STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1566

In the Matter of the Welfare of the Children of: T. A. M. and J. C. G., Parents.

Filed February 16, 2010
Affirmed
Kalitowski, Judge

Olmsted County District Court
File No. 55-JV-08-2284

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J.G., Woodbury, Minnesota (pro se respondent)

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

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

KALITOWSKI, Judge

Appellants J.R. and D.R. challenge the district court order granting custody of children D.G., X.G., and J.G. to S.V. and J.B., arguing that: (1) the district court did not properly apply the statutory factors and improperly considered and weighed nonstatutory factors when making its decision; and (2) the extraordinary circumstances of this case warrant this court's independent review of the placement of the children. We affirm.

FACTS

Mother T.A.M. and father J.C.G. are the parents of children X.G., born May 3, 2002, J.G., born April 3, 2004, and D.G., born June 8, 2007. D.G. suffered medical complications from having cocaine and THC in her system when she was born and was immediately placed with appellant J.R., her maternal great-aunt. D.G. has never lived with either parent. On July 2, 2007, T.A.M. voluntarily placed her two older children, X.G. and J.G., in foster care. On July 23, 2007, respondent Olmsted County Community Services convened a family group conference to develop a plan for the children to leave foster care. T.A.M. selected great-aunt J.R. to continue to care for D.G., and another aunt, appellant D.R., to care for the two older children, who moved into her residence on July 27, 2007. Appellants both live in Rochester, Minnesota.

Although the children were placed outside the home starting in June and July 2007, no CHIPS petition was filed until March 2008. During this time the children did not have a guardian ad litem, the parents did not have legal representation, and permanency proceedings were delayed. The children were adjudicated CHIPS; then

pursuant to a trial held on December 22 and 23, 2008, the parental rights of T.A.M. and J.C.G. were terminated for all three children.

Following the termination part of the trial, a permanency placement hearing was held. During the hearing, T.A.M. stated that it was in the best interests of the children that they be placed together in a permanent home, but she expressed no preference as to where. The options before the court that are at issue on appeal were leaving the children in the care of appellants, or placing all three children with S.V. and J.B., a couple who live in Indiana and are extended relatives of the children.

In an order filed March 6, 2009, and amended July 27, 2009, the district court ordered that the children be placed in the home of S.V. and J.B. The court determined that S.V. and J.B. presented the best permanent placement option for the children. Appellants J.R. and D.R. now challenge this determination.

D E C I S I O N

I.

In child-placement proceedings, "[t]he evidence and its reasonable inferences must be viewed in the light most favorable to the prevailing party." *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996). On appeal from a permanent-placement order, this court determines whether the district court's findings address statutory criteria and are supported by substantial evidence, or whether such findings are clearly erroneous. *Id.* at 261-62.

"In ordering a permanent placement of a child, the court must be governed by the best interests of the child, including a review of the relationship between the child and

relatives and the child and other important persons with whom the child has resided or had significant contact." Minn. Stat. § 260C.201, subd. 11(e) (2008). In a permanency proceeding, the "best interests of the child" are defined as "all relevant factors to be considered and evaluated." Minn. Stat. § 260C.201, subd. 11(c)(2) (2008). In determining the best interests of children in placement decisions, the child-placing agency must make "individualized determination[s]," and among the factors to be considered are:

> (1) the child's current functioning and behaviors;
> (2) the medical, educational, and developmental needs of the child;
> (3) the child's history and past experience;
> (4) the child's religious and cultural needs;
> (5) the child's connection with a community, school, and church;
> (6) the child's interests and talents;
> (7) the child's relationship to current caretakers, parents, siblings, and relatives; and
> (8) 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(a), (b) (2008). Currently, the law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000). Appellate courts are not meant to comb through the record to determine "best interests" because this involves credibility determinations. *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003) (citing *Schmidt v. Schmidt*, 436 N.W.2d 99, 105 (Minn. 1989)).

