FILED

December 12, 2017

OFFICE OF APPELLATE COURTS

STATE OF MINNESOTA

IN COURT OF APPEALS

In re Z. R. R., L. L. R., M. P., A. J. F., Sr., and Bethany Christian Services,

Petitioners

In the Matter of the Petition of: Z. R. R. and L. L. R. to adopt A. J. F., Jr.

O R D E R

#A17-1856

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Reyes, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE FOLLOWING REASONS:

In this adoption dispute, the child's parents, the potential adoptive parents, and the agency involved in the adoption, seek a writ of prohibition to preclude the district court from enforcing its orders filed on October 16 and 19, 2017. The first order rules that the child is not an "Indian child" under the Indian Child Welfare Act but is an "Indian child" under the Minnesota Indian Family Preservation Act (MIFPA), that the parents' consents to the adoptive placement are not sufficient to allow a placement that does not satisfy MIFPA, and that an evidentiary hearing under Minn. Stat. § 260.771 (2016) is required to address whether to allow the proposed placement. The second order sets the hearing for December 18, 2017. Petitioners ask this court to decide their petition before that date. Respondents, the Indian tribe and the child's guardian ad litem, oppose the petition.

A writ of prohibition can issue "only if" "(1) an inferior court or tribunal [is] about to exercise judicial or quasi-judicial power; (2) the exercise of such power [is] unauthorized by law; and (3) the exercise of such power [will] result in injury for which there is no adequate remedy." *In re Leslie*, 889 N.W.2d 13, 14-15 (Minn. 2017) (citations omitted). Prohibition does not lie if an appeal is an adequate remedy. *Bellows v. Ericson*, 233 Minn. 320, 325, 46 N.W.2d 654, 658 (1951).

For various reasons, petitioners assert that no evidentiary hearing under Minn. Stat. § 260.771 is required for this adoption. Petitioners also assert that an appeal is an inadequate remedy for an erroneous hearing because requiring a hearing will void the parents' consents to the adoption, disregard the parents' wishes, disrupt the child's placement, and require improper disparate treatment of the mother and child because of their race. We disagree.

If, on appeal from a final ruling, this court reverses the district court's determination that the parents' consents are inadequate to support the proposed placement, those consents, as well as the parents' wishes, will be vindicated. Additionally, it does not appear that the child's placement will be disrupted if a writ is not granted. The district court found that the child is "well cared for" by the prospective adoptive parents, and the tribe states that it has not requested that the child be removed from the potential adoptive parents during the proceedings. Further, the assertion that conducting the hearing constitutes improper race-based treatment of the mother and child assumes that petitioners will be successful in their challenges to the application of the relevant statutes. If those challenges are unsuccessful, petitioners will lack a legal basis for their petition.

We also reject petitioners' assertion that, under *State v. Deal*, 740 N.W.2d 755 (Minn. 2007), an appeal is an inadequate remedy. There, while a criminal prosecution was pending, the defendant's wife petitioned to dissolve her marriage to the defendant. In the dissolution, the defendant sought depositions relevant to the criminal matter which exceeded the scope of discovery allowable in the criminal case. 740 N.W.2d at 758. In granting the state a writ of prohibition to preclude the depositions, the supreme court ruled that an appeal was an inadequate remedy "because the harm – allowing [the defendant] to compromise the integrity of the criminal trial by going beyond the scope of criminal discovery – would already have occurred." *Id.*, at 769-70. Here, there is no parallel proceeding to compromise, and any errors in the proceeding can be corrected in an appeal, if necessary.

The petition mentions a writ of mandamus but it does not address the standard for that writ. Minn. Stat. §§ 586.01-.12 (2016). Because petitioners did not brief mandamus, we do not address it. *See Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 2007) (declining to address an inadequately briefed question).

IT IS HEREBY ORDERED: The petition for a writ of prohibition is denied.

Dated: December 12, 2017

BY THE COURT

Jill Flaskamp Halbrooks

Jill Flaskamp Halbrooks
Presiding Judge