioner of human services, but not later than 30 days after receiving notice required under section 260C.613, subdivision 1, paragraph (c), that the agency has made an adoptive placement, a relative or the child's foster parent may file a motion for an order for adoptive placement of a child who is under the guardianship of the commissioner . . . .

Appellants argue that "[t]he legislature enacted a law that mandates notice be provided by the agency of an adoptive placement and mandates that a person act within a period of time after proper notice is provided," but "because the child was placed before the law was enacted, nobody received the mandated notice" and that, therefore, they "could not have filed a motion within 30 days after receiving notice." Essentially, appellants contend that because the statutory scheme that would have provided them with notice did not exist when L.L.C. was placed with the foster parents, they did not have the opportunity to fulfill the requirements of section 260C.607 and their petition for adoption should have proceeded under chapter 259, which would have governed the adoption prior to the enactment of Minn. Stat. §§ 260C.601-.635. *See* Minn. Stat. § 260C.601, subd. 1 ("Sections 260C.601 to 260C.635 establish . . . procedures for timely finalizing adoptions in the best interests of children under the guardianship of the commissioner. . . . Adoption proceedings for children not under the guardianship of the commissioner are governed by chapter 259.")

Appellants' argument is unpersuasive. Appellants provide no relevant legal authority to support their proposition that chapter 259 should govern their petition for adoption. They filed their petition on March 15, 2013. The legislature provided that Minn. Stat. §§ 260C.601-.635 "is effective August 2, 2012." 2012 Minn. Laws, ch. 216, art. 1, § 52, at 425. The legislature did not provide an exception to the effective date for children who were placed in adoptive placement prior to August 2. *See State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004) ("When the text of a law is plain and unambiguous, we must not engage in any further construction." (quotation omitted)).

Appellants alternatively argue that "if Anoka County is correct and [they] are required to act within a specific time frame after notice, . . . [then] the time frame is still running and ask that the matter be remanded for [them] to file a petition pursuant to Minn. Stat § 260C.601, as they have yet to receive notice pursuant to Minn. Stat. § 260C.613, subd. 1." Appellants' reference is to the 30-day time frame in section 260C.607, subdivision 6(a), which begins to run after receipt of notice under section 260C.613, subdivision 1, that the agency has made an adoptive placement. Although there is merit to appellants' argument that the 30-day time frame was not triggered because notice was not provided, it does not provide a basis for relief for several reasons.

First, the district court concluded that even if notice had been circulated pursuant to section 260C.613, subdivision 1, paragraph (c), appellants were not entitled to receive notice because they did not fall within any of the categories of relatives entitled to notice by statute. *See* Minn. Stat. §§ 260C.613, subd. 1(c) ("The responsible social services agency shall notify the court and parties entitled to notice under section 260C.607,

subdivision 2, when there is a fully executed adoption placement agreement for the child."), .607, subd. 2(4) (requiring that notice be given to certain individuals and entities, including "relatives of the child who have kept the court informed of their whereabouts as required in section 260C.221 and who have responded to the agency's notice under section 260C.221, indicating a willingness to provide an adoptive home for the child unless the relative has been previously ruled out by the court as a suitable foster parent or permanency resource for the child").

Second, appellants had actual notice of the agency's adoptive placement when they filed their adoption petition, but they did not move for an order for adoptive placement under section 260C.607, subdivision 6. In fact, appellants were not authorized to move for adoptive placement because they did not have an adoption home study approving them for adoption, which is a statutory requirement. *See* Minn. Stat. § 260C.607, subd. 6(a)(1) (stating that "a relative or the child's foster parent may file a motion for an order for adoptive placement of a child who is under the guardianship of the commissioner if the relative or the child's foster parent: . . . has an adoption home study under section 259.41 approving the relative or foster parent for adoption").

In sum, under the governing statutes, appellants were not authorized to move for adoptive placement or to petition for adoption. But appellants were not without a remedy. Section 260C.607 specifically allows a relative to seek judicial review and intervention when an agency unreasonably refuses to consider adoptive placement with the relative. The statute provides that:

> Any relative . . . who believes the responsible agency has not reasonably considered the relative's . . . request to be considered for adoptive placement as required under section 260C.212, subdivision 2, and who wants to be considered for adoptive placement of the child shall bring a request for consideration to the attention of the court during a review required under this section. . . . After hearing from the agency, the court may order the agency to take appropriate action regarding the relative's . . . request for consideration under section 260C.212, subdivision 2, paragraph (b).