Statutory Factors

Appellants argue that the district court did not adequately address the statutory criteria for best-interests determinations found in Minn. Stat. § 260C.212, subd. 2(b). But the district court made findings that address all the statutory criteria. *See A.R.G.-B.*, 551 N.W.2d at 261 (stating that district court findings for child-placement decisions must address statutory criteria). The district court specifically stated that it was balancing "the statutory factors and the best interest of the children in light of each potential placement" and concluded "that [J.B. and S.V.] are best able to meet the immediate and long-term physical and emotional needs of the three children."

After thoroughly reviewing the record in the light most favorable to the district court's findings, we conclude that its findings do not warrant reversal. The district court analyzed each factor individually and concluded that they weighed in favor of placement with S.V. and J.B. The court recognized the excellent care that appellants had provided for the children and the improvements the children made in appellants' care, but concluded that it is in the children's best interests to be placed together permanently with S.V. and J.B.

Specifically, the court determined that the children's medical, developmental, and educational needs would be better served by S.V. and J.B., who have the education and resources to provide the best opportunity for a variety of cultural, educational, and recreational experiences for the children, and who do not have the educational and medical limitations that appellants have. The court determined that the children's history and past experience indicate a need for a secure, stable, permanent placement, and that

S.V. and J.B. present the best opportunity for the children to live together and to maintain contact with their extended family. In addition, the court noted that appellant D.R. stated that she would continue to support the boys into adulthood only "if necessary." This is contrasted by evidence that S.V. and J.B. want to continue to provide a secure home into adulthood and send the children to college.

There is sufficient evidence in the record to support the district court's findings that numerous best-interests factors favor placing the children with S.V. and J.B. *See A.R.G.-B.*, 551 N.W.2d at 261 (stating that district court findings for child-placement decisions must be supported by substantial evidence). Because the district court's findings are not clearly erroneous, it is unnecessary for us to further address appellants' discussion of the evidence. *See Vangsness*, 607 N.W.2d at 474 (Minn. App. 2000) (stating that appellate courts need not discuss and review in detail the evidence for the purpose of demonstrating that it supports the district court's findings). But to fully address appellants' arguments, we will examine the evidence that appellants argue was ignored by the district court, was improper or irrelevant, or was contrary to the district court's placement decision.

Appellants argue that certain statutory factors must be analyzed in the current context, and that it is undisputed that the children had improved and were functioning well in appellants' care. But appellants cite no authority for the proposition that the district court cannot take future needs into account, and they do not controvert the evidence that the district court relied on in concluding that S.V. and J.B. are best suited to provide for the children's developmental, educational, and medical needs throughout

their lives. In addition, the district court was presented with testimony from the guardian ad litem that the children have "established healthy relationships with [S.V. and J.B.]" and that their functioning could be increased if placed together. The district court determined that it is in the children's best interests to be placed together.

Appellants claim that they are better suited to nurture the children's African-American heritage, despite the fact that appellants, like S.V. and J.B., are not African-American, because they live closer to the children's African-American family. But the district court was presented with evidence from which it concluded that S.V. and J.B. were the most willing to maintain extended family ties. Furthermore, the district court found that appellants made it difficult for extended family members to see the children, and for the siblings to see one another. The district court had to issue an order to facilitate contact; thus the district court found appellants' testimony that they would support extended family contact not credible. Appellants point to the fact that the children have a half brother in Rochester, but no proposed placement would allow them to live with him. In addition, there was evidence that S.V. and J.B. have the flexibility, the means, and the desire to visit Minnesota regularly.

The district court thoughtfully considered all relevant factors and explicitly concluded that it is in the children's best interests to place them with S.V. and J.B. The district court concluded that appellants have a genuine interest in the welfare of the children and are committed to doing the best they can for them. But, in determining the best interests of the children, the district court found that placement with S.V. and J.B. was preferable. And the fact that there is evidence to support a contrary finding on a

statutory factor does not make the district court's best-interests findings clearly erroneous. *See Vangsness*, 607 N.W.2d at 474.

