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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1042**

In the Matter of the Welfare
of the Children of: D. L. M., J. D. S.
and R. J., Parents.

**Filed November 17, 2009
Affirmed
Hudson, Judge**

Anoka County District Court
File Nos. 02-JV-08-7
02-JV-08-2125
02-JV-09-523
02-JV-09-608

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Considered and decided by Kalitowski, Presiding Judge; Hudson, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant county challenges the district court's order placing respondent-mother's child in long-term foster care, arguing that the district court erred by ordering the placement without the county's "compelling reasons" and that the placement was not supported by the child's best interests. Because the parties' stipulation limited the issue before the district court to whether long-term foster care or termination of parental rights was in the child's best interests, and because the district court did not abuse its discretion in its best-interests determination, we affirm.

FACTS

In January 2008, Anoka County Department of Community Social Services and Mental Health (county) filed a child-in-need-of-protection-or-services (CHIPS) petition relating to respondent-mother D.L.M.'s children, nine-year-old J.T.M. and fourteen-year-old B.M.S. The petition alleged that mother had abused alcohol and drugs in front of the children, had failed to provide them with proper food and hygiene, and had hit B.M.S. Because B.M.S. had special needs, the children entered court-ordered foster care in a therapeutic foster home. Mother entered inpatient chemical-dependency treatment but was discharged without completing the program because she failed to complete program requirements. The district court adjudicated the children CHIPS.

The district court ordered mother to comply with a case plan filed by the county. The case plan required mother to refrain from abusing chemicals, successfully complete chemical-dependency treatment and follow recommendations, complete a psychological

evaluation and follow all recommendations, find a job or make efforts to obtain employment, participate in individual therapy, and participate in supervised parenting and parenting education. Mother completed inpatient chemical-dependency treatment but was unable to successfully complete other elements of the case plan.

In October 2008, the county filed a petition to terminate the parental rights of mother and the fathers of both children.¹ The petition alleged that mother continued to use or abuse chemicals, was unable to obtain employment or to maintain housing for the children, failed to consistently attend counseling or participate in chemical-dependency aftercare, was inattentive to the children during supervised visitation, and resumed a relationship with a man who had previously abused her.

The district court issued an order terminating both fathers' parental rights at a default hearing after they failed to respond to notices relating to the proceeding. Mother contested the petition. On the day of trial, the parties submitted a stipulation to the district court. The stipulation stated: (1) the county agreed to withdraw its termination-of-parental rights (TPR) petition regarding B.M.S. and file a petition for her long-term foster care; (2) mother agreed that B.M.S. would be placed in long-term foster care and that a legal basis existed to terminate her parental rights as to J.T.M.; and (3) the parties would submit to the district court the issue of "whether it is in the best interests [of J.T.M.] to be placed in long-term foster care with his sister or . . . to have his mother's

¹ Because B.M.S.'s father is an enrolled member of the White Earth Band of Ojibwe, it was determined that B.M.S. was subject to the terms of the Indian Child Welfare Act. J.T.M. is not subject to the Act.

parental rights terminated so he can be placed in an adoptive home.” The parties agreed that the district court’s determination on the best-interests issue could be appealed.

The district court approved the stipulation, and mother waived her right to a trial on the termination of her parental rights. She testified that although she loved J.T.M., she recognized she would be unable to parent him now or in the foreseeable future, and she believed it was in his best interests to terminate her parental rights. She testified that she voluntarily signed the stipulation and understood that if the district court decided that J.T.M. should be in long-term foster care, the district court would not accept the voluntary termination of rights, but if the district court decided that J.T.M. should be placed for adoption, the district court would accept the termination.

B.M.S. testified that she wished to be placed with her brother, but that when she turned 18 in two years, she would most likely go back to living with her mother and would keep in contact with her brother. J.T.M. testified that he would like to stay with the current foster family and would stay there even after his sister left.