Minn. Stat. § 260C.607, subd. 5(b); *see* Minn. Stat. § 260C.212, subd. 2(a) (2012) ("The authorized child-placing agency shall place a child, . . . in a family foster home selected by considering placement with relatives and important friends in the following order: (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.").

Under the plain language of section 260C.607, subdivision 5(b), if appellants were not satisfied with the agency's refusal to consider them as an adoptive placement, their remedy was to "bring a request for consideration to the attention of the court." Instead, appellants filed an unauthorized adoption petition. Nevertheless, the district court provided the relief set forth under section 260C.607, subdivision 5(b). The district court had before it the affidavit of appellant M.M.L., which described appellants' willingness to adopt L.L.C., the reasons that they would be suitable adoptive parents, and the agency's refusal to consider them as a placement option. The district court heard the agency's reasons for opposing adoptive placement with appellants. Finally, the district court considered L.L.C.'s best interests. *See* Minn. Stat. § 260C.212, subd. 2(a) ("The

policy of the state of Minnesota 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."), (b) (2012) (setting forth a nonexclusive list of "factors the agency shall consider in determining the needs of the child"). The district court made the following best-interests determination:

> By all accounts the child is healthy and flourishing with his foster parents. He has been in placement with them for nearly a year and is anxious for resolution. His journey to his current status has been particularly difficult. The child and [appellants] are strangers to one another. The child has not been placed with [appellants] on even a temporary basis. There is no home study. A contested evidentiary hearing now would be pointless. Delaying the permanency decision in order to permit [appellants] the opportunity to have a temporary placement, to conduct a home study, to become familiar with the child, and to otherwise become prepared for a meaningful evidentiary hearing would result in a delay of many months. The Court concludes the best interests of the child would not be served by disrupting his current household placement and by being considered for placement with people he does not know.

The district court's focus on the additional delay that would result if it explored the possibility of placement with appellants was appropriate. The supreme court has stated that

> [e]ach delay in the termination of a parent's rights equates to a delay in a child's opportunity to have a permanent home and can seriously affect a child's chance for permanent placement. This simple but alarming truth is widely recognized in literature and has propelled courts across the nation to improve the administration of justice for children. As stated by the National Council of Juvenile and Family Court Judges, the prolonged uncertainty for children of not knowing whether they will be removed from home, whether and when they will return home, when they might be moved

> to another foster home, or whether and when they may be placed in a new permanent home is frightening. This uncertainty can seriously and permanently damage a child's development of trust and security.

In re Welfare of J.R., Jr., 655 N.W.2d 1, 5 (Minn. 2003) (citation and quotation omitted). Whether delay occurs during the termination-of-parental-rights phase of a child-welfare case or during the post-termination adoption phase, it is generally not in a child's best interest.

In sum, after hearing from appellants and the agency regarding the possibility of placement with appellants, and after considering L.L.C.'s best interests, the district court decided not to delay the pending adoption by the foster parents to explore the possibility of placement with appellants. The district court's decision was not an abuse of discretion. *See Davis v. Davis*, 306 Minn. 536, 538, 235 N.W.2d 836, 838 (1975) ("The [district] court was vested with broad discretion in applying the best-interest standard in the custody determination and, without a showing of arbitrary action, an appellate court will be slow to interfere with the exercise of that discretion.").

II.

Appellants contend that the district court "err[ed] in determining that a contested evidentiary hearing should not be conducted to determine the reasonableness of [the commissioner] withholding consent" and that "[w]hen multiple petitions have been brought with respect to the same child, and that child is under the guardianship of the Commissioner of Human Services, the district court is required to consolidate the matters

for trial." *See* Minn. R. Adopt. P. 33.01(e) (stating that if there is no parent or guardian to give consent to a child's adoption, consent shall be given by the commissioner).