Nonstatutory Factors

Appellants also argue that the district court improperly considered and gave great weight to nonstatutory factors. But the statutory factors are only "among the factors" to be considered when making best-interests determinations. Minn. Stat. § 260C.212, subd. 2(b). Furthermore, Minn. Stat. § 260C.201, subd. 11(c)(2), defines best-interests considerations as "all relevant factors to be considered and evaluated." Thus, the plain language of the relevant statutory sections allows consideration of other factors. And caselaw confirms that best-interests factors are not exclusive to those listed in statutes. *See In re Paternity of B.J.H.*, 573 N.W.2d 99, 102 (Minn. App. 1998) (rejecting argument that "best interests" are limited to statutory factors in a paternity proceeding); *see also Vangsness*, 607 N.W.2d at 477 n.3. Moreover, "[t]he paramount consideration in all proceedings for permanent placement . . . is the best interests of the child." Minn. Stat. § 260C.001, subd. 3(2) (2008). We conclude that the district court only considered "non-statutory" factors in order to make the most thorough best-interests determination for placement of the children.

Appellants assert that the district court improperly considered and weighed their learning disabilities and handicaps. But appellants cite no statute or caselaw that provides that these factors are not within "all relevant factors to be considered and evaluated." Furthermore, the district court's concern for these factors was not outside the statutory framework, but was used in determining that S.V. and J.B. could provide more

thoroughly for the educational, medical, and developmental needs of the children as they grow up. *See* Minn. Stat. § 260C.212, subd. 2(b)(2). We reject appellants' assertion that the court may only consider the current functioning and needs of the children; it is in the children's best interests to consider their functioning throughout their lives.

Appellants also contend that the district court improperly considered and weighed the financial differences between themselves and S.V. and J.B. Appellants claim that because they are "not of a certain financial ability, demeanor, or class," the district court did not seriously consider them as permanent placements for the children they had been raising for the previous 18 months. But the district court did seriously consider them as options for placement, as is evident in the record.

Appellants cite *In re Custody of M.A.L.*, 457 N.W.2d 723, 727 (Minn. App. 1990), which warns of "the danger of prejudice in favor of finding a white middle-class home to be in the child's best interests even if it shuts the child off from her heritage." But in that case, this court affirmed the district court's award of custody to the family who was "committed to keeping M.A.L. connected with her relatives and her heritage" and was more interested in her development. *M.A.L.*, 457 N.W.2d at 727-28. Similarly, here, the district court placed the children with S.V. and J.B. as the parties most committed to maintaining contact with extended family. *M.A.L.* does not stand for the proposition that financial status is an inappropriate consideration in making permanent child-placement decisions, and appellants have cited no such authority. In addition, the "non-statutory" factor of financial status affects the statutory considerations of the children's medical,

developmental, and educational needs, and their interests and talents. *See* Minn. Stat. § 260C.212, subds. 2(b)(2), (6).

Appellants also argue that the district court improperly considered household composition in making its placement determination. Appellants assert that by considering the two-adult composition of S.V. and J.B.'s household in making its placement determination, the district court showed bias against nontraditional families. But the court stated that this issue was not given significant weight, was only considered "in light of the children's educational, family, cultural, recreational, and developmental needs, and the applicable factors," and that the result would have been the same despite this consideration.

Finally, appellants claim that the district court used nonstatutory factors to "trump" the statutory considerations. But appellants provide no support for this contention. And the district court delineated all of the statutory factors and provided sufficient evidence for a finding that on the whole, those factors and the paramount consideration of the best interests of the children, were best served by placing the children with S.V. and J.B. The record here might, as appellants claim, also support findings contrary to those made by the district court. But because the district court's findings address the statutory criteria, are supported by substantial evidence, and are not clearly erroneous, we affirm the district court's decision. *See A.R.G.-B.*, 551 N.W.2d at 261-62 (explaining the standard of review in child-placement cases).

II.

Because we conclude that the district court did not clearly err in placing the children with S.V. and J.B., we need not reach appellants' claim that the extraordinary circumstances of this case warrant this court's independent review of the appropriate placement for the children.

Affirmed.