The county child-protection caseworker testified that J.T.M. had done well in the foster family’s care, losing about 40 pounds and having improved hygiene. She testified that the foster parents declined to take custody of J.T.M. or adopt him, but they were willing to serve as an ongoing foster-care resource. She testified that the county had identified another possible relative-placement option for J.T.M., but that had fallen through. She testified that she believed termination and adoption to be in J.T.M.’s best interests because: foster care would not necessarily be permanent for the next eight years; there is a social stigma attached to foster care; the caseworker was involved with

many aspects of his care in the foster-care system; and J.T.M.'s sister would be leaving foster care in two years, when she turned 18. The social worker also had a minor concern with the foster family in that J.T.M. loves sports, and the foster family's situation did not allow him to participate fully in sports activities. She testified that J.T.M. is "an easy, nice kid," with no special needs, and is "very adoptable." She testified that the children have a loving, bonding relationship with each other, and she hoped they could stay together, but there was no way to know definitely whether potential adoptive parents would take in B.M.S. She would be supportive if the foster parents felt they could adopt J.T.M.

The guardian ad litem (GAL) testified that she had been leaning toward recommending long-term foster care, but when she met with J.T.M., he started crying when he was told he could not live with this mother. She asked him what he would like to have happen, and he expressed a wish to play basketball. She started weighing both options, thought about the opportunities that J.T.M. would not have living with the foster family for the next eight years, and decided to recommend termination and searching for an adoptive home. She testified this was a close question and a difficult decision for her. She thought it would be difficult to find a home that would adopt J.T.M. and also provide long-term foster care for B.M.S.

The foster father testified that since arriving in the foster home, B.M.S. and J.T.M. had an improved diet, better hygiene, and more exercise. He testified that J.T.M. has neighborhood friends and plays sports with them informally, and, although church and other family commitments precluded J.T.M. from playing school basketball, they would

look into joining the YMCA for other activities. He testified that J.T.M., who was in fifth grade, was doing acceptably in school, without behavior problems. He testified that he was committed to J.T.M. as a foster parent, and the main reason his family could not consider adopting J.T.M. was the financial support from foster care, which enables him to be a full-time parent. He testified that he was in favor of an arrangement that suited the children's best interests, but if finances were not an issue, having B.M.S. and J.T.M. stay together would be "the ultimate."

At closing, the county attorney argued that the district court was precluded from ordering J.T.M.'s placement in long-term foster care because the county had not presented "compelling reasons" that termination of parental rights was not in the child's best interests. *See* Minn. Stat. § 260C.201, subd. 11(d)(3) (2008). The county also argued that the Minnesota Rules of Juvenile Protection Procedure require that the county, not another party, initiate a petition for long-term foster care. *See* Minn. R. Juv. Prot. P. 33.02, subd. 4(b).

Mother's attorney argued that, regardless of the county's position, the record established compelling reasons that termination of mother's parental rights was not in J.T.M.'s best interests, and that it was in J.T.M.'s best interests to remain in long-term foster care. Mother argued that the issue of whether the county initiated a request for long-term foster care was outside the parties' stipulation and irrelevant if the district court found compelling reasons why termination of parental rights was not in J.T.M.'s best interests. Mother further argued that the district court had authority to grant equitable

relief consistent with the child's best interests, and that attempting to limit that authority would violate the separation of powers under the Minnesota Constitution.

The district court found that, pursuant to statute and the parties' agreement, it was an available option to place B.M.S. in long-term foster care, and it was in her best interests to remain in the care and custody of the county with placement in long-term foster care. The district court also determined that there were compelling reasons to place J.T.M. in long-term foster care and that it was in his best interests to be placed in long-term foster care. The district court concluded that mother had knowingly and voluntarily waived her right to a contested trial on the issue of involuntary termination of her parental rights, and that grounds existed to terminate those rights. The district court dismissed the county's involuntary termination petitions as to B.M.S. and J.T.M., as well as mother's voluntary termination petition, and ordered that J.T.M. remain in the custody of the county, with long-term foster-care placement with the current foster family. This appeal follows.