Appellants rely on Minn. R. Adopt. P. 42.02, subd. 2, which provides, "When multiple adoption petitions have been filed with respect to the same child who is under the guardianship of the Commissioner of Human Services, the court shall consolidate the matters for trial." Appellants also rely on Minn. R. Adopt. P. 42.03, subd. 2, which sets forth a mandatory bifurcation procedure for use in determining whether the commissioner has unreasonably withheld consent to a child's adoption. But those rules presume that there are valid, competing adoption petitions. *See* Minn. R. Adopt. P. 42.02, subd. 2 (referencing "multiple adoption petitions . . . filed with respect to the same child"); Minn. R. Adopt. P. 42.03, subd. 2 (referencing "the trial on the contested adoption petitions"). Because the district court properly dismissed appellants' adoption petition as unauthorized, appellants' rule-based argument regarding the need for an evidentiary hearing is unavailing.

III.

Appellants contend that the district court erred "in determining that a comprehensive search [for relatives] was conducted by Anoka County Social Services." Under Minn. Stat. § 260C.221(a),

> [t]he 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 and whenever the child must move from or be returned to foster care. The

> relative search required by this section shall be comprehensive in scope.

Appellants assert that "a comprehensive search requires an examination of a 'great aunt and uncle' pursuant to the Department of Human Services own best practices guide." And they argue that whether the agency search was comprehensive "impacts the ultimate determination of whether or not the agency acted reasonably in withholding the consent [for] [a]ppellants to adopt L.L.C." Appellants also argue that "the lack of [a] relative search does provide justification for a waiver of agency placement under the law." The district court recognized that there is no waiver provision in section 260C.607, but it concluded that "[a] 'best interest' waiver of the agency placement requirement is arguably implicit in section 260C.607," reasoning that "[c]ertainly, the 'best interests of the child' factor is the paramount consideration."

Assuming, without deciding, that a best-interests waiver is implicit in 260C.607, we conclude that the district court did not err by declining to waive the agency placement requirement in this case. The district court noted that an "important policy consideration is that reasonable efforts are made to finalize the adoption of children under guardianship of the Commissioner." *See* Minn. Stat. § 260C.601, subd. 2 (stating that "[t]he responsible social services agency has the duty to act as the commissioner's agent in making reasonable efforts to finalize the adoption of all children under the guardianship of the commissioner"). The district court reasoned that "[i]t is unreasonable and not in the best interests of children under guardianship [of] the Commissioner to delay finalizing adoptions without good cause." The district court concluded that the alleged

inadequacies in the relative search did not justify good cause for further delay. The district court explained that

> [i]t is clear from the evidence that Social Services carried out an exhaustive search for family members. The child was placed with different family members on several occasions. The child's grandmother was a party to the CHIPS case and actively participated in the proceedings. A series of family consultations were convened. Many relatives participated and were interviewed or considered as placement options and as a source for the search for relatives. It is clear that Social Services did all that it could to find a potential family placement for the child. Throughout this activity not one family member mentioned [appellants]. The Court made a finding earlier in the process that Social Services had conducted a sufficient search for relatives. [Appellants] have failed to demonstrate good cause to delay the proceedings and conduct an evidentiary hearing on the basis that Social Services failed to conduct a comprehensive search for relatives in this case.

Although there is merit to appellants' contention that the relative search was inadequate and we disagree that the agency made "an exhaustive search for family members," we agree that the agency's failure to identify appellants as a potential adoptive resource did not justify waiving the agency placement requirement or delaying the imminent adoption by the foster parents. Once again, the district court considered L.L.C.'s best interests and concluded that the delay attendant to exploring the possibility of placement with appellants was not in L.L.C.'s best interests. As discussed in section I of this opinion, that conclusion was a sound exercise of the district court's discretion.

In conclusion, we observe that nothing in the record suggests that appellants are not suitable prospective adoptive parents. However, the decisions in this case must be based on L.L.C.'s best interests. And under the particular circumstances of this case—in

which appellants' willingness to provide an adoptive home for L.L.C. was unknown until approximately two weeks before the scheduled finalization of the child's adoption by the foster parents—the district court did not err by concluding that L.L.C.'s best interests did not justify a departure from the plain language of section 260C.607.

Affirmed.