DECISION

I

This court reviews a district court's permanency decision to determine whether the district court's findings address the applicable statutory criteria and whether they are supported by substantial evidence or whether they are clearly erroneous. *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996). The allegations supporting permanent placement must be proved by clear and convincing evidence. *Id.* at 261.

If a child cannot return home following a child-in-need-of-protection-or-services adjudication, a court may order the child’s permanent placement “into long-term foster care only if it approves the responsible social service agency’s compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights is in the child’s best interests.” Minn. Stat. § 260C.201, subd. 11(d)(3)(i) (2008). “‘Compelling reasons’ means an individualized determination by the responsible social services agency, which is approved by the court, related to a request by the agency not to initiate proceedings to terminate parental rights. . . .” Minn. Stat. § 260C.007, subd. 8 (2008).²

The county maintains that the district court erred by ordering J.T.M.’s placement in long-term foster care because Minn. Stat. § 260C.201, subd. 11(d)(3)(i), requires that the county present compelling reasons that termination of parental rights is not in the children’s best interests, and in this proceeding, the county presented no such reasons and opposed the placement. The county argues that the county social worker’s answers to questions on cross-examination do not amount to “compelling reasons.” Mother argues that because of the parties’ stipulation, the district court was not asked to decide this issue, and it is therefore waived. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate court generally will not address issue that was not presented to, and decided by, district court).

² Additionally, to place a child in long-term foster care, the child must either be 12 years old, or be a sibling of a child of that age, in circumstances where the siblings have a significant positive relationship. Minn. Stat. § 260C.201, subd. 11(d)(3)(ii) (2008). The district court found, and the parties agree, that this second requirement is met because of J.T.M.’s sister, B.M.S., and their relationship.

“In ordering a permanent placement of a child, the court must be governed by the best interests of the child.” Minn. Stat. § 260C.201, subd. 11(e) (2008). Minnesota courts have endorsed the use of stipulations in other family-law proceedings. *See Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997) (stating, in dissolution proceeding, that because stipulations simplify and expedite litigation, they “are afforded the sanctity of binding contracts”). Here, the stipulation provided an appropriate framework for the district court to consider the children’s best interests. Further, mother agreed in the stipulation that legal grounds existed to terminate her parental rights to J.T.M. and waived her right to a trial on that issue. *See In re Children of B.J.B.*, 747 N.W.2d 605, 608 (Minn. App. 2008) (noting due-process rights as applied to juvenile-protection proceeding). Had mother believed that the district court would not have had the option to order long-term foster care for J.T.M., she might not have waived her right to a trial on the issue of termination of her parental rights.

When parties enter into a stipulation for the purposes of limiting the issue at trial, appellate review will not lie for facts or issues outside of the stipulation. *Olson v. Gopher State Benevolent Soc’y*, 203 Minn. 267, 269, 281 N.W. 43, 43 (1938). This principle applies even to “questions which, if they had been litigated, might have been answered in favor of [the complaining party].” *Id.* It is consistent with the general rule that issues may not be raised for the first time on appeal. *See Taylor v. City of New London*, 536 N.W.2d 901, 904 n.3 (Minn. App. 1995) (citing *Thiele*, 425 N.W.2d at 582, and declining to address issue stipulated below), *review denied* (Minn. Oct. 27, 1995).

The parties' stipulation expressly limited the issue before the district court to whether it was in J.T.M.'s best interests to place him in long-term foster care or to terminate mother's parental rights and seek adoptive placement. The parties signed the stipulation, the district court approved it, the county never moved to vacate it, and the district court determined only the best-interests issue. On this record, we will not review the statutory-interpretation issue when it lies outside the stipulation and when it was not decided by the district court. *Olson*, 203 Minn. at 269, 281 N.W. at 43; *Thiele*, 425 N.W.2d at 582.³

The county also points out that the Minnesota Rules of Juvenile Protection Procedure provide that "[t]he county attorney may seek any alternative permanent placement relief, and any other party may seek only termination of parental rights or transfer of permanent legal and physical custody to a relative." Minn. R. Juv. Prot. P. 33.01, subd. 4(b). The county argues that because the county did not file a petition seeking placement for J.T.M. in long-term foster care, the district court was precluded from ordering that placement. But, by the same reasoning that applies to the statutory-interpretation issue, we conclude that the parties' stipulation limited the issue before the district court, and we decline to consider the county's argument on appeal. *Thiele*, 425 N.W.2d at 582.

³ We acknowledge the Minnesota Supreme Court's determination, under a previous version of the permanency statute, that "[t]he best interests standard guides a court's determination in a termination proceeding, but it does not permit a court to order a statutorily-prohibited placement." *In re Welfare of J.M.*, 574 N.W.2d 717, 722 (Minn. 1998). But because we conclude that, pursuant to the parties' stipulation, the statutory-interpretation issue was not addressed by the district court, we need not consider the applicability of *J.M.* to this case.

Mother argues that the county's interpretation of Minn. Stat. § 260C.201, subd. 11(d)(3)(i), infringes on the district court's equitable power to determine the best interests of the child and violates the separation of powers under the Minnesota Constitution. But because the district court did not consider this issue, we will not address it. *See id.* Further, because mother did not file a notice of review on this issue, we consider it waived. *See* Minn. R. Civ. App. P. 106 (stating that a respondent may obtain appellate review of judgment or order in same action adversely affecting the respondent by filing a notice of review).

II

The county argues that the district court abused its discretion by determining that it is in J.T.M.'s best interests to be placed in long-term foster care. "Whether termination of parental rights is in a child's best interests is a decision that rests within the district court's discretion." *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008).

A district court's order for long-term foster care must be supported by compelling reasons that termination is not in a child's best interests. Minn. Stat. § 260C.201, subd. 11(d)(3)(i). In a permanency proceeding, "[t]he 'best interests of the child' means all relevant factors to be considered and evaluated." Minn. Stat. § 260C.201, subd. 11(c)(2) (2008).

The district court concluded that "[t]here are compelling reasons to place [J.T.M.] in long-term foster care." The district court found that the foster family had provided a "safe, stable, and loving home for [the children]" and "have met the children's needs."

The district court found that when J.T.M. entered the foster family's home, he was obese, had poor hygiene, had problems with anger, and engaged in bullying. But after several months, he had lost 40 pounds, improved his hygiene, was eating balanced meals, and had neighborhood friends. The district court credited testimony from the GAL that the foster family's performance with J.T.M. had been "amazing," "diligent," and "impressive." The district court also found credible the foster family's testimony that they were committed to providing long-term foster care to J.T.M. until he reached the age of majority. The district court found that "[a]lthough the testimony indicates that [J.T.M.] is a pleasant, adoptable boy, there remains a very real risk that [his] past difficulties will resurface in the event of a transition to another home."

The county does not directly challenge the district court's findings of fact, but argues that, although J.T.M.'s basic needs have been met in foster care, such placement does not provide the same stability and permanence as a potential adoptive placement. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 58 (Minn. 2004) (stating that long-term foster care is not a favored disposition). The county social-services caseworker testified that she had concerns about foster care based on its social stigma, and the GAL testified that, although J.T.M. was "thriving" in the current foster care home, she did not believe continued foster care was in J.T.M.'s best interests because "it's still foster care."

We recognize the county's policy concerns relating to long-term foster care as a permanent placement option. Nonetheless, those concerns carry less weight in J.T.M.'s situation because he has been successfully placed with his sister in a foster-care home

where he has made significant improvements, and where he has the strong possibility of remaining long term in a supportive environment. The GAL testified that the foster family had “worked diligently” on J.T.M.’s hygiene, grades, socialization, eating habits, weight management, and discipline, and had made “impressive gains” with J.T.M. in those areas. Significantly, both the social worker and the GAL expressed only minor concerns about J.T.M.’s current foster-care placement.

Based on this record, the district court’s findings on the best-interests issue are supported by substantial evidence and are not clearly erroneous. The district court did not err by concluding that compelling reasons exist not to terminate mother’s parental rights and to place J.T.M. in long-term foster care.

Affirmed.